



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GOINEU



This Project is funded  
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# Les questions posées par les notaires français et belges confrontés à une succession internationale

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# Les questions posées par les notaires français et belges confrontés à une succession internationale

## 1. La notion “dernière résidence habituelle” du défunt

- Règle de base: art. 21, §1 du Règlement n° 650/2012: « *Sauf disposition contraire du présent règlement, la loi applicable à l'ensemble d'une succession est celle de l'État dans lequel le défunt avait sa résidence habituelle au moment de son décès. »*
- Définition? Non ... mais des indications dans les considérants 23 et 24.
- Le notaire doit rechercher « le centre de vie » du défunt.
- Illustration: la dernière résidence habituelle des fonctionnaires européens ?
- Clause d'exception: art. 21, §2 du Règlement n° 650/2012: « *Lorsque, à titre exceptionnel, il résulte de l'ensemble des circonstances de la cause que, au moment de son décès, le défunt présentait des liens manifestement plus étroits avec un État autre que celui dont la loi serait applicable en vertu du paragraphe 1, la loi applicable à la succession est celle de cet autre État.* »



# Les questions posées par les notaires français et belges confrontés à une succession internationale

## 2. Professio juris

- a) Rappel du Règlement successions (art. 22) : la professio juris en général
- b) La situation de la Belgique et la question de la réserve et de l'ordre public international belge
- c) La situation de la France :
  - i. La professio juris avec des pays relevant de la Common Law : la question de la réserve et de l'ordre public français
  - ii. La professio juris avec des pays de droit musulman et l'ordre public international français



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# Les questions posées par les notaires français et belges confrontés à une succession internationale

## 3. Renvoi

- a) L'arrêt de la Cour de cassation française du 15 mai 2018 relatif à la succession d'un binational
- b) Illustration avec un cas franco-turc
- c) Illustration avec un cas franco-maghrébin
  - i. Un Franco-Algérien résidant en Algérie
  - ii. Un Français converti résidant en Algérie

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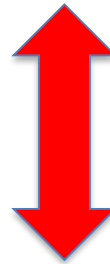


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# Les questions posées par les notaires français et belges confrontés à une succession internationale

## 4. Forme du certificat successoral européen

La Belgique: un acte authentique



La France: un document '*sui generis*'

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## 5. Dispositions transitoires : le cas particulier de l'article 83 §4 du Règlement

La *professio juris* présumée :

*“Si une disposition à cause de mort, prise avant le 17 août 2015, est rédigée conformément à la loi que le défunt aurait pu choisir en vertu du présent Règlement, cette loi est réputée avoir été choisie comme loi applicable à la succession”*

Cas pratique belgo-italien

- a) La lecture belge
- b) La lecture française



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# The questions asked by French and Belgian notaries faced with an international succession

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# The questions asked by French and Belgian notaries faced with an international succession

## 1. The notion of the deceased's "last habitual residence"

- General rule: Art. 21, §1 of Regulation No. 650/2012: *"Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death."*
- Definition? No ... but indications in the recitals 23 and 24.
- The notary shall search for the deceased's "centre of life".
- Illustration: the last habitual residence of European officials?
- Exception clause: Art. 21, §2 of Regulation No. 650/2012: *"Where, by way of exception, it is clear from the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law should be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State."*





# The questions asked by French and Belgian notaries faced with an international succession

## 2. Professio juris

- a) Reminder of the Succession Regulation (Art. 22): professio juris in general
- b) The situation of Belgium and the issue of the reserved share and Belgian international public policy
- c) The situation of France:
  - i. Professio juris with countries subject to Common Law: the issue of the reserved share and French international public policy
  - ii. Professio juris with Islamic law countries and French international public policy



# The questions asked by French and Belgian notaries faced with an international succession

## 3. Renvoi

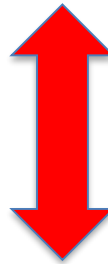
- a) Decision by the French Court of Cassation (supreme court) of 15 May 2018 concerning the succession of a person having dual nationality
- b) Illustration with a Franco-Turkish case
- c) Illustration with a Franco-North African case
  - i. A Franco-Algerian living in Algeria
  - ii. A French convert living in Algeria



# The questions asked by French and Belgian notaries faced with an international succession

## 4. Form of the European certificate of succession

Belgium: an authentic deed



France: a '*sui generis*' document

# The questions asked by French and Belgian notaries faced with an international succession

## 5. Transitional provisions: the special case of Article 83, §4 of the Regulation

The presumed *professio juris*:

*“If a disposition of property upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with this Regulation, that law shall be deemed to have been chosen as the law applicable to the succession”*

Belgo-Italian case study

- a) Belgian interpretation
- b) French interpretation



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