

# CJEU on donation mortis causa under the Succession Regulation in the case UM, C-277/20

This Thursday, the Court of Justice delivered its judgment in the case UM, C-277/20, where it clarifies whether a donation mortis causa may fall within the scope of the notion of “agreement as to succession” in the sense of the Succession Regulation.

The request for a preliminary ruling in this case arises out of proceedings in Austria on the inscription in the land registry of the property right to real estate situated in that Member State. The requested inscription is supposed to be made on the basis of a contract of donation mortis causa in respect to that real estate, entered into between two German nationals habitually resident in Germany. Prior to the request for the inscription, the succession proceedings have been opened before a German court for the last place of residence of the donor.

Before the Austrian courts, the request for the inscription of the propriety right have been already rejected by two instances and ultimately the Oberster Gerichtshof referred to the Court the preliminary questions that read as follows:

*Is Article 3(1)(b) of [the Succession Regulation] to be interpreted as meaning that a contract of donation mortis causa entered into between two German nationals habitually resident in Germany in respect of real estate located in Austria, granting the donee a right having the character of an obligation against the estate to registration of his title after the donor’s death pursuant to that contract and the donor’s death certificate, that is without the intervention of the probate court, is an agreement as to succession within the meaning of that provision?*

*If the answer to the above question is in the affirmative: Is Article 83(2) of [The Succession Regulation] to be interpreted as meaning that it also regulates the effect of a choice of applicable law made before 17 August 2015 for a contract of donation mortis causa that is to be qualified as an agreement as to succession within the meaning of Article 3(1)(b) of [the Succession Regulation]?*

In his Opinion presented this July, AG Richard de la Tour considered that Article 3(1)(b) of the Succession Regulation must be interpreted to the effect that the notion of “agreement as to succession” includes donation contracts inter vivos, by which, in favor of the donee, the transfer of the ownership of one or several assets even only partially accounting for the hereditary estate of the donor does not take place until the death of the donor.

In its judgments, the Court also **pronounces itself in favour of the interpretation according to which a contract of donation mortis causa is to be qualified as an “agreement as to succession”**.

The reasoning of the Court commences with the juxtaposition of exclusion from the scope of the application of the Succession Regulation provided for in its Article 1(2)(g) [“shall be **excluded (...) property rights (...) created or transferred otherwise than by succession, for instance by way of gifts**”], on the one hand, and definition of the notion of “agreement as to succession” in the sense of Article 3(1)(b) of the Succession Regulation [“an agreement resulting from mutual wills, which, with or without consideration, **creates, modifies or terminates rights to the future estate or estates (...)**”], on the other hand (paragraph 27).

The Court stresses then the importance of **autonomous and uniform interpretation** of the notions of the Succession Regulation (paragraph 29) and contends that the very wording of the definition of the notion of “agreement as to succession” indicates that this notion covers also transfers relating to **future estates** (paragraph 30).

By contrast, the second preliminary question is answered in the negative. For the Court, as nothing indicates that a choice of law applicable have been made to succession as a whole, Article 83(2) of the Succession Regulation is not applicable to the case at hand. As such, the choice made solely with regards to the agreement as to succession is not governed by Article 83(2) (paragraph 39).

The judgment can be found here (in German and French so far).