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Restrictions on successions – special rules

 Belgium

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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?

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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