



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
DIPARTIMENTO DI DIRITTO PUBBLICO
ITALIANO E SOVRANAZIONALE

EU Regulation n. 650/12

Agreements as to Successions

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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

Valid

Null and void
(in principle)
with exceptions

Null and void

- **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 *Erbvertrag*

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 before 17 August 2015 are valid if they 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!

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