



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

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INTERNATIONAL MIGRATION, KNOWLEDGE OF FOREIGN LAW AND REGULATING SUCCESSION

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HIGHLIGHTS

1.- The application of foreign law in EU succession regulation

2.- Knowledge of foreign law : interpretation and misinterpretation

3.- Information, counsel and proof of foreign law



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1.- The application of foreign law in EU succession regulation



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- **APPLICABLE LAW**

- The **habitual residence** at the time of death except if the deceased was manifestly more closely connected with an another State (art. 21)
- **Choice of Law** : nationality (or one of the nationalities) at the time of making the choice or at the time of death (art. 22)

- **APPLICABLE THIRD STATE LAW**

- **Applicable Law**

Any law specified by the Regulation shall be applied **whether or not it is the law of a Member State.**



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Example

- An Englishman is habitually resident in France and his assets : bank accounts and buildings in England and France.
- He wants to have his succession governed by English Law.
- Solution : *professio juris*?



Problems

- A professio juris will take effect on assets in France
- **It will be necessary to consider the effect of this professio juris in England.**

➤ Renvoi

The **application of the law of any third State** shall mean the application its rules of *renvoi* (art. 34) ...

➤ to the law of a **Member State**

➤ to the law of **another third State which would apply its own law.**



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Example

- A Swiss citizen **habitually resident in Morocco** dies leaving property in Switzerland, Morocco and France.
- The Moroccan rule refers to Swiss law, the national law of the deceased and Swiss law agrees to apply.
- The Moroccan, Swiss and French authorities will settle the succession in accordance **with Swiss law**



2.- Knowledge of foreign law :

Necessity Interpretation and misinterpretation



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Knowledge of foreign law and professio juris

- Knowledge of diversity of national laws :
 - Professio juris to « British Law » : English and Welsh Law?... Northern Ireland (Intestacy law)?
 - Professio juris to « Spanish Law » : civil spanish code, catalan civil law ... etc?
- See art. 36 : internal conflict of laws regulation
 - *internal conflict-of-laws rules*
 - *or apply the law of the territorial unit with which the deceased had the closest connection*



- **Knowledge of validity of professio juris**

Art 22 : *The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.*

Art. 27 : *A disposition of property upon death made in writing shall be valid as regards form if its form complies with the law of nationality, domicile or habitual residence*



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In most cases, the deceased had consulted a lawyer in his State of habitual residence and he will draft the deed according to local laws :

...English law sets special capacity requirements in the case of a holographic will...

...In the State of Florida, a holograph will is not recognized even if it is valid under the law of the place where it was made unless it was made in the presence of witnesses...



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Conclusion :

1.- It is necessary to **verify the formal requirements in the State of which the deceased was a national** as soon as there are assets to be included in his succession, otherwise the choice of law may remain ineffective in the deceased's State of origin....



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2.- If the authorities of a third State **do not know the *professio juris***

.... the choice made by the deceased will have **no effect!**



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Knowledge of foreign law and eviction of applicable Law

- Art. 30 : Special rules imposing restrictions concerning or affecting the succession in respect of certain assets « for economic, family or social consideration »

=> ex. in french law : preferential allotment for certain assets like companies or businesses located in France (*Cass. Civ. 1ère, 10 oct. 2012*)



Knowledge of foreign law and (mis)interpretations of EU regl.

- **Trust** : an Englishman residing in France establish a testamentary trust and... chooses English law to govern his real estate succession...
 - Trust as **unknown institution** :
 - Recital 16 « this Regulation should provide for the adaptation of an unknown right *in rem* to the closest equivalent right *in rem* under the law of that other Member State.
 - Problem of **land registration legislation** in France...



- **Appointed executor in a will**

- In a will in english law, he/she has the estate administration
- But it can't be compared to the French executor because in english law he owns the property that is separate from his personal estate.
- French notary has to ask a local lawyer the functions of the executor in English law?

3.- Information, counsel and proof of foreign law



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Knowledge of foreign law by a professional (notary, Lawyer)

- **Documentary** fund
- **Research center** (in France the CRIDON national and regional network for notaries)



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Successions in Europe

Succession law in 22 European countries

EN

FR

A site proposed by:



Successions in Europe

23-11-2015

| | | | |
|---|----------------|---|-------------|
|  | Austria |  | Latvia |
|  | Belgium |  | Lithuania |
|  | Bulgaria |  | Luxembourg |
|  | Croatia |  | Malta |
|  | Czech Republic |  | Netherlands |
|  | Estonia |  | Poland |
|  | France |  | Portugal |
|  | Germany |  | Romania |
|  | Greece |  | Slovakia |
|  | Hungary |  | Slovenia |



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- **Document from a local lawyer** who certifies the existence of a right, gives its content, and can even interpret it
- **Legal opinion :**
Assumptions

Factual and legal on the basis of which the legal opinion is issued are analysed



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• Cooperation agreements

⇒ Cooperation agreements with professional organizations (National notary orders, Bars ...)

⇒ Mention fares and responsibilities in cross border cooperation

⇒ French Notary Order signed 22 conventions of cooperation with Notaries Orders abroad



Knowledge of foreign law and responsibilities

- **Duty to advise** in the international context
- In case of **difficulties that make it impossible** to access the content of the foreign law, while the client claims its application, it will then be up to the client to provide proof of this...
- **Professional responsibility**



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