



# FINAL CONFERENCE

EU Cross-Border Succession Law



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UNIVERSITÀ DEGLI STUDI DI MILANO  
DIPARTIMENTO DI STUDI INTERNAZIONALI,  
GIURIDICI E STORICO-POLITICI



UNIVERSITÀ DEGLI STUDI DI MILANO  
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ITALIANO E SOVRANAZIONALE

## EU Regulation No 650/12

# Exceptions to the Application of Lex Successionis

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THE PROJECT IS IMPLEMENTED BY COORDINATOR



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# I - The Exceptions within the Regulation System

**Relationship with the Regulation's general principles**

**Quasi lack of interest for the contents of the substantive provisions made applicable**

**Removing the obstacles to the free movement of persons facing difficulties in asserting their rights in the context of a cross-border succession**

**Effective guarantee of rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession**

## II – Mechanisms to Tackle the Evasion of the Law

IT (26) Nulla nel presente regolamento dovrebbe impedire a un organo giurisdizionale di applicare meccanismi intesi a contrastare l'elusione della legge, come la frode alla legge nel **contesto** del diritto internazionale privato.

EN (26) Nothing in this Regulation should **prevent a court from applying mechanisms** designed to tackle the evasion of the law, such as fraude à la loi in the context of private international law.

FR (26) Aucune disposition du présent règlement ne devrait empêcher une juridiction d'appliquer les mécanismes destinés à **lutter contre la fraude à la loi**, par exemple dans le cadre du droit international privé.

## II – Mechanisms to Tackle the Evasion of the Law

### Fraude à la loi

- Modification of a factual element constituting a connecting factor with the only aim to circumvent the application of a certain law

### Abusive exercise of rights

- Action aimed at setting the basis for the application of a EU/national law provision to gain an unjust advantage

## II – Mechanisms to Tackle the Evasion of the Law

Mr Rich is an American widower, born in NY, who retired 15 years ago and decided to spend his retirement age in *Côte d'Azur* with his new young French girlfriend. He owns a wonderful villa in Antibes and millions of USD deposited with French and US banks. He has two adult children from his previous marriage, who blame him for his new menage. He is very upset with them. So he intends to bequeath all his possessions to his girlfriend. He adds to his last will a choice-of-law clause in favour of NY Law. He also decides to sell his villa to a US company wholly owned by himself.

### III – Certain Overriding Mandatory Rules (Art. 30)

Special substantive rules imposing restrictions for economic, family or social considerations

Certain **immovable** property, certain **enterprises** or **other** special categories of **assets**

Restrictions **concerning or affecting the succession** in respect of those assets

Imposed under the **law of the State in which those assets are located**

Provided that the restriction to the application of lex successionis

- (i) (a) is necessary, proportionate and non-discriminatory, and
- (b) lex successionis does not afford equivalent protection;
- (ii) is compatible with public policy

### III – Certain Overriding Mandatory Rules (Art. 30)

In 1963 Mme Lefebvre, who is (and has always remained) a French citizen, moved to Italy to study art in Florence. There, she also found love and a handsome German husband, who unfortunately died in 2012. They had always lived happily in Florence

They had two children, to whom she now wishes to equally bequeath all her possessions.

She owns a *fond agricole* near Bordeaux FR (€ 900,000), bonds, shares (€ 300,000) and cash (€ 300,000) deposited with an Italian bank.



## IV – Public Policy (Art. 35 and Rec. 58)

In exceptional circumstances

Relationship with jurisdiction  
criteria

Relationship with connecting  
factors

Manifest incompatibility



Notion of public order

Lex fori fundamental principles

ECHR

Charter of Fundamental Rights of  
the EU



Disregard of certain provisions of foreign law

Application by analogy of other  
provisions of the same foreign law

Other applicable law pursuant to  
the Regulation

Lex fori



Subject to compatibility with the Charter of Fundamental Rights of the EU  
and especially Art. 21 (non-discrimination)

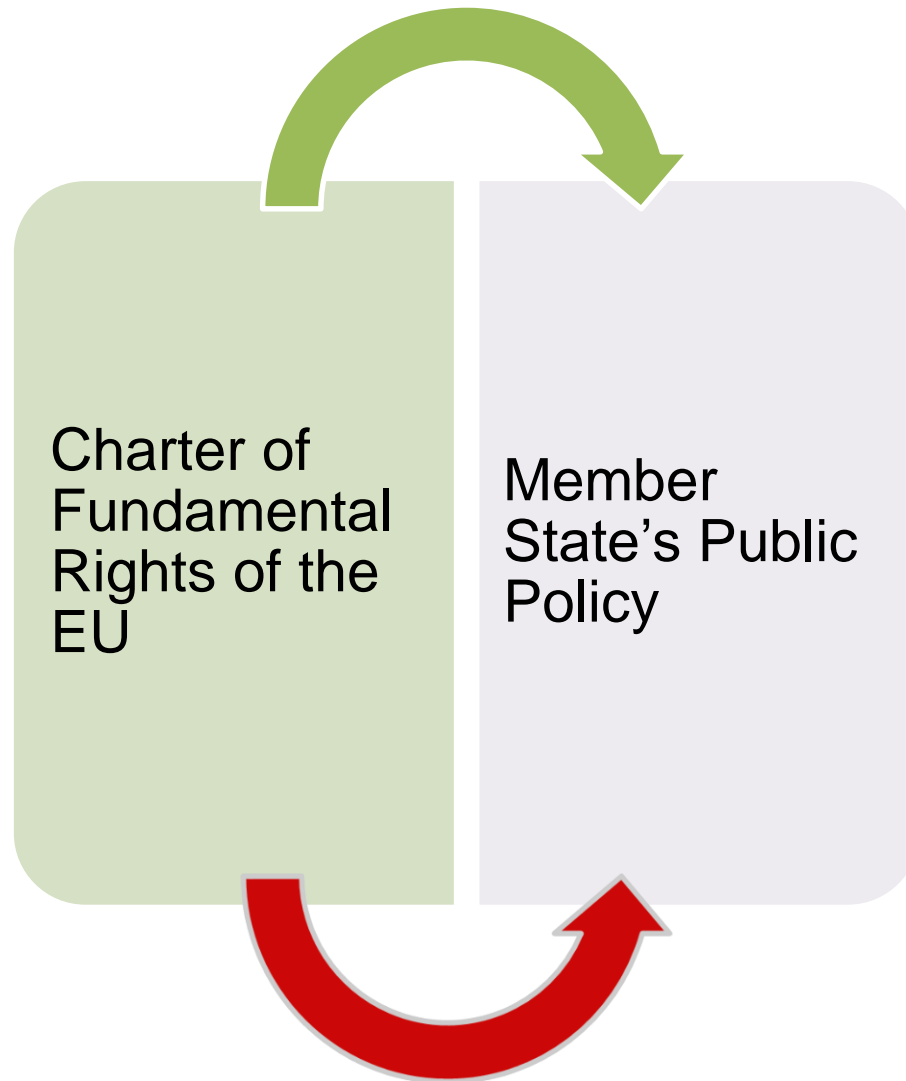
## IV – Public Policy (Art. 35 and Rec. 58)

Georg and Maurizio signed a civil partnership pursuant to German law. Georg previously had a baby-girl, Michelle, with a now-deceased German girl, while Maurizio had a baby-girl, Anna, from a previous marriage with an Italian girl.

Later on Maurizio adopted Michelle.

After some time, Maurizio, Georg and Michelle move to Italy where they happily live for 10 years. Suddenly, Georg dies of a heart attack. Maurizio starts planning his children's future... He intends to equally bequeath all his possessions to Michelle and Anna but is worried about Anna's mother attitude towards Michelle...

# V - Role for the Charter of Fundamental Rights of the EU



## VI – General Guidelines for Interpretation



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

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