

What has changed since 2015 for a citizen. The point of view of a professional from a third country

Laurent Besso
Civil Law Notary in Lausanne

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Introduction and reminder

The notary's mission in the context of inheritance law

- Advice to the testator
- Clear transcription of the testator's wishes
- Transfer of the assets of the deceased to the heirs

The framework for Third Country Citizens

He/ She should inquire about:

- The applicable law
- The competent authority to deal with the succession (Location)
- The validity and recognition of its provisions for cause of death in countries with which there is a related link

Unlimited and limited liability cases

Unlimited:

- Residence
- Citizenship
- Religion

Limited:

Location of assets: Immovable or movable property (bank accounts, business, boats, aircraft etc.).

The Tools

1) The wishes of the testator

2) International conventions

- multilateral: Hague Conventions, EU Regulations, etc.

- bilateral

Example of the treaty between Italy and Switzerland on the law applicable to the inheritance of its nationals
(analyzed differently by the EU and Switzerland)

3) National laws

National Systems

United system

- Nationalist
- Territorialist
- Alternative

Splitting system

- Standard (territorialist)
- Pure
- Nationalist

Risk of incompatibility of national systems

- Circle of heirs
- Importance of legal shares
- Circle of compulsory heirs
- Public order

The Issue

To determine the existing differences between the different laws in order to

anticipate cases of involuntary splits.

Splits are a real obstacle to the freedom to testate creating serious inequalities between the heirs and an unstable legal situation for the testator.

In Europe

Regulation (EU) No 650/2012 stipulates the principle of unity of succession (art. 23), it allows the adoption of foreign law, even non-European ones (art. 20 and 22).

Regulation (EU) No 650/2012 provides a definition of the Inheritance Pact as European rules as well as other types of provisions for cause of death (art. 3).

The application of EU reg.650/2012 in a Third Country

The recognition of provisions issued in a country of the European Union depends on the International Private Law regulation applicable in the third country.

Switzerland has known since the 1990's the principle of *Professio Juris*, which is confirmed article 90 of the Swiss federal Private Law.

Nevertheless there are some differences in the application rules. Among others, in Switzerland, in the event of dual Swiss and other citizenship, the choice for a foreign law is no longer possible for a Swiss resident.

In Switzerland, the choice in favor of a foreign law is not possible if, at death, the testator had lost the citizenship of the chosen law.

For the European resident, this choice will remain possible, due to the above-mentioned Regulation. Thanks to the European Union for strengthening the spirit of *Professio Juris*.



The application of EU Reg.650/2012 in a Third Country

The usefulness and effects of the regulations do not end with testamentary dispositions.

The inheritance certificate (example Switzerland)

The European heirship certificate may be considered equivalent to a Swiss heirship certificate if it indicates the name of the deceased as well as of all the legal and / or instituted heirs, provided that these persons can be determined on the basis of at least a provisional assessment of the legal situation and that it emanates in accordance with the law of the country of issue (country of opening of the estate), a judicial or administrative authority or even a notary.

Acts which attest only to statements by individuals, without an authority carrying out public tasks having carried out certain investigations in order to ascertain the material legal situation are non-compliant. Some provision also applies in relation with the compliance to the Swiss public order. (Supreme Court decision on the validity of an Egyptian heirship certificate based on the Sharia law)

The application of EU Reg.650/2012 in a Third Country

The executor

The notion of executor is now recognized in all countries of the European Union. In addition, in accordance with article 22 of EU Regulation No 650/2012, the power of the executor, including his faculty with regard to the sale of goods and the payment of creditors, complies with those of the law applicable to the succession..

Switzerland considers, on the other hand, that this is a modality of execution which is thus the competence of the State in which the succession is opened.

Please also note that not all third countries agree to give powers to a foreign executor (for example South Africa) for the assets located in their country.

Conclusion

Regulation (EU) No 650/2012 is a magnificent tool aimed at making it possible to maintain and develop an area of freedom, security and justice in favor of citizens while ensuring the protection of their fundamental rights. It eliminates a large number of obstacles to the free movement of the persons concerned.

If Switzerland, maybe because of its geographical location and its political organization, has been able to show itself as a pioneer in the field of the simplification of succession management, the European Union, by its size and its inescapable political importance, has given a real boost to the field we are dealing with today. This impetus is beneficial to all, of course in the first place to European nationals, whether they are residents of the European Union or of third countries and also to all nationals of third countries living in Europe.

European Union policy thus becomes a beacon that guides and will guide the legislators of third countries to promote the security, particularly the legal security, that it provides for the benefit of citizens.



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