

Agreements in EU Council on Abolition of Exequatur and Succession

During its meeting of December 13-14, 2011, the Council of Ministers of the European Union has made decisions regarding some forthcoming private international law legislation. The Press Release states:

Main Results:

*Ministers also reached agreement on the text of a regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of **succession** and the creation of a European Certificate of Succession. On the recast of a regulation on **jurisdiction and the recognition and enforcement of judgments in civil and commercial matters** (the so-called “Brussels I” regulation), the Council approved political guidelines for further work.*

More specifically, the Council agreed:

Judgments in Civil and Commercial Matters

The Council agreed on political guidelines on the abolition of exequatur on judgements given on matters falling within the scope of the so-called Brussels I regulation.

(...)

The UK and Ireland have decided to take part in the adoption of the revised regulation. Once adopted, the revised regulation will also be applicable to Denmark in the context of the existing agreement between the EU and Denmark on the matter.

Succession

The Council reached very broad general agreement on the text of the regulation

on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession (18745/11 + ADD 1). (...)

In order to reach a general approach, further work is needed, in particular on two issues:

- the question of restoration of lifetime gifts (“clawback”) where considerable differences between member states’ legal systems exist: While some member states allow for clawback, others don’t.*
- the question of the administration of a deceased person’s estate: Work will start immediately in order to prepare incoming negotiations with the European Parliament.*

Open questions also exist on the recitals as well as the proposed standard forms.

In general, the proposed rules aim to make life easier for heirs, legatees and other interested parties.

The main provisions are:

- The draft act provides for the application of a basic connecting factor for determining both the jurisdiction of the courts and the law applicable to a succession with cross-border implications, namely the deceased’s habitual residence at the time of death. The proposed Regulation will also allow a person to choose the law to govern the succession the law of the State of his/her nationality. This rule would take some of the stress out of estate planning by creating predictability.*
- The proposed rules will ensure mutual recognition and enforcement of decisions and mutual acceptance and enforcement of authentic instruments in succession matters.*
- A European Certificate of Succession would be created to enable persons to prove their status and/or rights as heirs or their powers as administrator of the estate or executor of the will without further formalities. This should result in faster and cheaper procedures for all those involved in a succession with cross-border implications.*

The UK and Ireland have not yet notified the Council that they will participate in the final adoption of the regulation, but have participated actively in the negotiations. Denmark will not take part in the adoption of the proposed regulation.

Many thanks to Niklaus Meier for the tip-off.