



Towards the entry into force of the succession regulation:  
building future uniformity upon past divergencies



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SEMINAR AND EXCHANGE OF BEST PRACTICES | MADRID, 30 OCTOBER 2015  
Jurisdiction, competence and application of the EU Regulation 650/2012

# DETERMINING JURISDICTION UNDER THE EU REGULATION No 650/2012

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THE PROJECT IS IMPLEMENTED BY COORDINATOR



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## General Features

"Exclusive" grounds of jurisdiction

"Broad meaning" of "courts"

(Art. 3.2 +Rec. 20-21)

Contentious and non-contentious proceedings

"Matters of succession"

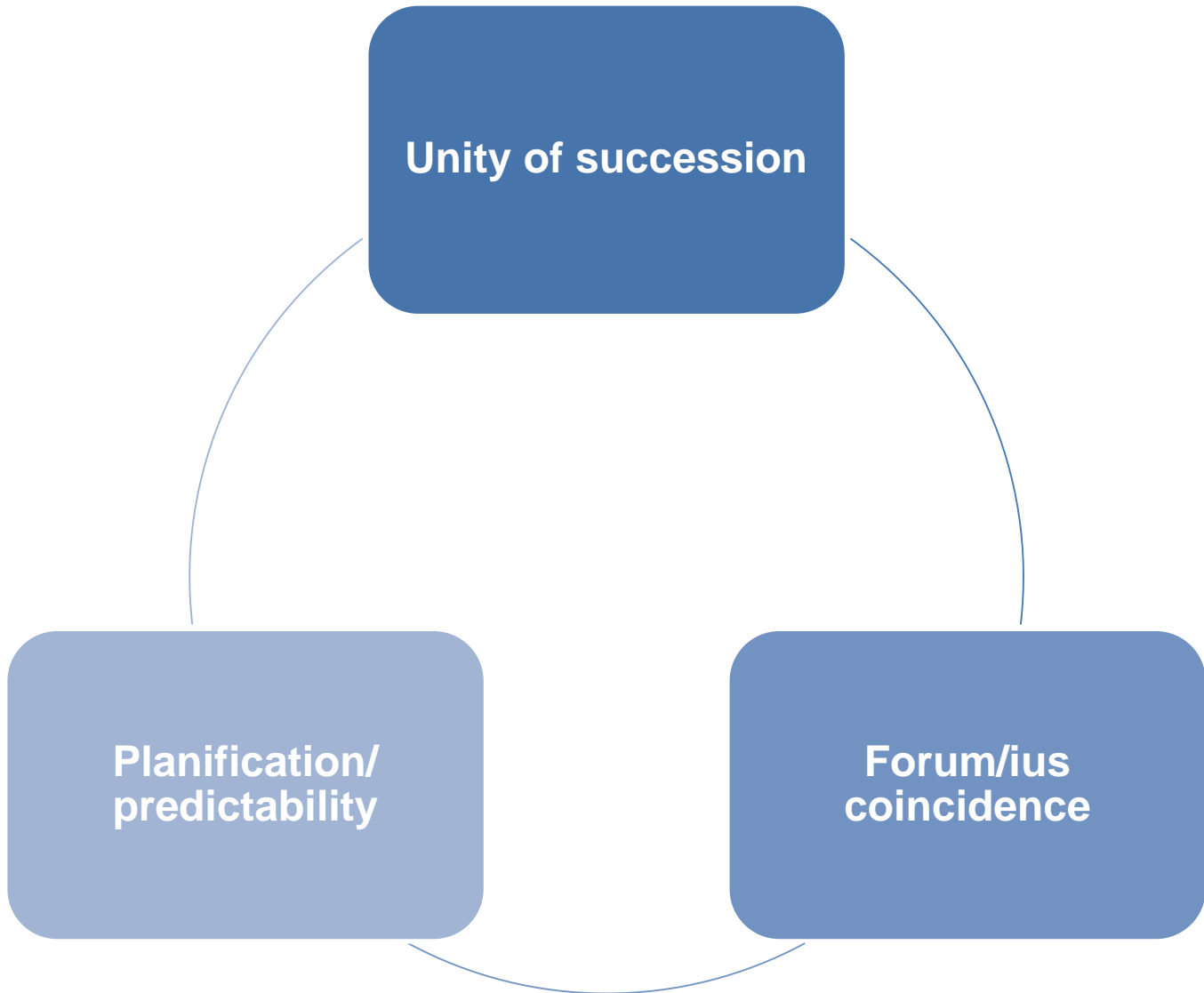
National law regarding the internal jurisdiction

# Relevant Principles

Unity of succession

Planification/  
predictability

Forum/ius  
coincidence



## Reminder: General conflicts of laws rules

Law of the State (member OR NOT) in which the deceased had its **habitual residence** at the time of the death, UNLESS:

BY WAY OF EXCEPTION, the deceased was **manifestly more closely connected** with another State

**Choice of law** upon the deceased in favor of the State (member OR NOT) of **nationality** at the time of choice/death

# Grounds of Jurisdiction

## General Jurisdiction

- Art. 4: MS of the deceased's **habitual residence** at the time of death
- Art. 10.1: [if the deceased's habitual residence is in a non-MS,] MS in which assets of the estate are located and other conditions occur
- Art. 11: *forum necessitatis*

## General Jurisdiction/Specific Matters

- Agreement among "the parties concerned": **MS the law of which was chosen by the deceased to govern his succession as a whole** [that of the **deceased's nationality** only]
- Artt. 5, 6.b, 7, 9

## Jurisdiction on Specific Matters

- Art. 10.2: MS «in which assets of the estate are located» [if no MS has jurisdiction ex art. 4 or 10 or 5] => to rule on those assets
- Art. 13: (also) MS of habitual residence of the person who, under lex successioneis may make certain declarations before a court, if allowed by the lex fori
- **LIMITATION**: Art. 12: assets located in a third State.

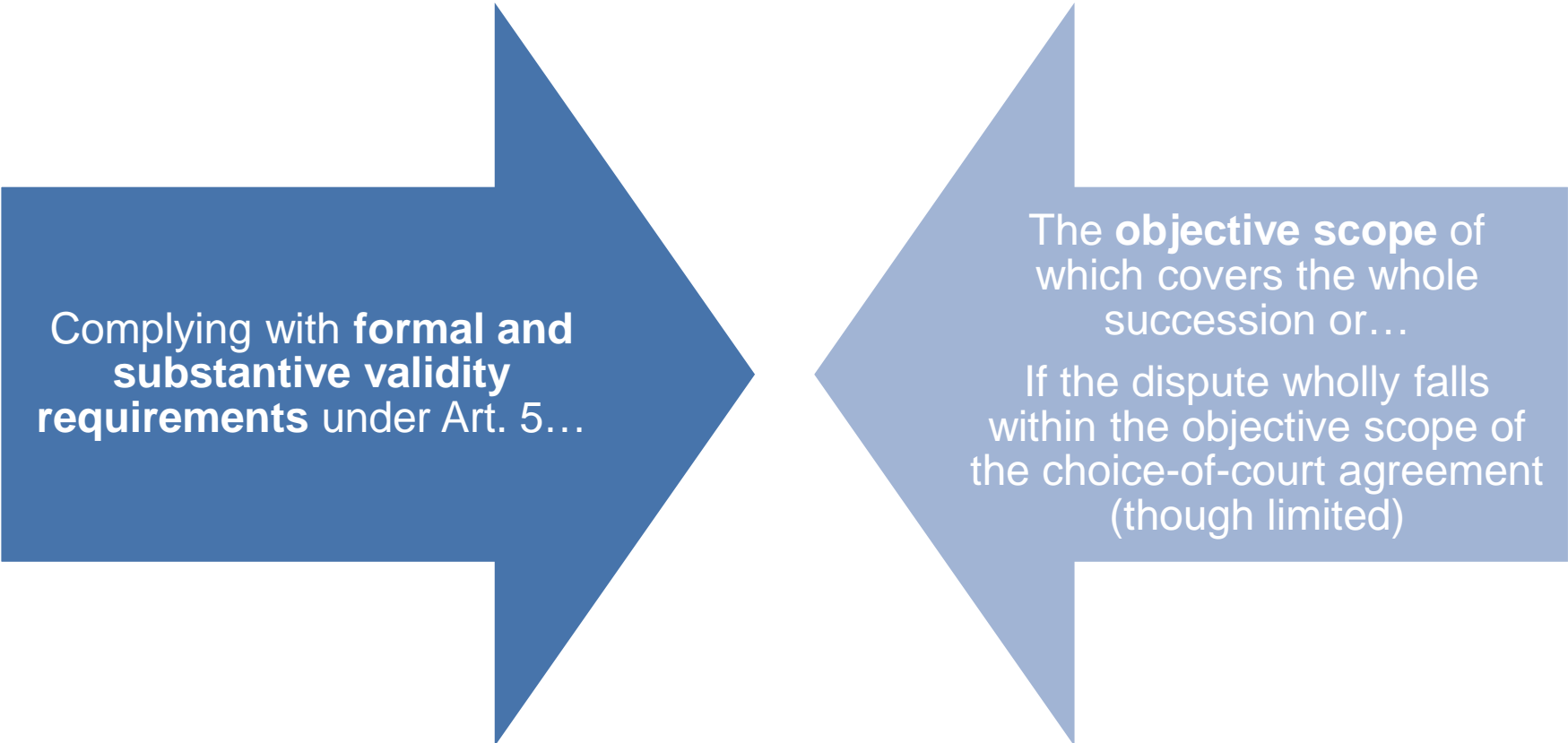
## A- In Case of Choice-of-Court Agreement

**Deceased's** choice of **law** in favor of the law of the MS of his/her nationality



Choice of **court by** the **interested parties** in favor of the courts of that MS

## A- In Case of Choice-of-Court Agreement



Complying with **formal and substantive validity requirements** under Art. 5...

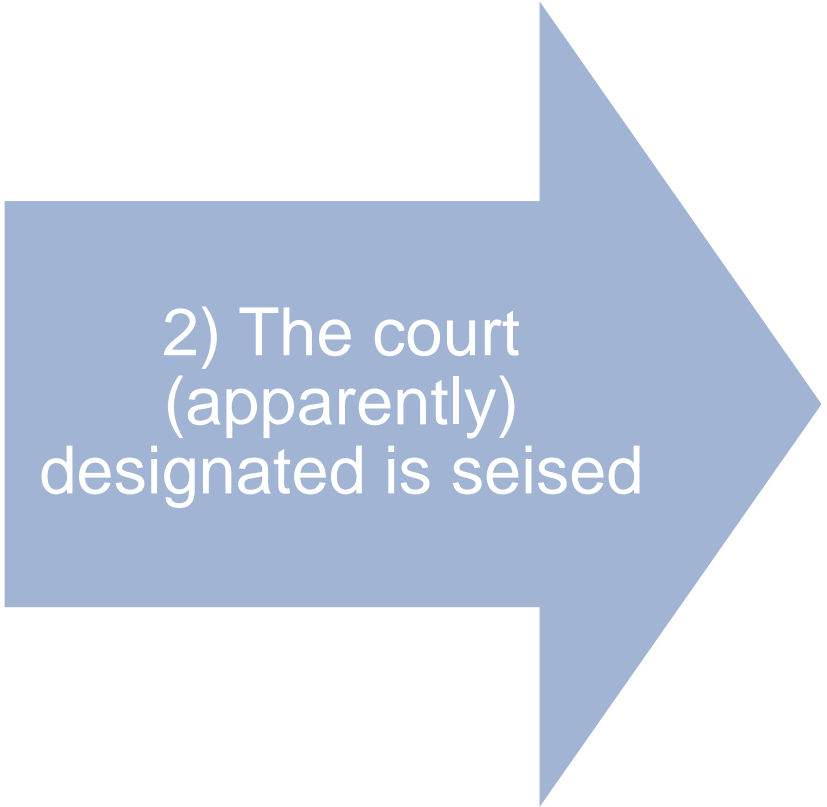
The **objective scope** of which covers the whole succession or...

If the dispute wholly falls within the objective scope of the choice-of-court agreement (though limited)

## A- In Case of Choice-of-Court Agreement Two Scenarios



1) A court other than  
the (apparently)  
designated one is  
seised



2) The court  
(apparently)  
designated is seised



## A-1) A Court Other Than the (Apparently) Designated One Is Previously Seised

Court seised under Art. 4 or 10



Art. 6.b: declines jurisdiction



Art. 7.a: the chosen court shall have jurisdiction



See also Art. 17: *lis pendens*

Court seised has no jurisdiction under the Regulation



Art. 15



Own motion declaration of no jurisdiction

## A-2) The (Apparently) Designated One Is Previously Seised

**Ante causam**  
choice-of-court  
agreement ex art. 5

- Art. 7.b

All the parties have  
**expressly accepted**  
the jurisdiction of the  
court seised

- Art. 7.c

**Appearance-based**  
Jurisdiction

- Parties to the proceedings not parties to the agreement (Art. 9)
  - Recital 28
- In case they enter an appearance contesting jurisdiction, the court shall decline jurisdiction
- Jurisdiction with the courts ex Art. 4 or 10
- Art. 11? Deceased's nationality is not a sufficient connection?

## B- If No Choice-of-Court Agreement (or for Out-of-Scope Disputes)

MS of the **deceased's habitual residence at the time of death**  
(Art. 4)

If the deceased's habitual residence is in a third State, MS in which **assets of the estate are located**, in so far as it is also:

- (a) MS of the deceased's nationality at the time of death; or, failing that,
- (b) MS of the deceased previous habitual residence (no more than 5 years before the court is seised)

*Unless...*

## B- ... Forum Non Conveniens ("*sui generis*")

### Court seised ex Art. 4 or 10

If the deceased chose the law of the MS of his nationality

At the request of one of the parties

Taking into account "the **practical circumstances**" of the succession (eg. habitual residence of the parties, location of the assets)

If the court considers the courts of the **MS of the chosen law** "**better placed**" to rule on the succession

**MAY decline jurisdiction => Art. 7.b**

## **(C) If neither (A) nor (B)... Forum Necessitatis**

**If no MS court has jurisdiction under the Reg.**

On an exceptional basis

If proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected (Recital 31)

Court of the MS with which the case has a sufficient connection

**MAY rule on the succession**

***Thank you for your attendance and attention***

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