



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

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# La succession du conjoint survivant

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# La succession du conjoint survivant

## Dans le domaine des successions transfrontalières :

- le cas est très fréquent
- on assiste à une évolution de la définition de conjoint
- les disciplines sont souvent différentes dans les divers Pays

Premières questions : **analyse de cas pratiques**



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# La succession du conjoint survivant - 1

## Cas numéro 1 (arrêt Mahnkopf, CJUE 558/16)

- défunt citoyen allemand
- résidence habituelle en Allemagne
- héritiers : sa femme et un fils
- biens en Allemagne et copropriété d'un immeuble en Suède
- marié sous le régime légal de la communauté réduite aux acquêts, sans aucun contrat de mariage
- le conjoint survivant demande un CSE pour transcrire le transfert en Suède : art. 1371 du BGB règle la répartition des acquêts par majoration de la part légale du conjoint survivant

## La prévision de l'art. 1371 du BGB entre dans le champ d'application du Règlement 650/2012 ?

L'article 1er, paragraphe 1, du Règlement ... doit être interprété en ce sens que relève du champ d'application dudit règlement une disposition nationale ... qui prévoit, lors du décès de l'un des époux, une répartition des acquêts forfaitaire par majoration de la part successorale du conjoint survivant.

Application concrète du principe



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## La succession du conjoint survivant - 2

### Cas numéro 2 (Cridon)

- défunt citoyen italien
- résidence habituelle en France
- héritiers : conjoint et enfants
- bien meubles et immeubles en France et en Italie
- donation entre époux faite en France, quand il y était résident, reçue par un Notaire français

### La donation entre époux s'applique aux biens situés en Italie ?

- en Italie la donation de biens à venire et les pactes successoraux sont interdits
- l'exclusion des libéralités est prévue par l'article 1, paragraphe 2 lettre g) du Règlement 650/2012
- mais la donation entre époux qui a pour objet des biens futurs et prend effet au jour du décès peut être considérée un pacte successoral et donc une disposition à cause de mort selon l'article 3, paragraphe 1, lettre d) (accord qui confère, modifie ou retire, avec ou sans contre-prestation, les droits d'une succession future d'une ou plusieurs personnes parties au pacte) ?



## La succession du conjoint survivant - 3

### Cas numéro 3

- défunt citoyen français
- résidence habituelle en France
- convention de communauté universelle
- testament italien successif limité aux immeubles en Italie

### La communauté universelle entre époux s'applique aux biens situés en Italie ?

- NON (pacte successoral ou donation de biens à venir) : le testament successif régit la succession des immeubles italiens
- OUI (loi successorale et donc application de la loi française) : le testament ne produit pas d'effets
  
- Peut-on rédiger un CSE dans ce cas ?
- Influence du Règlement 1103/2016



# La succession du conjoint survivant - 4

## Cas numéro 4

- défunt citoyen néerlandais
- résidence habituelle ? Pays Bas ou Kenya
- biens immeubles en Italie
- argent et meubles aux Pays Bas et au Kenya
- conjoint survivant russe, résident en Italie
- deuxième mariage au Kenya

## Difficulté concrète pour l'individuation de la résidence habituelle

- choix de loi, art. 22 du Règlement (UE) 650/2012
- Peut-on rédiger un CSE dans ce cas ?
- Influence du Règlement (UE) 1103/2016



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**Merci de Votre attention.**



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# The succession of the surviving spouse

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# The succession of the surviving spouse

## In the field of cross-border successions:

- the case is very common
- there is a change in the definition of spouse
- disciplines are often different in different countries

First issues: **practical case analysis**



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# The succession of the surviving spouse - 1

## Case number 1 (judgment Mahnkopf, CJUE 558/16)

- deceased German citizen
- habitual residence in Germany
- heirs: his wife and son
- property in Germany and co-ownership of a building in Sweden
- married under the legal regime of the community reduced to purchases, without any marriage contract
- the surviving spouse requests a CSE to transcribe the transfer in Sweden: art. 1371 of the BGB regulates the distribution of purchases by increasing the legal part of the surviving spouse

## The prediction of art. 1371 of the BGB falls within the scope of Regulation 650/2012?

Article 1(1) of Regulation ... must be interpreted as meaning that a national provision, such ... which prescribes, on the death of one of the spouses, a fixed allocation of the accrued gains by increasing the surviving spouse's share of the estate falls within the scope of that regulation.

Practical application of the principle



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## The succession of the surviving spouse - 2

### Case number 2 (Cridon)

- deceased Italian citizen
- habitual residence in France
- heirs: spouse and children
- good furniture and buildings in France and Italy
- donation between husband made in France, when he was resident, received by a French Notary

### The donation between spouses applies to property located in Italy?

- in Italy the donation of goods to come and the inheritance pacts are forbidden
- the exclusion of gifts is provided for by Article 1, paragraph 2 (g) of Regulation 650/2012
- but the donation between spouses whose object is future property and takes effect on the day of death may be considered an inheritance pact and therefore a disposition on account of death according to Article 3, paragraph 1, letter d) (agreement conferring, modifies or withdraws, with or without a counter-benefit, the rights of a future succession of one or more parties to the agreement)



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# The succession of the surviving spouse - 3

## Case number 3

- deceased French citizen
- habitual residence in France
- universal community convention
- successive Italian will limited to Italian buildings

## The universal spousal community applies to property located in Italy?

- NO (estate agreement or donation of future property): the successive will governs the succession of Italian properties.
- YES (inheritance law and therefore application of French law): the will does not produce effects.
- Can a CSE be issued in this case?
- Influence of Regulation 1103/2016



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# The succession of the surviving spouse - 4

## Case number 4

- deceased Dutch citizen
- habitual residence? Netherlands or Kenya
- real estate in Italy
- silver and furniture in the Netherlands and Kenya
- Russian surviving spouse, resident in Italy
- second wedding in Kenya

## Concrete difficulty for the individuation of habitual residence

- choice of law, art. 22 of Regulation (EU) 650/2012
- Can a CSE be issued in this case?
- Influence of Regulation (EU) 1103/2016



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