people is not in each other's hatred, but in each other's affection in a loving support; because nowhere is this Latin proverb better applied *(Inter duos litigantes tertius gaudet)* [between two parties, the third one rejoices] than in the lives of the people, and the third one, rejoicing in strife, is none other than tyranny aspiring for domination."

Paweł Czubik

The maze of European Union legislation

An analysis of Regulation No 650/2012 on matters of succession based on selected questions – qui prodest?

1. Introduction

If anyone asked me how the private law of any community of states in economic cooperation should be created so that it serves the citizens to the highest degree, my answer would be that it should start with the harmonisation of substantive law. First, the states should create a situation where the interpretation and application of similar legal institutions are very similar, and in some cases, even identical. Naturally, there are solutions that exclusively specific to the legal culture of a given state (making harmonisation difficult), but for the majority of substantive civil law institutions, national solutions emanate from the same source of law, namely Roman law and the Great Enlightened Codifications based on it.[141] Legal systems do not differ much in this aspect, and over the years, a harmonisation of legal systems would most probably prove successful. Apart from that, it is worth dealing with the positive aspect of purification of the idiosyncratic normative depositions in the legal system, that is laws which are essentially void of any practical significance, or which are *dese-*

141 See: K, Sójka-Zielińska, *Wielkie kodyfikacje cywilne. Historia i współczesność*, Warsaw, 2009, *in various instances*.

utudo laws[142], or constitute material that needlessly involves the judicature[143], and could be excluded from judicial tasks or transferred to extrajudicial procedures without compromising legal certainty[144].[145] From time to time, this type of "lifting" should be performed in the law of any state, as it would have a positive impact on the development of economic and social relations. Despite appearances, the harmonisation of substantive civil law might be a lengthy process, but it is not as complicated as it first seems if the states in the affected group have the same values and underlying legal patterns.

Once the substantive civil laws of the states of the community have become similar to one another, we could step forward to the stage of civil procedural harmonisation, with a view to ensure that rights are interpreted in a similar manner. As a result, the recognition of decisions would not present any problem, and the application of the public policy clause would virtually never arise within the group.

Finally, conflict of laws rules in private law should be harmonised. This would go almost unnoticed in mutual relations, since most of the time, it would result in a switch to a foreign law that shows hardly any difference from the domestic law, while in cases that would be redirected to a jurisdiction

142 An example for such procedures is the delivery of documents in Polish law, which is theoretically carried out by notaries public, according to Articles 102 and 103 of the Act on Notaries Public of 14/02/1991 [consolidated text after amendments: Dz.U. (Dziennik Ustaw, Journal of Laws of the Republic of Poland) 2017, item 2291]. These procedures will be removed from the Polish legal system as impracticable (this aspect of the act is currently being debated in Parliament).

143 An example from the judicial practice in Polish law (similarly to Hungarian law) is that the court grants permission on behalf of a minor for the legal guardian to waive a legacy. Since a waiver of legacy (even if it is debt-ridden) exceeds the usual management of a minor's assets, section 3 of Article 101 of the Act on Families and Guardianship makes it contingent upon the permission of a court. Most of the time, this procedure is a mere formality with little significance, since the parents proceed in the child's interest and not to his/her detriment. In several European legal systems (e.g. Czech, German), no court permission is required for a similar act by legal guardians in cases affecting minors (although both parents must represent the child, while in Poland, one of the parents is sufficient, but the waiver is subject to prior permission of the court).

144 A real judicial "battle" has been triggered by this issue in Poland with regards to social expectations, which is, unfortunately, not reflected in the wording of the law. In the end, the court decided, because of differences in case law, to side with the text of the law (see: Uchwała składu 7 sędziów Sądu Najwyższego z dnia 22 maja 2018 r., III CZP 102/17), which will hopefully not hinder a future legislative amendment repealing the requirement of a court permission for the waiver of a legacy.

145 A number of judicial procedures, e.g. the issue of an order for payment, could be transferred to notaries public (just like in Hungary).

outside the regionally integrated territory (non-EU countries, that is third countries), the states involved in integration would respond similarly to any similar substantive law or procedural law designated for application. All states would accept or refuse their application in a parallel fashion, referring to a similarly construed public policy clause.

In this way, through this three-stage process, we could arrive at a new, modified version of a reanimated *ius privatum romanum* (although its basic institutions would probably not differ much from the base pattern) within the territory of European integration.[146]

Au rebours, should anyone ask me how not to shape European civil law, I would answer that the worst solution would be to start this process the other way around. If we started with the introduction of common conflict of laws norms (in the field of international private law), we would be introducing a "pest" into the legal system that could cause internal corrosion in the system, as well as errors and problems in the application of law.

Courts would refer to foreign jurisdictions (other countries within the integration system or third countries), which would be construed in very different ways by the courts of different countries within the integration system[147]. This could lead to different judgments in cases with essentially the same facts. In such a case, the possibility of referring to a preliminary ruling institution

146 Obviously, this is a simplified model which would not prove that easy in practice, especially considering the participation of common law countries and Scandinavian "mixed"-system countries in European integration, which may give different interpretations to basic civil law institutions.

147 No court interpretation of foreign law can be a real interpretation, irrespective of the qualification of the institution concerned and the legal definitions which always depend on the country where the court is situated (*lex fori*). In Polish law, it is exclusively courts that can *ex officio* establish the applicability of a foreign law, and that have the option to examine the interpretation of that foreign law. Currently, this process is based on Article 51a of the Act of 27 July 2001 on Ordinary Courts Dz. U. 2018, item 23 with changes). This law has replaced the former Article 1143 of the Act on Civil Procedure, repealed as of 12 August 2017, based on the amendment to the Act on the Organisation of Ordinary Courts of 12 July 2017. The content of both laws was essentially the same; the amendment only moved that content from one normative act to the other. Furthermore, based on Article 95, section 2 of the Act on Notaries Public, the notary public may request the content of foreign law for the purpose of issuing the document certifying succession, which may not be extended to comprise a waiver of legacy (it is also questionable whether the notary public can ask for an interpretation of this law – for this reason, this rule does not have any practical significance). The Polish court (in fact, the Polish notary public) receives the content of the foreign law from the Ministry of Justice, which procures this, from time to time, from Polish consuls, via the Ministry of Foreign Affairs. Practical experience shows that the procured laws are often outdated, and courts interpret them rather freely.

would not be of much help, since the answer would be restricted to the application of EU law in the state concerned (i.e. the application of conflict of laws norms referring to a foreign law rather than the application of the invoked foreign law itself). This process would only serve to mislead law application bodies, while it would always be the individual who bears the losses in the end.

Paradoxically, in the course of European integration, the process of integration starting with the adoption of common conflict of laws norms was supported[148], then they moved on to procedural norms, claiming to postpone the harmonisation of substantive law to the not very specific future. Of course, this followed from the competences of the European Union, as it had no powers in civil law matters, so it was not authorised to start the process "backwards". This overly abrupt integration that was started *ex natura rerum*, from the wrong end, could easily lead those who apply the law along precarious paths, leading towards unknown institutions[149]. Therefore, under the present circumstances of integration, any legislative activity in the field of the[150] so-called "judicial cooperation in civil matters"[151] defined in Article 81(2) of the Treaty on the Functioning of the European Union must be done with especial care, refraining from making greater changes to the system, so that citizens suffer no detriment in the field of the conflict of laws and procedural law.

As well, at the beginning of this decade, some large-scale measures were taken that have resulted in a regulation which completely reinterprets Mem-

148 The first steps towards (contractual) integration in civil law affected conflict of laws matters – the law applicable to contractual obligations (see the Rome Convention). The Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, was signed in Rome on 19 June 1980 (*OJ L 266 z 9/10/1980, pp. 1–19*). Steps related to civil procedures had been taken even earlier (Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed in Brussels on 27 September 1968 (OJ L 229, 31 December 1972, pp. 32-42).

149 However, many of the accepted solutions are rather restricted in their functionality. See: P. Mostowik, *Jak nie ujednolicać międzynarodowego prawa prywatnego i postępowania cywilnego, czyli o projektach rozporządzeń unijnych dotyczących majątkowych ustrojów małżeńskich i skutków związków partnerskich*, „Europejski Przegląd Sądowy" 2011, Issue 11, pp. 12–23 All this can give the impression that it has been in vain.

150 Treaty on the Functioning of the European Union – consolidated text including changes to take account of amendments introduced by the Treaty of Lisbon (Dz.U 2004, No. 90 item 864).

151 The definition of EU activity in civil law is incorrect – the legislative powers of the EU are often broader than the judicial cooperation mentioned above. EU competences are focused on the fields of international private law and international civil procedure. See: K. Kowalik, *Kompetencja Wspólnoty Europejskiej w zakresie prawa prywatnego międzynarodowego*,„Przegląd Sądowy" 2005, no. 2, pp. 93–98

ber State procedures in the field of the law of succession, and determines the laws to be applied in inheritance cases. This amounted to a revolution in the field of wills and succession proceedings in Member States which have applied the regulation. This study deals with those related matters that have the greatest impact on citizens. Regulation No 650/2012, which I will hereinafter refer to as the EU Succession Regulation[152], has fundamentally changed the legal status of the testator or the heir, accepting by default that the law of succession is very weakly linked to the jurisdiction of the testator's place of habitual residence. We do not need to draw far-reaching conclusions to be able to understand the dangers inherent in this type of connection. At a time characterised by migration, the free movement of EU citizens, globalism and the transfer of employees even between the two hemispheres, laws, and sometimes even the properties of jurisdictions are frequently changing. However, citizens are often unaware of this, which can result in an arbitrary choice of law under which decisions are made in the matter of their succession when they die, and the whole situation can develop in a way that is detrimental to the heirs.

There would not be any serious problem if the factors that connect or link the legal issues to the laws of potentially relevant states in the rules on choice of law would remain in the same range as those underlying the qualifications relevant to jurisdiction. But this is not the case. It is enough to compare Article 21(1) of the Regulation with Article 4 of the Regulation to understand that habitual residence has consequences for the applicable law, regardless of whether habitual residence is in a country within or outside the EU[153], but it is only relevant for jurisdiction if it concerns jurisdiction of an EU Member State.[154] Moreover, where the law applicable based on Article 21(1) of the Regulation can be excluded under extraordinary circumstances (as stated in

152 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 (Dz. Urz. UE No. L 201/107, 27/07/2012).

153 According to Article 21(1) of the Regulation: "*Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.*"

154 According to Article 4 of the Regulation: "*The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.*"

Article 21(2)[155]), the same circumstances will not exclude jurisdiction based on habitual residence. Only the jurisdiction can be transferred to that of the chosen law (if the following cumulative conditions apply.[156] *Primo*, based on Article 22 of the Regulation, a national of another EU Member State may choose in his/her will the law of the State whose nationality he/she possesses, *secundo*, after his/her death, the heirs can make a choice-of-court agreement based on Article 5 of the Regulation[157]), which will be discussed below in further detail.

The application of habitual residence at the time of death as a connecting factor to be applied in a *de facto* different way to the governing law that is different from the jurisdiction in the matter of succession follows from the logic and fact that the Regulation has a twofold structure. In fact, this means two overlapping regulations, one of the "Rome"-type (conflict of laws), and another of the "Brussels"-type (jurisdiction). If the conflict of laws regulations are of universal effect, i.e. they replace the domestic international private law norms in the states applying the Regulation, and suggest these EU Member States the application of foreign laws (any law of another EU Member State or a third country), the jurisdiction rules of the EU Regulation may not have consequences on jurisdiction outside the EU, and the countries which do not apply the Regulation cannot be required to recognise the effect of the Regulation. As a result, if the deceased had a habitual residence within the EU, the law of the country of his/her habitual residence will apply, and the courts of that country have jurisdiction; as intended by the EU legislators. This serves to ensure the conformity of governing law and jurisdiction.

However, if the deceased had a habitual residence outside the EU, this conformity would not hold, since the governing law would be based on his/her habitual residence (a third country), while any potential jurisdiction with-

155 According to Article 21(2) of the Regulation: "*Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.*"

156 A further intrinsic feature of the Regulation is this kind of mutual entanglement between the conflict of laws norms and the procedural law norms. Meanwhile, it should, first and foremost, be clear to the average citizen and not only to legal professionals. Therefore, we can state that they have attained a result that is exactly the opposite of what it should have been.

157 According to Article 5(1) of the Regulation: "*Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.*"

in the EU would be justified by some other factor mentioned in the Regulation (such as nationality or assets[158]). In any case, this solution has not excluded the distribution of jurisdiction within the EU.[159] Also in such cases, the choice of a foreign law causes significant difficulties to the authority proceeding in the matter of succession (if, at the time of death, the habitual residence of the deceased was outside the EU, while the jurisdiction of an EU Member State derives from nationality).

By way of an example, if a Polish court or notary public applied Polish law in a succession case of Polish nationals who lived outside the EU and died before 17 August 2015[160], for those who died after this date, they would become bound to apply foreign law based on habitual residence of the deceased. This generates procedural costs related to the determination of the content of foreign law and its proper application, and also imposes an indemnification obligation on the state due to excessively delayed procedures. The whole matter affects the Republic of Poland in a particularly negative way, as it is taking effective measures,[161] using the means provided by law, to counter any delays

158 See Article 10 of the Regulation, which states that: "*1. Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as: (a) the deceased had the nationality of that Member State at the time of death; or, failing that, (b) the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed. 2. Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on those assets.*" Sections 1 and 2 of Article 1108 of the Polish Code of Civil Procedure have essentially the same effect (Act of 17 November 1964 - Code of Civil Procedure, consolidated text Dz. U. 2018, item 1360).

159 Also according to Article 10(2) of the Regulation. However, it was clear that it could be distributed in the same way in matters of succession where the assets and the succession rights were concentrated within the EU or in third countries. Non-EU countries (e.g. the USA) are not required to recognise the decisions of EU Member State courts. In these countries, separate procedures can be requested (although it can make a difference if the civil procedure laws of the third country concerned stipulate that decisions of EU Member States on matters of succession must be recognised – but, in any case, EU law cannot enact any binding rule for such cases).

160 This date is relevant for the application of the Succession Regulation – it entered into force in the second half of 2012, but based on Article 83(1) of the Regulation, it applies to the succession of persons deceased on or after 17 August 2015.

161 See the Act of 17 June 2004 on complaints regarding the parties' rights to investigation of their cases without undue delay, in a procedure conducted or supervised by the attorney general or in a judicial procedure (consolidated text: Dz. U. 2018, item 75). This act implements the fundamental judicial standards of the European Court of Human Rights.

in procedures, since the number of Polish nationals living outside EU borders amounts to 21 million, about 7-8 million of which have Polish citizenship[162].

The question arises as to why this decision to fundamentally change the law of succession was made in 2012 (effective as of 17 August 2015). Notwithstanding any official communications by the European Commission which tout as a success that there is one procedure and one law (not a total success, though, as explained before), it is worth mentioning the double role of this connecting principle. First of all (as this seems to be the most important), it serves to ensure jurisdiction and the qualities of law of the state where the free movement of EU workers has been concentrated.

In other words, this solution was designed for the big Western European states for which habitual residence as a factor determining jurisdiction has an assured financial advantage. If uniform jurisdiction was set to the domestic jurisdiction of the EU national's country, these countries would not have any jurisdiction in matters of succession over nationals of other EU Member States living in their territories. However, the rule on jurisdiction based on habitual residence grants them jurisdiction, and thus also allows them to collect the court fees. The judiciary and lawyers' associations providing services to the parties also benefit from this solution. As a result, a base jurisdiction is created in a group of EU Member States (metropolitan jurisdiction) that operates based on habitual residence, with auxiliary jurisdictions ("colonial" jurisdiction) that operate based on the country of origin, which would only prove applicable in cases of *mortis causa* choice of law or a *post mortem* choice-of-court agreement (the latter will be discussed below in more detail). Taking into account the main directions of workers' movements, the first group comprises the target countries of economic immigration (France, Germany, the Benelux countries and the Scandinavian countries), while the second group comprises Southern European and Central European countries (including Hungary and Poland).

Furthermore, it cannot be totally ruled out that the EU countries which benefit from the Regulation would be exempted from the necessity to de-

162 According to estimates, approx. 1.5 million Polish persons or persons of Polish origin are living in the Chicago metropolitan area alone (making this agglomeration the *de facto* second biggest "Polish" city in the world after Warsaw), many of whom possess Polish citizenship. Even if, in the case of the death of an affected national, the law applicable based on habitual residence (the state of Illinois) redirects to Polish law as *rei sitae* law (where the assets of the estate comprise property located in Poland), the Polish court (before applying Polish law as the subject of accepted redirection) must apply foreign law, correctly determining the foreign conflict of laws rules, which generates the above-mentioned problems.

termine the applicable foreign law (which would be particularly difficult if it were a national law) under the circumstances of mass migration originating from Third World countries. It is possible that, already while work on the Regulation was in progress, mass economic migration was already foreseeable. Interestingly, this migration reached its peak in the year when Regulation No 2012/650 entered into force. As a result, in the matter of succession of a Nigerian person with a habitual residence in Germany, they do not currently attempt to establish Nigerian law as governing (as they were forced to in cases of persons who died before 17 August 2015[163]), but apply German law instead.

Currently, for a national with a foreign habitual residence, the only chance to avoid the application of a foreign law (instead of domestic law) in matters of succession is to choose the domestic law. Based on Article 22[164] of the Succession Regulation, such choice of law must be made in the form of a disposition of property *mortis causa*. Essentially, this means a choice of law made by the testator in the form of a will, although other types of *mortis causa* dispositions by the testator can also contain a choice of succession law, provided that the applicable law recognises such dispositions[165]. It is worth noting that only the domestic law can be validly chosen. This can be the law of the testator's nationality at the time when he/she makes the choice (which most likely applies to the majority of choices), or the law which the testator presumed to be his/her domestic law at the time of death[166].

163 Based on Article 25(1) of the rules introducing the Civil Code effective as of 16 August 2015 (*Einführungsgesetz zum Bürgerlichen Gesetzbuche (18.08.1896) in der Fassung der Bekanntmachung vom 21. September 1994* (BGBl. I S. 2494; 1997 I S. 1061)). The content of this rule has now been harmonised with the EU Succession Regulation.

164 According to Article 22(1) of the Regulation: *"A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death."* According to para (2) of the same Article: *"The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition."*

165 According to Article 1048 of the Civil Code (Act of 23 April 1964 – Civil Code, consolidated text: Dz.U. 2018, item 1025), besides making a will, another traditional *mortis causa* procedure in Polish law is the declaration on the waiver of succession. In the same agreement, the person relating to whom succession is waived may also choose the governing law for the matter of his/her succession. In addition, the possibility of naming the successor manager has been introduced recently by the Act of 5 July 2018 on natural persons to inherit the management of an undertaking (Dz.U. 2018, item 1629). In this *mortis causa* declaration of a similar nature, the entrepreneur may also choose the law applicable to the succession.

166 This is probably another case where EU laws have given in to migrants who are waiting to become nationals of an EU Member State.

What could be the practical use of the testator's choice? We must distinguish between two situations. If the testator's habitual residence is outside the EU, the choice of domestic law of succession means that the court (which probably has jurisdiction based on the testator's nationality) will decide based on its own law, rather than on that of the foreign law of habitual residence. This will, most probably, be more efficient, without requiring substantial costs. So it is clearly of advantage to the heirs (both financially and timewise) if the testator makes such a decision.

The choice of domestic law has a more serious consequence if the testator has a habitual residence in another EU Member State – in this case, the interested parties (heirs, any executors of the will or administrators) can enter into a choice-of-court agreement, which transfers the matter of succession from the jurisdiction of habitual residence to the jurisdiction of domestic law. If no such agreement is made, the law of the EU Member State of habitual residence will determine the jurisdiction, but the law of another EU Member State will exercise it, as the testator's chosen applicable law. If the heirs live in the testator's country of domicile, the benefits of choice of law and jurisdiction determined based on that law are clear, and raise no doubts.

Furthermore, it must be added that no law other than the domestic law can be chosen (at the time of choice or at the time of death). As for Polish law, the adoption of the Regulation represented a step backwards. It must be noted that, until the 2015 changes to Polish international private law, Article 64(1) had allowed for a total of 6 connecting factors as the basis of choice of law. This provided far more freedom for actions related to wills than the supposedly liberal solution of the European Union[167], as it offered a real possibility of choice of laws. The current European solutions can hardly be described as giving a real choice. We should rather speak of the designation of domestic law (a prerequisite of choice is that several options exist among which a choice can be made). The essence of the European choice means that the domestic law can be designated in the will, or that no law is designated (chosen) at all. The European citizen may not even choose the law that would be applicable in the absence of a choice.

It is thought-provoking indeed why the European Union decided upon a solution that provides so little opportunities for its citizens, and imposes *de facto* limits on testamentary freedom. Would not it be a more justified, more

167 See: Act 4 February 2011 on international private law (original text: Dz. U. 2011, No. 80, item 432).

European and more open solution to give a wider possibility for choice, or rather to allow an EU citizen to choose the law of any EU country in his/her own will? It certainly would. But the European Union will never make such a decision. The answer seems rather simple. Citizens would decide in favour of a law that would ensure the fullest possible transfer to their heirs of all the assets in their estate, that is, the most popular laws would be the ones that do not prescribe *legitima portio* or reserves, and the ones that do not apply the inheritance of debts. The fact that no wider choice of law has been permitted shows that the European elite is not really capable of facing what citizens actually want. When the law was created, they failed to consider the individual's will.[168] The omnipotence and arrogance of EU oligarchs has contributed to the development of paths that are extremely disadvantageous to citizens. At the same time, state control and a particular breed of statolatry play an important role, to which Western-European social environment has only a very slight immunity, as it seems that they are not conscious of the danger of the socialist regime functioning in their countries, since, as opposed to Central European societies, they have never been subject to the realisation of the Soviet social experiment, that is, socialism as the way leading to communism.

Unfortunately, citizens are not aware of the possibility of a choice of law. The costs of this unawareness are borne by heirs, while French and German lawyers make money off it. In my practice as a notary public, over the last 3 years, I have noticed strong Euroscepticism in all those who were faced with the Succession Regulation as heirs or cross-border legatees.

In fact, it is rather hard to evaluate this Regulation positively, considering the uncertainty concerning the date of application of the law against persons having written their will at an earlier date. Although Article 83(4) of the Regulation allows for a presumption of the choice of domestic law in the case of wills written before 17 August 2015, the wording of the Regulation leads to practical difficulties regarding its application and the presumed choice-of-court actions of heirs.[169] Apart from that, there is substantial uncertainty in the case of wills made before 17 August 2015 which designate any law other

168 On the other hand, the protection of banks and credit institutions is taken into consideration, since their ability to proceed in claims cases could be restricted if the testator chooses a law of succession that limits the inheritance of debts.

169 According to Article 83(4): "*If a disposition of property upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with this Regulation, that law shall be deemed to have been chosen as the law applicable to the succession.*"

than the domestic law. Article 83 (2) and (3) are particularly hard to interpret[170], and they do not provide a reliable basis for casuistic court decisions on matters of validity of the will, or of the decision. It is apparent that a number of succession proceedings implemented before the introduction of the Regulation shows that they have not been confirmed by practical experience. Contrary to general assumptions, the Regulation applies to estates opened after 2015, as mentioned, rather than to succession proceedings conducted after that date. Undoubtedly, it would ensure considerable legal certainty if a solution were enacted whereby the Regulation would be applicable to estates opened after a specific date and to wills made after the same date. This would be in line with current general opinion.

Probably, the EU legislator had not aimed to establish a secure system that is understandable to EU citizens. Had it aimed to do so, it would undoubtedly have made the intertemporal feature of law contingent upon the date of making a will, and it would only have made the quality of the Regulation dependent on the opening of the estate for cases of intestate succession. At the same time, the lengthy preamble of the Regulation serves as an example of euro-demagogy lined with, at times, an Orwellian enthralment with reality, in addition to a very consistent implementation of its specific, definitely stated objectives, which, however, are not reflected in the content. At times, adopted provisions of the Regulation clearly contradict the objectives stated in the preamble[171].

170 According to Article 83(2): "*Where the deceased had chosen the law applicable to his succession prior to 17 August 2015, that choice shall be valid if it meets the conditions laid down in Chapter III or if it is valid in application of the rules of private international law which were in force, at the time the choice was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed.*" Meanwhile Article 83(3) reads: *A disposition of property upon death made prior to 17 August 2015 shall be admissible and valid in substantive terms and as regards form if it meets the conditions laid down in Chapter III or if it is admissible and valid in substantive terms and as regards form in application of the rules of private international law which were in force, at the time the disposition was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed or in the Member State of the authority dealing with the succession.*"

171 It sounds somewhat odd that the Regulation speaks of tradition while they do not consider the traditions of several states (e.g. regarding exclusive jurisdiction for real property). The rhetoric also hits a false note in the part where the Regulation mentions legal certainty of the law applicable to the matter of succession and effective guarantees for succession rights, while at the same time, the solutions actually introduced do not have much in common with the former, given the mutable connecting factor of habitual residence.

In summary, it is worth noting that ties to the home country and the identity of citizens' linked to their countries of origin did not change miraculously at the moment when Regulation No 650/2012 was adopted. It is not easy to create "global citizens" who feel attached to any country of their new residence, and develop an unstable citizen's identity. Although this is most probably the model that the EU wishes to set up, it seems that they will not succeed in practice.

On the other hand, we have to realise that the incremental method has proved rather successful in this field. The only suggested social response to a kind of European legislation that shapes preferences in a different way and massively transforms the trends of legal development in these solutions of European law should be linked with mechanisms that weaken the prior assumptions. As far as the EU Succession Regulation No 650/2012 is concerned, the testator's choice of domestic law in his/her will or in some other *mortis causa* disposition makes it possible later for the interested parties (that is the heirs, legatees and estate administrators) to transfer jurisdiction, by way of a choice-of-court agreement, from the EU country of habitual residence to their own Member State. Therefore, it is important that the organisations promoting civil society raise awareness of the idea of drafting a will, especially in communities of citizens living abroad, but also among fellow citizens who live in their home country and wish to emigrate to some other EU Member State, which will must contain, in any case, a clause on the choice of their own national law. This is the only way to save national jurisdiction of the country of origin, and for heirs to avoid bearing the enormous costs of foreign procedures. The awareness of this (in Polish society) is currently very low, and definitely needs to be improved. In all likelihood, this is also the responsibility of the consular and diplomatic services of the Visegrad Group countries. Central European citizens must be saved from a poorly implemented process of civil law harmonisation in the European Union.