



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



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Round table

Carlo Poli

Board Member of the Council of the Lawyers of Florence

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Associazione Avvocati
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Sezione Distrettuale di Firenze

- Il Regolamento UE 650/2012 prevede la possibilità per il giudice della residenza abituale del *de cuius*, competente in via generale per tutta la successione, ex art. 4 dello stesso Regolamento, di declinare la propria giurisdizione in favore del giudice del Paese di cittadinanza del *de cuius* qualora quest'ultimo, nel proprio testamento, abbia scelto di applicare la legge del Paese di cittadinanza, ove le sia richiesto da almeno una delle parti e se ritiene il giudice del Paese di cittadinanza più adatto a decidere sulla controversia
- E' stata così introdotta nell'ordinamento comunitario la possibilità per il convenuto di valersi dell'eccezione del c.d. "*forum non conveniens*" di matrice anglosassone.



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- Si tratta di un criterio inusuale per il diritto continentale, abituato ad ancorare la competenza a criteri di collegamento certi fissati per legge e non lasciati alla discrezionalità del giudice
- In questa sede ci si propone di fornire un contributo alla risoluzione del problema relativo alla ricostruzione dei limiti della discrezionalità del giudice qualora decida di spogliarsi della propria giurisdizione, accogliendo l'eccezione in questione.



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- EU Regulation 650/2012 provides for the possibility for the judge of the habitual residence of the *de cuius*, which under art. 4 of the same Regulation has general jurisdiction over all the succession, to decline its own jurisdiction in favor of the judge of the country of citizenship of the deceased, if he considers said judge (the judge of the country of citizenship) to be best suited to decide on the dispute, and in the event that the deceased in his will chose to apply the law of his country of citizenship and whether it has been requested by at least one of the parties of the dispute
- Thus the possibility for the defendant to use the Anglo-Saxon exception so-called “*forum non conveniens*” was introduced in Community law.



- This is an unusual criteria for continental law, accustomed to anchoring the competence to certain binding criteria determined by law and not left to the discretion of the judge
- We propose here to make a contribution to the resolution of the problem related to the reconstruction of the limits of the judge's discretion if he decides to strip himself of his jurisdiction by accepting the exception in question.



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