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# Recognition of Judgments: The Legal Framework of the Succession Regulation

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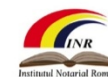
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## **Recognition and enforcement of decisions: framing the general issue**

- (1) The importance of the “free movement of rights” within the European judicial space
- (2) The path of automatic recognition followed by the EU: what does “automatic recognition” mean?

## What is a “decision” for the purposes of the Succession Regulation?

Key Provision: art. 3 (1) (g) Succession Regulation

(a) the decision, whatever this may be called, is given by a court or tribunal of a Member State (issue of Denmark, the United Kingdom and Ireland).

(b) a decision on the determination of costs or expenses by an officer of the court is a judgment and shall move within the European judicial space accordingly.

(c) decisions issued by other states (or by MS not bound by the regulation) will be recognized in the Member States (bound by the SR) in accordance to their domestic provisions.

*(continues)*

(d) a “decision” follows the rule on recognition and enforcement if the decision is emanated from a body of a Member State having jurisdiction under the law and deciding on its own authority on the issues (or over matters in non-contentious cases) between the parties (cf. in the „Brussels rules“ ECJ 2 June 1994, *Solo Kleinmotoren GmbH v Emilio Boch*, Case C-414/92, in *Reports*, 1994, I-2237, para. 17).

## “Decisions”, “authorities” and notarial functions

The Succession Regulation takes in due consideration the specificities of succession matters. In particular, the regulation acknowledges the role public notaries have in succession proceedings.

Key reference: not art. 3 (1) (g), but recital 22: when notaries exercise judicial functions they are bound by the rules of jurisdiction, and the decisions they give should circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions. Furthermore, also declaration for the acceptance or waiver of the succession, of a legacy or of a reserved share under art. 13 Succession Regulation also enjoy the free movement reserved to judicial decisions, only, however, if such declarations converge in a decision.

## Notaries exercising judicial functions

“notaries and legal professionals who, in some Member States, exercise judicial functions in a given succession by delegation of power by a court ” (rec. 20).

“the term ‘court’ should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of succession, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions ” (*ibidem*).

Delegated *executive competences and activities*: are they "decisions"?

# The procedure for recognition and enforcement: an overview

1) Principle: automatic recognition

2) Request to a court to judicially recognize the decision (the procedure to request judicial recognition and enforcement is the same)

2.A) Recognition is the principal claim (territorial competence court of domicile executed: whereas heads of jurisdiction and conflict of laws follow the criterion of habitual residence; cf. difference with, e.g., Brussels IIa Regulation)

2.B) Recognition is preliminary question (decides the court of the main claim)

## The procedure for recognition and enforcement: an overview (2)

### 3) Documents to be produced

- a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;
- b) the attestation issued by the court or competent authority of the Member State of origin.

4) If documents are in order, recognition/enforcement is granted. This is an *inaudita altera parte* procedure, showing a favour towards mutual recognition. At this stage, requested courts do not check grounds to refuse recognition and enforcement



## **The procedure for recognition and enforcement: an overview**

### **(3)**

5) The party against whom enforcement is sought can appeal the decision of the first court within 30/60 days

6) This second procedure is adversarial in nature (right to self defence)

7) Requested courts can a) take into consideration factual elements following the issuance of the foreign decision, or b) one of the given grounds to refuse recognition and enforcement (no supplement with domestic grounds). In NO way the court can review the facts assessed by the foreign court.

## **The procedure for recognition and enforcement: an overview (4)**

8) Grounds to refuse recognition and enforcement (art. 40 SR):

- Public policy (substantive and procedural): how did the case law address such issue before SR? Is it likely to be frequently invoked and frequently applied?
- Insufficient time to arrange for a self-defence in the first procedure (unless there is a failure to appeal)
- Inconsistent decisions (internal and from other Member/third States)

**Thank you for your attention!**

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