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WHAT'S NEW ABOUT EUROPEAN SUCCESSIONS?

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The new EU Regulation on successions of 4 July 2012 came into force on 17 August 2015. Applicable law

The rule is that applicable law is the law of the State where the deceased had his/her domicile at the time of death.

It should first be noted that this regulation does not apply in the UK or in Ireland and Denmark: these countries didn't take part in the preparation phase of the regulation and didn't notify the Commission that they would adopt it.

Possible choice of law

Regarding applicable law, Art. 22.2 and 22.3 provide that choice of law for the succession can be expressly made in a will.

Any authentic instrument or judicial decision which sets rights in matters of succession, and which is issued or given and enforceable in a Member State, shall be enforceable in other Member States (Art. 43 and 59).

Special provisions need to be made to transfer title in real-estate assets to the Mortgage Registry (art. 23.2).

Regulation Nr 650/2012 nevertheless provides for exceptions based on national or international public policy.

In particular, such issues as the reserved share of the estate or the specific priority order between heirs need to be taken into account.

Application of the EU Regulation on successions is made using standard forms, which are made available in Word format (e.g. the European certificate of succession).

Enforcement of decisions

As provided for under Art. 45, each country has provided a list of local courts having jurisdiction to declare a decision rendered in another Member State enforceable, in case of dispute.

In France:

- The Court of first instance (Tribunal de grande instance or TGI) has jurisdiction to declare a foreign decision enforceable.
- Any claim against a decision regarding application for a declaration of enforceability must be lodged before the Court of appeal having jurisdiction where the Court of first instance initially granted or rejected the application.
- Any subsequent appeal must be lodged before the French Supreme Court (Cour de Cassation).

The European certificate of succession

In France:

- The notaire is in charge of issuing European certificates of succession.
- Any claim against an European certificate of succession must be lodged before the Court of first instance (TGI).

Wills

Disposition of property upon death made in writing is valid if compliant with both the national law chosen by the parties and the law of the State where the disposition was made.

Yet, if the disposition was made regarding immovable property, validity of the last will is assessed based on the law of the State in which said property is located (Art. 27.1 of EU Regulation Nr 650/2012).

Tax issues

The rule is that the State where the deceased had his/her habitual residence may levy taxes on all national and international assets which made up the estate of the deceased at the time of death.

Nevertheless, since legal provisions may differ between two States, assets may be subject to tax in the State where they are located; in such a case, it is possible to deduct any tax already paid – in any event in accordance with the bilateral agreement signed with France.

For instance, Portuguese law does not provide for any inheritance tax, but assets owned by the deceased in Portugal may be subject to tax pursuant to French law.

A number of bilateral agreements have been entered into in order to avoid double taxation.

One exception: the case of Franco-British successions

Since the UK didn't adopt EU Regulation Nr 650/2012, English people may not choose applicable law as regards their succession. Nevertheless, French law may apply if they are domiciled in France.

For English residents who own a property in France, French law shall apply for the purpose of sale or inheritance.

However, one needs to keep in mind that French law and English law are based on differing definitions for domicile - which, under English law, is closer to the concept of citizenship than of residence.

Lastly, when English judges apply French law, they refuse to decrease the value of gifts, which undermine the rights of rightful heirs.

For a French citizen domiciled in the UK, it is therefore highly recommended to choose applicable law with care.