



## Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

1 March 2018\*

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EU) No 650/2012 — Succession and European Certificate of Succession — Scope — Ability to include the surviving spouse's share in the European Certificate of Succession)

In Case C-558/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Kammergericht Berlin (Higher Regional Court, Berlin, Germany), made by decision of 25 October 2016, received at the Court on 3 November 2016, in the proceedings brought by

**Doris Margret Lisette Mahnkopf**

other party:

**Sven Mahnkopf,**

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader (Rapporteur), A. Prechal and E. Jarašiūnas, Judges,

Advocate General: M. Szpunar,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 4 October 2017,

after considering the observations submitted on behalf of:

- the German Government, by T. Henze and M. Hellmann, acting as Agents,
- the Belgian Government, by L. Van den Broeck, J. Van Holm and C. Pochet, acting as Agents,
- the Greek Government, by G. Papadaki and K. Karavasili, acting as Agents,
- the Spanish Government, by V. Ester Casas, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and F. Di Matteo, avvocato dello Stato,
- the Polish Government, by B. Majczyna, acting as Agent,

\* Language of the case: German.

– the European Commission, by M. Wilderspin and M. Heller, acting as Agents,  
after hearing the Opinion of the Advocate General at the sitting on 13 December 2017,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Articles 1(1), 67(1) and 68(l) of 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 2012 L 201, p. 107).
- 2 The request has been made in proceedings relating to an application to have a European Certificate of Succession drawn up which have been brought by Doris Margret Lisette Mahnkopf following the death of her husband and concern succession to his estate.

### **Legal context**

#### *EU law*

##### *Regulation No 650/2012*

- 3 Recitals 7, 9, 11, 12 and 71 of Regulation No 650/2012 are worded as follows:
  - ‘(7) The proper functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed.
  - ...
  - (9) The scope of this Regulation should include all civil-law aspects of succession to the estate of a deceased person, namely all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession.
  - ...
  - (11) This Regulation should not apply to areas of civil law other than succession. For reasons of clarity, a number of questions which could be seen as having a link with matters of succession should be explicitly excluded from the scope of this Regulation.
  - (12) Accordingly, this Regulation should not apply to questions relating to matrimonial property regimes, including marriage settlements as known in some legal systems to the extent that such settlements do not deal with succession matters, and property regimes of relationships deemed to have comparable effects to marriage. The authorities dealing with a given succession under

this Regulation should nevertheless, depending on the situation, take into account the winding-up of the matrimonial property regime or similar property regime of the deceased when determining the estate of the deceased and the respective shares of the beneficiaries.

...

(71) The Certificate should produce the same effects in all Member States. It should not be an enforceable title in its own right but should have an evidentiary effect and should be presumed to demonstrate accurately elements which have been established under the law applicable to the succession or under any other law applicable to specific elements, such as the substantive validity of dispositions of property upon death. ...'

4 Article 1 of Regulation No 650/2012, headed 'Scope', states:

'1. This Regulation shall apply to succession to the estates of deceased persons. It shall not apply to revenue, customs or administrative matters.

2. The following shall be excluded from the scope of this Regulation:

...

(d) questions relating to matrimonial property regimes and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage;

...'

5 Article 3(1)(a) of Regulation No 650/2012 defines the term 'succession' as covering 'all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession'.

6 Article 21 of Regulation No 650/2012, which lays down the general rule concerning the law applicable to the succession, states in paragraph 1:

'Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.'

7 Article 22 of Regulation No 650/2012, headed 'Choice of law', provides in the first subparagraph of paragraph 1:

'A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.'

8 Article 23 of Regulation No 650/2012, headed 'The scope of the applicable law', provides:

'1. The law determined pursuant to Article 21 or Article 22 shall govern the succession as a whole.

2. That law shall govern in particular:

...

(b) the determination of the beneficiaries, of their respective shares and of the obligations which may be imposed on them by the deceased, and the determination of other succession rights, including the succession rights of the surviving spouse or partner;

...'

- 9 Chapter VI of Regulation No 650/2012, headed 'European Certificate of Succession', comprises Articles 62 to 73. Article 62 states:

'1. This Regulation creates a European Certificate of Succession (hereinafter referred to as "the Certificate") which shall be issued for use in another Member State and shall produce the effects listed in Article 69.

2. The use of the Certificate shall not be mandatory.

3. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with this Chapter.'

- 10 Article 63 of Regulation No 650/2012, headed 'Purpose of the Certificate', provides in paragraphs 1 and 2:

'1. The Certificate is for use by heirs, legatees having direct rights in the succession and ... who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees ...

2. The Certificate may be used, in particular, to demonstrate one or more of the following:

- (a) the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;
- (b) the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;

...'

- 11 Article 65(3)(d) of Regulation No 650/2012 states:

'The application [for a Certificate] shall contain the information listed below, to the extent that such information is within the applicant's knowledge and is necessary in order to enable the issuing authority to certify the elements which the applicant wants certified, and shall be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity, without prejudice to Article 66(2):

...

- (d) details of the spouse or partner of the deceased and, if applicable, ex-spouse(s) or ex-partner(s): surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable) and address;

...'

12 Article 67(1) of Regulation No 650/2012 provides:

‘The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements. It shall use the form established in accordance with the advisory procedure referred to in Article 81(2).

...’

13 Article 68 of Regulation No 650/2012, which governs the content of the certificate, provides:

‘The Certificate shall contain the following information, to the extent required for the purpose for which it is issued:

...

(f) details concerning the deceased: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;

...

(h) information concerning a marriage contract entered into by the deceased or, if applicable, a contract entered into by the deceased in the context of a relationship deemed by the law applicable to such a relationship to have comparable effects to marriage, and information concerning the matrimonial property regime or equivalent property regime;

...

(l) the share for each heir and, if applicable, the list of rights and/or assets for any given heir;

...’

14 Article 69 of Regulation No 650/2012, headed ‘Effects of the Certificate’, states:

‘1. The Certificate shall produce its effects in all Member States, without any special procedure being required.

2. The Certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements. The person mentioned in the Certificate as the heir, legatee, ... shall be presumed to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate.

...’

*Regulation (EU) 2016/1103*

15 Recitals 18 and 22 of Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (OJ 2016 L 183, p. 1) are worded as follows:

‘(18) The scope of this Regulation should include all civil-law aspects of matrimonial property regimes, both the daily management of matrimonial property and the liquidation of the regime, in particular as a result of the couple’s separation or the death of one of the spouses. ...

...

(22) As maintenance obligations between spouses are governed by Council Regulation (EC) No 4/2009 [of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ 2009 L 7, p. 1)], they should be excluded from the scope of this Regulation, as should issues relating to the succession to the estate of a deceased spouse, since they are covered by Regulation [No 650/2012].’

16 Article 1 of Regulation 2016/1103, headed ‘Scope’, provides in paragraph 2(d):

‘The following shall be excluded from the scope of this Regulation:

...

(d) the succession to the estate of a deceased spouse’.

17 Article 70 of Regulation 2016/1103, headed ‘Entry into force’, provides in the second subparagraph of paragraph 2 that, except for certain general and final provisions, that regulation is not to apply until 29 January 2019.

***German law***

18 Paragraph 1371(1) of the Bürgerliches Gesetzbuch (Civil Code; ‘the BGB’) states:

‘If the property regime is ended by the death of a spouse, the equalisation of the accrued gains shall be effected by increasing the surviving spouse’s share of the estate on intestacy by one quarter of the estate; it is irrelevant in this regard whether the spouses have made accrued gains in the individual case.’

19 Paragraph 1931 of the BGB provides:

‘(1) The surviving spouse of the deceased as an heir on intestacy shall be entitled to one quarter of the estate as against relatives of the first degree, and to one half of the estate as against relatives of the second degree or grandparents. If both grandparents and descendants of grandparents are living, the spouse shall also receive the share of the other half which under Paragraph 1926 would pass to the descendants.

...

(3) The provision laid down in Paragraph 1371 of the BGB shall be unaffected.

...’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 20 Mr Mahnkopf died on 29 August 2015. At the time of his death he was married to Mrs Mahnkopf. Both spouses, who had German nationality, were habitually resident in Berlin (Germany). The deceased had made no disposition of property upon death and his sole heirs were his wife and their only son.
- 21 The spouses were subject to the statutory property regime of community of accrued gains and had not entered into a marriage contract. In addition to assets possessed by the deceased in Germany, the estate also includes a half share in the co-ownership of a property in Sweden.
- 22 At the request of Mrs Mahnkopf, the Amtsgericht Schöneberg (Local Court, Schöneberg, Germany), the probate court with jurisdiction in respect of Mr Mahnkopf's estate, issued a national certificate of inheritance on 30 May 2016 according to which the surviving spouse and the descendant each inherited one half of the deceased's assets pursuant to the intestacy succession laid down by German law. The referring court states that the share of the estate allocated to the spouse results from the application of Paragraph 1931(1) of the BGB, under which the surviving spouse's share on intestacy, which is one quarter, is increased by an additional quarter when the spouses were subject to the matrimonial property regime of community of accrued gains, as Paragraph 1371(1) of the BGB provides.
- 23 On 16 June 2016, Mrs Mahnkopf also applied to a notary for the issue to her, pursuant to Regulation No 650/2012, of a European Certificate of Succession designating her and her son as coheirs, in respect of half of the estate each in accordance with the national rule of intestacy succession. She wished to use that certificate for the purpose of registration of their right of ownership of the property in Sweden. The notary submitted Mrs Mahnkopf's application to the Amtsgericht Schöneberg (Local Court, Schöneberg).
- 24 That court rejected the application for a European Certificate of Succession, on the ground that the share allocated to the deceased's spouse was based, as regards one quarter of the deceased's estate, on a regime governing succession and, as regards another quarter of his estate, on the matrimonial property regime provided for in Paragraph 1371(1) of the BGB. In its view, the rule under which that other quarter was allocated, which relates to a matrimonial property regime and not a succession regime, does not fall within the scope of Regulation No 650/2012.
- 25 Mrs Mahnkopf brought an appeal against that decision before the Kammergericht Berlin (Higher Regional Court, Berlin, Germany). By that appeal, she also supplemented her initial application by requesting in the alternative that the European Certificate of Succession be issued with a note referring, for information purposes, to her succession rights based, as regards one quarter of the deceased's estate, on the community of accrued gains.
- 26 The referring court states that academic lawyers are divided on the question as to whether the rule set out in Paragraph 1371(1) of the BGB is a rule of succession law or a rule concerning matrimonial property regimes. It takes the view that, in the light of its purpose, namely the allocation of accrued gains when the community of property ends because of the death of one of the spouses, Paragraph 1371(1) of the BGB is not a rule governing succession 'to the estates of deceased persons', within the meaning of Article 1(1) of Regulation No 650/2012. In its view, the rule laid down in that provision must apply whenever the effects of marriage, including questions relating to the matrimonial property regime, are governed by German law. Such application would not be guaranteed if that rule were classified as a rule of succession law, because in that case its scope would be limited to situations where succession is governed by German law in accordance with Articles 21 and 22 of Regulation No 650/2012.

- 27 The referring court also takes the view that, in the absence of harmonisation of the provisions relating to matrimonial property regimes in the European Union, the increase in the surviving spouse's share of the estate on intestacy resulting from the application of a rule concerning matrimonial property regimes, in the present instance Paragraph 1371(1) of the BGB, cannot generally be recorded, even purely for information purposes, in the European Certificate of Succession.
- 28 It nevertheless considers that that increase could be indicated in the European Certificate of Succession where the law of succession that is applicable, in accordance with Article 21 or Article 22 of Regulation No 650/2012, and the law relating to the spouses' matrimonial property regime are determined pursuant to the law of one and the same Member State, irrespective of the conflict-of-law rule that is applicable. It states that in the present instance the law applicable to the succession and the law applicable to the matrimonial property regime are determined exclusively under German law.
- 29 In this connection, the referring court puts forward the view that the wording used in Articles 67(1) and 69(2) of Regulation No 650/2012, according to which the elements to be certified have been established under the law applicable to the succession 'or under any other law applicable to specific elements', would permit such an interpretation. It states that such an interpretation is also justified in the light of the second sentence of recital 12 of Regulation No 650/2012 and of the purpose of the European Certificate of Succession of seeking to simplify and expedite the cross-border enforcement of succession rights.
- 30 In those circumstances, the Kammergericht Berlin (Higher Regional Court, Berlin) decided to stay proceedings and to refer the following questions to the Court of Justice for preliminary ruling:
- '(1) Is Article 1(1) of [Regulation No 650/2012] to be interpreted as meaning that the scope of the regulation ("succession to the estates of deceased persons") also covers provisions of national law which, like Paragraph 1371(1) of the [BGB], settle questions relating to matrimonial property regimes after the death of one spouse by increasing the other spouse's share of the estate on intestacy?
- (2) If the first question is answered in the negative, are Articles 68(l) and 67(1) of [Regulation No 650/2012] in any event to be interpreted as meaning that the share of the surviving spouse may be recorded in full in the European Certificate of Succession even if a portion of it stems from an increase pursuant to a rule governing matrimonial property regimes like Paragraph 1371(1) of the [BGB]?

If this question is to be answered in the negative in principle, can it nevertheless be answered in the affirmative exceptionally for situations where:

- (a) the purpose of the Certificate of Succession is limited to asserting rights of the heirs in a certain other Member State to property of the deceased located there, and
- (b) the ruling on succession (Articles 4 and 21 of [Regulation No 650/2012]) and — irrespective of which conflict-of-law rules are applied — the questions relating to matrimonial property regimes are to be assessed on the basis of the same national legal system?
- (3) If the first and second questions are answered in the negative in their entirety, is Article 68(l) of [Regulation No 650/2012] to be interpreted as meaning that the share of the surviving spouse increased pursuant to a rule of the matrimonial property regime may be recorded in full in the European Certificate of Succession, but for information purposes only on account of the increase?'



## Consideration of the questions referred

### Question 1

- 31 By its first question, the referring court asks, in essence, whether Article 1(1) of Regulation No 650/2012 must be interpreted as meaning that a national provision, such as that at issue in the main proceedings, which prescribes, on the death of one of the spouses, a fixed allocation of the accrued gains by increasing the surviving spouse's share of the estate falls within the scope of that regulation.
- 32 First of all, it should be recalled that, according to settled case-law of the Court, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union (judgment of 18 October 2016, *Nikiforidis*, C-135/15, EU:C:2016:774, paragraph 28 and the case-law cited); that interpretation must take into account not only its wording but also its context and the objective pursued by the legislation in question (see, inter alia, judgment of 18 May 2017, *Hummel Holding*, C-617/15, EU:C:2017:390, paragraph 22 and the case-law cited).
- 33 In accordance with its wording, Article 1(1) of Regulation No 650/2012 provides that the regulation is to apply to succession to the estates of deceased persons. Article 1(2) lists exhaustively the matters excluded from the regulation's scope, which include, in Article 1(2)(d), 'questions relating to matrimonial property regimes'. Article 3(1)(a) states that such succession covers 'all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession'.
- 34 It is also apparent from recital 9 of Regulation No 650/2012 that the scope of the regulation should include all civil-law aspects of succession to the estate of a deceased person.
- 35 As to the objectives pursued by Regulation No 650/2012, according to recital 7 it is intended to facilitate the proper functioning of the internal market by removing the obstacles to the free movement of persons who wish to assert their rights arising from a cross-border succession. In particular, in the European area of justice the rights of heirs and legatees, of other persons close to the deceased and of creditors of the estate must be effectively guaranteed.
- 36 To that end, Regulation No 650/2012 provides for the creation of a European Certificate of Succession which must enable every heir, legatee or beneficiary mentioned in the certificate to prove in another Member State his status and succession rights (see, to that effect, judgment of 12 October 2017, *Kubicka*, C-218/16, EU:C:2017:755, paragraph 59).
- 37 So far as concerns the context of the provision at issue, it is apparent from recitals 11 and 12 of Regulation No 650/2012 that the regulation should not apply to areas of civil law other than succession, in particular to questions relating to matrimonial property regimes, including marriage settlements as known in some legal systems to the extent that such settlements do not deal with succession matters.
- 38 In the present instance, it is apparent from the order for reference that, under Paragraph 1371(1) of the BGB, in the event of termination of the property regime of community of accrued gains (*Zugewinnsgemeinschaft*), when the accrued gains are allocated the surviving spouse's share on intestacy is increased by an additional quarter of the estate.

- 39 In its observations, the German Government stated in this connection that that provision of national law relating to the termination of a marital community of property applies only where the marriage comes to an end because of death; it has the aim of allocating on a fixed basis assets acquired during the marriage, compensating for the disadvantage that results from the statutory property regime of community of accrued assets being interrupted by the death of a spouse, while avoiding in that way the need to determine precisely the composition and value of the assets at the beginning and end of the marriage.
- 40 As the Advocate General has observed in points 78 and 93 of his Opinion, according to the information available to the Court, Paragraph 1371(1) of the BGB concerns not the division of assets between spouses but the issue of the rights of the surviving spouse in relation to assets already counted as part of the estate. Accordingly, that provision does not appear to have as its main purpose the allocation of assets or liquidation of the matrimonial property regime, but rather determination of the size of the share of the estate to be allocated to the surviving spouse as against the other heirs. Such a provision therefore principally concerns succession to the estate of the deceased spouse and not the matrimonial property regime. Consequently, a rule of national law such as that at issue in the main proceedings relates to the matter of succession for the purposes of Regulation No 650/2012.
- 41 Nor is that interpretation inconsistent with the scope of Regulation 2016/1103. Although that regulation was adopted in order to cover, as stated in recital 18 thereof, all civil-law aspects of matrimonial property regimes, including both the daily management of matrimonial property and the liquidation of the matrimonial property regime, in particular as a result of the couple's separation or the death of one of the spouses, it expressly excludes from its scope, pursuant to Article 1(2)(d), the 'succession to the estate of a deceased spouse'.
- 42 Finally, as the Advocate General has also observed in particular in point 102 of his Opinion, classification of the share falling to the surviving spouse under a provision of national law such as Paragraph 1371(1) of the BGB as succession-related allows information concerning that share to be included in the European Certificate of Succession, with all the effects described in Article 69 of Regulation No 650/2012. According to Article 69(1) of that regulation, the European Certificate of Succession is to produce effects in all Member States, without any special procedure being required. Article 69(2) provides that the person mentioned in the certificate as the legatee is to be presumed to have the status and the rights stated in the certificate with no conditions and/or restrictions being attached to those rights other than those stated in the certificate (judgment of 12 October 2017, *Kubicka*, C-218/16, EU:C:2017:755, paragraph 60).
- 43 Therefore, achievement of the objectives of the European Certificate of Succession would be impeded considerably in a situation such as that at issue in the main proceedings if it did not include full information relating to the surviving spouse's rights regarding the estate.
- 44 In the light of the foregoing considerations, the answer to the first question is that Article 1(1) of Regulation No 650/2012 must be interpreted as meaning that a national provision, such as that at issue in the main proceedings, which prescribes, on the death of one of the spouses, a fixed allocation of the accrued gains by increasing the surviving spouse's share of the estate falls within the scope of that regulation.

### **Questions 2 and 3**

- 45 In view of the answer given to the first question, there is no need to answer the second and third questions.

## Costs

- <sup>46</sup> Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

**Article 1(1) of 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 must be interpreted as meaning that a national provision, such as that at issue in the main proceedings, which prescribes, on the death of one of the spouses, a fixed allocation of the accrued gains by increasing the surviving spouse's share of the estate falls within the scope of that regulation.**

[Signatures]