# Beperkingen inzake erfopvolging — bijzondere regels

Landspecifieke informatie over de bijzondere regels die gelden voor bepaalde onroerende goederen, ondernemingen of andere bijzondere categorieën goederen

Het **Europees justitieel netwerk in burgerlijke en handelszaken** heeft een aantal informatiebladen opgesteld over de nationaalrechtelijke bijzondere regels die beperkingen opleggen met betrekking tot de erfopvolging. Die beperkingen betreffen doorgaans de volgende bestanddelen:

bepaalde soorten onroerende goederen,

bepaalde soorten ondernemingen,

andere bijzondere categorieën goederen.

Beperkingen met betrekking tot die bestanddelen worden opgelegd uit economische, familiale en/of sociale overwegingen.

Zij zijn ingevolge het recht van de betrokken staat van toepassing, ongeacht het op de erfopvolging toepasselijke recht.

Om een informatieblad over nationaal recht dat beperkingen oplegt met betrekking tot of anderszins van invloed is op de erfopvolging wat betreft dergelijke bestanddelen te raadplegen, klik op de overeenkomstige nationale vlag op deze pagina.

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## Restrictions on successions – special rules - Belgium

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

Article 745*quater* of the Civil Code (*Code civil*) lays down special rules for the case where ownership of certain property is shared between the deceased's descendants who receive the bare ownership and the surviving spouse who receives the usufruct.

In principle, the surviving spouse or one of the bare owners can request the full or partial conversion of the usufruct, i.e. one party can purchase the bare ownership or usufruct from the other party.

However, certain property is excluded from this rule:

Conversion of the usufruct can be refused by the family court (*tribunal de la famille*) if this may seriously harm the interests of a business or professional activity.

The agreement of the surviving spouse or surviving legal cohabitant is required where the immovable property and its furniture were used, on the date when the succession was opened, as the family's main dwelling.

Article 745*octies* of the Civil Code provides similar protection, for the benefit of the legal cohabitant, for an immovable property that was used as the family's common residence and its furniture.

Furthermore, Article 915*bis* of the Civil Code provides for the forced heirship of a portion of the estate (i.e. a reserved portion) for the benefit of the surviving spouse and stipulates, in all cases, that this forced heirship must include at least the immovable property that was used as the family's main dwelling and its furniture.

Where all or part of the succession consists of an agricultural holding, the heirs in a direct descending line can take over, based on a valuation, the movable and immovable property forming the agricultural holding (Article 1, first paragraph, of the Law of 29 August 1988 on succession rules for agricultural holdings with a view to promoting their continuity (*loi du 29 août 1988 relative au régime successoral des exploitations agricoles en vue d'en promouvoir la continuité*)).

If all or part of the succession does not consist of an agricultural holding, but is made up, instead, of immovable properties that formed part of the deceased's agricultural holding, and if one of the heirs in a direct descending line is currently operating those properties within their own agricultural holding, the latter can also take over these properties, based on a valuation, subject to the provisions of the Civil Code laying down the rights of the surviving spouse and surviving legal cohabitant (Article 1, third paragraph, of the Law of 29 August 1988).

Lastly, Article 4 of the Law of 16 May 1900 on succession rules for small inheritances (*loi du 16 mai 1900 sur le régime successoral des petits héritages*) provides that, where all or part of a succession consists of immovable properties for which the full 'cadastral income' (notional rental income) does not exceed EUR 1 565 (Article 1 of the Law), without prejudice to the rights conferred on the surviving spouse by Article 1446 of the Civil Code, each of the heirs in a direct line and, where applicable, the surviving spouse who is not divorced or legally separated from the deceased can take over, based on a valuation, either the dwelling occupied upon death by the deceased, his/her spouse or one of his/her descendants and its furniture, or the house, furniture and land that the occupier of the house personally used on his/her own behalf, the agricultural equipment and the animals used for cultivation, or the goods, raw materials, professional equipment and other accessories used on a commercial, small-scale or industrial basis.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

These provisions are mandatory, but the law does not expressly state whether they should be applied irrespective of the applicable law.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

Several procedures exist to guarantee these rights:

Approval of a usufruct conversion application by the family court: the family court can either refuse the usufruct conversion and allocation of full ownership, if this may seriously harm the interests of a business or professional activity, or approve the application if it is regarded as equitable given the specific circumstances of the case (Article 745*quater*(2) of the Civil Code).

Takeover of an agricultural holding: if the interested party or one of his/her creditors makes this application, the family court has a valuation carried out. The court can, for this purpose, appoint one or more experts (Article 4, first paragraph, of the Law of 29 August 1988 – an order of preference is stipulated in Article 3). If the method of takeover is disputed or if one of the interested parties refuses to consent or is not present, the family court summons the interested parties or their legal representatives at least 15 days in advance. On the date set, the interested parties meet under the chairmanship of the judge who summoned them. The meeting will go ahead even if one or more of the interested parties is absent. Where applicable, the judge chairing the meeting appoints a notary to replace absent parties, to receive their shares and to give discharge for those shares. The notary's fees are paid by the parties represented by the notary. The judge resolves the disputes and refers the parties, for the purpose of signing the deed, to the notary appointed by them or to

a notary appointed by the court, if the parties cannot agree on the choice of notary (Article 4, third paragraph, of the Law of 29 August 1988). Except for a serious reason recognised as valid in advance by the family court, the person taking over the immovable property cannot sell it for a period of 10 years from the signature of the takeover deed (Article 6, first paragraph, of the Law of 29 August 1988).
Takeover of small inheritances: the procedure is largely the same as for the takeover of an agricultural holding (Article 4, third and fifth paragraphs, of the Law of 16 May 1900). The only difference is the period during which the property taken over cannot be sold, except for a serious reason recognised as valid in advance by the family court, which is five years from the signature of the takeover deed (Article 5 of the Law of 16 May 1900).
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## Restrictions on successions – special rules - Bulgaria

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

The substantive law in force disqualifies the following from becoming either an heir or a legatee:
(1) any person who was not conceived when the succession was opened, and
(2) any person who was born unviable.
Under the law, any person born live is presumed viable until the contrary is proved.
In addition to the above, the following are disqualified as unworthy of succession:
(1) any person who has intentionally killed or has attempted to kill the deceased, the spouse or a child of the deceased, and any accomplice in these criminal offences, unless the act was committed under circumstances excluding punishability, or the person concerned was amnestied;
(2) any person who has falsely imputed a criminal offence punishable by a custodial sentence or by a severer penal sanction to the deceased, unless the false imputation is prosecuted acting on a complaint lodged by the victim and such complaint was not lodged;
(3) any person who, using force or fraud, has induced the deceased to make, alter or revoke a will or has prevented the deceased from doing any of the above, or who has destroyed, concealed or modified a will of the deceased or has knowingly made use of a non-authentic will.
The unworthy of succession may only inherit if the deceased has expressly recognised them as worthy by an instrument with notarised contents or by a will. If the deceased, being aware of the reason of the unworthiness, has made a will in favour of the unworthy of succession without expressly recognising them as worthy, the unworthy of succession only inherits within the limits of the will.
Under Article 54 of the Family Code (*Semeen kodeks*) in force, once divorced, the former spouses cease to be each other's legal heirs and forfeit the benefits arising from any predating dispositions in the event of death.
This rule, however, does not apply if the testator has explicitly stated that the testamentary dispositions will continue to produce their effects after the divorce.
For its part, the Ownership Act (*Zakon za sobstvenostta*) imposes a restriction concerning succession in favour of a foreign State, providing that a foreign State may not acquire a right of ownership in an immovable property in Bulgaria by inheritance.
Bulgarian legislation imposes two more restrictions in special laws concerning the inheritance of immovable property, owing to the specific nature of the property concerned.
Thus, the Agricultural Land Ownership and Use Act (*Zakon za sobstvenostta i polzvaneto na zemedelskite zemi*) lays down special rules on the inheritance of such property: agricultural land.
Under Article 3b of that Act, any foreigners, who acquire a right of ownership in agricultural land upon inheritance by law but do not meet the conditions provided for in the Treaty concerning the Accession of the Republic of Bulgaria to the European Union, or unless otherwise provided for in an international treaty ratified under the procedure of Article 22(2) of the Constitution of the Republic of Bulgaria, are obliged to transfer the ownership to persons who are entitled to acquire such properties within three years of the opening of the succession.
In the same vein, Article 24(1) of the Forests Act (*Zakon za gorite*) imposes a restriction concerning property which constitutes woodland: any foreigners, who acquire a right of ownership in forests and woodland-stock land upon inheritance by law but do not meet the conditions provided for in the Treaty concerning the Accession of the Republic of Bulgaria to the European Union, or unless otherwise provided for in an international treaty ratified under the procedure of Article 22(2) of the Constitution of the Republic of Bulgaria, are obliged to transfer the ownership to persons who are entitled to acquire such properties within three years of the opening of the succession.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Under the general rule, if the rules of the special law come into conflict with the general rules, the rules of the special law prevail; therefore, the restrictive rules discussed above apply whenever the substantive prerequisites for this are in place.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

The Agricultural Land Ownership and Use Act has established a special procedure ensuring compliance with the obligation under Article 3b(1) of the same Act, enabling the State to buy out the agricultural lands at prices set by a regulation of the Council of Ministers if the foreigner fails to transfer the right of ownership within the time limit specified in that rule.
Similarly, in respect of property constituting woodland, the Forests Act provides that the State may buy out the agricultural land at prices set in a regulation of the Council of Ministers if the time limit under Article 24(1) of that Act is not observed.
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## Restrictions on successions – special rules - Czechia

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

No such specific rules exist.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

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**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

No specific procedures for ensuring such compliance exist.

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## Restrictions on successions – special rules - Germany

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

Special restrictions within the meaning of Article 30 of the EU Succession Regulation can be found in German farm estate inheritance law (*Anerbenrecht*), which under certain conditions subjects agricultural property to special inheritance rules.

Such rules can be found in the Order on farms (*Höfeordnung*), which is a partial federal law applicable in Hamburg, Lower Saxony, North Rhine-Westphalia and Schleswig-Holstein, and in the farm estate inheritance laws of individual *Länder* (Act on domains [*Hofgütergesetz*] and Farm Estate Inheritance Act [*Anerbengesetz*] in Baden-Württemberg, the latter of which only applies if the deceased was born before 1 January 1930; the Order on estates [*Landgüterordnung*] in Hesse; the Order on farms [*Höfeordnung*] in Rhineland-Palatinate; the Farms Act [*Höfegesetz*] in Bremen). There are no such rules in the other *Länder*. Article 36(2)(c) of the EU Succession Regulation is used to determine which farm estate inheritance law applies. Furthermore, the individual estate inheritance rules in the Civil Code also apply (Sections 1515(2), 2049, 2312), as does Section 13 of the Real Estate Transactions Act (*Grundstücksverkehrsgesetz*), which allows a farm to be allocated to one lawful joint heir only.

The Order on farms contains special inheritance rules for certain agricultural holdings in order to prevent farms and forestry operations from being divided up in the event of succession. The provisions in the Order on farms provide that only one heir (heir to the farm) will be awarded ownership and thus guarantee the intergenerational preservation of economically viable farms. These rules not only serve the private interests of individual farm owners, but also the public interest in preventing farms from being divided up and keeping them efficient.

The other joint heirs can claim compensation, although the amount that can be claimed is lower than in other inheritance disputes in order to protect farms from excessive settlement and compensation claims which would threaten their survival.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Given the regulatory purpose of farm estate inheritance law, which is to ensure the intergenerational preservation of farms, the aforementioned special rules must be applied to domestic agricultural property regardless of which laws apply to the deceased's succession.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

Under the Rules of Procedure for farm matters (*Verfahrensordnung für Höfesachen* – HöfeVfO), German law allows the Agricultural Court (*Landwirtschaftsgericht*) to carry out certain verification procedures, e.g. to determine whether testamentary dispositions or farm transfer agreements infringe the law on entailed succession of farm estates.

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## Restrictions on successions – special rules - Estonia

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

Section 4 of the Law of Succession Act provides that succession is transferred to the heir when the succession is opened. This means that, as a rule, all rights and obligations are transferred to the heir. The only exceptions are those rights and obligations which by their nature are intrinsically linked to the person of the bequestor or which pursuant to law do not transfer from one person to another (section 130(1) of the Law of Succession Act).

On the grounds of public interest, certain types of rights in rem are restricted under the Restrictions on Acquisition of Immovables Act; however, this does not apply to the acquisition of immovables through succession (section 2(1)(6) of the Act).

Restrictions may apply to participation in certain types of company ownership. For example under the Bar Association Act, only barristers may be shareholders in a company of barristers (section 54(1) of the Bar Association Act). If the successor is not a barrister, he or she will be compensated for the value of their share.

The articles of association of a private limited company may also contain a restriction that shares are not transferred to the successor; in such case the successor must also be compensated for the value of their share (Section 153 of the Commercial Code).

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

The application of special rules is not dependent on the law applicable to the succession.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

No special procedures exist.

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## Restrictions on successions – special rules - Greece

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

Greek law contains certain special rules imposing restrictions on the inheritance of assets located in Greece for economic, family or social considerations. Such special rules have been laid down in relation to:

A) monks' estates (see Articles 4, 18 and 19 of Law 3414/1909 on the General Ecclesiastical Fund and the Management of Monasteries, retained in effect by Article 99 of the Law introducing the Hellenic Civil Code, Article 7(2) and Article 25 of Law 4684/1930, Article 1 of Law 1918/1942 and Article I of Law 2067/1952). In particular, those provisions state that, by operation of law, a monk's estate passes to the monastery where he is interred and in whose registers he is entered, after the reserved share of the estate for his heirs has been deducted. Bequests, donations and inheritances which devolve to the monk after he

enters the monastery belong to the monastery and the monk retains only a 50 % right of usufruct over the assets which devolved to the monastery, whereas assets acquired by the monk after taking his vows on other non-gratuitous grounds devolve to him in person and he can dispose of them, but may not do so via gratuitous transactions. If he does not dispose of them, after his death, 50 % of those assets devolve to the Ecclesiastical Central Financial Service and 50 % to the monastery. Note that there are even more specific rules for monks on Mt. Athos (see Article 101 of the Mt. Athos Charter, which was retained in effect by Article 99 of the Law introducing the Hellenic Civil Code). If the said monks acquire assets after vows are taken, those assets devolve to the monastery no matter when the monks die, and any disposition of the assets in a will is invalid, as is the will itself.

B) Assets disposed of by inheritance, bequest or donation to the Greek State or a body governed by public law or for public benefit purposes (see Law 4182 /2013 on public benefit estates, vacant succession and other provisions). The Minister of Finance can either affirm or disaffirm inheritance of the assets, unless it is an inheritance which passed to the State from an intestate person in which case the inheritance cannot be disaffirmed. Moreover, the State is deemed to accept such estates, at all times, subject to the benefit of inventory, which is to say, it is liable for the debts of the inherited estate only up to the level of the estate's assets.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Those special rules apply to the succession, irrespective of the law governing it.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

As far as the special rules in point (B) are concerned, Law 4182/2013 states, inter alia, that when the will is granted probate or a will granted probate abroad, which contains a disposition in favour of a public benefit purpose or in favour of the State or a body governed by public law, is filed, the court clerk and/or the consular authority at the place where the will is granted probate or filed, and the Athens Court of First Instance clerk to whom the will is sent, are obliged to send a copy of the probate proceedings to the relevant Directorate of the Ministry of Finance within the first 10 days of the following month. That law also states that assets which are left for public benefit purposes are to be used in the manner specified by the testator or donor, and it is prohibited to change the public benefit objectives and the manner and terms relating to management of the estate, and the provisions on how it is to be administered. If there are any doubts about what the testator or donor intended, or any challenges on those matters, the matter is to be resolved by the competent court. That same Law also established a Public Benefit Estates Registry (National Endowments Registry) in which all such estates must be recorded.

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## Restrictions on successions – special rules - Spain

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

a) In order to keep property in the same branch of the family when it is inherited by an ascendant, the law stipulates that this property must be reserved for relatives of the same line (Article 811 of the Spanish Civil Code [*Código Civil*]) and the widowed spouse must reserve any property inherited from his/her deceased spouse if he/she remarries or has another child (Article 968 of the Civil Code). Ascendants inherit before any other party any property gifted to their children or descendants who died without issue (Article 812 of the Civil Code).

b) Property located within the province of Vizcaya can only be passed on to certain relatives (Article 17 of Law 3/1992), a right that is conferred on all of Vizcaya's inhabitants (Article 23 of Law 3/1992).

c) In order to prevent businesses being broken up, either for economic reasons or in the interests of the family, the testator may provide for payment the other heirs for his/her share, including deferred payment, even if there is not enough cash in the inheritance (paragraph two of Article 1056 of the Civil Code).

d) A corporation (*sociedad de capital*) may, in its articles of association, restrict the transferability of shares, including upon death of the holder. If such a restriction exists, the corporation must put forward a person to buy the shares awarded to the heir or buy the shares itself (Article 124 of the Spanish Royal Legislative Decree 1/2010 on corporations, [*Ley de sociedades de capital*]).

e) For economic reasons, a minimum surface area has been laid down for rural properties to stop them being divided up between the heirs (Articles 23 et seq. of Law 15/1995 on the modernisation of agricultural holdings).

f) For social reasons, State and Autonomous Community legislation has laid down limits on the transfer of social housing.

g) The legislation on rural and urban leases permits specified successors of the tenant to acquire the lease rights by subrogation (Article 24 of Law 49/2003 on rural leases, Articles 16 and 33 of Law 29/1994 on urban leases).

h) The acquisition of rights on property located in zones which have declared that they restrict foreign national ownership is subject to military authorisation on the grounds of national security or state sovereignty (Articles 4, 16 and 18 of Law 8/1975 of 12 March 1975 on zones and installations of interest to national security and Article 46 of Royal Decree 689/1978 of 10 February 1978).

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Paragraphs b), e), f), g) and h) apply to property located in Spain irrespective of the law governing succession; paragraph d) applies if the company is governed by Spanish law.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

The notary documenting the transfer and the property registrar in charge of registering it check whether a transfer is lawful. A court order may of course also be requested.

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## Restrictions on successions – special rules - Croatia

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

There are no special rules in Croatian regulations that impose, for economic, family, or social reasons, restrictions relating to or affecting the inheritance of immovable property, certain companies, or other special categories of property contained therein.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Please see previous answer.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

Please see previous answer.

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## Restrictions on successions – special rules - Cyprus

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

There are no such special rules in Cyprus. However, there are provisions in the law protecting lawful heirs, which prohibit the so-called “reserved share” of the estate being disposed of in a will.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

See the answer above.

As for immovable property, the rules in the Wills and Succession Law, Cap. 195, as amended, apply.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

There are no special compliance procedures. The compliance procedures are the same as in all cases.

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## Restrictions on successions – special rules - Luxembourg

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

Yes, such restrictions exist under Luxembourg law. This is forced heirship, as defined in the Civil Code (*Code civil*). However, it is worth noting that these provisions do not impose restrictions on certain types of property or specific enterprises within the meaning of the question, or on the special categories of assets referred to in the question. Forced heirship imposes restrictions on a legal part of the estate, irrespective of the nature of the property included within that portion.

Article 913 of the Civil Code defines the principles according to which bequests in wills cannot exceed half of the testator’s assets if the latter is survived by one child, one-third if he/she is survived by two children, and one-quarter if he/she is survived by three or more children. Under Article 916 of the Civil Code, where there are no descendants, bequests in wills or lifetime gifts through deeds can concern all the assets.

For the sake of completeness, although these restrictions do not stem from the law on successions, the amended Law of 18 July 1983 on the conservation and protection of national sites and monuments (*loi modifiée du 18 juillet 1983 concernant la conservation et la protection des sites et monuments nationaux*) should be mentioned. Immovable property that has been listed in accordance with the provisions of said Law is subject to certain restrictions, irrespective of whether it is covered by a future or open succession. Thus, for example, Article 10, first paragraph, first sentence, of said Law provides that a listed immovable property cannot be destroyed or moved, its use cannot be changed, and it cannot undergo any restoration, repair or alteration work without the competent minister having given authorisation. Furthermore, Article 15, first paragraph, of the same Law states that no new structure can be joined to a listed immovable property without special authorisation from the minister.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Expert opinion is divided as to whether forced heirship of an estate falls within international public policy and must therefore be upheld irrespective of the law applicable to the succession.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

Yes, with regard to the forced heirship. If the attributions, whether lifetime gifts or bequests upon death, exceed the available portion, they may be reduced to that portion when the succession is opened. Article 920 *et seq.* of the Civil Code lays down the procedure for reducing donations and bequests that is applicable in this type of situation.

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## Restrictions on successions – special rules - Hungary

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

**1) Agricultural and forestry lands**

*1.1 In general*

Under Hungarian law, strict rules govern the acquisition of ownership over agricultural and forestry lands. These restrictions also affect acquisition by way of succession, whether by Hungarian nationals, the nationals of other Member States, or other foreigners. The restrictive provisions are included in the following two acts:

- Act CXXII of 2013 on transactions in agricultural and forestry land (*a mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény*) (Land Transactions Act) and
- Act CCXII of 2013 laying down various provisions and transitional measures concerning Act CXXII of 2013 on transactions in agricultural and forestry land (*a mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról szóló 2013. évi CCXII. törvény*) (2013 Act on Transitional Measures).

The rules are very complex; the main provisions relevant in terms of succession may be summarised as follows.

*1.2 Immovable property falling under the material scope of the restrictions*

The legal restrictions concern the acquisition of *'agricultural and forestry land'*. According to Section 5(17) of the Land Transactions Act the term 'agricultural and forestry land' (agricultural land) includes the following:

- all parcels of land which are registered for one of the following uses in the register of immovable property: cropland, vines, orchard, garden, meadow, pasture (grassland), reed, forest and woodland (irrespective of whether the land is located within an urban or peripheral zone); and
- parcels of land registered as taken out of cultivation and which are entered in the register of immovable property as: 'area registered as forest in the National Forestry Database'.

*1.3 Restrictions affecting the acquisition of ownership by succession*

The Land Transactions Act treats intestate succession and testamentary succession differently with regard to the acquisition of the ownership of agricultural land. The restrictions described in the Act apply only to acquisitions by testamentary succession and do not apply to the acquisition of agricultural land by intestate succession.

Within the meaning of Section 8(1) of the 2013 Act on Transitional Measures, a case where a testamentary heir may become an heir by operation of law – in the absence of a will and provided that other heirs are debarred from succession – is also deemed an acquisition of ownership by intestate succession for the purposes of the application of the restrictions concerning the acquisition of ownership.

*1.3.1 Rules concerning the acquisition of ownership by testamentary succession*

*a) an authorisation from the public authority is required*

If the testator has disposed of the ownership of agricultural land in a will, in order for the heir entitled under the will to obtain its ownership, approval by a public authority (agricultural administrative body) in the form of an authorisation is necessary (Section 34 of the Land Transactions Act). In the course of the approval procedure the agricultural administrative body ascertains

- whether the heir is eligible to acquire and
- that the will would not result in the infringement or circumvention of a restriction on the acquisition of ownership.

*b) restrictions concerning the acquisition of agricultural land*

The Land Transactions Act treats individual categories of legal entities differently in terms of eligibility to acquire agricultural land. The following categories of persons should be distinguished in this respect:

*i) legal entities which may not acquire ownership over agricultural land under any circumstance*

These include

- foreign natural persons (citizens of Member States are not included under this definition);
- foreign States (or their provinces, local governments, or any of their bodies);
- domestic or foreign legal persons (with a few exceptions).

Exception: the prohibition of legal persons from acquiring agricultural land through a disposition of property upon death does not apply to established churches (or to their organisations, institutions or units having legal personality according to the church's internal ecclesiastical rules).

*ii) persons falling under the definition of 'farmer'*

The term 'farmer' is defined under Section 5(7) of the Land Transactions Act. Natural persons of Hungarian nationality or the nationality of another Member State who have been registered by the competent authorities in an official register kept for this purpose fall under this definition. Preconditions specified by law must be met in order to be registered (agricultural or forestry specialist qualifications; certified agricultural or forestry activities and revenue from such activities, etc.).

For this category of persons the upper limit of the dimensions of agricultural land which may be owned by any one of them – the *'upper limit of land acquisition'* – is 300 hectares; this has to include the area of land already owned by the person concerned and the area of land over which he or she already exercises usufruct rights (Section 16(1) of the Land Transactions Act).

*iii) natural persons who are not 'farmers', but who are nationals of Hungary or another Member State*

Persons in this category may acquire the ownership of agricultural land, if the area of the agricultural land in their possession – together with the area of the agricultural land they wish to acquire – does not exceed 1 hectare (Section 10(2) of the Land Transactions Act).

Exception: the above-mentioned restriction does not apply to acquisitions between close relatives. However, the upper limit of land acquisition of 300 hectares also applies in such cases (Sections 10(3) and 16(1) of the Land Transactions Act).

For the purposes of the above provisions, the following persons are covered by the definition of *'national of a Member State'* (Section 5(24) of the Land Transactions Act):

- a national of a Member State (other than Hungary) of the European Union;
- a national of a State party to the Agreement on the European Economic Area;
- a national of another State who is treated in the same way as the above persons on the basis of an international treaty.

*1.3.2 Acquisition of ownership by intestate succession*

The restrictions described above (point 1.3.1) do not apply to acquisitions of agricultural land by intestate succession. Thus, a person who would be barred from acquiring the ownership of Hungarian agricultural land by testamentary succession (or through an acquisition between living persons) (for example someone who is not a national of a Member State) could acquire such ownership by intestate succession.

**2) Firearms and ammunition**

*2.1 In general*

Under Hungarian law firearms and ammunition may only be obtained with a firearms licence. The following legislation comprises the provisions on the possession of firearms:

- Act XXIV of 2004 on firearms and ammunition (*a lőfegyverekről és lőszerekről szóló 2004. évi XXIV. törvény*) (Firearms Act),
- Government Decree No 253/2004 of 31 August 2004 on weapons and ammunition (*a fegyverekről és lőszerekről szóló 253/2004. Korm. rendelet*) (Weapons Government Decree),
- Decree No 49/2004 of 31 August 2004 of the Minister for the Interior on shooting ranges, the storage of firearms and ammunition by public authorities and the theoretical knowledge and skills required to possess firearms (*a lőterekről, a lőfegyverek, lőszerek hatósági tárolásáról, a fegyvertartáshoz szükséges elméleti és jártassági követelményekről szóló 49/2004. BM rendelet*),
- Instruction No 2/2016 of 7 January 2016 of the Chief Commissioner of the National Police on the rules for storage by public authorities, sale, alienation, disposal, surrender without consideration and destruction of firearms (*a lőfegyverek hatósági tárolásának, értékesítésének, elidegenítésének, hatástalanításának, érték nélküli leadásának, megsemmisítésének szabályairól szóló 2/2006. ORFK utasítás*).

*2.2 Asset falling under the material scope of the restrictions*

The statutory restrictions concern the acquisition of *'firearms and ammunition'*. Within the meaning of Section 2(16) and (22) of the Firearms Act

- *firearm*: means any portable gun or airgun from which a projectile of solid material may be fired with a muzzle energy exceeding 7.5 Joules;

- *ammunition*: means any cartridge which is made up of a projectile, gunpowder and a primer and is pre-assembled in a single case.

*2.3 Restrictions affecting the succession of weapons*

According to Section 14(1) and (2) of Decree No 49/2004 of 31 August 2004 of the Minister for the Interior, when a licence holder dies, the heir may request – after the *grant of probate has become final* – the firearm and/or ammunition to be

- sold by a firearms dealer,
- alienated to a person or organisation that holds an authorisation for its acquisition,
- disposed of, destroyed or
- surrendered without consideration.

If the heir fails to make use of the options described above, the police may destroy the stored firearm and/or ammunition or may hand them over to a firearms dealer for sale following a trade expert's appraisal. The amount from the sale of the weapon and/or ammunition must be paid to the owner, after any costs incurred have been deducted.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Yes (in respect of each of the above mentioned assets).

With regard to agricultural and forestry lands (agricultural lands), the preamble of the Act itself (Land Transactions Act) lists economic, family policy and social considerations (such as the ability of villages to maintain their populations, improving the age structure of their local populations, improving rural employment, ensuring the stable operation of small farms, etc.) which clearly demonstrate the legislator's intention that the restrictions laid down in the Land Transactions Act should be applied in each case, irrespective of which State's law is the law governing the succession.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

**1) Agricultural and forestry lands**

Yes.

If the notary public conducting probate proceedings becomes aware during the proceedings that the estate includes agricultural or forestry lands (agricultural lands), and the testator has disposed of such land in his or her will, he or she will send the will to the agricultural administrative body with jurisdiction according to the land's location. The latter body has the competence to grant official approval to acquire the ownership of the agricultural land (Section 34 of the Land Transactions Act). In such cases the notary public suspends the probate proceedings until the agricultural administrative body has taken a decision (Section 71(2)(*d*) of Act XXXVIII of 2010 on probate proceedings).

In the course of the approval procedure the agricultural administrative body ascertains

- whether the heir is eligible to acquire and
- that the will would not result in the infringement or circumvention of a restriction on the acquisition of ownership.

The agricultural administrative body communicates its decision on the subject of approval to the notary public as well. If the agricultural administrative body refuses to grant the heir approval to acquire ownership of the land, this provision of the will must be considered invalid (Section 34 of the Land Transactions Act). In such a case the provision of the will in question is thus legally void, which must be taken into account by the notary public, and the transfer of the part of the estate concerned (the agricultural land in question) to the heir entitled under a will cannot be established (Section 71(6) of Act XXXVIII of 2010 on probate proceedings).

The duties of the agricultural administrative body are carried out by the county government offices.

**2) Firearms and ammunition**

Yes.

According to Section 13 of Decree No 49/2004 of 31 August 2004 of the Minister for the Interior, if a person who has a firearms licence dies, any firearms and ammunition must immediately be notified to the police by the person in possession of them, who must also ensure their safekeeping until the police arrive. The police take over and store the notified firearms and ammunition and draw up a record of their actions.

According to Chapter III of Instruction No 2/2016 of 7 January 2016 of the Chief Commissioner of the National Police, after the police have taken over the firearms and ammunition, they will

- inform in writing the official of the deceased licence-holder's local government who drew up the inventory of the estate (inventory official) that the firearms and ammunition are in public authority storage,
- simultaneously request that the firearms and ammunition be listed in the inventory of the estate,
- and request information regarding which notary public will conduct the probate proceeding.

The police will inform the notary public conducting the probate proceeding in writing of where the firearms and ammunition are located and request the final grant of probate to be forwarded to them after the probate proceeding has been closed.

The notary public accordingly forwards the grant of probate issued following the closure of the probate proceeding to the police. On the basis of the grant of probate, the police informs the heir that within 180 days he or she may request the firearms and ammunition to be sold by a firearms dealer or to be alienated to a person or organisation holding an authorisation to acquire them, or may initiate the disposal, destruction or surrender without consideration of the firearms and ammunition.

If the heir fails to make use of the options described above within the set deadline, the police may destroy the stored firearms and ammunition or may hand them over to a firearms dealer for sale following a trade expert's appraisal. The amount from the sale of the weapons and ammunition must be paid to the owner, after any costs incurred have been deducted (Sections 13 and 14 of Decree No 49/2004 of 31 August 2004 of the Minister for the Interior).

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## Restrictions on successions – special rules - Netherlands

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

In the Netherlands there are no special assets as indicated in Article 30 of the European Succession Regulation. However, not all assets are freely negotiable and transferable.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Not applicable in the Netherlands.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

Not applicable in the Netherlands.

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## Restrictions on successions – special rules - Austria

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

The real estate transaction laws (*Grundverkehrsgesetze*) of the provinces can provide for restrictions in application of the agreement between the Federal Government and the provinces under Article 15a of the Federal Constitutional Law (*Bundesverfassungsgesetz*) on civil law provisions relating to building plot transactions (Federal Gazette No 260/1993 as amended by Federal Gazette I No 1/2017, available here).

In accordance with Section 14 of the 2002 Residential Property Act (*Wohnungseigentumsgesetz*), if one of the partners in an 'owner partnership' (*Eigentümerpartnerschaft*) dies, a special rule applies: ownership of the deceased's part of the minimum share and joint residential property is transferred by law directly to the surviving partner. However, the latter can waive his/her right to this transfer of ownership (Federal Gazette I No 70/2002 as amended by Federal Gazette I No 87/2015, available here).

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

The aforementioned provision in Section 14 of the 2002 Residential Property Act on joint ownership with a right of survivorship is covered by the exceptions set out in Article 1(2)(g) of the EU Succession Regulation.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

In order to ensure compliance with the provisions set out in Section 14 of the 2002 Residential Property Act, paragraph (7) thereof states that if an estate is settled abroad, the duties and powers generally assigned to the (Austrian) Probate Court (*Verlassenschaftsgericht*) will be assigned to the competent Austrian Land Register Court (*Grundbuchsgericht*).

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## Restrictions on successions – special rules - Poland

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

No.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Under Article 7 of the Act of 4 February 2011 – Private International Law (Journal of Laws 2015, item 1792), foreign law is not to apply where the effects of its application would be contrary to the fundamental principles of the legal system of the Republic of Poland.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

No.

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Aan de vertaling in het Nederlands wordt momenteel gewerkt.

## Restrictions on successions – special rules - Portugal

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

Yes, there are rules that impose restrictions on or affect succession in respect of certain assets.

IN THE CIVIL CODE

Articles 1476(1)(a) and 1485 of the Civil Code (*Código Civil*) stipulate that usufruct and the right in rem of use and habitation are rights in rem that are extinguished by the death of their holder, by force of law.

Articles 2103-A and 2103-B of the Civil Code provide for a legal legacy: the surviving spouse has priority, at the time of partition, as regards the right to habitation of the family home and the right to use its contents, subject to certain conditions laid down in the Code.

The updated version of the Civil Code can be consulted in Portuguese at:

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=775&tabela=leis&so_miolo=&

IN THE COMPANIES CODE

Article 184 of the Companies Code (*Código das Sociedades Comerciais*) provides that, if a partner of an ordinary partnership dies, unless the articles of association stipulate otherwise, the remaining partners or the company must settle the respective value with the successor to whom the rights of the deceased accrue, unless they choose to dissolve the company and notify this to the successor within 90 days of the date on which they became aware of the partner's death. Surviving partners may, however, continue the company with the successor of the deceased, provided the successor gives their express consent.

Article 225 of the Companies Code states that a private limited company agreement may establish that if a partner dies, their share may not be transferred to the deceased's successors, and may also make the transfer subject to certain requirements.

If, owing to such an agreement, the share is not transferred to the successors of the deceased partner, the company must amortise it, acquire it or have it acquired by a partner or third party; if none of these measures is carried out within 90 days after any of the directors become aware of the partner's death, the share will be considered transferred.

Under Articles 469 and 475 of the Companies Code, the same system applies in the event of the death of a partner of a limited partnership.

Under Article 252(4) of the Companies Code, management of a private limited company may not be subject to succession by virtue of death, even in conjunction with a share.
The updated version of the Companies Code can be consulted in Portuguese at:
http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=524&tabela=leis&so_miolo=&
THE LEGAL FRAMEWORK FOR WEAPONS AND AMMUNITION
Article 37 of the legal framework on weapons and ammunition (*Regime Jurídico das Armas e Munições*), approved by Law No 5/2006 of 23 February 2006, provides that the acquisition by succession *mortis causa* of any declared weapon is only permitted by authorisation of the national director of the PSP ( *Polícia de Segurança Publica* (police force)), which can be obtained pursuant to the aforesaid legal provision.
The legal framework on weapons and ammunition, approved by Law No 5/2006 of 23 February 2006, can be consulted in Portuguese at:
http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=692&tabela=leis&so_miolo=

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

The answer is yes in the event of extinction due to death of the usufruct and of the right in rem of use and habitation, as well as of the rules set out in the Companies Code and in the legal framework on weapons and ammunition, referred to above.
This conclusion also derives from the provisions of Article 1(2)(h), (k) and (l) of Regulation No 650/2012.
The answer is no in the case of the legal legacy provided for in Articles 2103-A and 2103-B of the Civil Code.
However, the above answer does not prejudice different interpretations by the Courts.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

In the case of the opening of a succession, there are rules in the Civil Code that confer powers of administration of the inheritance and that can ensure compliance with the special rules referred to above.
The procedures and precepts of the Civil Code are as follows:
When the inheritance is still in abeyance – in other words, opened but not yet accepted or declared unclaimed for the State – the successors in title (Article 2047) or executor of the inheritance in abeyance (Article 2048) may arrange for the administration of the assets if a delay in such measures could be detrimental;
After the acceptance of the inheritance, the administration of the inheritance falls to the estate administrator (Article 2079 and 2087);
The estate administrator may ask the heirs or third parties to hand over the assets to be administrated, and use repossession or eviction actions against them to uphold or secure recovery of possession of the items subject to their management (Article 2088);
The estate administrator may collect inheritance debts receivable when recovery could be jeopardised by delay or when the payment is made voluntarily (Article 2089);
In addition, the heir may bring an inheritance claim to seek judicial recognition of their capacity as successor and the recovery of all of their inheritance assets, or part thereof, against those who possess them as an heir or by another title, or even without title (Article 2075).

**N.B.**

The information contained in this factsheet is not exhaustive or binding on the Contact Point, the Courts or other entities and authorities. Although they undergo regular updates, the factsheets may not contain all revisions made to the law, and are therefore no substitute for consulting the legal texts in force at any time.

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## Restrictions on successions – special rules - Romania

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

Yes.
Romanian law sets out special provisions concerning acquisition of the right of ownership of land situated in Romania.
For instance, the Romanian Constitution and the relevant legal rules provide that foreigners and stateless persons may acquire the right of private ownership of land only under the conditions arising from the accession of Romania to the European Union and from other international treaties to which Romania is party, on a reciprocal basis and under the conditions laid down by law, or through legal inheritance. Such persons cannot acquire the right of ownership of land by testamentary inheritance.
Furthermore, there are special regulatory provisions governing certain categories of goods. These apply irrespective of the beneficiary's citizenship or of whether the inheritance is legal or testamentary. For example, copyright is transmitted by inheritance under civil legislation for a period of 70 years, regardless of the date on which the work was legally published.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Yes.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

Explicit legal provision has been made for the prohibition.

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## Restrictions on successions – special rules - Slovenia

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

The Denationalization Act *(Zakon o denacionalizaciji)* lays down special rules concerning **succession in respect of privatised assets**.
These rules are applied in the event of a probate proceeding where the assets that are the subject of privatisation were not discussed, and no decisions have yet been taken. In that situation, the court may, at the request of a "legal successor", carry out a special, new probate proceeding concerning the privatised assets. The decision on privatisation is drawn up in the name of the individual who was the owner of the assets at the time of nationalisation.

There are special rules concerning the inheritance of the **assets of a company**. The rules relate to the transfer of assets that a deceased sole trader has been using to pursue a gainful activity or the transfer of the participating interest/shares from participation (membership) in a partnership or capital company to a legal successor or legal successors. The Inheritance Act *(Zakon o dedovanju)* does not contain any specific provision dealing with this. Under the Inheritance Act, at the moment of the death of the testator, a community of co-heirs is formed until the division of the inheritance, which means that the company is also jointly managed by the heirs. Where the inherited estate is the company, several situations might arise: if the successor of the company was appointed in the will, but does not wish to continue the company, a different solution must be accepted by all heirs. If the testator wrote a will without specifying the successor or has left no will, the heirs must agree on the continuation of the business. They may decide that none of them will continue the business as a sole trader, as a result of which the business ceases trading or is sold. Alternatively, they may decide that one of the heirs, as a sole trader, will continue the business or that some or all heirs will continue it. In the latter case, they transform the business into one of the types of company.

A general partnership ceases to exist with the death of one partner unless the partnership agreement provides otherwise. The participating interest of the deceased in a limited liability company may be inherited. If there are multiple heirs, the participating interest becomes the joint property of the community of heirs. They must manage the inheritance jointly until their respective shares are determined. When partitioning the inheritance, two situations are possible: the participating interest remains in the community of heirs, who agree to have equal or unequal parts of the participating interest, or the participating interest is divided by agreement unless otherwise provided in the memorandum of association. If the participating interest is divided, new participating interests are formed from the previous one.

Shares in a joint-stock company may be inherited. If there are multiple heirs, the participating interest becomes the joint property of the co-heirs. They manage and dispose of the participating interest/shares within the community of heirs.

There are special rules governing the inheritance of agricultural holdings, laid down in the **Inheritance of Agricultural Holdings Act** *(Zakon o dedovanju kmetijskih gospodarstev)*.

The overarching principle of these rules is to prevent farms from being divided up in the event of succession. Further provisions of the Act follow from that principle. As a rule, only one heir may be awarded ownership of the farm but must meet additional conditions. If the testator had full ownership of a protected farm, the farm is inherited by the heir that has the intention to work on the farm and was mutually chosen by all heirs. If the heirs cannot reach an agreement, the heir who has proved his/her intention to work on the farm, e.g. by completing training in the field of farming or by being trained in this field, takes precedence over all other heirs. Under the same conditions, the spouse of the deceased takes precedence over the descendants of the testator. If the protected farm was the joint property of the testator and his surviving spouse or the specific property of one of them or if the spouses were co-owners of the tangible farm property, the heir of the farm is the surviving spouse of the testator. If the protected farm was owned by one of the parents and his/her descendant or by the adopter and his/her adopted child, the heir is the descendant or the adopted child. The statutory participating interests of those persons who did not inherit the farm are considered to be reserved shares. In addition, the heir of a protected farm must be able to take over the farm under conditions that do not impose an excessive burden on him/her.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

The inheritance of a protected farm is a case where the law of the country in which certain special categories of assets are located contains special rules laying down restrictions concerning or affecting the succession in respect of those assets. Therefore, in cases where a protected farm located in Slovenia forms part of the estate, national, Slovenian law applies, regardless of the law applicable to the succession (the Inheritance of Agricultural Holdings Act).

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

The Inheritance of Agricultural Holdings Act contains provisions that are not in the Inheritance Act or differ from those provisions. In the absence of more specific provisions in the Inheritance of Agricultural Holdings Act covering issues of inheritance of protected farms, general rules on succession, i.e. the provisions of the Inheritance Act, apply.

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## Restrictions on successions – special rules - Slovakia

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

Yes, there are special categories of assets to which a special regime applies, in accordance with Article 30 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. Slovakia has notified the Commission of these categories of assets and of the legislation in force at the time of notification. This document sets out the regulations currently in force.

The provisions on special regimes are structured according to the category of assets that are subject to succession:

**A – agricultural and forest land:**

**Section 23 of Act No 180/1995 on certain measures for the settlement of ownership rights to land, as amended**

(1) Unless this Act provides otherwise, a legal act or court ruling on the settlement of coownership or a court **ruling on succession cannot, by dividing up the existing land listed in Section 21(1), result in a plot of agricultural land smaller than 2 000 m2 or a plot of forest land smaller than 5 000 m2.**

(2) It the beneficiaries do not settle the succession of the land listed in Section 21(1) in accordance with the conditions set out in subsection (1), or if in consequence of these conditions the court cannot confirm the share of the estate for each beneficiary, the court shall rule that the land will go to the beneficiaries best placed to manage it. The court shall also rule on this beneficiary's duty to settle with the other beneficiaries.

(4) The beneficiaries must make the statement referred to in subsection (3) in writing, and cannot retract it.

(6) The limitation period for beneficiaries claims' arising from the settlement of succession in accordance with subsections (2) and (3) is ten years. To secure such claims, on the registration of the debtor's title a lien is established on this land for the creditor; any statutory priority of a more senior lien does not apply. The creditor has the right of first refusal to the land covered by the lien.

(7) If the court decided on settlement for co-owners, the conditions set out in subsections (2) to (5) also apply to their settlement.

**B – land associations:**

**Section 8 of Act No 97/2013 on land associations, as amended**

(1) For the purposes of this Act, common immovable property refers to a single immovable item comprising several separate plots. **Common immovable property is indivisible** other than in the cases set out in subsection (2) (note: the subsection does not include succession, so no exemption applies). The joint tenancy of common immovable property cannot be dissolved and settled under the general provisions on dissolving and settling co-ownership (under the Civil Code).

**C – tenancy of a flat and passage of a member's share in a housing cooperative:**

**Sections 706-707 of Act No 40/1964 of the Civil Code (*Občiansky zákonník*)**

**The passage of tenancy is not subject to succession, so on request the notary only issues a confirmation of the beneficiaries concerned for the purposes of Section 706 of the Civil Code. However, a member's share is an asset and is therefore subject to succession in accordance with the beneficiaries' titles**.

**Section 706 of the Civil Code**:

(1) If the tenant dies and the flat is not a co-tenancy with the spouse, the deceased's children, grandchildren, parents, siblings, son-in-law and daughter-in-law who were sharing the household with the deceased on the day he or she died, and do not have their own flats, become the tenants (co-tenants). Persons who took care of the deceased tenant's shared household or were dependent on the deceased tenant also become tenants (co-tenants) provided they shared the household with the deceased for at least three years before he or she died and do not have their own flats.

(2) …

(3) If the tenant of a housing cooperative flat dies and the flat is not a co-tenancy with the spouse, **on the death of the tenant his or her membership of the cooperative and lease of the flat pass to the beneficiary who inherited the membership share.**

**Section 707 of the Civil Code**:

(1) If one of the spouses who were co-tenants in a flat dies, the surviving spouse becomes the sole tenant.

(2) If this is a cooperative flat, the spouses' co-tenancy of the flat lapses on the death of one of the spouses. If the title to the cooperative flat was acquired during the marriage, **the surviving spouse remains a member of the cooperative and owns the membership share; the court takes this into account in succession proceedings**. If a spouse who had acquired the title to the cooperative flat before marriage dies, **on the death of the spouse his or her membership of the cooperative and tenancy of the cooperative flat pass to the beneficiary who inherited the membership share**. If there are multiple tenancies, the deceased's membership can pass to multiple beneficiaries.

(3) If one of the co-tenants dies, his or her title passes to the other co-tenants.

**D – ownership interest in a private limited company:**

**Sections 116–117 of Act No 513/1991, as amended – if the deceased died after 1 January 1992**

Section 116 of the Commercial Code (*Obchodný zákonník*):

(1) …

(2) An ownership interest is inheritable. **If this is not a company with a sole member, the memorandum of association can exclude the succession of an ownership interest**. A beneficiary who is not the sole member can seek the revocation of his or her participation if the beneficiary cannot be required in fairness to be a member …

Section 117 of the Commercial Code:

(1) The division of an ownership interest is only possible in its assignment or transfer to the member's beneficiary or legal successor. The general meeting's approval is required for the division of an ownership interest.

(2) The memorandum of association can exclude the division of an ownership interest.

(3) In the division of an ownership interest, the amount of the investment set out in Section 109(1) must be maintained (the value of a member's investment must be at least EUR 750).

**E – the deceased's wage:**

**Section 35 of Act No 311/2001, the Labour Code (*Zákonník práce*), as amended**

Unless separate legislation provides otherwise, an employee's financial entitlements do not lapse on his or her death. The employee's wage entitlements from employment, up to four times the employee's average monthly earnings, pass directly to the employee's spouse, children and parents if they lived in the employee's household at the time of death. **If there are no such persons, the wage entitlements become subject to succession.**

**F – pensions:**

**(1) Section 21 of Act No 650/2004 on supplementary pension schemes, as amended**

The current value of the personal account of a participant who is a recipient of a temporary supplementary old-age pension or a temporary supplementary service pension, **is subject to succession if in the pension contract the deceased participant who is a recipient of a temporary supplementary old-age pension or a temporary supplementary service pension did not name another natural or legal person as the beneficiary to whom the current value of the personal account should be paid.**

**(2) Sections 40–40a of Act No 43/2004 on old-age pension schemes, as amended**

**Section 40**

(1) On the death of a contributor to an old-age pension scheme, the beneficiary who the contributor named in the pension contract is entitled to the payment of an amount corresponding to the current value of the deceased's personal pension account on the day the pensions company learnt of the contributor's death, less the mandatory contributions that were requested by the Social Insurance Agency (*Sociálna poisťovňa*) and unduly transferred on behalf of the deceased, and less the costs the pensions company has reasonably incurred for paying out this amount in cash or transferring it to a country other than a member of the eurozone, and plus the mandatory contributions that the Social Insurance Agency has yet to transfer. **If the contributor did not name any beneficiary in the pension contract, or if there is no beneficiary, these assets become subject to succession.**

(2) The beneficiary is not entitled to the payment of the amount under subsection (1) if a court has found in a final ruling that such person intentionally caused the contributor's death.

**Section 40a**

(1) On the death of a recipient of a lifetime pension, the beneficiary who the recipient named in the pension insurance contract is entitled to the payment of an amount under Section 32(2) or a lump-sum benefit under Section 46g(5) as at the day the insurer leant of the recipient's death. If the recipient **did not name any beneficiary in the pension insurance contract, or if there is no beneficiary, the amount defined in the first sentence becomes subject to succession.**

(2) The beneficiary referred to in subsection (1) is not entitled to the payment of the amount under Section 32(2) or a lump-sum benefit payment under Section 46g(5) if a court has found in a final ruling that such person intentionally caused the recipient's death.

**Section 118 of Act No 461/2003 on social security, as amended**

(1) If a natural person who satisfied the conditions for entitlement to a benefit died after claiming the entitlement to the benefit and the entitlement to its payment, this person's entitlements to the amounts due on the day he or she died pass, successively, to the spouse, children and parents.

(2) If a natural person who satisfied the conditions for entitlement to sickness benefits, an injury allowance, a rehabilitation allowance, a retraining allowance, a guarantee insurance benefit or unemployment benefit, but died before claiming the entitlement to these benefits, this person's entitlements to the amounts due on the day he or she died pass, successively, to the spouse, children and parents.
(3) If a benefit was awarded before the death of a natural person who satisfied the conditions for entitlement to the benefit and entitlement to its payment, the amounts due that had not been be paid as at the day this person died are paid to the natural persons listed in subsection (1) (first sentence).
(4) The entitlements passing to the natural persons listed in subsections (1) to (3) are not subject to succession; **they become subject to succession if there are no such natural persons.**
(5) If there are no natural persons who would become entitled to benefits under subsections (1) to (4), these benefits are other income for the source fund from which they were to have been paid.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Yes. Either it is the deceased's right to specify the persons who will acquire the assets after his or death instead of the legal beneficiaries (e.g. a supplementary pension contract), or this concerns a certain category of assets where the law specifies how it should be disposed of after the deceased had died (e.g. measures for the settlement of ownership rights to land, social security benefits).

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

For immovable property, if succession proceedings ignore the regulations set out in the first question, the authority responsible for maintaining the land registry does not record a newly-acquired property title in the land registry.
In succession proceedings held in Slovakia, the regulations set out in the first question are applied, on the instructions of the court, by the notary conducting the succession proceedings. The outcome of these proceedings is an order on succession, and any party who believes it is not in compliance with the special regimes in force may file a remedy to challenge the outcome.

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## Restrictions on successions – special rules - Sweden

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

In Sweden there are a few remaining entailed estates (*fideikommiss*). Entailment is a testamentary arrangement whereby certain property, which may not be disposed of, is to be passed on to members of one or more families in a certain order. In accordance with the Act on the liquidation of entailed estates (*lagen (1963:583) om avveckling av fideikommiss*), entailed estates are to be liquidated under special arrangements.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

N/A.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

N/A.

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## Restrictions on successions – special rules - England and Wales

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

No.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Not applicable.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

Not applicable.

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## Restrictions on successions – special rules - Scotland

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

Under Scots law, succession to heritable property situated outwith Scotland is governed by the laws of the jurisdiction in which it is situated.
For property situated in Scotland, where there is a will, as a protection from disinheritance, the surviving spouse or civil partner has a legal right to one-third of a deceased's moveable estate (moveable property such as cash, furniture etc) if there are 'issue' (children) or to one-half of the moveable estate if there are no issue. The issue share one-half of the moveable estate if there is no surviving spouse or civil partner or a third if there is a surviving spouse or civil partner.
Where a person dies without a will, the following rules apply: under the Succession (Scotland) Act 1964.
*Prior rights*
After debts have been paid, the first call on the estate is the surviving spouse's or civil partner's prior rights which comprise the right to
the home (immoveable property) in which s/he is living up to a value of £473,000
furniture to a value of £29,000
the sum of either £50,000 or £89,000, depending on whether the deceased left children

*Legal rights*

After prior rights have been met, the next call on the estate is legal rights. Legal rights can only be claimed from the deceased's moveable property.

The surviving spouse or civil partner has a legal right to one-third of a deceased's moveable estate if there are 'issue' (children) or to one-half of the moveable estate if there are no issue. The issue share one-half of the moveable estate if there is no surviving spouse or civil partner or a third if there is a surviving spouse or civil partner.

*Remainder of the estate*

What remains of the estate is distributed to remoter relatives in accordance with section 2 in the 1964 Act.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Where a person dies domiciled in Scotland, succession to that individual's heritable property is determined by the law of the country in which the heritable property is situated. Succession to the deceased's moveable assets is determined by Scots law regardless of where the assets are situated.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

Under Scots law, a deceased's estate is usually administered by an executor following a grant of Confirmation from the sheriff court. An executor is in a special relationship with beneficiaries when administering an estate and has a number of duties to fulfill, including to ingather the estate of the deceased, take title to it through obtaining confirmation, to pay any debts and distribute the remainder of the estate to beneficiaries.

The relationship between an executor and a beneficiary is fiduciary in nature. No executor may place him/herself in a position where his or her interest and his or her duty to a beneficiary are in conflict. If an executor or trustee places him/herself in such a position, this may amount to a breach of trust for which a beneficiary may have legal recourse to a court.

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## Restrictions on successions – special rules - Gibraltar

**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

No.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Not applicable.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

Not applicable.

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