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Towards the entry into force of the succession regulation:  
building future uniformity upon past divergencies

# *TOWARDS THE ENTRY INTO FORCE OF THE SUCCESSION REGULATION: BUILDING FUTURE UNIFORMITY UPON PAST DIVERGENCIES*

## *Questionnaire on Succession Law*

TARGET GROUP:

LEGAL PRACTITIONERS AND ACADEMICS

*(lawyers, notaries, judges, mediators, academics)*

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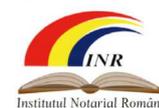
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**Note to the reader: please, when answering the questions, if possible take into account both relevant domestic statutory provisions and case law**

**Where a multiple-choice answer is foreseen, please put an x on the correct one. For the open questions instead, please draft your answer in red.**

- 1 If possible, clearly state your professional qualification (lawyer, notary, judge, mediator, academic):**
- 2 Do you think the intervention of the EU in the field of cross-border could help EU citizens to plan in a more effective way their succession *mortis causa*?**
- 3 Do you believe that the goal to increase individuals possibilities to effectively plan cross-border succession could better be pursued by supra-national uniform substantive law?**
- 4 Domestic concept of succession:**
  - 4.1 At a general level, which concept of succession is followed within your country?
    - a) Succession is an instrument to assure the continuity of the legal statues and family relationships of the *de cuius*;
    - b) Succession is an instrument to guarantee the party autonomy of the *de cuius*
    - c) Something else
  - 4.2 In light of the precedent question, in your domestic jurisdiction
    - a) do heirs directly succeed into the rights of the deceased, or
    - b) do they succeed into the estate only after the administration of the estate itself from an administrator?
  - 4.3 In case of a), if there is direct succession into the estate of the deceased person:
    - 4.3.1 What are the powers and obligations of heirs?
    - 4.3.2 Are there specific instruments to protect creditors of the deceased?
    - 4.3.3 How can the heir prove his/her quality? By way of authentic instruments or by judicial certificates?
    - 4.3.4 What are these authentic instruments and/or certificates (whose place is not

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- going to be taken by the EU Certificate on succession)?
- 4.3.5 What are the elements of these instruments or certificates, their costs and how long does it on average take to get such documents? What role could these costs and times play: could they be in favour of the use of the EU certificate on succession?
- 4.3.6 Which authorities (administrative bodies, courts, notaries, etc...) are competent to issue these instruments or certificates?
- 4.3.7 What legal effects are recognised in your domestic jurisdiction to these kinds of authentic instruments and certificates?
- 4.3.8 Does the requested authority have any power to verify the information offered by the requesting party?
- 4.3.9 Is there any instrument to protect third parties entering an agreement with an heir in case is proven, after such agreement, that the heir had no title to dispose the property (because of a lack in quality of heir)?
- 4.3.10 Does the protection of such third party rests upon the principle of legitimate expectations, save third parties not acting in good faith? If so, do authentic instruments and certificates set a rebuttable/non rebuttable presumption of good faith?
- 4.3.11 Does the protection of such third party rests upon the principle of certainty of commercial transactions, thus protecting the third party not acting in good faith?
- 4.3.12 Such purchase is considered to be a derivative or an original acquisition?
- 4.3.13 Are these rules also applicable in case the lack in ownership is not determined by a lack of quality, but is determined by the fact the sold good is not part of the deceased's estate (thus, are authentic instruments and certificates "property certificates" rather than certificates proving the quality of heir)?
- 4.4 In case of b), if there is no direct succession into the estate of the deceased person:
- 4.4.1 Who can be appointed as administrator of the estate?
- 4.4.2 What are the main duties/powers of the administrator of the estate?
- 4.4.3 Which are the documents proving the quality of administrator of estates? Can only judicial decisions prove this quality?
- 4.4.4 Is it possible in your system to recognise foreign decisions of appointments of administrators for estates present on your own territory?
- 4.5 Succession and adaptation of foreign and unknown legal institutions:
- 4.5.1 Which are the rights *in rem* in your domestic jurisdiction to which foreign and unknown rights *in rem* could be compared and adapted to?
- 4.6 Is in your domestic system a public registry for last wills?
- 4.7 Succession and jurisdictional activities:
- 4.7.1 Does the judicial authority have any power to promulgate information and news



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of a case that could be of any relevance for the foreign court requested to issue a European Certificate of Succession (art. 65 of the Reg.)?

4.7.2 Are there provisions or mechanisms that allow cooperation and/or collaboration between national and foreign authorities?

## 5 Relationships between succession law and other fields of law:

5.1 What are the relationships between succession law and tax law, in particular in case of cross-border successions? Is it possible that there could be double taxation?

5.2 What are the relationships between succession law and insolvency law?

5.3 What are in your domestic system the relationships between succession law and company law?

## 6 Succession law and fundamental rights:

6.1 Can legitimate children and illegitimate children succeed to the deceased parent in the same terms?

6.2 Can grounds of race, religion, gender, sexual orientation etc., restrict the capacity to inherit?

6.3 Do born and unborn people share the same capacity to inherit?

6.4 Do individuals and legal entities share the same capacity to inherit?

6.5 Can people on different grounds involved in a succession proceeding access public records for matters concerning the succession itself, if such records are established in domestic law?

## 7 Succession law and party autonomy:

7.1 Within your domestic system, can the testator freely dispose of his/her estate?

7.2 The capacity of the *de cuius* to conclude a valid will could be limited by law to protect

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certain relatives, or in considerations of the state of health of the *de cuius* ?

7.3 What form is required for the acts of disposition *mortis causa* of the estate?

7.4 In case the *de cuius* has a limited party autonomy in succession matters, who is identified by law as entitled to forced heirship? How much of the deceased estate is reserved to such heirs?

7.5 Are there in your domestic system provisions granting the interested party to invalidate acts of disposal made by the *de cuius* before his/her death (clawback) that could prejudice the heirship?

7.6 Are there in your legal system provisions limiting the *de cuius* party autonomy with regard to the disposition of his/her estate (e.g. agreements as to succession)?

7.6.1 In case agreements as to succession are allowed in your domestic system, what are the provisions concerning said legal institution?

7.7 In the event that agreements as to succession are allowed, what effects may these have against third parties and, in particular, on the forced heirs, if forced heirship is envisaged in your system?

7.8 Are joint wills allowed in your system?

7.9 If foreseen in your system, do forced heirships, rules on joint wills and on agreements as to succession qualify as overriding mandatory rules/public order?

## 8 Succession law and private international law:

8.1 What are the provisions of private international, and the connecting factors, on personal status?

8.2 Are there overriding mandatory rules or public order principles which may affect the application of foreign laws on the capacity to succeed?

8.3 Are there specific jurisdictional criteria and conflict of law rules applicable to cross-border successions?

8.4 In case concepts such as residence and/or domicile are relevant in your system, how are these interpreted?

8.5 What are the jurisdictional criteria adopted?

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- 8.6 What are the conflict of law rules adopted in the field of cross – border succession?
- 8.7 Has in your system the *de cuius* the right to choose the applicable law to his/her succession? Up until when? In what forms?
- 8.8 Are there specific connecting factors regarding immovable properties part of the deceased estate's?
- 8.8.1 In the affirmative, if your system follows the dualistic approach, it is possible to recognize foreign judgments delivered by other authorities in relation to immovable properties situated in your territory?
- 8.9 Are in your system in force relevant international conventions in the field of succession?
- 9 Succession law and foreign decisions, judgments, deeds, certificates and authentic instruments:**
- 9.1 Can foreign mediation agreements in matters of succession be recognized in your system? Under what conditions?
- 9.2 Can foreign public deeds and/or authentic instruments related to cross-border succession be recognized in your system? Under what conditions?
- 9.3 How much time is usually necessary for the recognition?
- 10 What elements could induce you to qualify a national or cross - border succession procedure as “complex”?**
- 11 What are the difficulties encountered by your client / the individual in cross - border succession that do not normally occur in pure domestic succession (additional costs, language difficulties, tensions related to travel abroad for the inspection of the estate, etc ...)?**
- 12 Are there relevant elements regarding cross – border successions that, in your opinion, have not been explicitly taken into account in this questionnaire and that should have been treated?**

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