The European Regulation No. 650/2012
Related to International Successions

(***Effective as of August 17, 2015***)

Conflicts of law rules in succession matters will drastically change in Europe on **August 17th 2015**, when the new E.U. Regulation No. 650/2012, adopted on July 4th 2012, becomes effective in most of the European Union Jurisdictions.

Usual residence at the time of death will become the main criterion used to select a single and uniformed applicable law.

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It took almost 3 years for the proposed Regulation of 14 October 2009 on international successions to be adopted in its final form on 4 July 2012, and enacted on 16 August 2012.

Then, another 3 years have passed between the enactment of the Regulation and the full effectiveness of the new provisions.

… Why is that so?

It would be an understatement to say that this Regulation was eagerly awaited by practitioners, while all commentators agreed that it is introducing profound innovations in the matter.

This mini revolution probably explains the delay **in its enforcement set for 17 August 2015**.

Obviously, this delay has been beneficial in giving practitioners time to become familiar with the new law on cross-border and international successions.

It will eventually replace the applicable conflicts of law rules of the Member States, except in the UK and Ireland which have opted out.

Similarly, Denmark has a permanent exclusion in the field of justice.[1]

In order to understand the scope of this Regulation, one must remember at the outset that **it excludes**:

- Matters related to **tax, customs and administration**,
- **Personal status and family relations**,
- Issues related to **absences and disappearances**, and
- Issues relating to **matrimonial regimes and their liquidation**.

In practice, this regulation aims at simplifying the process when dealing with international successions and, in particular, European cross-border successions.

These new provisions will:

- Designate **the authority having jurisdiction to settle successions** and, where appropriate, to **settle disputes** that may arise in the process;
- Determine **the applicable law;**
- Recognize **and enforce decisions as well as authentic instruments** within the territory of the participating Member States.

Therefore, it is designed to simplify, but also speed up and reduce the costs of processing international successions. To that end, the Regulation:

- Creates a standardized **European Certificate of Succession** (ECS) which can be used in all participating Member States. This standardization will facilitate procedures and formalities, for example to make payments or deliver legacies. In this respect, it is up to each participating State to determine what will be the relevant authorities on its territory to deliver the ECS;

- Designates **a single law and a single jurisdiction**. The unity of judicial and legislative powers represents one of the two major innovations of this new legislation; and

[1] Sources on *Regulation (EU) No 650/2012 which was voted by the European Parliament and the European Council on 4 July 2012 relative to jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of the European Certificate of Succession* include:
Droit Européen des successions internationales (European Law on International Successions) by George Khairallat & Mariel Revillard (Defrenois March 2013);
*Le certificat successoral et les registres fonciers (*The European Certificate of Succession and Land Registers*), La semaine juridique notariale et immobilière* Law Review *No. 11, March 15, 2013, act. 343*
*La Loi applicable aux successions Internationales selon le règlement du 4 juillet 2012 (*Applicable law in matters of international successions under the Regulation of 4 July 2012), *La semaine juridique notariale et immobilière No. 17, April 26, 2013, 1109*.
This article is also the result of work presented during the AEA-EAL annual Congress (European Association of Lawyers) in Gdansk (Poland) from 13 to 15 June 2013.

- Establishes the ***"Professio Juris"***, namely the possibility to designate in advance the law which will govern one's succession; this is the second major innovation of the Regulation.

It is worth to address those two innovations further :

I. The Unification of the Applicable Law

Prior to the application of the Regulation, the law governing international successions remains, depending on the State, either the law of the State of which the deceased is a national, or — this is the case in France — the law of his last domicile.

Some countries, including France, make a further distinction between movable and immovable property, that may lead to applying different respective laws.

This system is said to be "of scission" or dual; it leads in practice to the application of several laws to settle a single succession, dependent on the nature of the assets.

From a practical viewpoint, it has become necessary to settle correlated conflicts of laws, as well as jurisdictional dismissals, delays, lack of predictability and absence of legal certainty, which are factors of increased "procedural risk" (and related costs…).

Therefore, the situation will be radically different under the new Regulation regime.

Indeed, in the Member States where it will be applicable, **one law will govern the entire succession,** regardless of the nature or location of the property.

By default, it will be the **law of the usual residence of the deceased at the time of death**.[2]

However, there are **a few exceptions** to this general rule:

- If the deceased maintained **closer ties with another State** (to be defined on a case by case basis), the law of that State will apply, cf. Article 21-2 of the Regulation;

- State **mandatory laws** where the property is located may overrule this general jurisdiction pursuant to Article 30 of said Regulation;

- "***Renvoi***" to another jurisdiction is also authorized in some cases referred to in Article 34 of said Regulation;

[2] This principle is enshrined in Article 21 of the Regulation. It is explicitly stated under the recitals, notably under recital n° 23: *« … to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. ».*
The official text of the Regulation can be found at :
http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.201.01.0107.01.ENG

- Finally, under the **Public Policy** principle, a typical and well-known "national" safeguard in Private International Law, it will be possible to set aside a provision of the otherwise applicable law, if said law should be obviously incompatible with the Public Policy of the State, cf. art. 35 of the Regulation.

In addition to the unification of the applicable law relating to international successions, another novelty is now to be highlighted:

II. The introduction of the ***"Professio Juris"***

As mentioned above, it allows individuals to choose the law that will be governing their succession and estate.

Legislators have decided to respect and value the individual will, within certain limits however, since **only the national law may be designated** (*ie* the national law of the deceased at the time of executing the act, or at the time of death).

Should a person have a double nationality, he or she may designate one of the two national laws (again, assessed on the date of the election, or at the time of death).

This choice may be express or implied, but must result or be stated **in writing** in the form of "**dispositions of property upon death**".[3]

It is obviously recommended to clearly express one's choice, rather than subsequently leave the task of interpreting the sometimes ambiguous dispositions to heirs and/or to professionals...

It is also worth observing that **this choice could be formalized before the Regulation became applicable**, but it would only be effective if death would occur after August 17, 2015.

Finally, practitioners must keep in mind the ***universal application*** of this Regulation.

As a result :

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

See Article 20 of the Regulation.

[3]Article 26 under the Regulation sets the conditions for the *Substantive validity of dispositions of property upon death*, while Article 27 deals with the *Formal validity of dispositions of property upon death made in writing*. The latter are in agreement with the rules laid down in the **Hague Convention of 5 October 1961**, relative to the form of testamentary dispositions, whose relationship with the Regulation is addressed further under its Article 75.

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Eventually, that extensive universal scope of the Regulation might be infringing on the forced heirship mechanisms.

For instance, English citizens who would settle permanently in a participating State which provides for mandatory forced heirship rules, such as in France or in Italy, could nevertheless designate English Law as the applicable law governing their estate.

They could do so even though the UK decided not to participate in the application of the Regulation (see exclusions above-mentioned).

The fact that the estate of a British national would involve assets exclusively located in that forced heirship State would have little importance.

He or she could, through the implementation of the *"Professio Juris",* decide to bequest all the estate to third parties, even in the presence of forced heirs (such as children).

It would suffice for that purpose to choose the application of English Law to the succession!

As a consequence, in France, no doubt that the widely debated question surrounding the Public Policy nature of forced heirship rules will rise and bloom again [4]…

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[4] Cf. *Brèves réflexions sur l'ordre public et la réserve héréditaire (Brief reflections on public policy and heirship reserve)* Michel Grimaldi, Defrenois 15-30 August 2012 p. 755 ff., art. 40563