



## FAMILY LAW

# NEW RULES ON INHERITANCE IN THE EUROPEAN UNION

*EU Regulation 650/2012 of 4 July 2012 has been approved by the European Parliament and by the Council. The regulation covers jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession (inheritance) and on the creation of a European Certificate of Succession.*

### **I - THE EUROPEAN UNION REGULATION COMING INTO FORCE IN AUGUST 2015**

EU Regulation 650/2012 of 4 July 2012 has been approved by the European Parliament and by the Council. The regulation covers jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession (inheritance) and on the creation of a European Certificate of Succession.

This regulation applies to the estates of people who die on or after 17 August 2015, with a transitional safeguard for the choice of law made by the deceased or the validity of dispositions upon death by a will made before this date.

This new legal framework applies in all the Member States except for Denmark, Ireland and the United Kingdom, because of their special position in relation to the area of freedom, security and justice and to the Treaty on the Functioning of the European Union.

In passing the regulation, the European Union has sought to overcome the clear cross-border conflicts in rules, to make the internal market work better and remove the obstacles to free movement of people who face difficulties exercising their rights when it comes to inheritance.

This regulation introduces a significant change to the current rules on cross-border inheritance cases in many Member States, including Portugal, which, until now in its private international law, applied the law of the nationality of the deceased to govern the succession.

### **II. MAIN FEATURES OF THE REGULATION WHICH HAS DIRECT AND IMMEDIATE EFFECT IN THE EUROPEAN UNION**

This regulation is based on three fundamental principles and its foundations are:

- i) Jurisdiction and application to all of the assets of the deceased regardless of their situation and location;
- ii) It establishes the general rule of the habitual residence of the deceased at the date of death, but it does not establish any minimum residence period to meet the requirement of the rule.  
  
This means that habitual residence has to be assessed in light of the factual circumstances of the deceased, in particular, the duration and regularity of the deceased's residency in the State in question, as well as the conditions and reasons for this residence;
- iii) The law that applies to the deceased's succession under the new regulation applies to the whole of the succession.

### III. THE RULE OF THE HABITUAL RESIDENCE OF THE DECEASED AT THE DATE OF DEATH

#### a) Jurisdiction of the Member States

When it comes to general jurisdiction to consider and decide on the whole succession, the courts (or other bodies that play this role according to the internal law) of the Member State in which the deceased had his or her habitual residence will have jurisdiction.

However, there are some exceptions to this general rule. For example, the Regulation provides an exception if the deceased has chosen the law of his or her nationality to govern the succession and the heirs agree that the courts of the Member State of the law chosen have jurisdiction to deal with the matter. This means it is necessary for the heirs to agree that the courts of the State of the nationality of the deceased have exclusive jurisdiction to decide on or any matters relating to the succession (choice of forum agreement).

#### b) The substantive law applicable to the succession of the deceased

The Regulation adopted the same criterion for the applicable substantive law, so the law applicable to the succession will be the law of the Member State where the deceased had his or her habitual residence at the date of death, except if the person has chosen the law of the nationality to govern the whole succession. The choice of the national law must be formalised in the will itself or by declaration in the form of the disposition upon death. If the deceased has more than one nationality, he or she may choose the law of any one of the States of which he or she is a national at the date the choices made.

This Regulation gives the courts or other bodies of the Member State of the habitual residence of the deceased at the date of death the option of sending the case to the authorities of another Member State whenever they consider that those authorities would be better placed to deal with the case.

The Regulation provides that the law chosen by the deceased can be excluded if it is manifestly incompatible with the international public order of the Member State with jurisdiction.

It is important to make it clear that this Regulation will apply to nationals of States outside the European Union if they have a sufficiently strong link with the territory of a Member State, in other words, if they have their habitual residence in an EU Member State at the date of death.

Finally, we would stress the principle of universal application of this Regulation. This means that a law designated by the Regulation may be applied even if it is not the law of a Member State.

### IV. THE EUROPEAN CERTIFICATE

The Regulation introduces a further advantage of allowing the beneficiaries of the inheritance to deal with the whole process with a single authority. This means they will not have to duplicate procedures or costs in dealing with the estate.

The European Certificate of Succession is created for this purpose and will allow the heirs and executors or administrators of the estate to prove their status to any authority in any of the Member states without the need for further formalities. This is a significant improvement in relation to the current situation.

The estate of a deceased person can now be dealt with as a whole because the Regulation covers all issues related to the administration of the estate up to the stage of liquidation.

### V. CONCLUSION

EU Regulation no. 650/2012, on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, **will come into force in August 2015**. Its scope of application covers all issues of civil law raised by death but excludes, among others, tax, customs and administrative matters, as well as real rights and matrimonial regimes.

The general rule introduced by the Regulation is based on the element of connection: the habitual residence of the deceased at the date of death, except if that person has chosen the law of the nationality to govern the whole succession.

Rui Alves Pereira

This Informative Note is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Informative Note may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact **Rui Alves Pereira** ([rui.alvespereira@plmj.pt](mailto:rui.alvespereira@plmj.pt)).

Portuguese Law Firm of the Year  
*The Lawyer European Awards, 2015-2012*

Iberian Law Firm of the Year  
*Who's Who Legal, 2015, 2011-2006*  
*Chambers European Excellence Awards, 2014, 2012, 2009*

Top 50 - Most Innovative Law Firm in Continental Europe  
*Financial Times - Innovative Lawyers Awards, 2014-2011*