



## Reports of Cases

### **Case C-558/16** **Proceedings brought by Doris Margret Lisette Mahnkopf**

(Request for a preliminary ruling from the Kammergericht Berlin)

(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)

Summary — Judgment of the Court (Second Chamber), 1 March 2018

*Judicial cooperation in civil matters — Jurisdiction, applicable law, recognition and enforcement of decisions, acceptance and enforcement of authentic instruments in matters of succession and creation of a European Certificate of Succession — Regulation No 650/2012 — Scope — National provision prescribing, 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 — Included*

*(European Parliament and Council Regulation 650/2012, Art. 1(1))*

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.

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.'

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.

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. 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.

(see paras 18, 40, 42-44, operative part)