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



UNIVERSITÀ DEGLI STUDI DI MILANO DIPARTIMENTO DI DIRITTO PUBBLICO ITALIANO E SOVRANAZIONALE

EU Regulation n. 650/12

Agreements as to Successions Jacopo Re University of Milan

THE PROJECT IS IMPLEMENTED BY COORDINATOR



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Outline

Overview and Caveat

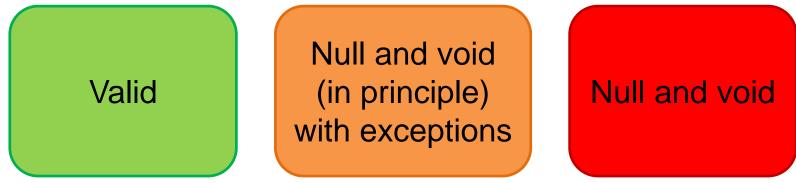
• Points

- PIL rules on Agreements as to successions
- Relationship with the *lex successionis*
- Transitional provisions

• Closing remarks

Overview and Caveat

- *Ratio* of artt. (24) 25-27 of the Successions Regulation
 - Varieties of solutions



- Free movement of persons: necessity that an agreement as to succession valid at the time of its conclusion is not questioned after the death of the person(s) concerned
- Estate planning
- Coordination with Art. 1 par. 2 let. g-h

PIL rules I: Characterisation

- Legal definitions: art. 3 par. 1 let. b-d Succession regulation (in reverse order)
 - d) disposition of property upon death means a will, a joint will or an agreement as to succession
 - c) joint will means a will drawn up in one instrument by two or more persons
 - b) agreement as to succession means an agreement, including an agreement resulting from mutual wills, which, with or without consideration, creates, modifies or terminates rights to the future estate or estates of one or more persons party to the agreement

PIL rules II: Characterisation

• This means: unilateral vs. contractual nature of the disposition

Art. 24

Wills Joint wills (if there is no agreement) Art. 25

Agreements as to succession

- Institutive agreement
- Renunciation agreement
 Mutual wills (joint/separate)
 Donation mortis causa
 Donation-partage,
 Insitution contractuelle
 Contract to make a will
 Patto di famiglia?
 Transferring agreement?

PIL rules III: Connecting factors

- "General" connecting factor (art. 25 par 1 e par. 2 al. 1):
 - *Lex successionis* at the time of the conclusion of the Agreement as to successions (hypothetical *lex successionis*):
 - Habitual residence (Art. 21 par. 1)
 - Optio legis (Art. 22)
 - Closest connection? (Art. 21 par. 2)
- Optio legis (Art. 25 par 3)
- Closest connection (Art. 25 par. 2 al. 2)

PIL rules IV:

Succession of one person (Art. 25 par 1 and 3)

- Hypothetical *lex successionis* / Optio legis for
 - Admissibility
 - Substantive validity
 - Binding effects
- One law for every aspects
- Symmetry with art. 24

PIL rules V:

Succession of several persons (Art. 25 par. 2 and 3)

- Different laws
- Admissibility:
 - hypothetical *lex successionis* of all persons involved / Optio legis

• Substantive validity and binding effects:

Closest connection / Optio legis

• Pros of the optio legis:

- One law applicable for every aspects
- Favor admissibility
- Richard (Austrian citizen) and Elsa (Italian citizen) are a married couple habitually resident in Trieste (Italy). They wish to conclude the Austrian *Erbvertag* No optio legis:
- The agreement is null and void, as per art. 458 Italian civil code
- (Elsa's hypothetical lex successionis).
- Choice of Austrian law (Richard's nationality at the time of the disposition):
- The agreement is admissible
- Austrian law is applicable to: Admissibility; Substantial validity; Binding effects

PIL rules VI: Scope of the applicable law

- Admissibility;
- Substantive validity (art. 26);
 - Capacity to dispose, to modify and to revoke;
 - Incapacity to dispose or to receive;
 - Representation;
 - Interpretation;
 - Questions relating to the consent or intention of the person making the Agreement.
- Binding effects.

PIL rules VII: Formal validity

- Art. 27
 - Made in writing
- Favor validitatis:
 - Locus regit actum
 - Nationality (time of disposition/time of death)
 - Domicile (time of disposition/time of death)
 - Habitual residence (time of disposition/time of death)
 - Lex rei sitae
- What is form?
- Rules for modification and revocation

Relationship with *lex successionis*

- The law applicable under art. 21 and 22 regulates (as per art. 23):
 - the disposable part of the estate;
 - the reserved shares or other restrictions on the disposal of property upon death
 - claims which persons close to the deceased may have against the estate or the heirs;
 - What about a Renunciation agreement entered by a reserved heir?
 - any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries.

Transitional provisions

- Art. 83 par. 3
- Agreements made <u>before</u> 17 August 2015 are valid if the comply with:
 - Art. 25 and 27 of the Succession Regulation;
 - Former PIL rule in force in the State:
 - Of the **deceased**:
 - Habitual residence
 - Nationality
 - Of the authority dealing with the succession

Closing remarks

- The rules on Agreements as to successions achieve their goal:
 - Ensuring validity in the Succession regulation area;
 - Ensuring predictability and uniformity of results
 - Protecting free movement of persons
 - Estate planning

Thank you for your attention! jacopo.re@unimi.it