

EU Succession Regulation: First Decade of Application, Strengths, Challenges, Future Outlooks

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NATIONAL REPORT

GERMANY

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Introduction

This National Report was prepared within the *EU Succession Regulation: First Decade of Application, Strengths, Challenges, Future Outlooks* (EUSuccess) project. EUSuccess is focused on the assessment of the practical functioning of the EU Succession Regulation¹ during the first decade of its application in selected Member States: Poland, Italy, Germany, Spain, Lithuania, Greece and Finland.² Each National Report was prepared on the basis of a detailed Questionnaire and thorough research into case-law of domestic courts in a given Member State. EUSuccess has a practical focus on law in action, however when needed the research of EUSuccess Team was supplemented by findings presented in the legal literature, decisions of domestic authorities other than courts, conclusions resulting from the case-law of the Court of Justice of the European Union (CJEU) and data collected during National Seminars aimed at the exchange of experiences with legal professionals.

Summary

The research carried out in the framework of the EUSuccess project provides an overview of the substantial body of case law regarding the application of the Succession Regulation (SR) in Germany. It is based on the evaluation of a total of 112 decisions available publicly. For each question, the pertinent decisions are identified and their core results reported. The result is a panoramic overview of the state of the application of the SR in German jurisprudence.

The study illustrates that generally, the application of the SR in Germany functions smoothly and that the integration of this European instrument into the German legal system has been successful. The changes brought about by the SR regarding jurisdiction and applicable law have been accepted and are well implemented. The rules on authentic instruments and recognition and enforcement do not appear to be problematic in German practice. The European Certificate of Succession can also be deemed to be functioning well generally, although the introduction of this new legal instrument has raised a few questions.

A number of challenges for the application of the SR in Germany have been identified. They do not concern the general functioning of the rules, but rather its application to specific issues and situations. Questions arise especially with regard to the characterization of some legal situations or instruments, and practical problems primarily concern the interface of the SR with German national rules (especially with regard to land registration) as well as the finer points of the ECS. While it must naturally be expected to take several more years until every question is answered, the establishment of solutions is well underway. Notably, German courts do not shy away from referring questions regarding the application of the SR to the ECJ, and keenly implement the ECJ's directions for its interpretation.

¹ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 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, OJ L 201, 27.7.2012, p. 107–134. See also Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation (EU) No 650/2012 of the European Parliament and of the Council 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, OJ L 359, 16.12.2014, p. 30–84.

² National Reports on Poland, Italy, Germany, Spain, Lithuania, Greece and Finland can be found on EUSuccess website at <https://eusuccess.project.uj.edu.pl>.

Setting the scene

Succession cases in your Member State

Please describe shortly how the succession cases are dealt with in your MS. Which authorities are competent and to what extent? Is it possible to handle a succession case without recourse to any public authority? Which legal professionals (e.g. notaries, legal advisors, attorneys, tax authorities, land registrars, civil status registrars) and at which stage (planning, liquidating, recognizing foreign decisions, etc.) might interpret or apply the Succession Regulation? Which authorities and legal professionals are considered ‘courts’ within the meaning of Article 3(2) Succession Regulation? Are there any other authorities, which are not ‘courts’, but do intervene in succession matters? How do such authorities establish their jurisdiction? Please explain shortly which authorities in your MS are competent to issue an ECS? What kind of authentic instruments³ within the meaning of Article 3(1)(i) Succession Regulation may authorities of your MS produce? What are their effects?

Under German law (§ 1922 BGB⁴), upon a person’s death their estate (all assets and debts – universal succession) automatically passes to their heir(s) by operation of law (immediate devolution of the inheritance) who then have the possibility to disclaim the inheritance (§§ 1942 et seq. BGB). The national Certificate of Inheritance (*Erbschein*, § 2353 BGB) plays an important role in practice: It serves as official proof of heirship and is required for many practical aspects of estate administration and settlement (e.g. bank accounts, insurance, real estate). Some institutions may instead accept a notarized will together with the probate court’s protocol of its opening as proof of heirship.

Responsibility for the administration and distribution of the estate itself lies, in principle, with the heirs. For some or all aspects of estate administration and settlement, an executor (*Testamentsvollstrecker*, §§ 2197 et seq. BGB) may be appointed if the deceased so decides (by testament). In cases where the heirs are unknown or missing, or when the immediate safeguarding of the estate so requires, management and protection of the estate can be taken on by an estate curator (*Nachlasspfleger*, §§ 1960 et seq. BGB). Executors and estate curators may be private persons (e.g. family members or friends of the deceased), or (legal) professionals.

Procedurally, the probate court (*Nachlassgericht*; a special division of the District Court (*Amtsgericht*)) takes the central role in dealing with succession cases. Its competence and procedures are primarily governed by the FamFG⁵. Competence lies with the *Nachlassgericht* at the deceased’s last place of habitual residence (§ 343(1) FamFG); for deceased persons not habitually resident in Germany at the time of their death, the court of their last habitual residence in Germany is competent (§ 343(2) FamFG). Lacking such competence, for deceased persons of German nationality or for assets located in Germany the competent court is the District Court Schöneberg in Berlin, which may refer the case to another probate court (§ 343(3) FamFG). The main tasks of the probate court are as follows:

- Determination and confirmation of heirship: It falls to the probate court to assess who the legitimate heirs are. If the deceased left a will (*Testament*) or inheritance contract (*Erbvertrag*), it has to be submitted to the competent probate court without undue delay (§ 2259 BGB); testators may also deposit wills with the probate court for safekeeping

³ See case C-658/17 *WB* ECLI:EU:C:2019:444.

⁴ German Civil Code – Bürgerliches Gesetzbuch (BGB).

⁵ Act on Procedure in Family Matters and in Matters of Non-Contentious Jurisdiction – Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG).

(§ 2248 BGB). The court will then formally “open” the will and inform the designated heirs (§ 348 FamFG), as well as review the validity of the will. If the deceased passed away intestate, the probate court will determine the heirs according to the legal succession rules (§§ 1924 et seq. BGB). If an heir decides to waive the inheritance, the disclaimer of inheritance has to be made by declaration to the probate court (§ 1945 BGB).

- Issuance of Certificate of Inheritance: The heir(s) may apply to the probate court for a Certificate of Inheritance, legally proving their status and share as heir. The court will not only review the documents and information submitted, but has a duty to investigate (*Amtsermittlungspflicht*). Likewise, wrong Certificates have to be revoked by the court.
- Appointing executors and estate curators: Executors (*Testamentsvollstrecker*) have to formally accept their position by a declaration at the competent probate court (§ 2202 BGB), which may issue a Certificate of Executorship (*Testamentsvollstreckerzeugnis*, § 2368 BGB) as proof of authority. Estate curators (*Nachlasspfleger*) are also appointed by the probate court (§ 1960 BGB).
- If the heirs cannot agree on the division of the estate, they may resort to the probate court for a judicial partitioning of the estate.

Matters of inheritance tax are dealt with by the tax office (*Finanzamt*), with which heirs are obligated to file an inheritance tax declaration. The tax office will then assess the inheritance tax under the Inheritance Tax and Gift Tax Act (*Erbschaftsteuer- und Schenkungsteuergesetz – ErbStG*), and collect it; it may also verify the accuracy of inheritance tax declarations by audit. Other than this purely fiscal role, the tax office is not involved in inheritance matters.

Notaries (*Notare*) are not mandatorily involved in succession matters, but nevertheless play an important role in practice. As independent public officials governed by the Federal Notaries’ Act (*Bundesnotarordnung – BNotO*), notaries can provide comprehensive and neutral legal advice and support on questions of inheritance law and estate administration/division, and are frequently consulted for estate planning, e.g. the drafting of wills (especially in complex cases). Formal notarisation according to the Notarisation Act (*Beurkundungsgesetz – BeurkG*) offers greater legal certainty for wills, and is mandatory for inheritance contracts. The German Federal Chamber of Notaries (*Bundesnotarkammer*) operates the electronic Central Register of Wills (*Zentrales Testamentsregister*) for officially deposited wills and inheritance contracts. Heirs will also frequently consult a notary for support in their application for a Certificate of Inheritance, and notaries are usually involved when an inheritance involves (a transfer of) real property, as well as for the notarisation of agreements on the division of assets.

Attorneys (*Rechtsanwälte*) or legal advisors may also be consulted for advice and support in all stages of inheritance matters, from estate planning to administration.

Without being directly concerned with succession law questions, the officials of two registry bodies are typically involved in inheritance matters:

- The civil status registry (*Standesamt*) will inform the probate court about the death of a deceased person.
- The land registry (*Grundbuchamt* – a division of the district court) is involved if real estate is part of the inheritance.

In special cases, other courts may be involved in a succession:

- If a minor or an incapacitated person inherits, the family court (*Familiengericht*) or guardianship court (*Betreuungsgericht*) may need to be involved.
- If the estate is over-indebted, the heirs may limit their personal liability by initiating estate insolvency proceedings (*Nachlassinsolvenzverfahren*, §§ 1975 et seq. BGB) with the insolvency court (*Insolvenzgericht*).

Handling a succession case without recourse to any public authority is theoretically possible in Germany. In practice, however, this is hardly ever the case – for the majority of successions, it would be difficult, if not downright impossible, as typically at least official proof of heirship is required for practical matters (e.g. by banks). It may only be envisaged for very small, simple estates consisting only of movable assets, with undisputed heirship and below the tax thresholds.

The implementation of the SR in Germany and its integration into the German legal system has been facilitated by the IntErbRVG⁶.

The SR is binding for all authorities, although the extent to which they need to interpret and apply it varies. For probate courts, it is crucial in the liquidation stage (determination of jurisdiction and applicable law for the succession case; issuance of the European Succession Certificate), as well as for the recognition of foreign decisions. Notaries and attorneys will need to consider it for cross-border estate planning, in liquidation and administration proceedings (asset transfers, especially for immovables; representation and dispute resolution), and in dealing with foreign decisions or authentic instruments. Land registries may be confronted with it if the administration of the inheritance involves real estate.

Clearly, German probate courts – like all courts within the German legal system – are considered “courts” within the meaning of Art. 3(2) SR; judicial officers (*Rechtspfleger*), who may be functionally competent at the probate court, are also considered courts (“other authorities” under Art. 3(2) SR).⁷ However, it should be noted that these authorities may act in succession matters without exercising judicial function (i.e. when they act without exercising judicial function, they may in that capacity not be regarded as “courts” in the sense of Art. 3(2) SR; notably, the ECJ considered a referral from a German probate court inadmissible as it originated in a (non-contentious) procedure for the issuance of an ECS and the referring court did thus not exercise a judicial function⁸). Notaries typically do not exercise judicial functions; however, in some situations they may be tasked with performing judicial functions (e.g. in property division matters), and are then insofar “courts” under Art. 3(2) SR.⁹ Insofar as consular officers perform judicial functions (instead of probate courts), they are also considered courts (“other authorities” under Art. 3(2) SR).¹⁰ Whereas “courts” are bound by the jurisdiction rules of the SR, for authorities who are not “courts”, jurisdiction is established under the national law rules and principles relevant to them; notably, § 343 FamFG was reformed to be parallel with the SR.

Competence for the issuance of an ECS in Germany lies with the probate court (§ 34 IntErbRVG). Functional competence primarily falls to the judicial officer, but lies with the judge if there is a disposition of property upon death or the case may involve the application of foreign law (§ 3(2) lit. I, § 16(2) RPflG¹¹).

Authentic instruments within the meaning of Art. 3(1) lit. i SR can be public wills (§§ 2232, 2249 BGB) and contracts of inheritance (§§ 2274 BGB), national certificates of inheritance (§§ 2253 et seq. BGB), declarations of acceptance or disclaimer of an inheritance (§§ 1942 et seq. BGB), as well as estate inventories (§§ 1993 et seq. BGB) and declarations or agreements

⁶ Act to Implement Certain Legal Instruments in the Field of International Succession Law – Internationales Erbrechtsverfahrensgesetz (IntErbRVG).

⁷ Anatol Dutta, 'Art 3 EuErbVO' in *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, vol. 12: *Erbrecht* (9th edn, CH Beck 2024) para 19; on the debate regarding arbitration courts, see para 24.

⁸ Case C-187/23 *Albausy* ECLI:EU:C:2025:34.

⁹ Dutta (n 7) para 20.

¹⁰ Dutta (n 7) para 21.

¹¹ Act on Senior Judicial Officers – Rechtspflegergesetz (RPflG).

regarding the partitioning of an estate (§§ 2042 et seq. BGB), in each case when and as far as they fulfill the conditions of Art. 3(1) lit. i SR.¹²

State of digitalisation of the succession proceedings

Please explain briefly also the state of digitalisation of cross-border succession proceedings¹³ in your Member State. May parties or their representatives communicate with competent authorities by means of electronic communication? May they file applications / claims by means of electronic communication? Is service of documents by means of electronic communication possible? Do documents sent electronically have legal effects?

The digitalization of cross-border succession proceedings in Germany is still a work in progress, as part of the wider effort to modernize judicial proceedings and cooperation. Due to the federal system, the degree of digitalization may vary between the German states. In the field of succession law, the introduction of the electronic Central Register of Wills (*Zentrales Testamentsregister*), run by the Federal Chamber of Notaries, has largely facilitated queries with regard to wills and other succession-related documents. There is no electronic infrastructure specially aimed at cross-border succession proceedings.

Electronic communication between parties or their representatives with competent authorities is generally possible. A special, secure electronic communications infrastructure system for courts and authorities for the transmission of electronic documents and files (*EGVP*¹⁴) has been introduced in 2004 and is continually developed and expanded, with the addition of a mandatory mailbox for attorneys (*beA*) in 2016 and a mandatory mailbox for notaries (*beN*) in 2018. While the electronic submission of documents to courts is now generally mandatory for attorneys, other legal officials and authorities, for private parties electronic communication remains optional.

Applications and claims, e.g. for a certificate of inheritance, can often be filed electronically, subject to formal requirements. For persons for whom electronic filing is mandatory (legal officials), this usually entails a qualified electronic signature and/or submission via a secure means of transmission. For private parties, frequently their personal appearance before the probate court or a notary will still be required in the course of proceedings.

Service of documents by means of electronic communication is possible. Typically, service to legal professionals is effected electronically via their (mandatory) electronic mailboxes. Electronic service to private persons requires explicit consent by the recipient.

Electronically sent documents can have full legal effect. An electronic document with a qualified electronic signature is legally considered the equivalent to a physical signed document, i.e. complying with the statutory requirement of written form (§§ 126(3), 126a BGB). The evidentiary value of (qualified) electronic documents is similar to that of physical documents (§ 371a ZPO¹⁵).

¹² See Jessica Schmidt, 'Art 59 EuErbVO' in *Beck Online Großkommentar zum Zivilrecht* (CH Beck, 1 September 2025) para 10 et seq.

¹³ See Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation PE/50/2023/REV/1 OJ L, 2023/2844, 27.12.2023.

¹⁴ Electronic court and administration mailbox – Elektronisches Gerichts- und Verwaltungspostfach (EGVP).

¹⁵ German Code of Civil Procedure – Zivilprozessordnung (ZPO).

Methodology of the research

Please explain briefly how the research for the purpose of the National Report was made. How was the case law collected? Is it publicly available? How many decisions/cases were identified? What kind of effects, if any, country specific framework had for data collection?

As the aim of this National Report is to provide an overview of the practical application of the SR in Germany, its methodology has been consciously limited to a documentation and evaluation of the existing case law. Research for this National Report was made by collecting the available German case law on the SR (up to and including September 2025) and entering it into an overview spreadsheet, following which each decision was evaluated in-depth with regard to all issues addressed.

The collection of case law was effected with three databases: beck-online, juris, and IPRspr. Beck-online¹⁶ and juris¹⁷ are the two major German legal databases, run commercially and available by subscription. With their data collections of decisions published in German law journals, as well as their own case law collections (especially, BeckRS), they cover practically all available case law; it should be noted that the text of decisions found in these databases is usually also available via publicly accessible resources. IPRspr¹⁸ is a publicly available database for decisions on private international law run by the Max Planck Institute for comparative and international private law (Hamburg). This specialized resource was used to confirm and supplement the findings from the two general databases; it yielded only very few additional decisions. It should be noted that by far not all decisions by German courts are reported in journals and databases, so there is an unknown body of case law regarding the SR which is unavailable publicly. However, it can be assumed that those unreported decisions simply apply the rules of the SR, as typically all decisions containing in-depth discussions and/or relating to problematic issues are reported. The body of reported decisions can thus be relied on for research purposes.

In each database, a search was made for every article of the SR with regard to all reported decisions relating to it (i.e. containing a reference to this article in their text and/or linked in the database as having regard to this article). The search results were entered into the overview spreadsheet, which contains basic information for each judgment and allowed for sorting of the judgments according to different criteria. Also, an initial classification of the decisions according to their relevance was made. The in-depth evaluation of every decision was then based on a close reading of its text as well as reference to case notes (if available).

The search yielded a total of 112 decisions with reference to the SR. In some of these, only passing reference was made to the SR (e.g. using it as an argument in other contexts); while not an application of the SR per se, this illustrates the acceptance of the SR and its successful integration into the German legal system. In several other decisions, the rules of the SR were applied without further discussion (interestingly, sometimes by financial or social courts), as apparently they did not raise any problems. The majority of decisions, however, contained a discussion of one or several issues with regard to the rules of the SR, highlighting problematic questions and bringing new insights for its practical application in Germany. This National Report concentrates on describing and evaluating these decisions of added value for the understanding of the SR in Germany.

¹⁶ Available at beck-online.beck.de.

¹⁷ Available at www.juris.de.

¹⁸ Available at <https://iprspr.mpipriv.de/requests/new>.

It should be noted that there are no databases available for Germany with regard to authentic instruments and ECSs. Research into these aspects was thus limited to “indirect” research via reported court decisions. Nevertheless, the analysis of the court decisions has provided an impression of German practice in this regard (especially with a view to the ECS on which there are a substantial number of decisions).

Additional recourse to the – very extensive – German legal literature was taken only selectively to fill gaps. There is a large body of publications (article-by-article commentaries, case notes, articles in journals and collected volumes, etc.) available on the SR; as the in-depth analysis of specific issues, as well as the discussion of problems which are as of yet merely theoretical, would go far beyond the scope and purpose of this National Report, it has not been examined and reported in detail here.

Questions

General

1. Were there any doubts in your MS as to the scope of application¹⁹ (substantive– Article 1(1), temporal – Article 83(1), territorial – Recitals (82), (83)) of the Succession Regulation?

The substantive scope of the SR raised two major questions for the application in Germany, for both of which the ECJ offered a clear direction, if not a full resolution.

The first issue was the delineation between succession and matrimonial property law, especially with regard to the characterisation of the German substantive law rule in § 1371(1) BGB, which orders the increase of the spousal share in the inheritance by ¼ for spouses living in the community of accrued gains matrimonial property regime, to achieve a lump-sum equalization of accrued gains. For German law, after decades-long debates its characterization as belonging to matrimonial property law had been established²⁰; it was, however, unclear whether this could be upheld under the SR, leading to an exclusion from its scope of application as a question relating to matrimonial property regimes (Art. 1(2) lit. d SR). While this was initially suggested (e.g. OLG Schleswig 3 Wx 60/13 – 19.08.2013²¹), the question of the characterization of § 1371(1) BGB under the SR was referred to the ECJ (KG Berlin 6 W 80/16 – 25.10.2016²²); the ECJ's answer in *Mahnkopf*²³ in favour of a broad understanding of the scope of application of the SR, and a characterisation of § 1371(1) BGB as belonging to succession law, has left open a number of follow-up questions²⁴ (a certain scepticism and reluctance regarding its consequences can be gleaned in AG Stuttgart-Bad Cannstatt 74 VI 1354/19 – 22.03.2021²⁵; notably, for a case outside the temporal scope of application of the SR, a court followed the German qualification, OLG München 31 Wx 326/18 – 24.09.2019²⁶).

The second issue concerned the exclusion of the nature of rights *in rem* (Art. 1(2) lit. k SR) and the registration of rights (Art. 1(2) lit. l SR), particularly with regard to rights in immovables and the need for their constitutive registration in the German land register (*Grundbuch*) under German property law.²⁷ In line with the ECJ's decision in *Kubicka*²⁸, German courts now follow a fairly narrow interpretation of the exceptions, leading to a more generous application of the SR with regard to legacies by vindication (OLG Saarbrücken 5 W 25/19 – 23.05.2019²⁹) and directions for partitioning with *in rem* effect (KG Berlin 1 W 348/22 – 22.09.2022³⁰; see also OLG München 34 Wx 236/20³¹); the understanding has been established that the exception relates to only the existence of rights *in rem*, but not to the modalities of their transfer (OLG

¹⁹ See case C-98/24 *Koda* (pending), case C-618/24 *Isergartler* (pending).

²⁰ BGH iV ZB 30/14 – 13.05.2015, ECLI:DE:BGH:2015:130515BIVZB30.14.0A.

²¹ ECLI:DE:OLGSH:2013:0819.3WX60.13.0A.

²² ECLI:DE:KG:2016:1025.6W80.16.0A.

²³ Case C-558/16 *Mahnkopf* ECLI:EU:C:2018:138.

²⁴ See Caroline Sophie Rapatz, 'Das Internationale Privatrecht der EU – Vorbild oder Vormacht?' (CH Beck 2023) 119 et seq., 548 et seq. with further references.

²⁵ ECLI:DE:AGCANN:2021:0322.74VI1354.19.0A.

²⁶ ECLI:DE:OLGMUEN:2019:0924.31WX326.18.0A.

²⁷ See Rapatz (n 24) 89 et seq. with further references.

²⁸ Case C-218/16 *Kubicka* ECLI:EU:C:2017:755.

²⁹ ECLI:DE:OLGSL:2019:0523.5W25.19.00.

³⁰ ECLI:DE:KG:2022:0928.1W348.22.00.

³¹ ECLI:DE:OLGMUEN:2020:0929.34WX236.20.0A – In this case, the court concluded that there was neither a legacy by vindication nor directions for partitioning with *in rem* effect under Italian law, but rather a transfer *inter vivos* among the heirs, subject to German property law and not to the law applicable to the succession.

München 34 Wx 357/17 – 10.02.2020³²; OLG Saarbrücken 5 W 25/19 – 23.05.2019³³). Further clarification of the scope of lit. l may arise from a current referral to the ECJ (BGH IV ZB 41/23 – 27.11.2024³⁴), following up on *RJR*³⁵. Notably, such questions typically arise in the context of an ECS.

Other than that, the application of the negative catalogue of Art. 1(2) SR seems unproblematic, with a straightforward application of lit. b (legal capacity, OLG Koblenz 9 WF 607/17 – 19.03.2018³⁶), lit. d (matrimonial property regimes, OLG Hamm 10 W 12/24 – 18.07.2024³⁷; KG Berlin 19 W 25/23 – 03.08.2023³⁸), lit. g (property rights transferred otherwise than by succession, OLG Nürnberg 15 W 318/17 – 25.04.2017³⁹), and lit. l (registration of rights and its legal requirements, OLG Nürnberg 15 W 1461/17 – 27.10.2017⁴⁰; OLG München 31 Wx 275/17 – 12.09.2017⁴¹). The delineation between questions of company law and succession law under lit. h has been convincingly argued (OLG Hamm 8 U 41/22 – 15.02.2023⁴²).

The temporal scope of the SR has been addressed in a large number of cases, with Art. 83 SR frequently applied by German courts. The necessity of its application in the transitional phase after the entry into force of the SR can be expected to diminish over the years. The intertemporal scope of application of the SR generally does not appear to raise doubts in Germany, and the application of Art. 83(1) SR is unproblematic (see questions 21-23 for Art. 83(2)-(4) SR).

The territorial scope of application of the SR does not appear to be problematic.

2. Are there any challenges caused by the fact that Ireland and Denmark (and the UK – before its withdrawal from the EU) are not applying the Succession Regulation?

There is no evidence of difficulties or challenges in this regard.

3. Are there any international agreements binding your MS, the application of which Succession Regulation ‘shall not affect’ (Article 75(1), Succession Regulation)? Were there any challenges caused by the interplay between international agreements and the Succession Regulation (Article 75(1), Article 75(3) Succession Regulation)⁴³? Please outline the main problematic issues briefly.

Germany is a Contracting Party to the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, which explicitly takes precedence over the SR (Art. 75(1) SR). This appears unproblematic in practice (e.g. OLG Oldenburg 3 U

³² ECLI:DE:OLGMUEN:2020:0210.34WX357.17.0A.

³³ ECLI:DE:OLGSL:2019:0523.5W25.19.00.

³⁴ ECLI:DE:BGH:2024:271124BIVZB41.23.0.

³⁵ Case C-354/21 *RJR* ECLI:EU:C:2022:587.

³⁶ ECLI:DE:OLGKOB:2018:0319.9WF607.17.0A.

³⁷ ECLI:DE:OLGHAM:2024:0718.10W12.24.00.

³⁸ ECLI:DE:KG:2023:0803.19W25.23.0A.

³⁹ ECLI:DE:OLGNUER:2017:0425.15W318.17.0A.

⁴⁰ ECLI:DE:OLGNUER:2017:1027.15W1461.17.0A.

⁴¹ ECLI:DE:OLGMUEN:2017:0912.31WX275.17.0A.

⁴² ECLI:DE:OLGHAM:2023:0215.8U41.22.00.

⁴³ See case C-21/22 *OP* ECLI:EU:C:2023:766.

18/24 – 12.02.2025⁴⁴; OLG Köln 2 Wx 227/23 – 22.01.2024⁴⁵; KG Berlin 19 W 127/21 – 30.09.2021⁴⁶; OLG Hamm 10 W 53/21 – 10.08.2021⁴⁷).

Bilateral treaties regarding succession law exist with Turkey⁴⁸, the Russian Federation and other successor states of the USSR⁴⁹ and Iran⁵⁰. Their precedence over the SR insofar as they relate to material questions of succession law⁵¹ is well-established and the priority of their application does not appear to cause problems (OLG Köln 2 Wx 22/24 – 04.03.2024⁵²; OLG Hamm 10 W 31/17 – 21.03.2019⁵³; OLG Hamburg 2 W 17/20 – 16.03.2021⁵⁴). Literature on Art. 75 SR has been relied on to argue the precedence of treaties also in other contexts (BGH XII ZB 565/20 – 08.03.2023⁵⁵).

Challenges may arise especially when the treaties do not govern all aspects of the case, but need to be applied in conjunction with the SR.⁵⁶

4. Were there instances in your MS where the notion of ‘habitual residence of the deceased at the time of death’⁵⁷ was interpreted for the purpose of the application of the Succession Regulation? What factors were considered? Are there any factors to which more weight is given than to the others? Is this expression understood the same way as for the purpose of establishing jurisdiction and designating applicable law? Please outline the main problematic issues briefly?

Generally, determining habitual residence in the context of the SR does not appear to be more problematic than in other contexts. In many cases, the deceased’s habitual residence is determined without further discussion or simply stated, typically in the context of Art. 4 SR and/or Art. 21 SR; frequently, recourse to Art. 4 SR is taken in the context of determining local competence under § 343(1) FamFG which is interpreted parallel to Art. 4 SR. There does not appear to be a different understanding for matters of jurisdiction and applicable law, rather a parallel between the two.

⁴⁴ ECLI:DE:OLGOL:2025:0212.3U18.24.0A.

⁴⁵ ECLI:DE:OLGK:2024:0122.2WX227.23.00.

⁴⁶ ECLI:DE:KG:2021:0930.19W127.21.00.

⁴⁷ ECLI:DE:OLGHAM:2021:0810.10W53.21.00.

⁴⁸ Agreement between the German Reich and the Republic of Turkey concerning matters of succession – Deutsch-türkisches Nachlassabkommen (Anlage zu Art. 20 des Konsularvertrags zwischen dem Deutschen Reiche und der Türkischen Republik vom 28.5.1929), RGBI. 1930 II 758. The treaty is binding for the Federal Republic of Germany as legal successor of the German Reich.

⁴⁹ Consular Treaty between the Federal Republic of Germany and the Union of Soviet Socialist Republics – Konsularvertrag zwischen der Bundesrepublik Deutschland und der Union der Sozialistischen Sowjetrepubliken vom 25.4.1958, BGBI. 1959 II 232. The treaty is binding for the majority of states which legally succeeded the USSR, among them the Russian Federation.

⁵⁰ Friendship treaty and Establishment Agreement between the German Reich and the Empire of Persia – Freundschaftsvertrag und Niederlassungsabkommen zwischen dem Deutschen Reich und dem Kaiserreich Persien vom 17.2.1929, RGBI. 1930 II 1002. The treaty is binding for the Federal Republic of Germany as legal successor of the German Reich, and for the Islamic Republic of Iran as legal successors of the Empire of Persia.

⁵¹ Aigner-Şahin, 'Zuständigkeits- und kollisionsrechtliche Problemfelder in Erbfällen mit Drittstaatenbezug' (2025) ErbR 442, 442.

⁵² ECLI:DE:OLGK:2024:0304.2WX22.24.00.

⁵³ ECLI:DE:OLGHAM:2019:0321.10W31.17.00.

⁵⁴ ECLI:DE:OLGHH:2021:0316.2W17.20.0A.

⁵⁵ ECLI:DE:BGH:2023:080323BXIIZB565.20.0.

⁵⁶ See extensively Rapatz (n 24) 444 et seq.

⁵⁷ See case C-80/19 *EE*, ECLI:EU:C:2020:569.

In German case law, objective and subjective criteria are distinguished as factors for the determination of habitual residence at the “actual centre of life” (*tatsächlicher Lebensmittelpunkt*) as the focus of familiar, social and professional relations. Among the objective factors usually considered are the length and regularity of physical presence, residence, registration with authorities, social bonds, professional connections, language skills, the location of assets, and citizenship. As subjective factor, the *animus manendi* (*Aufenthalts- und Bleibewille*) is taken into account (e.g. OLG Hamm 10W 35/17 – 02.01.2018⁵⁸). A tendency to allocate generally greater weight to specific factors cannot be discerned; rather, courts take a holistic view of the overall situation in each individual case. The role of actual residence and its duration seems to be less important than the other, socio-economic circumstances, whereas the mere presence of subjective elements cannot suffice to establish habitual residence.

There were some instances in which courts proceeded to an in-depth discussion of habitual residence. The following selection of exemplary cases highlights the issues under consideration and discussion:

- A deceased who had lived and worked in China since 2004 and returned to Germany regularly on vacation, spoke Chinese and was married to a Chinese citizen, was considered to have his habitual residence in China; while he had bought an immovable in Germany and planned to live there after his retirement, this will to return was not considered sufficient to (re)establish habitual residence in Germany (OLG Frankfurt a.M. 21 W 59/20 – 14.09.2020⁵⁹). Similarly, for a deceased who had moved to Thailand more than 10 years before his death, lived there with his partner and owned apartments, a car and a motorcycle, neither the fact that he regularly returned to Germany to visit his family and look after the apartments he owned there nor the fact that he died in Germany while pursuing chemotherapy there was considered sufficient to (re)establish habitual residence in Germany (OLG Hamm 10 W 53/21 – 10.08.2021⁶⁰). A deceased who had lived mainly in Colombia from 2016 onwards, spoke the local language, was socially integrated, received medical treatment and applied to Colombian courts for a divorce was considered to have established his habitual residence in Colombia despite remote-working for a German company, paying taxes in Germany and having kept his apartment in Germany (OLG Karlsruhe 14 W 87/23 – 19.02.2024⁶¹).
- A cross-border commuter who lived in Poland due to lower living costs, but continued working in Germany, received medical treatment in Germany, was not integrated in the Polish community and did not speak Polish, was considered to be habitually resident in Germany (KG Berlin 1 AR 8/16 – 26.04.2016⁶²). Similarly, a retired person who had moved to Spain, but kept strong ties to Germany, was considered to remain habitually resident in Germany (OLG Hamm 10 W 35/17 – 02.01.2018⁶³). Both discussions were criticized. Nevertheless, for retired Germans moving abroad but maintaining social and economic ties to Germany, German courts tend to be reluctant in

⁵⁸ ECLI:DE:OLGHAM:2018:0102.10W35.17.0A.

⁵⁹ ECLI:DE:OLGHE:2020:0914.21W59.20.00.

⁶⁰ ECLI:DE:OLGHAM:2021:0810.10W53.21.00.

⁶¹ ECLI:DE:OLGKARL:2024:0219.14W87.23WX.0A.

⁶² ECLI:DE:KG:2016:0426.1AR8.16.0A.

⁶³ ECLI:DE:OLGHAM:2018:0102.10W35.17.0A; confirmed by OLG Hamm 10 W 108/18 – 10.07.2020, ECLI:DE:OLGHAM:2020:0710.10W108.18.00.

accepting a change of habitual residence (e.g. OLG Düsseldorf 3 Wx 138/20 – 20.11.2020⁶⁴).

- With regard to the *animus manendi*, it is disputed whether legal capacity is required to establish or change this will. Case law indicates a tendency to demand legal capacity (OLG München 31 AR 47/17 – 22.03.2017⁶⁵). For example, a patient suffering from dementia who against or without his will was brought from Germany to Poland to live in a care facility until his death but never established any other ties to his new country of residence did not establish habitual residence there (OLG Karlsruhe 14 W 50/24 – 22.07.2024⁶⁶). On the other hand, more recently it has been argued that in such cases habitual residence is determined by the guardian (*obiter* OLG München 33 UH 4/23e – 09.02.2023⁶⁷).

5. Are there any other decisions / doubts / challenges, which do not fit within any of the above questions, but are related to the application of the Succession Regulation, and therefore, should be signaled within the National Report?

No.

Jurisdiction

6. Are you aware of any doubts / challenges to the application of the rules on jurisdiction of the Succession Regulation in your MS⁶⁸? Are there any voices suggesting any amendments to these rules?

The application of the jurisdiction rules appears to function rather smoothly in Germany. Amendments may be proposed occasionally in legal literature, but they do not appear urgent or touch upon fundamental issues.

The question whether the jurisdiction rules of the SR also regulate the international competence for the issuance of national certificates of inheritance by the MS was referred to the ECJ (KG Berlin 6 W 125/16 – 10.01.2017⁶⁹) and clarified in *Oberle*. Since then, the application of the jurisdiction rules of the SR has been unproblematic (e.g. OLG Köln 2 Wx 222/18 – 04.07.2018⁷⁰).

7. Were there instances in your MS where the court or another authority established its jurisdiction based on Article 10(1) Succession Regulation⁷¹, namely on the basis of location of assets and nationality or previous habitual residence? What were the assets and what was their value? Were there any doubts or challenges to the application of these provisions in practice?

Subsidiary jurisdiction under Article 10(1) lit. a SR was established in several cases. For a German citizen with habitual residence in Colombia, lacking jurisdiction under Art. 4 or Art. 7

⁶⁴ ECLI:DE:OLGD:2020:1120.3WX138.20.0A.

⁶⁵ ECLI:DE:OLGMUEN:2017:0322.31AR47.17.0A.

⁶⁶ ECLI:DE:OLGKARL:2024:0722.14W50.24WX.00.

⁶⁷ ECLI:DE:OLGMUEN:2023:0209.33UH4.23E.0A.

⁶⁸ See case C-20/17 *Oberle* ECLI:EU:C:2018:485.

⁶⁹ ECLI:DE:KG:2017:0110.6W125.16.0A.

⁷⁰ ECLI:DE:OLGK:2018:0704.2WX222.18.00.

⁷¹ See case C-645/20 VA, ZA, ECLI:EU:C:2022:267, case C-55/23 *Jurtukala* ECLI:EU:C:2023:599, case 291/23 *Hantoch*, ECLI:EU:C:2024:938.

SR subsidiary jurisdiction was based on fixed assets with a German bank (ca. 350.000 €) and shares in a German limited liability company (GmbH) (OLG Karlsruhe 14 W 87/23 – 19.02.2024⁷²). For German citizens owning immovables in Germany, German jurisdiction was affirmed “at any rate” under Art. 10(1) lit. a SR (OLG Brandenburg 3 W 71/22 – 26.01.2023⁷³; OLG Frankfurt 21 W 59/20 – 14.09.2020⁷⁴). For a German citizen resident in South Africa, a bank account with a German bank sufficed to establish German jurisdiction (OLG Köln 2 Wx 227/23 – 22.01.2024⁷⁵). In further cases, such subsidiary jurisdiction was confirmed for a German citizen due to assets in Germany without specifying their kind or value (OLG Köln 2 Wx 293/20 – 09.12.2020⁷⁶), and without any discussion (AG Hamburg-St. Georg 970 VI 1412/19 – 15.07.2022⁷⁷). The application of the provision does not appear to have caused problems.

8. Were there instances in your MS where the court or another authority established its jurisdiction based on Article 10(2) Succession Regulation, namely on the basis of the location of assets / asset? What were the assets / asset and what was their / its value? Were there any doubts or challenges to the application of this provision in practice?

Subsidiary jurisdiction under Article 10(2) SR was established in the case of a Canadian citizen with habitual residence in Canada (last resident in Germany in the 1960s), due to a bank account in Germany (OLG Düsseldorf 3 Sa 5/23 – 18.09.2023⁷⁸), as well as in the case of a citizen of the United States of America who had left Germany and established habitual residence there more than five years before his death, with regard to an apartment in Germany belonging to the estate (OLG Frankfurt a.M. 20 W 135/24 – 14.08.2024⁷⁹). Jurisdiction of the German courts under Article 10(2) SR was established without an in-depth discussion in a further case (AG Bonn 34 VI 136/23 – 14.04.2023⁸⁰). Notably, it was denied in the case of Pope Benedict XVI, as no assets belonging to the estate were located in Germany and liabilities cannot establish such jurisdiction (OLG München 33 Wx 270/23 – 12.06.2024⁸¹). No doubts or challenges to the application of the provision are apparent.

9. Were there instances in your MS where the court exercised jurisdiction or declined jurisdiction based on one of the mechanisms provided for in Articles 5 – 9 Succession Regulation?⁸² If yes, could you please explain which mechanism was used and whether there were any doubts or challenges to their application in practice?

The mechanisms provided for in Article 5, Article 8 and Article 9 SR do not appear to have been applied yet in Germany.

Jurisdiction was declined under Article 6 lit. a SR in favour of Swedish courts (which had previously declined jurisdiction under Art. 4 SR) in the case of a Swedish citizen who had

⁷² ECLI:DE:OLGKARL:2024:0219.14W87.23WX.0A.

⁷³ ECLI:DE:OLGGBB:2023:0126.3W71.22.0A.

⁷⁴ ECLI:DE:OLGHE:2020:0914.21W59.20.00.

⁷⁵ ECLI:DE:OLGK:2024:0122.2WX227.23.00.

⁷⁶ ECLI:DE:OLGK:2020:1209.2WX293.20.0A.

⁷⁷ ECLI:DE:AGHHSG:2022:0715.970VI1412.19.0A.

⁷⁸ ECLI:DE:OLGD:2023:0918.3SA5.23.0A.

⁷⁹ ECLI:DE:OLGHE:2024:0814.20W135.24.00.

⁸⁰ ECLI:DE:AGBN:2023:0414.34VI136.23.0A.

⁸¹ ECLI:DE:OLGMUEN:2024:0612.33WX270.23E.0A.

⁸² See case C-422/20 RK ECLI:EU:C:2021:718.

(implicitly) chosen Swedish law, taking into account that two of the three heirs were habitually resident in Sweden, the main asset in dispute was an immovable located in Sweden, and the differences between Swedish and German substantive succession law made the application of *lex fori in foro proprio* desirable (OLG Frankfurt a.M. 21 W 81/22 – 24.01.2022⁸³). However, in a case where French law had been (implicitly) chosen, on appeal it was decided that the French courts were not “better placed to rule on the succession” as the court of appeal did not consider the application of French law to be complicated (OLG Schleswig 3 Wx 6/23 – 30.04.2024⁸⁴). Also, a court did not decline jurisdiction under Article 6 lit. a SR in a case of choice of Dutch law, as the succession had strong ties to Germany (last habitual residence of the deceased, habitual residence of the plaintiff, real estate, bank account) (OLG Oldenburg 3 U 18/24 – 12.02.2025⁸⁵).

An exercise of jurisdiction under Art. 7 lit. a SR was rightfully refused by German courts in a case where no valid previous decline of jurisdiction pursuant to Article 6 by the Dutch authorities was found: a letter by a Dutch notary was not considered a valid and binding declaration of such a decline of jurisdiction under the circumstances (OLG Köln 2 Wx 332/19 – 11.12.2019⁸⁶). In two German-Spanish cases and a German-Swedish constellation, the requirements of Art. 7 SR were not fulfilled (OLG Hamm 15 W 488/17 – 17.12.2019⁸⁷; OLG Hamburg 2 W 85/16 – 16.11.2016⁸⁸; OLG Karlsruhe 14 W 87/23 – 19.02.2024⁸⁹).

Doubts regarding the need for an express decline of jurisdiction, the competence of courts to examine the decision of a previously seized court to decline jurisdiction under Art. 6 lit. a or Art. 7 lit. a SR, and the possibility to decline jurisdiction in case of an inferred choice of law under Art. 83(4) SR were referred to the ECJ (OLG Köln 2 Wx 107/20 – 28.08.2020⁹⁰) and clarified in *RK*.⁹¹

10. Were there cases in your MS where the court exercised jurisdiction based on Article 11 Succession Regulation on *forum necessitatis*? If yes, what were the reasons justifying the need of exercising jurisdiction? What circumstances were considered to justify the sufficient connection with your MS?

No cases have been reported where jurisdiction was exercised by German courts based on Art. 11 SR. A *forum necessitatis* was discussed but declined in the case of Pope Benedict XVI (OLG München 33 Wx 270/23 – 12.06.2024⁹²), as there was no evidence that proceedings in the Vatican State could not be conducted. In a dispute about local jurisdiction for the opening of a will, the court of appeal based its decision on international jurisdiction on the national rule of § 105 FamFG as it did not consider the jurisdictional rules of the SR to be applicable; however, it argued that jurisdiction would also be established under Art. 11 SR as a procedure for the opening of a will (written in German and deposited in Germany by a German deceased person) in Thailand under Thai law was considered impossible for the heirs in Germany (OLG Frankfurt a.M. 21 SV 2/20 – 26.05.2020⁹³).

⁸³ ECLI:DE:OLGHE:2022:0124.21W81.22.00.

⁸⁴ ECLI:DE:OLGSH:2024:0430.3WX6.23.00.

⁸⁵ ECLI:DE:OLGOL:2025:0212.3U18.24.0A.

⁸⁶ ECLI:DE:OLGK:2019:1211.2WX332.19.0A.

⁸⁷ ECLI:DE:OLGHAM:2019:1217.15W488.17.00.

⁸⁸ ECLI:DE:OLGHH:2016:1116.2W85.16.0A.

⁸⁹ ECLI:DE:OLGKARL:2024:0219.14W87.23WX.0A.

⁹⁰ ECLI:DE:OLGK:2020:0828.2WX107.20.0A.

⁹¹ ECJ C-422/20 *RK* ECLI:EU:C:2021:718.

⁹² ECLI:DE:OLGMUEN:2024:0612.33WX270.23E.0A.

⁹³ ECLI:DE:OLGHE:2020:0526.21SV2.20.00.

11. Were there cases in your MS where the court limited its jurisdiction based on Article 12 Succession Regulation? If yes, please explain which third state was considered and how the need of limiting jurisdiction was justified?

No cases have been reported.

12. Are courts in your MS competent to receive a declaration mentioned in Article 13 Succession Regulation (namely, ‘a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession’)? Are any other authorities competent to receive such declarations (for example, notaries)? Are you aware of any challenges related to making such declarations in your MS⁹⁴ is cases where jurisdiction in succession matters was with the courts of another MS?

In Germany, only probate courts are competent to receive the declarations mentioned in Art. 13 SR (see § 1945(1) BGB). The local competence has been clarified by the implementing provision of § 31 sent. 1 IntErbRVG: it lies with the court in the district of which the person making the declaration is habitually resident (OLG Düsseldorf I-3 Sa 1/18 – 26.10.2018⁹⁵).

No challenges have been reported when jurisdiction in succession matters lies with the courts of another MS (unproblematic e.g. in OLG Köln 2 Wx 142/19 – 05.06.2019⁹⁶). It is, however, disputed whether Art. 13 SR can also be applied when no MS court has jurisdiction to rule on the succession under Art. 4 or Art. 10 SR; this did not need to be decided in the case of a German citizen habitually resident in England (OLG Köln 2 Wx 73/20 – 27.03.2020⁹⁷).

13. Are you aware of any challenges in your MS when it comes to accepting a declaration mentioned in Article 13 Succession Regulation (namely, ‘a declaration concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability of the person concerned in respect of the liabilities under the succession’) made in other MSs?

There was some debate in Germany regarding the (formal) validity of a declaration concerning the waiver of succession at the court competent under Art. 13 SR, clarified by the ECJ upon referral (see question 26).

14. Are there any other decisions / doubts / challenges, which do not fit within any of the above questions, but are related to jurisdictional rules of the Succession Regulation, and therefore, should be signalled within the National Report?

No other issues seem apparent from German case law.

⁹⁴ See case C-57/24 *Lawida* ECLI:EU:C:2025:217.

⁹⁵ ECLI:DE:OLGD:2018:1026.3SA1.18.0A.

⁹⁶ ECLI:DE:OLGK:2019:0605.2WX142.19.0A.

⁹⁷ ECLI:DE:OLGK:2020:0327.2WX73.20.00.

15. Are you aware of any doubts / challenges to the application of the rules on applicable law of the Succession Regulation in your MS? Are there any voices suggesting any amendments to these rules?

The application of the rules on applicable law appears to function rather smoothly in Germany. Amendments may be proposed occasionally in legal literature, but they do not appear urgent or touch upon fundamental issues.

16. Were there cases where the escape clause of Article 21(2) Succession Regulation was applied? If yes, please explain which laws were considered and what circumstances of the case were considered to justify that the deceased was manifestly more closely connected with another law?

A court considered the application of the escape clause in a case where the interpretation of a testament written in 1967 would have been subject to German law before and subject to Illinois law after the entry into force of the SR: the escape clause would have allowed the continued interpretation according to German law. Ultimately, the court did not need to decide this as both German and Illinois law led to the same result (AG Hamburg-Wandsbek 709 VI 2263/17 – 17.05.2018⁹⁸).

Two further cases were reported in which the escape clause of Art. 21(2) SR was considered, but ultimately not applied. In the case of a deceased German repatriate from Poland, the court did not consider a manifestly closer connection to Poland to be established, as the deceased did not maintain strong and close ties to Poland in the last years of his life and the social centre of his life was not established there (cf. Recital 24 SR); additionally, the court pointed out that the location of all significant assets in Poland – which it did not deem definitively established – would not suffice to trigger the escape clause in and of itself, but only provide one factor to be weighed in an overall assessment (OLG Schleswig 3 Wx 1/22 – 30.10.2023⁹⁹). In a case where the court held after careful consideration that the German deceased had established his habitual residence in China (see question 4), it did not consider the connections to Germany significant enough to justify overriding the application of Chinese law by means of the escape clause (OLG Frankfurt a.M. 21 W 59/20 – 14.09.2020¹⁰⁰).

It should be noted that the escape clause has been criticized rather strongly in German (and Austrian) legal literature.¹⁰¹

17. Were there instances of doubts as to choice of applicable law under Article 22 Succession Regulation? Were there instances where a tacit choice ('demonstrated by the terms of a disposition of property upon death') within the meaning of Article 22(2) Succession Regulation was identified?

The explicit choice of applicable law under Art. 22 SR does not appear to raise any problems or doubts. There are, however, a number of reported cases addressing the issue of tacit choice of law.

⁹⁸ ECLI:DE:AGHHWA:2018:0517.709VI2263.17.0A.

⁹⁹ ECLI:DE:OLGSH:2023:1030.3WX1.22.00.

¹⁰⁰ ECLI:DE:OLGHE:2020:0914.21W59.20.00.

¹⁰¹ See, e.g. Anatol Dutta, 'Art 21 EuErbVO' in *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, vol. 12: *Erbrecht* (9th edn, CH Beck 2024) para 6, with comprehensive references to critical voices.

There were doubts regarding whether the existence and validity of a tacit choice were to be determined according to the hypothetically chosen law or according to an autonomous interpretation of EU law; the Federal Court of Justice, in accordance with the prevailing opinion, decided in favour of an autonomous interpretation (BGH IV ZB 33/20 – 24.02.2021¹⁰²). The choice of law has to result from the disposition of property upon death; in the German-Austrian case at hand, a tacit choice of German law was accepted as the deceased and her husband had used terminology specific to German law and made dispositions regarding the binding effect for the surviving spouse which were in accordance with German but not Austrian law.

A tacit choice of Romanian law was assumed when a Romanian-German resident in Germany made his testament in Romanian before a Romanian notary referring to provisions of the Romanian civil code (OLG Köln 2 Wx 142/19 – 05.06.2019¹⁰³). A tacit choice of Swedish law was confirmed for a Swedish citizen whose testament was made in Sweden in the form required by Swedish law and in conformity with Swedish substantive succession law, and with the express declaration that Swedish law should be applied for the “interpretation and use” of the testament (OLG Frankfurt a.M. 21 W 81/22 – 24.01.2022¹⁰⁴). In a German-French case, the tacit choice of German law was affirmed for a German couple resident in Germany whose German-language testaments used terminology with specific meaning in German succession law, and whose dispositions clearly were intended to follow up on earlier dispositions under German law (OLG Saarbrücken 5 U 8/23 – 24.01.2024¹⁰⁵). A tacit choice of French law was identified for a donation agreement *mortis causa* between a French citizen and his German wife living under French matrimonial property law, concluded in French before a French notary and taking into account specificities of French succession law (OLG Schleswig 3 Wx 6/23 – 30.04.2024¹⁰⁶).

A tacit choice of German law was identified for an agreement as to succession, which was based on the binding effects under German law; the court held that a later tacit choice of South African law in the testament of one party to the agreement (regardless of the testament’s validity) could not be effective as a change of the applicable law could only be effected by all parties to the original succession agreement (AG Hamburg-St. Georg 970 VI 1412/19 – 15.07.2022¹⁰⁷).

The fact that a German citizen habitually resident in Italy had written a German-language will regarding her assets located in Germany was not considered an implicit choice of German law in view of the fact that the majority of her assets was located in Italy and there was an Italian-language will regarding them; Italian law was applicable to the entire succession (OLG Köln 2 Wx 342/19 – 11.12.2019¹⁰⁸).

In some additional cases, the courts did not need to decide whether a tacit choice of German law had been effected (OLG Karlsruhe 14 W 87/23 – 19.02.2024¹⁰⁹; OLG Hamm 10 W 35/17 – 02.01.2018¹¹⁰).

¹⁰² ECLI:DE:BGH:2021:240221BIVZB33.20.0.

¹⁰³ ECLI:DE:OLGK:2019:0605.2WX142.19.0A.

¹⁰⁴ ECLI:DE:OLGHE:2022:0124.21W81.22.00.

¹⁰⁵ ECLI:DE:OLGSL:2024:0124.5U8.23.00.

¹⁰⁶ ECLI:DE:OLGSH:2024:0430.3WX6.23.00.

¹⁰⁷ ECLI:DE:AGHHS:2022:0715.970VI1412.19.0A.

¹⁰⁸ ECLI:DE:OLGK:2019:1211.2WX342.19.0A.

¹⁰⁹ ECLI:DE:OLGKARL:2024:0219.14W87.23WX.0A.

¹¹⁰ ECLI:DE:OLGHAM:2018:0102.10W35.17.0A.

18. Were there any instances where the substantive validity of a choice of applicable law was discussed? What was the exact doubt?

There do not appear to have been discussions of this issue in German case law.

19. Were there any instances where the modification / revocation of a choice of applicable law within the meaning of Article 22(4) Succession Regulation was discussed?

It is debated whether the admissibility of a modification or revocation results from the SR itself or is subject to the chosen law under Art. 22(3) SR.¹¹¹ The majority opinion appears to be in favour of the application of the chosen law (AG Hamburg-St. Georg 970 VI 1412/19 – 15.07.2022¹¹²; see question 17).

Art. 22(4) SR was also discussed in conjunction with the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions: the court held that the revocation of a testament established according to German form and (presumably) containing a fictional choice of German law did not need to conform to the German formal requirements, but that the South African form was sufficient for the revocation (OLG Köln 2 Wx 227/23 – 22.01.2024¹¹³).

20. Are there any doubts in your MS as to which matters are governed by the law applicable to succession (*lex successionis*)? Are there any doubts in delineating the scope of the law applicable to succession (*lex successionis*) and other matters¹¹⁴ (for example, law applicable to rights *in rem*, law applicable to matrimonial property regimes, legal capacity)?

With regard to the two main issues debated in Germany, namely the delineation of succession law vis-à-vis matrimonial property law and property law applicable to rights *in rem*, the ECJ has clarified the situation at least partially in *Mahnkopf* and *Kubicka*, respectively (see question 1).

It should be noted that the need for such delineations typically arises in the context of a German Certificate of Inheritance or a European Certificate of Succession (e.g. OLG Hamm 10 W 12/24 – 18.07.2024¹¹⁵).

21. Were there cases concerning a choice of law made prior to 17 August 2015, which triggered application of Article 83(2) Succession Regulation?

There were a number of German cases in which Art. 83(2) SR was applied to choices of law prior to the entry into force of the SR.

The Federal Court of Justice had to decide in the following constellation (BGH IV ZB 22/18 – 10.07.2019¹¹⁶): In 1998, the German testatrix had concluded a succession agreement with her Italian partner, choosing German law; in 2016, having ended the relationship with her partner, she made a will. The court clarified that Art. 83(2) SR applies to succession agreements, and

¹¹¹ See Florian Loyal, 'Art 22 EuErbVO' in *Beck'scher Online-Kommentar Erbrecht* (CH Beck 2025, 75th edn.) para 16.

¹¹² ECLI:DE:AGHHS:2022:0715.970VI1412.19.0A.

¹¹³ ECLI:DE:OLGK:2024:0122.2WX227.23.00.

¹¹⁴ See case C-218/16 *Kubicka* ECLI:EU:C:2017:755, case C-558/16 *Mahnkopf* ECLI:EU:C:2018:138.

¹¹⁵ ECLI:DE:OLGHAM:2024:0718.10W12.24.00.

¹¹⁶ ECLI:DE:BGH:2019:100719BIVZB22.18.0.

held that the choice of law in the 1998 succession agreement was valid under Art. 83(2) Alt. 1 SR, as it fulfilled the requirements of Art. 25(3) SR. As the succession agreement was valid and thus binding under the validly chosen German law, the testatrix could not revoke it and the contrary disposition in the 2016 will was invalid. The court pointed out that the broad understanding of Art. 83(2) Alt. 1 SR entails the possibility, as in the case at hand, that a choice of law which was not valid under the conflict of laws rules in force at the time it was made subsequently becomes valid with the entry into force of the SR; consequently, an initially invalid disposition of property upon death may become valid and binding from this point in time. This retroactive effect was, however, considered “false retroactivity” and hence tolerable in terms of the constitutional and EU law principle of legal certainty.

The subsequent application of Art. 83(2) SR to a joint will (a succession agreement in the sense of the SR) did not pose problems, although the tacit choice of German law was debated at length (BGH IV ZB 33/20 – 24.02.2021¹¹⁷, OLG Saarbrücken 5 U 8/23 – 24.01.2024¹¹⁸ – see also question 17).

In one constellation (OLG München 31 Wx 269/18 – 18.08.2020¹¹⁹), the deceased (an Austrian national) had originally chosen German law in a joint will with his wife in 1996; in June 2015, after his wife’s death, he made a new will including an explicit choice of Austrian law. The court assessed the validity of both choices of law under Art. 83(2) SR. It came to the conclusion that the choice of Austrian law in the 2015 will was valid under its Alt. 1 as it met the conditions of Chapter III SR. The previous choice of German law in the joint will was not valid under Alt. 1 or Alt. 3, and only partially valid under Alt. 2 (choice of German law for immovables located in Germany, Art. 25(2) EGBGB previous version). However, this partial choice of German law was revoked by the later choice of Austrian law.

In some cases, the courts based their argumentation on both Art. 83(2) and (4) SR (see also question 22). In a German-Swedish case (OLG Frankfurt a.M. 21 W 81/22 – 24.01.2022¹²⁰), the court affirmed a choice of law valid under Art. 83(2) SR, but pointed out that a choice of law would in any case result from Art. 83(4) SR.

In one instance, the court found that a choice of Canadian law was not valid under Art. 83(2) SR: as the deceased did not have Canadian nationality, it was not valid under Art. 22 SR, and the rules of private international law in force at the time the choice was made did not allow for a choice of Canadian law either (LG Oldenburg 16 O 1549/20 – 19.11.2020¹²¹).

22. Were there instances in which Article 83(4) Succession Regulation was applied¹²² (and the law in accordance with which ‘a disposition of property upon death was made prior to 17 August 2015’ and ‘which the deceased could have chosen in accordance with this Regulation’ was found to ‘have been chosen as the law applicable to the succession’)? How was the requirement of being made ‘in accordance’ with the given law understood?

¹¹⁷ ECLI:DE:BGH:2021:240221BIVZB33.20.0.

¹¹⁸ ECLI:DE:OLGSL:2024:0124.5U8.23.00.

¹¹⁹ ECLI:DE:OLGMUEN:2020:0818.31WX269.18.0A.

¹²⁰ ECLI:DE:OLGHE:2022:0124.21W81.22.00.

¹²¹ ECLI:DE:LGOLDBG:2020:1119.16O1549.20.0A.

¹²² See case C-80/19 *EE* ECLI:EU:C:2020:569.

In *RK*¹²³, the ECJ clarified that an inferred choice of law under Art. 83(4) SR is sufficient for the application of the jurisdictional rules in Art. 6 lit. a and Art. 7 lit. a SR (upon referral by OLG Köln 2 Wx 107/20 – 28.08.2020¹²⁴).

While technically Art. 83(4) SR is only triggered when Art. 83(2) SR does not apply, German courts use it “in any case” to avoid problems in the application of Art. 83(2) SR (see also question 21). In a German-French case (OLG Schleswig 3 Wx 6/23 – 30.04.2024¹²⁵), Art. 83(4) SR led to a valid choice of French law, so it was not necessary to decide whether an implicit choice of law (triggering application of Art. 83(2) SR) had been effected. Similarly, in the case of a testament made in 2002 and using German legal terminology, the court applied Art. 83(4) SR; it left open whether a tacit choice of German law (which would have triggered the application of Art. 83(2) SR) had been effected, as it would not have led to a different law (OLG Karlsruhe 14 W 87/23 – 19.02.2024¹²⁶). However, whereas the Federal Court of Justice (BGH IV ZR 110/21 – 29.06.2022¹²⁷) applied Art. 83(4) SR without further discussion to an express choice of English law, clearly Art. 83(2) SR would have been the opposite norm.¹²⁸

In the case where a valid choice of Canadian law had not been possible under Art. 83(2) SR, the court pointed out that this also barred the fiction under Art. 83(4) SR (LG Oldenburg 16 O 1549/20 – 19.11.2020¹²⁹, see question 21).

In a case solved via Art. 83(2) SR (OLG Frankfurt a.M. 21 W 81/22 – 24.01.2022¹³⁰, see question 21), the court pointed out *obiter* that Art. 83(4) SR is not to be interpreted narrowly for teleological reasons; as in the case at hand, the testator had been clearly conscious of the application of the law deemed to have been chosen, the question whether the fiction of Art. 83(4) SR requires such a consciousness for the disposition to be made “in accordance” with the “chosen” law did not need to be answered. This question was again raised but not answered in another case (OLG Köln 2 Wx 227/23 – 22.01.2024¹³¹): the court tended to not require consciousness regarding the application of the law deemed to have been chosen on the part of the testator, but did not need to decide as in the case at hand the testament including the “choice” had been revoked so Art. 83(4) SR had lost its (potential) effect. The question of the exact interpretation of the requirement of being made “in accordance” remains open, and is still strongly debated in German legal literature.¹³²

23. Were there instances where Article 83(3) Succession Regulation concerning the validity of a disposition of property upon death made prior to 17 August 2015 was applied? Please elaborate?

Art. 83(3) SR was applied to joint wills made by spouses without apparent problems (BGH IV ZB 33/20 – 24.02.2021¹³³; OLG Saarbrücken 5 U 8/23 – 24.01.2024¹³⁴).

¹²³ ECJ C-422/20 *RK* ECLI:EU:C:2021:718.

¹²⁴ ECLI:DE:OLGK:2020:0828.2WX107.20.0A.

¹²⁵ ECLI:DE:OLGSH:2024:0430.3WX6.23.00.

¹²⁶ ECLI:DE:OLGKARL:2024:0219.14W87.23WX.0A.

¹²⁷ ECLI:DE:BGH:2022:290622UIVZR110.21.0.

¹²⁸ See case note by Windeknecht NJW 2022, 2552.

¹²⁹ ECLI:DE:LGOLDBG:2020:1119.16O1549.20.0A.

¹³⁰ ECLI:DE:OLGHE:2022:0124.21W81.22.00.

¹³¹ ECLI:DE:OLGK:2024:0122.2WX227.23.00.

¹³² For an overview with further references, see Anatol Dutta, 'Art 83 EuErbVO' in *Münchener Kommentar zum Bürgerlichen Gesetzbuch, vol. 12: Erbrecht* (9th edn, CH Beck 2024) para 13 et seq.

¹³³ ECLI:DE:BGH:2021:240221BIVZB33.20.0.

¹³⁴ ECLI:DE:OLGSL:2024:0124.5U8.23.00.

24. Were there any cases in your MS concerning the ‘substantive validity’ of a disposition of property upon death within the meaning of Article 26 Succession Regulation and Articles 24-25 Succession Regulation? Where there any doubts as to the designation of applicable law for this purpose or with respect to the notions of ‘admissibility’, ‘substantive validity’, ‘binding effects between the parties’ or ‘conditions of its dissolution’?

The application of the special conflicts rules for the admissibility and substantive validity of dispositions of property upon death does not appear to be problematic in Germany. It typically does not merit in-depth discussion as such in jurisprudence. Discussions are frequently triggered by intertemporal aspects (e.g. BGH IV ZB 22/18 – 10.07.2019¹³⁵); however, the application of the rules, although intricate, does not seem especially challenging for German courts.

As the interpretation of a testament is expressly defined as part of its substantive validity in Art. 26(1) lit. d SR, determining the law applicable to it according to Art. 24(1) SR as such was not considered problematic by the court (AG Hamburg-Wandsbek 709 VI 2263/17 – 17.05.2018¹³⁶), although intertemporal questions were raised by the fictional application of the SR (see also question 16). In one case, the court held that a document titled “Power of Attorney” was considered a disposition of property upon death in the sense of Art. 24 SR (AG Mosbach 2 VI 180/21, 05.08.2024¹³⁷).

A choice of law for an agreement as to succession under Art. 25(3) SR can be explicit or tacit (OLG Saarbrücken 5 U 8/23 – 24.01.2024¹³⁸). A choice of law can be made only with regard to the issues of substantive validity; however, as a court pointed out, in case of doubt a choice of law is to be understood as a choice of law for the entire succession and not limited to these aspects (AG Hamburg-St. Georg 970 VI 1412/19 – 15.07.2022¹³⁹).

It can be debated whether joint wills are considered as agreements as to succession, i.e. whether Art. 24 SR or Art. 25 SR is applicable to them. This question does not need to be resolved when both rules lead to the same result (AG Hamburg-Wandsbek 709 VI 2263/17 – 17.05.2018¹⁴⁰). The Federal Court of Justice has characterized a joint will containing mutual dispositions under German law as an agreement as to succession in the sense of Art. 3(1) lit. b SR (BGH IV ZB 33/20 – 24.02.2021¹⁴¹). Nevertheless, Art. 24(1), (3) SR were applied to the revocation of a public joint will without any discussion (OLG Karlsruhe 14 W 6/22 – 24.02.2022¹⁴²).

25. Were there any doubts as to the delineation of ‘substantive validity’ and ‘formal validity’?

No instances of such doubts could be discerned in the reported judgements.

26. Were there any challenges to the application of Article 28 on validity as to form of ‘a declaration concerning the acceptance or waiver of the succession, of a

¹³⁵ ECLI:DE:BGH:2019:100719BIVZB22.18.0.

¹³⁶ ECLI:DE:AGHHWA:2018:0517.709VI2263.17.0A.

¹³⁷ ECLI:DE:AGMOS:2024:0805.2VI180.21.0A, IPRspr 2024-38, available at <https://iprspr.mpipriv.de/2024-38>.

¹³⁸ ECLI:DE:OLGSL:2024:0124.5U8.23.00.

¹³⁹ ECLI:DE:AGHHS:2022:0715.970VI1412.19.0A.

¹⁴⁰ ECLI:DE:AGHHWA:2018:0517.709VI2263.17.0A.

¹⁴¹ ECLI:DE:BGH:2021:240221BIVZB33.20.0.

¹⁴² ECLI:DE:OLGKARL:2022:0224.14W6.22WX.0A.

legacy or of a reserved share, or a declaration designed to limit the liability of the person making the declaration’?

The application of Art. 28 SR generally does not appear to be problematic. In one instance, the court (erroneously) left open whether the law applicable to the form of a waiver was determined under Art. 28 SR or Art. 11 I EGBGB, as they both led to the same result (OLG Köln 2 Wx 119/21 – 14.07.2021¹⁴³).

Questions arose with regard to the formal validity of a waiver declaration made before the court competent under Art. 13 SR (see question 13). In the case of heirs habitually resident in the Netherlands, these questions were referred to the ECJ (OLG Bremen 5 W 13/20 – 11.11.2020¹⁴⁴), which ruled in *T.N., N.N.* that compliance with the formal requirements applicable before the court of the habitual residence of the heir waiving succession is sufficient.¹⁴⁵

27. Is there an institution of an administrator whose appointment is mandatory or mandatory upon request in your MS within the meaning of Article 29 Succession Regulation? Were there instances where foreign applicable law (*lex successionis*) interfered with the powers of administrator exercised under the law of the forum?

As the administration of the estate has to be ordered by the probate court upon request (§ 1981 BGB), the appointment of an administrator under Art. 29 SR is possible. Only one such case was reported, in which no interference of the Brazilian *lex successionis* with the German *lex fori* could be discerned (OLG Köln 2 Wx 293/20 – 09.12.2020¹⁴⁶).

28. Were there cases where the *renvoi* provided for in Article 34 Succession Regulation operated? If yes, please explain the laws of which states were considered? Is partial *renvoi* possible?

Partial *renvoi* is possible – in fact, all *renvoi* cases published to date have addressed situations of partial *renvoi*. Instances have been reported for English law, with a *renvoi* to German law as *lex rei sitae* for immovables under Art. 34(1) lit. a SR (OLG Bremen 3 W 9/20 – 16.04.2020¹⁴⁷), as well as for Thai law (OLG Hamm 10 W 53/21 – 10.08.2021¹⁴⁸) and Chinese law (OLG Frankfurt a.M. 21 W 59/20 – 14.09.2020¹⁴⁹), which similarly refer back to the *lex rei sitae* for immovables. On the other hand, there was no (partial) *renvoi* in a case where South African law was applicable: As the deceased’s bank account with a German bank was characterized as movable (under the *lex rei sitae*), the law of her last domicile in South Africa remained applicable (OLG Köln 2 Wx 227/23 – 22.01.2024¹⁵⁰).

29. Were there cases where the rule on *commorientes* of Article 32 Succession Regulation was applied? If yes, please describe.

No cases were reported in Germany.

¹⁴³ ECLI:DE:OLGK:2021:0714.2WX119.21.0A.

¹⁴⁴ ECLI:DE:OLGHB:2020:1111.5W13.20.0A.

¹⁴⁵ ECJ C-617/20 – 02.06.2022, *T.N., N.N. / E.G.*, ECLI:EU:C:2022:421.

¹⁴⁶ ECLI:DE:OLGK:2020:1209.2WX293.20.0A.

¹⁴⁷ ECLI:DE:OLGHB:2020:1604.3W09.20.00.

¹⁴⁸ ECLI:DE:OLGHAM:2021:0810.10W53.21.00.

¹⁴⁹ ECLI:DE:OLGHE:2020:0914.21W59.20.00.

¹⁵⁰ ECLI:DE:OLGK:2024:0122.2WX227.23.00.

30. Were there cases where the rule on estate without claimant of Article 33 Succession Regulation was applied? If yes, please describe.

No cases were reported in Germany.

31. Were there cases in your MS, in which certain provisions of the law of your MS or another state were qualified as special rules mentioned in Article 30 Succession Regulation (namely as ‘special rules which, for economic, family or social considerations, impose restrictions concerning or affecting the succession’ in respect of certain specific assets, which ‘are applicable irrespective of the law applicable to the succession’)? If yes, please describe which rules and relating to what kind of assets were considered? How did the court establish that these rules are indeed applicable irrespective of applicable law?

In the case law reported to date, Art. 30 SR was discussed, but ultimately not applied in two situations. In one case, a European Certificate of Succession had been issued in accordance with the German *lex successionis*; the procedural requirements of another Member State (*in casu*: Austria) for the registration of heirs in the land register, compliance with which the sole heir requested, were not considered to fall within the scope of Art. 30 SR (OLG Nürnberg 15 W 1461/17 – 27.10.2017¹⁵¹). In a German-Canadian case, the court pointed out *obiter* that Art. 30 SR does not apply to provisions on reserved or compulsory shares (LG Oldenburg 16 O 1549/20 – 19.11.2020¹⁵²). Both courts stressed the exceptional character of the clause which necessitates its narrow interpretation.

32. Were there cases in your MS in which an adaptation of a foreign right *in rem* was performed in accordance with Article 31 Succession Regulation? Please provide details of such adaptation. What was the original right and what was the equivalent?

No German cases have been reported as of yet.

33. Were there instances in your MS where the public policy clause of Article 35 Succession Regulation was applied or considered but not applied? If yes, please describe the context of the case and the reasoning of the court.

The public policy clause was applied by the Federal Court of Justice in a case where the deceased, a British national who had lived in Germany for decades, had chosen English law as the *lex successionis* (BGH IV ZR 110/21 – 29.06.2022¹⁵³). Under English law, the deceased’s children are only granted a discretionary maintenance claim in case of financial need – there is no mandatory, fixed quota compulsory share. Taking recourse to decisions by the German Constitutional Court, the court reasoned that in the case at hand, the application of English law would violate fundamental principles of German law: The participation in the estate by way of an unconditional, non-discretionary minimum share of the inheritance is considered a core value of German law. As the case had strong connections to Germany, the complete exclusion of the deceased’s adopted son from the succession was considered incompatible with German

¹⁵¹ ECLI:DE:OLG NUER:2017:1027.15W1461.17.0A.

¹⁵² ECLI:DE:LGOLDBG:2020:1119.16O1549.20.0A.

¹⁵³ ECLI:DE:BGH:2022:290622UIVZR110.21.0.

public policy. The result was the application of the German rules on the compulsory share, insofar replacing the English *lex successionis*.¹⁵⁴

The public policy clause was considered, but not applied, with regard to the formal validity of a testament made before a Dutch notary in Germany, in contravention of the territoriality principle (OLG Oldenburg 3 U 18/24 – 12.02.2025¹⁵⁵).

34. Were there instances in your MS where ‘mechanisms designed to tackle the evasion of the law, such as fraude à la loi’ were applied as suggested in Recital (26) Succession Regulation? If yes, please explain the circumstances and outcome of this application?

German case law does not show evidence of the application of such mechanisms.

35. Were there instances where the rules on territorial conflict of laws (Article 36) or inter-personal conflict of laws (Article 37) were applied in your MS? Were there any doubts / challenges to their application? Please elaborate.

It appears that the determination of the pertinent law in cases of states with more than one legal system (e.g. Great Britain, United States, Spain, India) in accordance with these rules does not pose any doubts or difficulties. Only one case explicitly referred to Art. 36 SR (OLG Düsseldorf 3 W 86/25 – 26.05.2025¹⁵⁶: application of English law according to Art. 36(2) lit. a SR). No cases mentioning Art. 37 SR were reported.

36. Does your MS comprise several territorial units each of which has its own rules of law in respect of succession within the meaning of Article 38 Succession Regulation? If yes, are domestic rules or the Succession Regulation applied to resolve conflicts of laws arising between such units? Please explain.

Art. 38 SR does not have relevance in Germany.

37. Are there any other decisions / doubts / challenges, which do not fit within any of the above questions, but are related to the rules on applicable law of the Succession Regulation, and therefore, should be signaled within the National Report?

Art. 25 EGBGB orders the rules on applicable law of the SR to be applied *mutatis mutandis* to successions not falling within the scope of the Regulation. This extensive application is relevant for “German-German” cases (OLG Düsseldorf 25 Wx 52/19 – 16.03.2020¹⁵⁷). It is, however, limited to the substantive scope of application and does not entail an extension of the temporal scope of application (OLG Schleswig 3 Wx 122/15 – 25.04.2016¹⁵⁸).

Some special characterization issues are not yet fully resolved, e.g. regarding the appointment of estate curators: Courts have held that this is to be characterized as a procedural measure for the safekeeping of the estate, and thus not subject to the law applicable to the estate, but rather

¹⁵⁴ Some reactions to this decision are favourable (e.g. Frederick Rieländer, 'Wahl ausländischen Erbstatuts und deutscher ordre public' (2022) ErbR 964); others are critical (e.g. Juliane Weber, 'Ordre public-Verstoß durch erbrechtliche Rechtswahl?' (2025) ZEV 65; Robert Magnus, 'Pflichtteilsrecht und Ordre Public' (2024) 123 ZVglRWiss 4).

¹⁵⁵ ECLI:DE:OLGOL:2025:0212.3U18.24.0A.

¹⁵⁶ ECLI:DE:OLGD:2025:0526.3W86.25.0A.

¹⁵⁷ ECLI:DE:OLGD:2020:0316.25WX52.19.0A.

¹⁵⁸ ECLI:DE:OLGSH:2016:0425.3WX122.15.0A.

to the (German) *lex fori* (OLG Frankfurt 20 W 135/24 – 14.08.2024¹⁵⁹; OLG Köln 2 W 293/20 – 09.12.2020¹⁶⁰). This stance has been criticized,¹⁶¹ and may need further discussion and potentially a referral to the ECJ.

Legal literature is debating a number of other potential problems, which may become the object of judicial decisions in the future. An example are the problems surrounding a renunciation of inheritance and/or compulsory share with regard to its characterization and a later change of applicable law.¹⁶²

Authentic Instruments and Court Settlements

38. Are you aware of any doubts / challenges to the application of the rules on Authentic Instruments and Court Settlements of the Succession Regulation in your MS? Are there any voices suggesting any amendments to these rules?

The rules in Art. 59-61 SR do not appear problematic from a German point of view – the cases reported do not address any issues related to them.

The somewhat unfortunate terminology of the German translation of Art. 3(1) lit. i SR (“Schriftstück”, “Beweiskraft”) necessitates a careful interpretation of the term “authentic instrument”; however, legal literature has clarified this¹⁶³ and so far, no major problems have appeared in this regard.

39. Are you aware of any challenges to the use of authentic instruments produced in your MS in another MS?

No.

40. Are you aware of any challenges to the use in your MS of authentic instruments within the meaning of Article 3(1)(i) Succession Regulation, which were produced in another MS?

The case law does not indicate any difficulties.

41. Were there any challenges to the enforcement in your MS of a foreign court settlement under Article 61 Succession Regulation?

No cases referring to Art. 61 SR were reported.

42. Were there any other decisions / doubts / challenges, which do not fit within any of the above questions, but are related to circulation of authentic

¹⁵⁹ ECLI:DE:OLGHE:2024:0814.20W135.24.00.

¹⁶⁰ ECLI:DE:OLGK:2020:1209.2WX293.20.0A.

¹⁶¹ See Horst Bestelmeyer, 'OLG Frankfurt a. M.: Internationale Zuständigkeit deutscher Nachlassgerichte für die Bestellung eines Nachlasspflegers nach Art. 10 EuErbVO' (2025) RPfleger 167.

¹⁶² See, e.g., Raphael de Barros Fritz, 'Die Qualifikation von Pflichtteilsverzichteten unter Geltung der EuErbVO' (2020) ZEV 199; Günther Schotten, 'Der Erb- und Pflichtteilsverzicht im deutschen Recht und die Europäische Erbrechtsverordnung' (2020) ErbR 338; Raphael de Barros Fritz, 'Die Auswirkungen eines Statutenwechsels auf Pflichtteilsverzichtete unter Geltung der EuErbVO' (2020) ZEV 596; Charlotte Strehlke-Verkühlen, 'Der Erbverzicht im Internationalen Privatrecht' (2019) ErbR 545.

¹⁶³ See, e.g., Jessica Schmidt, 'Art 3 EuErbVO' in *Beck Online Großkommentar zum Zivilrecht* (CH Beck, 1 September 2025) para 38 et seq. (with further references).

instruments and court settlements under the Succession Regulation, and therefore, should be signaled within the National Report?

There was only one instance where jurisdiction under Art. 59(2) SR was mentioned, but not discussed in-depth. The German court's jurisdiction for determining the formal validity of a testament made before a Dutch notary in Germany was found to be established (also) under Art. 59(2) SR, as Germany was the Member State of origin according to Art. 3(1) lit. e SR and thus its courts competent to deal with the challenge to the document's authenticity (OLG Oldenburg 3 U 18/24 – 12.02.2025¹⁶⁴).

Recognition and Enforcement of Judgements

43. Were there cases in your MS, in which the rules on recognition and enforcement caused doubts / were analyzed and discussed?

The application of the recognition and enforcement rules generally does not appear to pose problems for German authorities. So far, hardly any case law for Artt. 39-58 SR can be found. There is only one context in which issues keep arising: The issuance of attestations according to Art. 46(3) lit. b SR. Three decisions, all in German-Polish cases, were reported in which such an issuance was discussed, but ultimately denied; it should be noted that these cases are very technical and intricate, and can be reported here only in an abbreviated version.

A Polish notary tasked with the issuance of an ECS applied to a German probate court for an attestation according to Art. 46(3) lit. b SR, but her request was denied. The Federal Court of Justice (BGH IV ZB 20/22 – 29.03.2023¹⁶⁵) held that the time-limited complaint according to § 567(1) no. 2 ZPO is the adequate remedy in such a situation. It found that the notary does not have a right to apply for an attestation as she is not a party who raises the recognition of a decision from another MS: The notary claims that she will decide on the recognition herself incidentally (Art. 39(3) SR), and she is thus not a party aiming for the recognition by a Polish court or authority. Hence, she does not have a right to initiate a procedure under Artt. 45 et seq. SR; also, Art. 46(3) lit. b SR does not provide for a right to the issuance of an attestation. A right for the notary to apply for the issuance of an attestation does not result from Art. 66(1)(2), (5) SR either.

An heir requested the issuance of an attestation according to Art. 46(3) lit. b SR for a German national certificate of inheritance in order to provide proof to the Polish land registration authorities. The Federal Court of Justice (BGH IV ZB 19/24 – 19.03.2025¹⁶⁶) denied this request, as the attestation was not requested for use in an application for recognition procedure according to Artt. 45 et seq. SR in Poland: the heir apparently did not aim for the recognition of a German decision by Polish courts or authorities (according to Art. 39(2) SR), but rather wished to use the attestation to facilitate an automatic acceptance of the German certificate of inheritance in Poland (especially by the Polish land register).

These decisions confirm the stance already taken earlier at appellate level (OLG Köln 3 Wx 13/22 – 02.03.2022¹⁶⁷). A joint German certificate of inheritance had been issued for the heirs of a deceased; subsequently, one of these heirs, habitually resident in Poland, died and a notary was asked to issue an ECS regarding her succession. This notary now requested the issuance of an attestation for the certificate of inheritance, in order to prove its effects in Poland. The court

¹⁶⁴ ECLI:DE:OLGOL:2025:0212.3U18.24.0A.

¹⁶⁵ ECLI:DE:BGH:2023:290323BIVZB20.22.0.

¹⁶⁶ ECLI:DE:BGH:2025:190325BIVZB19.24.0.

¹⁶⁷ ECLI:DE:OLGK:2022:0302.2WX13.22.00.

denied this, as a German national certificate of inheritance is neither enforceable nor does it entail the authority of a final decision (*Rechtskraft*), and as the notary was not a party to the recognition proceedings.

So far, the courts could leave open the interesting questions whether a German national certificate of inheritance is a “decision” (in the sense of Artt. 3(1) lit. g, 39 SR), whether an attestation under Art. 46(3) lit. b SR can or must also be issued for decisions not capable of being enforced, and whether an attestation can be requested in order to extend the publicity effects of a national certificate of inheritance to another MS. A referral to the ECJ was not necessary as the outcome of the cases so far did not depend on the answer to these issues; however, it is to be expected and hoped that such an authoritative clarification will be required and delivered in the future.

44. Were there any cases in your MS, in which a decision on succession matters originating from another MS faced refusal of recognition / enforcement? If yes, please provide details.

No such cases were reported.

45. Does the Succession Regulation have any influence on the recognition and enforcement of decisions coming from third states (for example, when it comes to the assessment of indirect jurisdiction of the foreign court)?

There are no specific indications in the available case law.

46. Are there any other decisions / doubts / challenges, which do not fit within any of the above questions, but are related to the recognition and enforcement of judgements under the Succession Regulation, and therefore, should be signaled within the National Report?

As the SR is not applicable to questions of company law (Art. 1(2) lit. h SR), a court held that the duty to recognize an Austrian decision under Art. 39(1) SR did, in any case, not extend to these issues (*in casu*: succession into limited partnership shares (*Kommanditanteile*); OLG Hamm 8 U 41/22 – 15.02.2023¹⁶⁸).

European Certificate of Succession

47. Where there any doubts or challenges with respect to the issuance / use of an ECS¹⁶⁹ in your MS?

There is a fairly large body of German case law in which the issuance and/or use of an ECS in Germany plays a role, as frequently, court cases regarding the application of the SR originate in proceedings for the issuance of an ECS by German authorities, or regarding the use of an ECS with German authorities, often the land registry. These cases are often marked by technical detail. From the body of existing case law, it can be concluded that generally, the application of the provisions of the SR regarding the ECS does not appear problematic in Germany. Doubts or challenges arise with regard to specific questions, often in the interplay with the rules and principles of German national law.

¹⁶⁸ ECLI:DE:OLGHAM:2023:0215.8U41.22.00.

¹⁶⁹ See case C-301/20 *UE, HC*, ECLI:EU:C:2021:528, case C-354/21 *RJR* ECLI:EU:C:2022:587, case C-187/23 *Albausy* ECLI:EU:C:2025:34, case C-240/24, *BNP Paribas Fortis* (pending), case C-873/24 *Marwanek* (pending).

The use of foreign-issued ECSs as proof with German registry authorities has given rise to a few decisions clarifying minor points. A certified copy of an ECS is to be accepted by the German land registry as sufficient proof of succession (KG Berlin 1 W 2/23 – 27.06.2023¹⁷⁰); for registration in the commercial registry (*Handelsregister*), an ECS provides sufficient proof of succession as well (whereas the registry is not obligated to accept foreign national documents, cf. Art. 1(2) lit. 1 SR; OLG Bremen 2 W 37/24 – 18.03.2025¹⁷¹). An ECS was still considered a valid document for the purposes of land registration (Art. 69(5) SR) in a case where the form was not completely filled in but the missing information resulted from a declaration by the issuing Spanish notary which was connected to it (OLG Bremen 3 W 10/24 – 18.04.2024¹⁷²). In one atypical and intricate case, the court accepted that it was impossible to require the parties to request an ECS in Greece, and that the land registry was to be corrected *ex officio* (OLG Düsseldorf 3 Wx 131/23 – 12.01.2024¹⁷³).

Following *Kubicka*, the acquisition of *in rem* rights in specific individual items belonging to the estate under the applicable succession law has to be accepted; the German *lex situs* may not require additional conditions to be fulfilled. Consequently, an ECS issued in a foreign MS demonstrating the attribution of specific assets to specific heirs or legatees (cf. Artt. 63(2) lit. b, 68 lit. l, lit. m SR) has to be accepted as sufficient proof of succession and/or the incorrectness of the register entry by the German land registry. This was confirmed for a legacy by vindication under French law (OLG Saarbrücken 5 W 25/19 – 23.05.2019¹⁷⁴) and for directions for partitioning with *in rem* effect under Italian law (KG Berlin 1 W 348/22 – 22.09.2022¹⁷⁵; see also OLG München 34 Wx 236/20 – 29.09.2020¹⁷⁶).

With regard to Art. 68 SR, the question of which information can or must be included in the ECS has given rise to various issues and debates. The ECJ's decision in *Mahnkopf*¹⁷⁷ originated in the question of whether for spouses living in the community of accrued gains matrimonial property regime, the increase of the spousal share by ¼ under § 1371(1) BGB (lump-sum equalization of accrued gains) could be included in the ECS; the referring court suggested different possibilities of achieving this aim (KG Berlin 6 W 80/16 – 25.10.2016¹⁷⁸). The ECJ characterized this increase of the share of the surviving spouse as part of succession law, so that its inclusion in the ECS results as a straightforward consequence. On the other hand, rights acquired other than by succession cannot be included in the ECS as they do not fall within the scope of the SR (OLG Nürnberg 15 W 318/17 – 25.04.2017¹⁷⁹).

A recurring question in the context of Art. 68 SR is whether, when German law is applied to the succession, specific individual items or assets belonging to the estate can be designated in the ECS; this typically concerns immovables including apartments. Originally, the majority opinion was that this was not possible due to the German principle of universal succession (§ 1922 BGB), and also the formal requirements of Art. 68 SR and the form provided (OLG Nürnberg 15 W 299/17 – 05.04.2017¹⁸⁰; OLG München 31 Wx 275/17 – 12.09.2017¹⁸¹; OLG

¹⁷⁰ ECLI:DE:KG:2023:0627.1W2.23.0A.

¹⁷¹ ECLI:DE:OLGHB:2025:0318.2W24.37.00.

¹⁷² ECLI:DE:OLGHB:2024:0418.3W10.24.0A.

¹⁷³ ECLI:DE:OLGD:2024:0112.3WX131.23.3WX133.0A.

¹⁷⁴ ECLI:DE:OLGSL:2019:0523.5W25.19.00.

¹⁷⁵ ECLI:DE:KG:2022:0928.1W348.22.00.

¹⁷⁶ ECLI:DE:OLGMUEN:2020:0929.34WX236.20.0A.

¹⁷⁷ Case C-558/16 *Mahnkopf* ECLI:EU:C:2018:138.

¹⁷⁸ ECLI:DE:KG:2016:1025.6W80.16.0A.

¹⁷⁹ ECLI:DE:OLGNUER:2017:0425.15W318.17.0A.

¹⁸⁰ ECLI:DE:OLGNUER:2017:0405.15W299.17.0A.

¹⁸¹ ECLI:DE:OLGMUEN:2017:0912.31WX275.17.0A.

Nürnberg 15 W 1461/17 – 27.10.2017¹⁸²; OLG Düsseldorf 3 Wx 158/20 – 14.10.2020¹⁸³, in a case of a subsequent purchase of the inheritance). This stance has, at least in principle, been accepted by the ECJ in *RJR*¹⁸⁴; nevertheless, in the wake of this ECJ decision, there are strong arguments for German authorities to include specific items or information in the ECS, at least if otherwise its *effet utile* is endangered because the ECS is not accepted for registration purposes in another MS, and legal literature is increasingly supporting this stance.¹⁸⁵ Following up on the ECJ's previous decision, in a case concerning an immovable in the Czech Republic the Federal Court of Justice has referred the question of the interpretation of Art. 68 lit. 1 SR in this regard to the ECJ (BGH IV ZB 41/23 – 27.11.2024¹⁸⁶); the matter is still pending.¹⁸⁷

The interpretation of what constitutes a “challenge” prohibiting the issuing authority from issuing a requested ECS under Art. 67(1) lit. a SR was doubtful: It was strongly debated whether only challenges raised in other proceedings, or also challenges raised in the procedure for issuing the ECS itself fall within the scope of Art. 67(1) lit. a SR. The Court of Appeal Stuttgart decided in favour of a narrow reading including only challenges raised in other proceedings (OLG Stuttgart 8W 342/20 – 15.12.2020¹⁸⁸). However, in a subsequent case, the question was referred to the ECJ (AG Lörrach 23 VI 1236/21 – 21.03.2023¹⁸⁹). The ECJ¹⁹⁰ held the request inadmissible as the referring court did not exercise a judicial function, but pointed out that Art. 67(1) lit. a SR includes all challenges regardless of the procedure in which they were raised. This reading is now followed by German courts (OLG Nürnberg 15 Wx 1493/23 – 21.03.2025¹⁹¹; OLG Köln 2 W 134/24 – 26.03.2025¹⁹²); it should be noted that the judicial authority seized of the redress procedure upon the refusal to issue an ECS due to challenges raised may not always be competent to rule on these challenges, and that parties may need to initiate separate proceedings.

There was some debate regarding the scope of the presumption of accuracy in Art. 69 SR. It has been established that the German authorities (*in casu*: land registry) are not obligated to independently verify the acquisition of rights documented in the ECS, but are also not prohibited from an examination of the ECS if there are doubts regarding its content as the presumption of accuracy is not irrefutable (OLG Saarbrücken 5 W 25/19 – 23.05.2019¹⁹³; see also OLG München 34 Wx 236/20 – 29.09.2020¹⁹⁴). The designation of a co-heir as sole heir of a German immovable belonging to the estate in an Austrian ECS was not accepted as proof by the German land registry: As under the applicable Austrian law the co-heir had not directly acquired sole ownership in the immovable upon succession, the presumption of accuracy (Art. 69 SR) was insofar refuted (OLG München 34 Wx 357/17 – 10.02.2020¹⁹⁵).

In terms of the persons who may apply for an ECS, the following points were clarified. An estate insolvency administrator was considered an administrator of the estate in the sense of

¹⁸² ECLI:DE:OLGNUER:2017:1027.15W1461.17.0A.

¹⁸³ ECLI:DE:OLGD:2020:1014.3WX158.20.0A.

¹⁸⁴ Case C-354/21 *RJR* ECLI:EU:C:2022:587.

¹⁸⁵ See e.g. Felix Berner, 'EuGH: Ablehnung der Grundbucheintragung nach Vorlage eines Europäischen Nachlasszeugnisses, das die Immobilie nicht identifiziert' (2023) DNotZ 943; Anatol Dutta, 'Art 68 EuErbVO' in *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, vol. 12: *Erbrecht* (9th edn, CH Beck 2024) para 9.

¹⁸⁶ ECLI:DE:BGH:2024:271124BIVZB41.23.0.

¹⁸⁷ Case C-873/24 *Marwanek* (pending).

¹⁸⁸ ECLI:DE:OLGSTUT:2020:1215.8W342.20.00.

¹⁸⁹ ECLI:DE:AGLOERR:2023:0321.23VI1236.21.00.

¹⁹⁰ Case C-187/23 *Albausy* ECLI:EU:C:2025:34.

¹⁹¹ ECLI:DE:OLGNUER:2025:0321.15WX1493.23.00.

¹⁹² ECLI:DE:OLGK:2025:0326.2WX134.24.00.

¹⁹³ ECLI:DE:OLGSL:2019:0523.5W25.19.00.

¹⁹⁴ ECLI:DE:OLGMUEN:2020:0929.34WX236.20.0A.

¹⁹⁵ ECLI:DE:OLGMUEN:2020:0210.34WX357.17.0A.

Art. 63 SR, and may apply for the issuance of an ECS (OLG Frankfurt a.M. 21 W 151/20 – 09.02.2021¹⁹⁶); the same was held for an estate curator tasked with the administration of the estate (OLG Schleswig 3 Wx 4/18 – 02.02.2018¹⁹⁷). However, a foreign notary tasked with the issuance of an ECS does not have a right to apply for the issuance of an attestation according to Art. 46(3) lit. b SR, and neither does such a right not result from Art. 66(1)(2), (5) SR (BGH IV ZB 20/22 – 29.03.2023¹⁹⁸, see question 43).

With regard to formal questions, it was clarified that the certified copy of an ECS, in conformity with the formal requirements of Art. 70 SR, has to be accepted by German authorities; the fulfilment of additional formal requirements under national law may not be demanded, even if the ECS was issued in Germany (KG Berlin 1 W 2/23 – 27.06.2023¹⁹⁹). However, the certified copy has to be presented in the original (LG Frankfurt a.M. 2/04 O 20/22 – 02.11.2022²⁰⁰).

With regard to the limited period of validity of the ECS (Art. 70(3) SR), doubts arose in the situation that a valid certified copy was presented to the German land registry with a request for registration, but that its period of validity elapsed before the registration was performed. The court held that in case of the expiry of the period of validity before the completion of registration, the land registry may require an extended or renewed certified copy to be presented as sufficient proof (KG Berlin 1 W 161/19 – 03.09.2019²⁰¹). However, this has been overruled by the ECJ's decision in *UE, HC*²⁰² that the relevant point in time is that of the (first) presentation to the authority (see OLG Bremen 3 W 10/24 – 18.04.2024²⁰³).

One case was reported regarding the suspension of the effects of the Certificate (Art. 73 SR), in which the application of the SR did not appear problematic (OLG Karlsruhe 14 W 121/24 – 25.03.2025²⁰⁴).

48. Are there any statistics on ECSs made in your MSs available?

No comprehensive statistics on domestic ECSs are available for Germany.

49. Are there any statistics on 'foreign' ECSs used in your MSs available?

No comprehensive statistics on foreign ECSs are available for Germany.

50. Are there any other decisions / doubts / challenges²⁰⁵, which do not fit within any of the above questions, but are related to the issuance or use of the ECS, and therefore, should be signaled within the National Report?

There were doubts whether in applying for an ECS the use of the form mentioned in Art. 65(2) SR (Form IV, Annex IV) was optional or mandatory, with some German probate courts

¹⁹⁶ ECLI:DE:OLGHE:2021:0209.21W151.20.00.

¹⁹⁷ ECLI:DE:OLGSH:2018:0202.3WX4.18.0A.

¹⁹⁸ ECLI:DE:BGH:2023:290323BIVZB20.22.0.

¹⁹⁹ ECLI:DE:KG:2023:0627.1W2.23.0A.

²⁰⁰ ECLI:DE:LGFFM:2022:1102.2.04O20.22.00.

²⁰¹ ECLI:DE:KG:2019:0903.1W161.19.0A.

²⁰² Case C-301/20 *UE, HC*, ECLI:EU:C:2021:528.

²⁰³ ECLI:DE:OLGHB:2024:0418.3W10.24.0A.

²⁰⁴ ECLI:DE:OLGKARL:2025:0325.14W121.24WX.0A.

²⁰⁵ See case C-102/18 *Brisch* ECLI:EU:C:2019:34.

considering it mandatory. Upon referral (OLG Köln 2 Wx 276/17 – 06.02.2018²⁰⁶), the ECJ clarified in *Brisch*²⁰⁷ that the use of the form is optional.

Other aspects

51. Are there any other decisions / doubts / challenges, which do not fit within any of the above headings and questions, but are related to the application of the Succession Regulation, and therefore, should be signalled within the National Report?

No additional issues or problems for the application of the SR can be deduced from the reported German case law.

²⁰⁶ ECLI:DE:OLGK:2018:0206.2WX276.17.0A.

²⁰⁷ Case C-102/18 *Brisch* ECLI:EU:C:2019:34.