

## Book Review

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*EU Succession Regulation No 650/2012.  
A Commentary*, edited by H. Pamboukis,  
published by Nomiki Bibliothiki, Verlag C.H.  
Beck, Hart Publishing and Nomos Verlag,  
Athens-München-Oxford-Baden Baden 2017,  
pp. 741

1. The subject-matter of the EU succession Regulation No. 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession<sup>1</sup>, has been raising serious controversies for a long time. The act which applies to the succession cases in the European Union post 17 August 2015 raises doubts in the particular areas of its application, which are not identically resolved in the respective Member States. Therefore, every publication referring to such doubts and attempting to explain the importance of the mechanisms applied by the Regulation is worth noticing<sup>2</sup>. This applies to the presented publication, namely comments to the Regulation provisions by Greek authors. The look at the EU succession law in the light of the Greek law seems very interesting already at first glance. Despite the fact that several commentaries applicable to Regulation No. 650/2012 have recently appeared in the generally available literature<sup>3</sup>,

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<sup>1</sup> OJ L 201, 27.7.2012, p. 107-134.

<sup>2</sup> Cf. M. Załucki, *New Revolutionary European Regulation on Succession Matters. Key Issues and Doubts*, *Revista de Derecho Civil* 2016, No 1, p. 165-176.

<sup>3</sup> For example: *Le droit européen des successions. Commentaire du Règlement no 650/2012 du 4 juillet 2012*, edited by A. Bonomi and P. Wautelet, Bruxells 2013; *Il nuovo diritto internazionale privato europeo delle successioni*, edited by A.

there are no publications by the authors from the countries which have not been recently considered to be the founders of the canons of the modern civil law studies. Therefore, it is really essential that the authors have coped with the problem and published the results of their considerations in English. Thus, the potential scope of impact of that publication has been extended and polemics with some of the views of the authors has been enabled.

2. The publication is a typical commentary to a legal act. It has been prepared by many authors, which makes the scientific level thereof slightly differentiated, as usual in the case of such work. Each of the fourteen authors referred to the specific provisions of the Regulation based on extensive European literature, and provided their own views on the current state of knowledge. Therefore, the commentary is not only a collection of previous ideas but in many ways the authors attempt to take the floor in the discussion referring to the Regulation provisions in order to propose a specific direction of interpretation. This is extremely important, specifically because the practice of applying certain standard solutions has only been born. Regulation No. 650/2012 has been applied only for two years, which makes it difficult to state whether it is an evolution or a revolution in the European succession law<sup>4</sup>. In many cases, the authors of the discussed publication are inclined to agree with the first stand, namely the evolution, indicating as an example that the Regulation entrance into force may simplify and shorten the procedure of hearing succession cases in the European Union.

3. The book starts with introductory comments to the Regulation provisions by H. Pamboukis and A.P. Sivitanidis (p. 1-13). The authors present shortly how the Regulation was passed and also the basic structure of the same, as well as changes in the Greek law resulting from the Regulation No. 650/2012 entrance into force. Greece, similarly as many other European countries, has previously referred in trans-border succession cases within its private international law to the citizenship of the testator, whereas as a result of the Regulation provisions coming into force this has changed to the place of habitual residence of the testator<sup>5</sup>. This is a very important change and it is a pity that the authors have failed to comment on the expected consequences of that change. It must be emphasised that the authors refer to the necessity of autonomic interpretation of the Regulation provisions,

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Davi and A. Zanobetti, Torino 2014; *Die Europäische Erbrechtsverordnung*, edited by A. Dutta and S. Herrler, München 2014; J. Carrascosa Gonzales, *El Reglamento Sucesorio Europeo 650/2012 de 4 de Julio 2012. Análisis crítico*, Granada 2014; *Unijne rozporządzenie spadkowe*, edited by M. Załucki, Warszawa 2015; U. Bergquist, R. Frimston, F. Odersky, D. Damascelli, P. Lagarde, B. Reinhardt, *Commentaire de Règlement européen sur les successions*, Paris 2015; *Die EU-Erbrechtsverordnung*, edited by A. Burgstaller, G. Schmaranzer, A. Geroldinger, M. Neumayr, Wien 2016; *EU Succession Regulation. A Commentary*, edited by A. L. Calvo Caravaca, A. Davi and H.P. Mansel, Cambridge 2016.

<sup>4</sup> Cf. A. Devaux, *The European Regulations on Succession of July 2012: A Path Towards the End of the Succession Conflicts of Law in Europe, or Not?*, *The International Lawyer* 2013, No 2, p. 229-248.

<sup>5</sup> Cf. M. Pfeiffer, *Choice of Law in International Family and Succession Law*, *The Lawyer Quarterly* 2012, No. 4, p. 291-306.

i.e. such interpretation where the assumption that the terms used in the Regulation are identical with the terms applied by the domestic substantive law must be abandoned. The domestic laws regarding inheritance may differ, and they actually differ, so considering them in the interpretation of the Regulation provisions would result in accepting mutually exclusive meaning of the same colliding legal regulations in the respective EU countries. For uniform application of Regulation No. 650/2012 throughout the EU, it is needed to assume identical understanding of the basic terms in all of the countries to which the Regulation applies. In some cases, this may mean that views expressed on the background of domestic substantive law will have to be abandoned. This will contribute to uniform interpretation of colliding legal regulations in all of the EU Member States<sup>6</sup>.

After the introduction there follow approximately 100 pages (p. 15-109) written by G. Nikolaidis, where the scope of the Regulation application is discussed as well as the basic standard definitions introduced by that act. In the light of the necessity of autonomous interpretation of the Regulation provisions, that part of the work is of crucial nature, as these considerations will be further referred to by other authors. Autonomous definitions of the terms provided by the Regulation will serve, in the opinion of the author, to such autonomous interpretation. Therefore, the author meticulously discusses the ideas broadly referring to the literature published to date. He explains also the exclusion of the respective areas from the scope of application of the Regulation, namely taxes, customs duties and administrative affairs.

Further one hundred pages (p. 110-201) are devoted to the matter of jurisdiction in trans-border succession cases. The respective authors discuss, among other things, the problems of general jurisdiction, prorogation clauses, determination of the lack of jurisdiction, jurisdiction in case of the selection of the applicable law (H. Pamboukis, A. P. Sivitanidis), jurisdiction based on dispute, additional jurisdiction, jurisdiction in case of declaration on acceptance or rejection of inheritance, legacy or mandatory participation, examination of jurisdiction and acceptability of proceedings if the respondent's place of habitual residence is in a country other than a Member State in which the action has been instituted (G. Panopoulos) or jurisdiction of the court in which the action has been first instituted, suspension of proceedings as there are related cases heard before the courts of various Member States, or the applied temporary and preventive measures in such cases (H. Meidanis). The authors frequently emphasise the importance of the place of habitual residence of the testator for the determination of jurisdiction in a succession case, expressing a view that there is a need to arrive at the effect of a uniform *forum* and *ius*, thanks to which the hearing of succession cases in the EU will be easier. This is an interesting thought which must be considered when interpreting the provisions of the Regulation, as it had been the foundation for the introduction of the act<sup>7</sup>.

<sup>6</sup> F. Marongiu Buonaiuti, *The EU Succession Regulation and Third Country Courts*, Journal of Private International Law 2016, No. 3, p. 552.

<sup>7</sup> Cf. G. Debernardi, *Le règlement européen sur les successions et nouvelles perspectives pour les systèmes juridiques natio-*

On the following nearly two hundred and fifty pages (p. 202-444) the authors broadly discuss the applicable law in the European succession cases. This part of the publication has been written by many authors who consider the fundamental solutions applied by the Regulation in reference to the European literature published in that matter. It is obviously impossible to refer here to all of the views expressed in that part of the publication, but there are some that are worth the attention. First of all, interesting are the comments by H. Pamboukis and A. P. Sivitanidis regarding interpretation of Article 21 of the Regulation. It must be reminded that the Article introduces the rule that “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”<sup>8</sup>. The authors try to explain, among other things, what should be taken into account when determining the place of habitual residence of the testator. They also see the importance of the Recitals of the Regulation and the motives therefore, which must be mentioned particularly because it is not always the case that in the contents of that commentary the references to the Recitals are strongly emphasised. Another important element is the comment to the provisions of Article 22 of the Regulation referring to the choice of law for the respective succession case. This fragment, prepared by D. Stamatiadis, refers in the comparative perspective to allowing the freedom of choice of the applicable law in succession cases, however, with the indicated limited possibility in that regard by the testators being the citizens of the Member States. Of crucial importance are also the comments by A. Metallionos to Article 23 of the Regulation. The author discusses the applicable law in a succession case in reference to a specific testator, by emphasising the importance of the inheritance unity principle. The inheritance unity principle, namely a situation in which the applicable law and the jurisdiction in a succession case are related to one legal system, is one of the greatest achievements of the European succession law, to which the process of the Regulation provisions interpretation must be subjected, among other things<sup>9</sup>.

Recognition, enforceability and enforcement of judgements in succession cases issued in other Member States are the objects of discussion on the following pages of the publication (p. 445-525). Further follows the discussion of official documents and court settlements in that area (p. 526-577). The authors present the legal problems appearing on those grounds, many times referring to the issue of acceptability of foreign documents in Greece. The comments are extremely interesting, specifically in the context of the mechanism of refusal of the specific documents originating from other Member States. Particular attention must be paid to the view of D. Stamatiadis on the European Certificate of Suc-

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*naux*, Nice 2017, p. 38 et seq.

<sup>8</sup> A. Davi, A. Zanobetti, *Il nuovo diritto internazionale privato delle successioni nell'unione europea*, Cuadernos de Derecho Transnacional 2013, No. 2, p. 29 et seq.

<sup>9</sup> P. Lagarde, *Présentation du règlement sur les successions*, [in:] *Droit européen des successions internationales. Le Règlement du 4 juillet 2012*, edited by G. Khairallah and M. Revillard, Paris 2013, p. 5-16.

cession (p. 578-666). The author refers to the importance of the new instrument serving the documentation of the entitlement to inheritance and broadly presents the purpose and consequences of the document issue. Moreover, he explains the matters of the Certificate rectification, amendment or annulment, as well as the appeal procedures vesting in case of the European Certificate of Succession issue, which are considered in accordance with the domestic laws.

The book is concluded by the discussion of general and intertemporal issues, as well as collision in reference to the existing international conventions applicable to succession. Also cited is the Regulation including Recitals.

4. The lecture of the discussed publication, which seems to be a successful contribution to the development of the European legal considerations, results in several conclusions. Firstly, the need of autonomous interpretation of the provisions of the succession Regulation justifies the origin of new publications in that regard, which would comprehensively present the legal act and explain the importance of its mechanisms. Secondly, the basic assumptions of the Regulation provisions, aimed at simplification of the succession procedures in the European Union and shortening of the duration of trans-border succession cases, are values which should become foundations for the interpretations made. Thirdly, authors should build the Regulation interpretations based on the inheritance unity principle. All that may contribute to further integration in future<sup>10</sup>.

<sup>10</sup> Cf. L.-D. Rath-Boşca, L.M. Barmos, i I.A. Stănescu, *The Need to Harmonize the Laws of the European Union Regarding the Succession Law*, *Agora International Journal of Economical Sciences* 2016, No 10, p. 35–40.