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Restrictions on successions – special rules

 Germany

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European Judicial Network
(in civil and commercial matters)

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 immovable 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 Hessen, the Order on farms [*Höfeordnung*] in Rhineland-Palatinate, the Farms Act [*Höfegesetz*] in Bremen and the Order on farms [*Höfeordnung*] in Brandenburg). 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 a farm may be inherited by only one person (the heir to the farm) 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*), 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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