

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

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NATIONAL REPORT

SPAIN

prepared by

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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 conducted for the Spanish National Report within the EUSuccess project shows that the implementation of the EU Succession Regulation (Regulation (EU) No 650/2012) in Spain has been generally consistent and effective. Spanish courts and notaries have applied the Regulation coherently, with no major systemic issues reported regarding jurisdiction, applicable law, recognition and enforcement of judgments, or the use of the European Certificate of Succession (ECS). Both notaries and courts are authorised to issue the ECS, though statistical data on its use are lacking.

In matters of jurisdiction, Spanish courts have confirmed the universal competence of authorities where the deceased had their last habitual residence in Spain. No relevant case law has arisen under Articles 10–12.

Regarding applicable law, most discussions remain academic, but there are some interesting decisions from on the interpretation of tacit choice under Article 22 and its interaction with matrimonial property regimes issued by the Directorate-General for Legal Security and Public Faith, the administrative body that oversees notaries, property and commercial registries. Certain special national rules, such as those governing agricultural holdings, Biscayan family property (“tronicalidad”), and noble titles, have been identified as “special rules” under Article 30. These demonstrate how regional traditions interact with the Regulation’s aim of uniformity. Spanish authorities consistently invoke public policy (Article 35) to reject discriminatory foreign succession laws, particularly those based on gender. The 2025 Supreme Court decision on a Dutch national’s succession clarified internal conflict-of-law questions for non-Spanish residents.

Concerning recognition and enforcement, Spanish practice shows no difficulties in recognising or executing succession-related judgments or authentic instruments from other Member States, reflecting the Regulation’s success in ensuring free circulation of decisions. Likewise, both

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>.

notaries and courts in Spain are empowered to issue the European Certificate of Succession, and no practical obstacles have been reported in its issuance or use, though statistical data remain unavailable.

Overall, the Regulation operates smoothly in Spain, with challenges mainly limited to interpretative and academic debates rather than practical obstacles.

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?

Succession matters in Spain are primarily handled by judicial and notarial authorities. Civil courts (Juzgados de Primera Instancia) have jurisdiction over contentious inheritance proceedings, including challenges to wills, declaration of heirs, and partition of estates, with appellate review by the Audiencias Provinciales and the Tribunal Supremo. This competence is conferred by the Law on the Judiciary (“Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial (LOPJ)”).

Notaries play a central role in Spanish succession practice: they receive wills, record acceptances/renunciations, authorise deeds of acceptance-and-adjudication, and may conduct non-litigious succession matters. Notarial instruments often serve as the title for registry purposes. Spanish Notaries’ framework and notarial competences are regulated in the Notaries Act (“Ley del Notariado”) and further implemented in the Notaries Regulation (“Reglamento Notarial”).

The Property Registry (“Registro de la Propiedad”) and the Directorate-General for Legal Security and Public Faith (“Dirección General de Seguridad Jurídica y Fe Pública”, hereinafter “DGSJFP”) oversee the registration and supervision of inherited property, while tax authorities intervene to assess inheritance tax obligations. The Civil Registry (“Registro Civil”) might also intervene for vital records.

Is it possible to handle a succession case without recourse to any public authority?

Practically no for full transfer and registration of title: informal private agreements among heirs can settle division of movable assets, but for transfer of real property, registration or notarial deeds (acceptance/adjudication) or a judicial declaration are generally required to affect third parties and land registries. Notarial deeds and court decisions provide the formal titles necessary for registries and third-party recognition. Only at a theoretical level a fully private succession can be implemented.

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?

All the legal professionals involved in succession matters in Spain may interpret or apply the Succession Regulation, particularly its provisions on applicable law. During the planning and drafting phase, private attorneys and notaries play a key role in advising on and preparing wills,

especially when the testator wishes to make an express or implied choice of law in accordance with Article 22 of the Regulation. At the opening and liquidation of the estate, notaries handle non-contentious declarations and authentic instruments, while lawyers or solicitors provide representation and legal assistance, particularly in contentious proceedings before the courts. When it comes to registration and the transfer of property rights, property registrars are responsible for verifying the compliance of succession deeds with registry requirements, and the DGSJFP issues binding administrative resolutions that clarify questions of registrability and interpret the application of the Regulation's rules. Finally, at the taxation stage, the relevant tax authorities intervene to assess and collect inheritance tax, ensuring that all fiscal obligations derived from the succession are properly fulfilled.

Which authorities and legal professionals are considered 'courts' within the meaning of Article 3(2) Succession Regulation?

In Spain, both tribunals and notaries (when they act exercising judicial powers, i.e. when they decide on non-contentious successions) are considered courts within the meaning of Article 3(2) Succession Regulation.

According to Spanish declarations on the Regulation, notaries are courts when they act for declarations of intestate heirs, as well as the submission to a judge, verification, opening and notarisation of sealed, holograph and oral wills, and the drawing up of an inventory of succession assets.

Are there any other authorities, which are not 'courts', but do intervene in succession matters? How do such authorities establish their jurisdiction?

There are other authorities that intervene in the succession process. These other authorities, and also notaries when they do not exercise judicial powers -for example, when they draft and authorise a will- establish their jurisdiction according to Spanish domestic rules. These rules have very broad criteria of jurisdiction.

Please explain shortly which authorities in your MS are competent to issue an ECS?

The certificate will be issued by the competent court or notary in each case.

a) A European Certificate of Succession issued by a court will be issued by a separate order ("Providencia") pursuant to Article 67 of Regulation (EU) No 650/2012, following an application for a certificate submitted using the form referred to in Article 65(2) of this Regulation. The court that has dealt with or is dealing with the succession will have jurisdiction to deal with issuing a European Certificate of Succession. A copy of the certificate issued will be given to the applicant.

b) Upon request, the competent notary who declares all or part of the succession, or their legal representative or replacement if applicable, will be responsible for issuing the certificate pursuant to Article 62 of Regulation (EU) No 650/2012, using the form referred to in Article 67 of this Regulation.

(Rules 11 and 14 of the Twenty-Sixth Final Provision of Law 1/2000 on civil procedure, as worded in the Second Final Provision of Law 29/2015 on international legal cooperation in civil matters).

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?

Within the meaning of Article 3(1)(i) of the EU Succession Regulation, the main authentic instruments produced by Spanish authorities are notarial wills, notarial deeds of acceptance and adjudication of inheritance, notarial deeds of renunciation of inheritance, notarial certificates (including the European Certificate of Succession when issued by a notary), and judicial declarations of heirs or judgments rendered in succession proceedings. These instruments are executed by public officials—judges or notaries—who are legally authorised to confer authenticity under Spanish law and who guarantee the identity of the parties and the conformity of the document with the law.

Under Spanish procedural law, and in particular Article 517 of the Ley de Enjuiciamiento Civil, notarial deeds (escrituras públicas) constitute enforceable titles (títulos ejecutivos) when they contain clear, liquid, and due obligations that can be directly claimed without prior judicial declaration. Consequently, a notarial deed of acceptance and adjudication of inheritance may serve as an enforceable title if it includes an obligation of payment or delivery expressly accepted by the debtor. Judicial declarations of heirs and judgments issued by the courts are likewise enforceable titles under the same provision.

Beyond their executory effects, these instruments also function as formal titles for registration purposes before property and commercial registries, as confirmed by numerous DGSJFP (formerly DGRN) resolutions published in the Boletín Oficial del Estado. They produce full evidentiary value regarding the facts and declarations recorded therein and enable the recognition and circulation of succession rights across Member States in accordance with the Regulation’s rules on authentic instruments.

State of digitalisation of the succession proceedings

Please explain briefly also the state of digitalisation of cross-border succession proceedings⁴ in your Member State. May parties or their representatives communicate with competent authorities by means of electronic communication?

Yes. Spain has significantly advanced judicial and registry digitalisation: the Ministry of Justice’s digital transformation programmes (electronic judicial file, ACCEDA/HORUS platforms, LexNET/SEDES) and recent laws have institutionalised electronic communication between citizens, legal professionals and courts. Notarial and registry systems have also been digitalised (national notarial electronic portal; Law 11/2023 introduced measures for digitalisation of notarial and registral acts).

May they file applications / claims by means of electronic communication?

Electronic filing is now the general rule for legal professionals and many users via the Judicial Electronic Headquarters (“Sede Judicial Electrónica”), the Electronic Judicial File and interconnected registral/notarial platforms; registries and notaries receive and process many applications electronically in line with Law 11/2023 and implementing resolutions.

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

⁴ 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.

Is service of documents by means of electronic communication possible? Do documents sent electronically have legal effects?

Electronic service of documents is fully recognised and legally effective in Spain. Under Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, and Law 18/2011, of 5 July, regulating the use of information and communication technologies in the Administration of Justice, parties and their representatives may receive and submit documents electronically before judicial and administrative authorities. Both laws establish the principle of equivalence between electronic and paper communications, provided authenticity, integrity, and time-stamping are ensured.

Electronic notifications, filings, and documents sent through authorised platforms—such as LexNET, the Sede Judicial Electrónica, and the electronic headquarters of the Ministry of Justice—produce full legal effects. These systems automatically issue acknowledgments of receipt and time-stamps, which guarantee the authenticity, integrity, and non-repudiation of the communication. The legal validity of these electronic acts is expressly recognised in Articles 38 to 46 of Law 18/2011 and Articles 41 and 43 of Law 39/2015, as well as in Royal Decree 1065/2015, which regulates electronic notifications in judicial proceedings.

In the notarial and registry context, Law 11/2023, of 8 May, on the digitalisation of notarial and registral acts, confirms that notarial electronic documents and digital deeds issued through official systems have the same probative and legal effect as their paper equivalents once electronically signed and verified through the secure platforms managed by the Dirección General de Seguridad Jurídica y Fe Pública (DGSJFP).

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?

The Spanish National Report was prepared within the EUSuccess project following the project template: researchers used a structured Questionnaire, performed a focused review of Spanish case law, examined DGSJFP (before, “DGRN”) resolutions, consulted domestic academic literature and collected practitioner’s input at informal exchanges with legal professionals.

Case law and administrative resolutions were gathered from official sources (CENDOJ and DGRN resolutions published in BOE and academic publications). It must be underlined that in Spain, not all judicial decisions are published. The Ministry of Justice only makes available all judicial decisions of collegiate bodies -the Supreme Court, the National High Court, the High Courts of Justice and the Provincial Courts- and a selection of decisions issued by single-judge courts. As a consequence, only a few first instance judicial decisions appear in the databases. In contrast, most second instance judicial decisions and all Supreme Court decisions are publicly available.

The Report indicates that, for Spain, a relatively limited amount of concrete case law directly applying novel EU Succession Regulation rules (e.g., Articles 10–12, 21–34) was found — many issues remain debated in academic literature rather than resolved in abundant case law. appendices (the Report itself contains the catalogued decisions and references used).

Questions

General

1. Were there any doubts in your MS as to the scope of application⁵ (substantive—Article 1(1), temporal – Article 83(1), territorial – Recitals (82), (83)) of the Succession Regulation?

No significant doubts observed with regard to the scope of application.

Substantive scope of application has not been specially controversial before Spanish courts. There is one remarkable decision on the application of the Regulation in a case on the denial of the registrarial inscription of the change of owner of an asset after the execution of an agreement as to succession (Judgment of the Superior Court of Islas Baleares of 14 May 2021⁶). The Court held that the Regulation was substantively applicable because, although pursuant to Article 1(2)(l) matters relating to the recording of rights in a register are excluded from its scope of application, in this case the issue in dispute does not strictly concern a purely registrarial matter, but rather the lawfulness of the succession agreement itself, whose validity also constitutes an aspect subject to registrarial review.

Regarding the temporal scope of application, all decisions found issued after the entry into force of the Regulation deal correctly with the issue. When the decedent had passed away before 17 August 2015, courts correctly apply Spanish private international law domestic rules on jurisdiction and applicable law, most times even without mentioning the Regulation. See, for example, the Judgment of the Provincial Audience of Madrid of 10 September 2012⁷, of the Provincial Audience of Las Palmas of 18 September 2012⁸ or of the Provincial Audience of Madrid of 16 October 2012⁹.

The Supreme court also dealt correctly with the temporal scope of application of the Regulation and confirmed that successions concerning persons deceased prior to 17 August 2015 shall not be governed by the law determined by the Regulation but by Article 9.8 of the Civil Code, that is to say, by the national law of the deceased at the time of death (i.e. Judgments of the Supreme Court of 5 December 2018¹⁰; of 15 January 2019¹¹ and of 19 May 2025¹²).

⁵ See case C-98/24 *Koda* (pending), case C-618/24, *Isergartler* (pending).

⁶ Judgment of the Superior Court of Islas Baleares (“Sentencia del Tribunal Superior de Justicia de Islas Baleares”) of 14 Mayo 2021, ECLI:ES:TSJBAL:2021:460.

⁷ Judgment of the Provincial Audience of Madrid („Sentencia de la Audiencia Provincial de Madrid”) of 10 September 2012, ECLI:ES:APM:2012:14805. The case dealt with the succession of a national of the US who had died before the entry into force of the Regulation and whose latest residence before death had been in Spain.

⁸ Judgment of the Provincial Audience of Las Palmas („Sentencia de la Audiencia Provincial de Las Palmas”) of 18 September 2012, ECLI:ES:APGC:2012:1868. The deceased was a Venezuela national that died in 1976.

⁹ Judgment of the Provincial Audience of Madrid („Sentencia de la Audiencia Provincial de Madrid”) of 16 October 2012, ECLI:ES:APM:2012:18047. The case concerned the succession of a national of the United States deceased in 2010, whose residence at the time of death was in New York.

¹⁰ Judgment of the Supreme Court, Civil Chamber (“Sentencia del Tribunal Supremo, Sala de lo Civil”) of 5 December 2018, ECLI:ES:TS:2018:4139. The case decided on the succession of a national of the United Kingdom deceased the 25th July of 2013 whose last habitual residence had been in Valencia.

¹¹ Judgment of the Supreme Court, Civil Chamber (“Sentencia del Tribunal Supremo, Sala de lo Civil”) of 15 January 2019, ECLI:ES:TS:2019:56, on the testate succession of a british national with habitual residence in Spain, deceased in 2011.

¹² Judgment of the Supreme Court, Civil Chamber (“Sentencia del Tribunal Supremo, Sala de lo Civil”) of 19 May 2025, ECLI:ES:TS:2025:2215. The legal issue raised concerned the determination of the law applicable to the succession of a Dutch national who died in the place of his habitual residence, Zaragoza, on 24 March 2013.

There have been doubts related to the effects of the law applicable to wills and agreements as to successions executed before the entry into force of the Regulation. In the Judgment of the Provincial Audience of Málaga of 3 May 2023¹³, the deceased passed away after the entry into application of the Succession Regulation, but the will had been executed beforehand. The Judgment applies Article 83(4) in a correct way: *“There is no doubt that the Regulation preserves the validity of a choice of law made even before its entry into force, and not only with regard to the law of Member States but also of third States”*¹⁴. The Regulation was also correctly applied to an agreement as to successions executed before the entry into force of the Regulation in Judgment of the Superior Court of Islas Baleares of 14 May 2021 in a case regarding a French national whose habitual residence was in Mallorca¹⁵: *“Given the date on which the aforementioned public deed was executed, the provisions of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 (hereinafter, the European Succession Regulation) shall apply. This Regulation concerns jurisdiction, applicable law, recognition and enforcement of decisions, acceptance and enforcement of authentic instruments in matters of succession, and the creation of a European Certificate of Succession. Pursuant to its transitional provision No 1, it applies to the successions of persons who die on or after 17 August 2015, or who have concluded a succession agreement on or after that same date”*¹⁶.

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 have been some challenges regarding the personal scope of application of the Regulation in relation to British nationals, given that the United Kingdom was not participating in the Regulation before its withdrawal for the EU.

No decisions related to Ireland or Denmark have been found. Only a general reference to these States as non-participating in the Regulation was found in a case dealing with the personal scope of application regarding a British national (Judgment of the Provincial Audience of Alicante of 29 February 2024¹⁷).

Regarding the UK before its withdrawal from the EU, the (at the time) Directorate-General for Registers and Notaries (now Directorate-General for Legal Security and Public Faith) took a mistaken position in the first place. In the first instance, this Directorate-General maintained, in its Resolution of 13 August 2014, that the British nationality of the deceased constituted an obstacle to the application of Article 83(2) of Regulation (EU) No 650/2012, since *“in accordance with Articles 1 and 2 of Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on*

¹³ Judgment of the Provincial Audience of Málaga (“Sentencia de la Audiencia Provincial de Málaga”) of 3 May 2023, ECLI:ES:APMA:2023:680.

¹⁴ Literally: *“no cabe duda que el Reglamento preserva la validez de la elección efectuada incluso antes de su entrada en vigor y no solo con arreglo a la ley de los Estados miembros sino también en terceros Estados”*.

¹⁵ Judgment of the Superior Court of Islas Baleares (“Sentencia del Tribunal Superior de Justicia de Islas Baleares”) of 14 Mayo 2021, ECLI:ES:TSJBAL:2021:460.

¹⁶ Literally: *“Dada la fecha en que la mencionada escritura pública fue autorizada, resultan de aplicación las disposiciones del Reglamento (UE) n.º. 650/2012 del Parlamento Europeo y del Consejo, de 4 de julio de 2012 (en adelante Reglamento sucesorio europeo), relativo a la competencia, la ley aplicable, el reconocimiento y la ejecución de las resoluciones, a la aceptación y la ejecución de los documentos públicos en materia de sucesiones mortis causa y a la creación de un certificado sucesorio europeo. En su disposición transitoria 1 está prevista su aplicabilidad a las sucesiones de las personas que fallezcan a partir del día 17 de agosto de 2015, o que hayan concluido el pacto sucesorio a partir de esa misma fecha (art. 25.1.)”*.

¹⁷ Judgment of the Provincial Audience of Alicante (“Sentencia de la Audiencia Provincial de Alicante”) of 29 February 2024, ECLI:ES:APA:2024:298.

European Union and to the Treaty on the Functioning of the European Union, those Member States do not take part in the adoption of that Regulation and are not bound by it or subject to its application (as they did not exercise the opt-in right granted to them by the aforementioned instruments)”¹⁸. Subsequently, however, in its Resolution of 15 June 2016, the application of Regulation (EU) No 650/2012 to the case was not questioned, given the date of the deceased’s death (after 17 August 2015), and therefore the principle of universality of the applicable law (Article 20) was deemed to govern, notwithstanding that the said State was in an opt-out situation¹⁹. This thereby entailed an adequate modification of the doctrine contained in the Resolution of 13 August 2014.

Judicial decisions available have applied the rules on the personal scope of the Regulation correctly regarding the UK. The aforementioned Judgment of the Provincial Audience of Alicante of 29 February 2024 explained that non-participation of the United Kingdom only affected the territorial scope of application of the Regulation (i.e. British authorities does not apply it) but not its personal one: *“Indeed, in the view of this Chamber, Regulation (EU) No 650/2012 and the rules contained therein are those which the participating Member States must apply in order to determine the legal system applicable to the substance of an international succession. In the case of Spain, the Regulation has now replaced Article 9.8 of the Civil Code, and its conflict-of-law rules (Articles 21 and 22) are those which must be taken into account in order to determine the law applicable to the succession. This is so by virtue of the universal character of the Regulation (Article 20), regardless of whether the deceased was a national of a Member State, or of the United Kingdom, Ireland, or Denmark (Member States not participating in the Regulation), and even where the deceased was a national of a non-EU State. The United Kingdom’s opt-out in relation to Regulation (EU) No 650/2012 entails, in practice, that its judicial and non-judicial authorities will not resort to the Regulation to determine the legal system applicable to the substance of an international succession within their jurisdiction. Such authorities will continue to apply their traditional internal system of Germanic origin based on scission, which distinguishes between the application of the *lex rei sitae* for the succession of immovable property and the *lex domicilii* for that of movable property”²⁰.*

¹⁸ Resolution of the Directorate-General for Registers and Notaries („Resolución de la Dirección General de los Registros y el Notariado” or „RDGRN”) of 13 August 2014, BOE n. 242, of 6 October 2014. Literally: *“de conformidad con los artículos 1 y 2 del Protocolo número 21 sobre la posición del Reino Unido y de Irlanda respecto del espacio de libertad, seguridad y justicia, anejo al Tratado de la Unión Europea y al Tratado de Funcionamiento de la Unión Europea, dichos Estados miembros no participan en la adopción del citado Reglamento y no quedan vinculados por él y por sus normas de aplicación (al no haber ejercitado la facultad opt-in que les confieren los citados instrumentos)”*.

¹⁹ Resolution of the Directorate-General for Registers and Notaries (“Resolución de la Dirección General de los Registros y el Notariado” or „RDGRN”) of 15 June 2016, BOE n. 175, of 21 July 2016.

²⁰ Literally: *“Efectivamente, a juicio de esta Sala, el Reglamento UE 650/2012 y las normas contenidas en él son las que debemos utilizar los Estados miembros participantes para determinar el ordenamiento aplicable al fondo de una sucesión internacional. En el caso de España el Reglamento ha sustituido actualmente al artículo 9.8 del Código Civil y sus normas de conflicto (artículos 21 y 22) son las que hemos de tener en cuenta para determinar la ley aplicable a la sucesión. Y ello es así, dado el carácter universal del Reglamento (art. 20), tanto si el causante es nacional de un Estado miembro como si lo es del Reino Unido, de Irlanda o de Dinamarca (Estados miembros no participantes en el Reglamento), e incluso si lo es de un Estado no comunitario. El opt-out del Reino Unido en relación al Reglamento 650/2012 lo que conlleva en la práctica es que sus autoridades judiciales y extrajudiciales no acudirán al Reglamento para determinar el ordenamiento aplicable al fondo de una sucesión internacional de la que conozcan. Tales autoridades seguirán utilizando su tradicional sistema interno de origen germánico de escisión que distingue entre la aplicación de la *lex rei sitae* para la sucesión de los bienes inmuebles* y la *lex domicilii* para la de los muebles”*.

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)²¹? Please outline the main problematic issues briefly.

No doubts observed with regard to this issue. The Convention between Spain and Greece on Successions matters is no longer applicable²². Regarding Articles 75(1) and 75(3) no decisions have been found.

Only one decision has been found on Article 75(2), it deals with the applicability of this specific Convention between Spain and Greece (Judgment of the Provincial Audience of Islas Baleares of 4 May 2016²³). In the case, given that the deceased had passed away before the entry into application of the Regulation, the Convention was considered applicable, and not the Regulation.

4. Were there instances in your MS where the notion of ‘habitual residence of the deceased at the time of death’²⁴ 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?

Spanish courts normally emphasize the duration of the stay and family ties of the deceased as well as the intention to reside permanently with the aim of avoiding evasion of the law. See, for example, the Judgment of the Provincial Audience of Santa Cruz de Tenerife of 31 May 2022, on a will made by hand in Florida²⁵.

However, in other decisions, courts seem to give excessive weight to administrative documents such as the municipal certificate of registration (“certificado de empadronamiento”) or the mere possession of a Foreigner Identification Number (NIE). See, for example, the Judgment of the

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

²² Convention between Spain and Greece on Succession matters of 6 May 1919 (“Convenio bilateral entre España y Grecia, celebrado el 6 de marzo de 1919, fijando reglas que se han de aplicar a las sucesiones de los españoles y de los griegos fallecidos en Grecia y en España, respectivamente”), *Gaceta de Madrid*, n. 338 of 3 December 1920.

²³ Judgment of the Provincial Audience of Islas Baleares („Sentencia de la Audiencia Provincial de Islas Baleares”) of 4 May 2016: “*El convenio celebrado entre España y Grecia el 6 de marzo de 1919 se encontraba vigente en el momento del fallecimiento del causante. En la actualidad, para las personas fallecidas a partir del 17 de agosto de 2015, es de aplicación el Reglamento (UE) 650/2012, del Parlamento Europeo y del Consejo, de 4 de julio de 2012, relativo a la competencia, la ley aplicable, el reconocimiento y la ejecución de las resoluciones, a la aceptación y la ejecución de los documentos públicos en materia de sucesiones mortis causa y a la creación de un certificado sucesorio europeo, que en su artículo 75.2 establece su preferencia sobre los convenios bilaterales*” (“The Convention concluded between Spain and Greece on 6 March 1919 was in force at the time of the deceased’s death. At present, for persons who died on or after 17 August 2015, 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, shall apply. Article 75(2) thereof provides for its precedence over bilateral conventions”).

²⁴ See case C-80/19 *EE*, ECLI:EU:C:2020:569.

²⁵ Judgment of the Provincial Audience of Santa Cruz de Tenerife (“Sentencia de la Audiencia Provincial de Tenerife”) of 31 May 2022, ECLI:ECLI:ES:APTF:2022:1084.

Provincial Audience of Alicante of 29 February 2024²⁶, where these documents were used as indications of the deceased having its habitual residence in Spain, even if other documents showed that he was domiciled in the United Kingdom. In this case, the habitual residence of one of the deceased's children in Spain was also used as an indication.

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 doubts observed with regard to this issue.

Jurisdiction

6. Are you aware of any doubts / challenges to the application of the rules on jurisdiction of the Succession Regulation in your MS²⁷? Are there any voices suggesting any amendments to these rules?

No doubts observed with regard to this issue. International jurisdiction does not seem a controversial issue before Spanish courts. Only a few decisions concerning this issue have been found and in all of them jurisdiction was based in Article 4 but in one, in which jurisdiction was based in Article 10(1)²⁸.

Before the entry into force of the Regulation, Spanish courts had underlined that international jurisdiction was universal when the deceased had his last habitual residence in Spain (it covered all assets irrespective of their location)²⁹.

7. Were there instances in your MS where the court or another authority established its jurisdiction based on Article 10(1) Succession Regulation³⁰, 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?

As stated in the former question, one decision based in Article 10(1) has been found³¹. The deceased was a national of Spain and the assets were located in Spain. The court does not elaborate extensively on its reasoning and provides little information regarding the assets and their value to substantiate its jurisdiction. It merely states the following: *“In the present case, the deceased, Mr Heraclio, at the date of his death on 3 November 2021, was a Spanish national, despite his domicile being in Miami (State of Florida, United States of America), and the assets forming part of the estate, pursuant to the will executed on 16 May 2019 before*

²⁶ Judgment of the Provincial Audience of Alicante (“Sentencia de la Audiencia Provincial de Alicante”) of 29 February 2024, ECLI:ES:APA:2024:298.

²⁷ See case C-20/17 *Oberle* ECLI:EU:C:2018:485.

²⁸ Order of the Provincial Audience of Madrid (“Auto de la Audiencia Provincial de Madrid”) of 30 September 2024, ECLI:ES:APM:2024:5056A. This case was about the succession of a Spanish national whose last habitual residence was in Miami, whose assets were located in Spain.

²⁹ Judgments of the Spanish Supreme Court (“Sentencia del Tribunal Supremo”) of 15 November 1996, *REDI*, 1997, pp. 265-268, of 23 September 2002, RJ 2002\7868, of 14 September 2009, RJ 2009\6139 and of 12 January 2015.

³⁰ 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.

³¹ Order of the Provincial Audience of Madrid (“Auto de la Audiencia Provincial de Madrid”) of 30 September 2024, ECLI:ES:APM:2024:5056A. This case was about the succession of a Spanish national whose last habitual residence was in Miami, whose assets were located in Spain.

*Notary Ms Miriam Herrando Deprit in Madrid, are located in Spain, as evidenced by the documents submitted with the claim*³².

- 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?**

No case law on the matter has been found.

- 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?³³ If yes, could you please explain which mechanism was used and whether there were any doubts or challenges to their application in practice?**

No case law on the matter has been found.

- 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 case law found with regard to *forum necessitatis*.

- 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 case law has been found regarding Article 12.

- 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 MS³⁴ is cases where jurisdiction in succession matters was with the courts of another MS?**

Article 13 of the succession regulation can be applied by Spanish courts to receive a declaration acceptance of waiver of the succession. Nevertheless, no case law has been found regarding Article 13.

³² Literally: “*En el presente caso el causante DON Heraclio a fecha de su fallecimiento el día 3 de noviembre de 2021 era nacional español pese a que su domicilio se encontraba en Miami (Florida estado de los Estados Unidos de América) y los bienes dejados en herencia con arreglo al testamento otorgado en fecha 16 de mayo de 2019 ante la Sra. Notario de Madrid doña Miriam Herrando Deprit se encuentran en España según consta en la documental que se aporta con la demanda*”.

³³ See case C-422/20 *RK* ECLI:EU:C:2021:718.

³⁴ See case C-57/24 *Ławida* ECLI:EU:C:2025:217.

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?

No case law has been found with regard to this issue. It shall be noted that Article 1012 of the Civil Code allows an heir who is abroad to accept the inheritance under benefit of inventory before a Spanish diplomatic or consular officer. This provision aims to enable acceptance of the inheritance in countries where the concept of acceptance under benefit of inventory is not recognised³⁵. However, this is not mandatory. The heir is entirely free to accept the inheritance before a notary or other public officer abroad³⁶.

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 signaled within the National Report?

There is a concern regarding the identification of the rules that shall determine territorial jurisdiction in international cases. It should be noted that the Directorate-General for Legal Security and Public Faith is mistaken in asserting that Article 22 quater of the Organic Law on the Judiciary (“Ley Orgánica del Poder Judicial” or “LOPJ”) contains rules on territorial jurisdiction determining the court competent by reason of territory, when Article 4 of the Succession Regulation has already established that the courts competent to hear the succession are the Spanish courts³⁷. That function pertains to the Civil Procedure Act (“Ley de Enjuiciamiento Civil” or “LEC”).

Applicable law

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?

Academic literature has detected problems with regard to implicit or tacit choice of law according to Article 22 of the Succession Regulation³⁸. Some decisions have emphasized the possibility of choosing tacitly the applicable law by the deceased by designating the law of a country where there is a complete free will of the testator³⁹. On the contrary, other decisions have emphasized that this is not enough to declare the existence of a tacit choice of law in favour of the national law of the deceased: For the sake of legal certainty, it must be required

³⁵ W Goldschmidt, *Sistema y filosofía del Derecho internacional privado*, vol II (Editorial Bosch 1948) 246–264.

³⁶ J Carrascosa González, *El reglamento sucesorio europeo: análisis crítico* (2ª edn, RCC 2019).

³⁷ Resolution of the Directorate-General for Registers and Notaries (“Resolución de la Dirección General de los Registros y el Notariado” or „RDGRN”) of 24 July 2019, BOE n. 231 of 25 September 2019.

³⁸ JM Fontanellas Morell, ‘La forma de la designación de Ley en la propuesta de Reglamento europeo en materia de sucesiones’ (2011) *Revista Española de Derecho Internacional (REDI)* 123–127. A Bonomi and P Wautelet, *El Derecho europeo de sucesiones* (Aranzadi 2015) 273.

³⁹ Resolution of the Directorate-General for Legal Security and Public Faith (“Resolución de la Dirección General de Seguridad Jurídica y Fe Pública” or „RDGSJFP”) of 30 July 2021, BOE n. 191 of 11 August 2021.

that the tacit choice of the law governing the succession clearly and unequivocally (or beyond doubt) results from the circumstances⁴⁰.

The most remarkable academic literature has suggested to eliminate tacit choice of law as it has been done in Rome III⁴¹.

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?

No case law has been detected with regard to the Escape clause before the Spanish courts so far.

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?

Yes. See question n. 13. There has been a significant number of decisions under Article 22, particularly on the existence of a tacit choice of law. For example, in Judgment of the Provincial Audience of Málaga of 3 May 2023⁴², the issue raised was whether there was a tacit choice of Canadian law, given that the testator disinherited the children from his first marriage, an act permitted under Canadian law. The central question of the dispute was to determine which law was applicable in this case — Spanish law as the law of the deceased's last habitual residence or Canadian law as the national law of the deceased. The Judgment states as follows: *"In its third clause, the will states: 'The testator declares that this last will and testament is made in accordance with his personal law and that it does not prejudice any compulsory rights that any person might hold in his estate. Should the law governing his succession impose rights in favour of his children, the testator acknowledges such compulsory rights'. It thus appears that there is a tacit reference to Canadian law, since, after stating his nationality and residence, the testator refers to the application of his personal law to the testamentary disposition. Furthermore, the content of the testamentary provision clearly shows an intention to apply his personal law, as with respect to the three children mentioned, he bequeaths his assets in Spain only to one of them, omitting the other two (who do not challenge the validity of their exclusion)*

⁴⁰ Resolution of the Directorate-General for Registers and Notaries ("Resolución de la Dirección General de los Registros y el Notariado" or „RDGRN") of 10 April 2017, *BOE* n. 99 of 26 April 2017; Resolution of the Directorate-General for Legal Security and Public Faith ("Resolución de la Dirección General de Seguridad Jurídica y Fe Pública" or „RDGSJFP") of 28 August 2020, *BOE* n. 257 of 28 September 2020; Judgment of the Provincial Audience of Alicante ("Sentencia de la Audiencia Provincial de Alicante") of 29 February 2024, *ECLI:ES:APA:2024:298*; Resolution of the Directorate-General for Legal Security and Public Faith ("Resolución de la Dirección General de Seguridad Jurídica y Fe Pública" or „RDGSJFP" of 21 May 2024, *BOE* n. 160 of 3 July 2024.

⁴¹ ME Ginebra Molins, 'Sucesiones transfronterizas y Estados plurilegislativos' in ME Ginebra Molins and J Tarabal Bosch (eds), *El Reglamento (UE) 650/2012: su impacto en las sucesiones transfronterizas* (2016) 237–262. A Ybarra Bores, 'La sucesión de ciudadanos británicos en España tras la aplicación del Reglamento 650/2012' (2018) 10(1) *Cuadernos de Derecho Transnacional (CDT)* 466–488. E Castellanos Ruiz, 'Ley aplicable a la sucesión mortis causa' in A-L Calvo Caravaca and J Carrascosa González (dirs), *Litigación Internacional en la Unión Europea (IV): Comentario al Reglamento (UE) n° 650/2012 del Parlamento Europeo y del Consejo sobre sucesiones mortis causa* (Aranzadi 2019) 133–190, 155.

⁴² Judgment of the Provincial Audience of Málaga ("Sentencia de la Audiencia Provincial de Málaga") of 3 May 2023, *ECLI:ES:APMA:2023:680*.

— a possibility permitted under Canadian law, as evidenced by documents nos. 1 and 2 submitted with the statement of defence, which is incompatible with Spanish law governing the preterition of forced heirs”⁴³.

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

No issues have been detected in connection with the substantial validity of a choice of law clause to succession upon death.

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?

No case law on this matter has been detected so far.

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 matters⁴⁴ (for example, law applicable to rights *in rem*, law applicable to matrimonial property regimes, legal capacity)?

Some academic literature has underlined the problems between the scope of application of the law applicable to succession upon death and the law applicable to matrimonial property regimes⁴⁵. Nevertheless, judicial decisions have not been particularly problematic⁴⁶. Academic literature emphasizes that there are many problems with regard to that question because in accordance with the Succession Regulation different laws may be applied to the dissolution of matrimonial regimes and to the succession which may lead to some incongruences and inconsistencies but this has remained at an academic level⁴⁷.

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

⁴³ Literally: “En su disposición tercera establece: “Manifiesta el testador que esta disposición de última voluntad es conforme a su ley personal y que no perjudica derechos legítimos de otra índole que pudiera ostentar cualquier persona en su herencia. En el caso de que la Ley que ordene su sucesión imponga derechos a favor de sus hijos, el testador les reconoce estos derechos legítimos”. Resulta pues que existe una remisión tácita a la ley canadiense cuando, tras hacer constar su nacionalidad y residencia, se refiere a la aplicación de su ley personal a la disposición de última voluntad. Por otro lado, del contenido de la disposición testamentaria se deduce la clara voluntad de aplicar la sucesión a la su ley personal, pues en lo que respecta a los tres hijos que menciona solo lega sus bienes en España a uno de ellos, con preterición de los otros dos (que no cuestionan la validez de la disposición que los excluye), posibilidad que permite la Ley Canadiense según resulta del documento nº 1 y 2 aportado con la contestación, que resulta incompatible con lo establecido en la legislación española en los casos de preterición de herederos forzosos.”

⁴⁴ See case C-218/16 *Kubicka* ECLI:EU:C:2017:755, case C-558/16 *Mankopff* ECLI:EU:C:2018:138.

⁴⁵ S Álvarez González, ‘¿Qué norma de conflicto de leyes hay que adoptar para determinar la ley aplicable a las cuestiones previas a efectos de la sucesión?’ (2017) *Revista Española de Derecho Internacional (REDI)* 19–48, esp 35.

⁴⁶ Order of the Provincial Audience of Madrid (“Auto de la Audiencia Provincial de Madrid”) of 30 September 2024, ECLI:ES:APM:2024:5056A.

⁴⁷ J Carrascosa González, *El Reglamento sucesorio europeo 650/2012 de 4 de julio de 2012: Análisis crítico* (2nd edn, RCC 2019).

There have been some decisions rendered prior to 17th of August 2015 by the courts which had moved with no particular difficulty on the matter⁴⁸. See answer to question 1, particularly the last paragraph on the temporal scope of application.

22. Were there instances in which Article 83(4) Succession Regulation was applied⁴⁹ (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?

Yes, there were (see former question). “In accordance” was understood as the fact that the deceased could only choose its national law.

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?

No case law on this matter has been detected so far.

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’?

Spanish courts have not referred to this problem specifically.

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

Spanish courts have not referred to this problem specifically.

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

No case law on this matter has been detected so far.

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?

⁴⁸ Judgment of the Provincial Audience of Málaga (“Sentencia de la Audiencia Provincial de Málaga”) of 3 May 2023, ECLI:ES:APMA:2023:680; Judgment of the Superior Court of Islas Baleares (“Sentencia del Tribunal Superior de Justicia de Islas Baleares”) of 14 Mayo 2021, ECLI:ES:TSJBAL:2021:460.

⁴⁹ See case C-80/19 *EE* ECLI:EU:C:2020:569.

In Spanish law, there is no institution of a court-appointed “administrator of the estate” comparable to that existing in common law jurisdictions. The administration of the estate (*administración de la herencia*) is normally carried out by the heirs themselves once they have accepted the inheritance, or by a “contador-partidor” (partitioner or executor) if one has been designated by the testator (contador-partidor testamentario) or appointed by the heirs or the court (contador-partidor dativo) under Articles 1057 and following of the Spanish Civil Code. The appointment of such a figure is not mandatory, either *ex officio* or upon request, within the meaning of Article 29 of the Succession Regulation. Spanish succession law is based on the principle of universal succession (*sucesión universal*), by which the heirs automatically acquire ownership of the estate as a whole upon acceptance, without the need for an intermediary administrator. As a result, no mandatory administrative mechanism exists that would correspond to the “administrator” referred to in Article 29 of the Regulation. The heirs, or the contador-partidor if appointed, perform the necessary acts of liquidation and distribution.

There have been no cases reported where a foreign *lex successionis* interfered with the powers of such an executor or partitioner under Spanish law. However, practical difficulties may arise when the applicable foreign law (for example, English or American law) provides for a personal representative with exclusive powers to administer and distribute the estate, since Spanish property and registration law (particularly *lex rei sitae*) does not recognize ownership of the estate as vested in an administrator. In such cases, Spanish authorities tend to treat the foreign administrator as acting in representation of the heirs, not as owner of the estate.

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?

Referral (*renvoi*) has not been considered by Spanish case law so far. However, a strong controversy among Spanish legal experts concerning the possibility of fragmenting the succession as a result of the operation of *renvoi* or referral has arisen. Some academic literature considers that unity and universality of the succession should prevail on the international harmony of solutions as aimed by Article 20 of the Regulation. On the other hand, other legal experts sustain that Article 34 is an exception that should operate even if the succession might be governed by different State laws⁵⁰. At present the question remains uncertain at an academic level but Spanish case law is still waited with Great Expectations by both academic sectors.

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

No cases have been found on Article 32.

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

No cases have been found on Article 33.

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

⁵⁰ J Carrascosa González, *El Reglamento sucesorio europeo 650/2012 de 4 de julio de 2012: Análisis crítico* (2nd edn, RCC 2019).

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?

No case law on this issue has been found. However, scholars have pointed out some laws that could be qualified as “special rules” according to Article 30.

For example, if the estate assets are located in Spain, Law 19/1995 of 4 July on the Modernisation of Agricultural Holdings applies. This is known as ‘agricultural inheritance law’. Article 24 of Law 19/1995 prevents the allocation and registration in Spain of excessively small properties and requires the transfer of ownership of certain properties in their entirety by inheritance, in order to combat smallholdings: *"1. The division or segregation of a rural property shall only be valid when it does not result in plots smaller than the minimum cultivation unit. 2. Any legal acts or transactions, whether voluntary or not, which result in the division of such properties in contravention of the provisions of the previous paragraph shall be null and void and shall have no effect between the parties or in relation to third parties. 3. The partition of an inheritance shall be carried out in accordance with the provisions of paragraph 1 of this article, even if this is contrary to the wishes of the testator, applying the rules contained in the Civil Code on things that are indivisible by nature or by law and on the allocation of such things in the absence of the express wishes of the testator or of an agreement between the heirs"*.

The succession of nobility titles follows its own special rules. In Spanish law, these are contained in Article 5 of the Decree of 4 June 1948 and Partidas, 2, 15,2, whose criteria have been successfully and profoundly modified by Law 33/2006, of 30 October, on equality between men and women in the order of succession to noble titles. The succession of noble titles is not governed by the *Lex Successionis* (Article 1.2.g). The succession of noble titles is governed by the law of the State whose authorities granted the honorary title (*Lex Cartae Concessionis*)⁵¹.

Biscayan troncality should also be considered. This institution consists of a series of legal provisions whose objective is to guarantee the economic stability of the family by preserving certain real estate assets in the family patrimony. Currently, the Biscayan family estate affects property located in the ‘Tierra Llana’ or ‘Infanzonado’ (see Law 3/1992, of 1 July, on Basque Civil Law, Title II, Articles 18 et seq.). Biscayan family property follows specific rules of succession that constitute an exception to the application of the law governing succession. The rules of civil inheritance law in Tierra Llana seek to preserve the accumulated wealth of a family consisting of family property. These rules, therefore, do not seek to establish legal protection for the family benefiting from the family property, which is self-sufficient in the context of a now outdated agricultural and livestock economy (= family protection). Rather, these rules reflect a structural element of Basque society, “family solidarity” (= protection of the social structure). This principle of family solidarity informs and underpins the entire law of the Tierra Llana.

Article 30 RES is applicable to the succession of Biscayan family property. Thus, the succession of Biscayan family property is not governed by the Succession Law, but by specific provisions of the Law of the Plain, that is, by the law of the place where such family property is located. Consequently, two estates will be created. The first is formed by the estate assets, whose

⁵¹ Resolution of the Directorate-General for Registrars and Notaries (“RDGRN”) of 20 January 1997 *BIMJ*, 1998 n. 1815, pp. 426-428.

succession is governed by the Law of the Tierra Llana, which is the law of the place where the assets are located. The second is composed of the remaining assets, whose succession is governed by the Succession Law determined by Articles 21-22 RES. Legitimate claims, if provided for by the law of succession, are governed by that law, by the law of succession. What is received under the law governing the succession of the core assets must be included in the overall calculation of the legitimate claim, which is made in accordance with the law of succession⁵².

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?

Article 31 has not been applied by a Spanish court so far.

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.

Article 35 has been considered in cases rendered before the application of the Succession Regulation. Non-discrimination has been the perfect and preferred reason for activating public policy of the Forum⁵³.

Nevertheless Article 35 has not been applied as such by Spanish courts so far.

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

⁵² J Carrascosa González, *El Reglamento sucesorio europeo 650/2012 de 4 de julio de 2012: Análisis crítico* (2nd edn, RCC 2019).

⁵³ In this regard, the Resolution of the Directorate-General for Registries and Notaries (“RDGRN”) of 20 July 2016 [acceptance and award of inheritance and Iranian nationality], *BOE* n. 226, de 19 September 2016 indicated that the Iranian law establishing that the deceased's son receives twice as much as his daughter on the basis of their sex is inapplicable in Spain because it violates Spanish international public policy. This conflict with Spanish international public policy arises because the application in Spain of such discriminatory foreign legal provisions would damage the basic structure of Spanish private law, in which the fundamental rights of individuals occupy a prominent place. Non-discrimination on the basis of sex is a principle of utmost importance in the organisation of Spanish society, enshrined in international conventions signed by Spain and of paramount importance in Spanish private law. It must also be underlined that, under Spanish law, individuals cannot waive their fundamental rights. The right not to be discriminated against on the basis of sex is inalienable. Therefore, the application of a foreign law based on this discriminatory criterion would mean that the inheritance would have to be distributed in Spain in accordance with criteria that are unconstitutional and harmful to fundamental rights. It is not the same to renounce an inheritance, sell or donate part or all of an inheritance of one's own free will, as it is to accept and allow the application of a foreign law that, in a mandatory manner, grants the daughter of the deceased half the inheritance rights of the son of the deceased simply because she is a woman. In short, accepting the application of Iranian law in Spain on this point would mean distributing the inheritance according to discriminatory criteria contrary to the Constitution, criteria that a person cannot renounce. The DGRN states: ‘*The acceptance by the daughter who is discriminated against in the granting of the title in question, of the allocation of the inheritance made in accordance with the discriminatory criteria that inform the declaration of heirs, does not remedy the allocation of the inheritance nor does it validate the registrable title insofar as the allocation is made on the basis of legal criteria contrary to international public policy and therefore inapplicable in Spain*’. Finally, if the daughter of the deceased wishes to receive half of her father's inheritance for the benefit of her brother, she must proceed to renounce all or part of said inheritance or, once the inheritance has been accepted, she may sell or donate to her brother the part she does not wish to receive.

(26) Succession Regulation? If yes, please explain the circumstances and outcome of this application?

In the Spanish scenario, Article 12.4 of the Civil Code will be applicable, a provision that has been applied by Spanish case law, precisely in the area of inheritance, to prevent the possibility of circumventing the legitimate rights established in the Spanish Civil Code. There are many examples of application of this Article to successions before the entry into force of the Regulation⁵⁴.

An example after the entry into force of the EST can be seen in SAP Santa Cruz de Tenerife 31 May 2022 [will granted in Florida] [ECLI:ES:APTF:2022:1084]. The deceased was registered in Florida and Spain. It was proven that the fact that she was also registered in Miami was solely because the deceased wanted to execute her will in accordance with Florida law in order to avoid the legitimate portions established in the Spanish Civil Code, which constitutes a clear case of fraud (Art. 12.4 CC).

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.

Articles 36 and 37 have triggered a lot of controversy before the Spanish courts and specially in the core of Spanish academic literature. Some administrative authorities have determined that Spanish law lacks conflict of laws rules to specify the regional law applicable when the deceased holds a foreign nationality⁵⁵.

Nevertheless the Spanish Supreme Court has corrected this previous wrong interpretation by dictating a very interesting and very well reasoned decision in which the Spanish Supreme Court stressed that, in the event of a foreign deceased with no "vecindad civil" the succession of this person should be covered by the Spanish law corresponding to the place where the deceased had his or her last habitual of residence (in Spain).

Therefore, the ruling of the Supreme Court of 19 May 2025, even if it applied the rules previous to the European Succession Regulation, is perfectly applicable to cases governed by the said Regulation⁵⁶. The Supreme Court states that when foreign law refers to Spanish law to regulate the succession of a deceased person who is not a Spanish national, the Spanish interregional legal system must be applied, and if this system has a gap in relation to foreign deceased persons who do not have any Spanish civil residence, then Article 9.10 of the Civil Code shall be applied by analogy. Thus, the law of the Spanish territory corresponding to the habitual residence of the deceased at the time of death is applicable to the succession: "in this case, the application of Article 9.8 CC leads to the application of Dutch law, as this was the nationality of the deceased at the time of death... the deceased had their habitual residence for a period of more than five years prior to their death in Spain, specifically in Zaragoza (...) the conflict rule contained in Article 16 CC to determine whether state civil law or regional civil law applies takes into account civil residence, and foreigners do not have civil residence. Given this gap, the analogous application of the rule in Article 12.5 CC, which, in cases where the Spanish

⁵⁴ Judgment of the Superior Court of Catalonia, Third Chamber ("Sentencia AT Cataluña") of 4 November 1986, RGD, 1987, n. 512, pp. 2677-2682; Judgment of the Provincial Audience of Barcelona, Section 4 ("Sentencia de la Audiencia Provincial de Barcelona, sección 4ª") of 4 November 2003, R. AC 1818; STS 5 March 1994, R.2933.

⁵⁵ RDGSJFP 24 July 2023, BOE n. 231 of 27 September 2023]; RDGSJFP 17 October 2024, BOE n. 281 of 21 November 2024.

⁵⁶ Judgment of the Supreme Court, Civil Chamber ("Sentencia del Tribunal Supremo, Sala de lo Civil") of 19 May 2025, ECLI:ES:TS:2025:2215.

conflict rule refers to the legislation of a State in which different legislative systems coexist, orders that the determination of which is applicable among them shall be made in accordance with the legislation of that State, also refers to Article 16 CC. (...) The reasonable alternative of applying Article 9.10 CC by analogy, which, in cases of persons without nationality, considers the law of their habitual residence to be their personal law, leads in this case to the solution adopted by the appealed judgment, since Aragon was the habitual residence of the deceased at the time of death.... In this way, a solution is also reached that determines as the applicable law the one that is closest and has the closest link to the conflict, which is consistent with the principles that inspire the regulation of conflict rules.

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.

Yes. Spain is a plurilegislative State (“Estado plurilegislativo”), comprising several territorial units with their own civil law systems (“Derechos civiles forales”). These coexist alongside the common civil law contained in the Spanish Civil Code (“Código Civil común”). The Autonomous Communities of Catalonia, the Balearic Islands, Aragon, Navarre, the Basque Country and Galicia each have their own rules governing succession, including different regimes of forced heirship (“legítimas”), testamentary freedom, and agreements as to succession.

Conflicts of laws between these internal territorial laws are not governed by the Succession Regulation, but rather by domestic conflict-of-laws rules set out in Article 16 and Article 9.8 of the Spanish Civil Code, as interpreted by case law. These provisions determine which regional law applies according to the “vecindad civil” (civil residence or personal law) of the deceased at the time of death.

Therefore, Article 38 of the Succession Regulation does not apply to internal Spanish inter-territorial conflicts. Such conflicts are resolved exclusively under Spanish internal law, following the connecting factors established in the Civil Code (mainly vecindad civil), and the Regulation operates only at the international level, not within Spain’s domestic multi-legal system.

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?

No comments on this question.

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?

Some academic literature have outlined some doubts on the free circulation of last will and testaments as authentic instruments in the application of the Succession Regulation. They

underlined that it is not clear if these instruments are valid in Spain as such with regard to substance⁵⁷.

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

No problems observed with regard to this question.

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?

No problems observed with regard to this question.

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

No problems observed with regard to this question.

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

No problems observed with regard to this question.

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?

No cases have been found on recognition and enforcement of judgments under the Regulation.

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 cases have been found on recognition and enforcement of judgments under the Regulation.

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)?

No cases have been found on recognition and enforcement of judgments of third States that quote the Regulation.

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

⁵⁷ J Carrascosa González, *El Reglamento sucesorio europeo 650/2012 de 4 de julio de 2012: Análisis crítico* (2nd edn, RCC 2019).

judgements under the Succession Regulation, and therefore, should be signalled within the National Report?

The lack of case law on this matter may be due to the fact that enforcement of judgments is dealt with by the courts of first instance, most of whose decisions are not published by the Ministry of Justice.

European Certificate of Succession

47. Where there any doubts or challenges with respect to the issuance / use of an ECS⁵⁸ in your MS?

As stated in the introduction to this report, in Spain, notaries and courts are the competent authorities to release the ECS. There have been cases in which the notary that had intervened in the succession had not issued the ECS, or had not answered to the request of issuance of the ECS⁵⁹.

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

There are no statistics on the European certificate of succession made in Spain as far as we are concerned.

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

There are no statistics on the European certificate of succession made in Spain as far as we are concerned.

50. Are there any other decisions / doubts / challenges⁶⁰, 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?

The first published judgment that applied the Regulation in Spain concerned the effects of an ECS issued by Letonian authorities. It was relevant because it decided, accordingly to the Regulation, that an ECS issued by the authorities of a MS could only be challenged before the authorities of the MS of issuance⁶¹. It also denied the possibility of issuing precautionary measures against the exercise of the faculties of the heirs recognized as such by ECS, grounding its decision on Article 73 of the Regulation.

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 signaled within the National Report?

⁵⁸ 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).

⁵⁹ See, for example, Judgment of the Provincial Audience of Malaga (“Sentencia de la Audiencia Provincial de Málaga”) of 30 December 2021, ECLI:ES:APMA:2021:4880.

⁶⁰ See case C-102/18 *Brisch* ECLI:EU:C:2019:34.

⁶¹ Judgment of the Provincial Audience (“Sentencia de la Audiencia Provincial”) of Barcelona of 5 July 2018, ECLI:ES:APB:2018:4133^a.

No questions on this matter.