



Registradores  
DE ESPAÑA

# “Further procedural, notarial and registration problems of the Succession Regulation”

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## **FURTHER PROCEDURAL, NOTARIAL AND REGISTRATION PROBLEMS OF THE SUCCESSION REGULATION**

### **1. INTRODUCTION**

### **2. ISSUES TO BE ADRESSED IN A FORTHCOMING REVISION OF THE SUCCESSION REGULATION**

# INTRODUCTION

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## 1. INTRODUCTION

- ❖ **Questionnaire Special Group on Succession EJM** - excessively centred on *ad extra* issues not directly related to the European Certificate on Succession
- ❖ **European Commission conducting revision of the Regulation** – looking forward to listening to ideas and proposals

This presentation addresses issues that could be object of a forthcoming revision of the Regulation, that affect all registers in the EU and that ELRA could endorse as a common position.

**ISSUES TO BE ADRESSED IN A  
FORTHCOMING REVISION OF THE  
SUCCESSION REGULATION**

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## 2. ISSUES TO BE ADRESSED IN A FORTHCOMING REVISION OF THE SUCCESSION REGULATION

### **A) Equivalence of authentic instruments** (Article 3.1.i) Succession Regulation):

Drafting of the provision could be improved – the definition given could be more precise and put emphasis on the need of a public document drafted by a notary, in presence of the parties and after checking identity and capacity of the parties.

## 2. ISSUES TO BE ADRESSED IN A FORTHCOMING REVISION OF THE SUCCESSION REGULATION

### **B. Closing of own-motion proceedings in the event of a choice of law (Article 8 Succession Regulation)**

Paradoxes in its application because of the definition of extrajudicial settlement provided by the Regulation

- It appears to be clear that if this concept is understood as provided by a notarial document that limits itself to attest the agreement it has as a consequence the closure of the judicial proceedings, in particular in those legal systems where judicial liquidation of the inheritance is organised *ex officio*.
- Not clear – judicial competence when the notarial intervention is decisive and remains subject to the competence rules set out by the Regulation
  - Examples of situations where potential clashes with Recital 29 and Article 17 of the Regulation may take place.

## 2. ISSUES TO BE ADRESSED IN A FORTHCOMING REVISION OF THE SUCCESSION REGULATION

### C. Renvoi (Recital 70 and Articles 34, 35, 36 of the Regulation)

- Recital 70 – clarification of the nature of the European Succession Regulation (judicial, notarial or *tertium* nature)
- Article 34 - Partial renvoi to the law of the forum by the conflict rules of a third State is an unresolved issue.  
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- Article 35 – in need of a definition for “public order”
- Article 36.1- problems in the ES jurisdiction collision with concept of “*vecindad civil*”



**THANK YOU!**

