# INFORMATION NOTE

## *The complicated business of succession when you are an international official*

*Our aim with this article is to make AMFIE members aware of the complicated situation which has always governed passing on their assets to their children, spouses or third parties, because of the overlapping of divergent laws in their countries of origin and residence and maybe also the country where the assets are situated, not to mention those of the beneficiaries and putative beneficiaries. We have to stress from the outset that the following information relates only to civil law and procedure; the tax implications are beyond the scope of this article.*

*No two cases are identical, and the reader should not rely on the general information which follows to reach a valid and reliable assessment of his personal situation. Regardless of the circumstances he should, if our information gives him pause for thought, seek advice from a notary or specialist law firm with expertise in whichever jurisdictions are concerned.*

*National legislations differ, often substantially, not only as regards content (formal rules to be observed by the testator, any reserved parts of the estate reverting automatically to certain statutory heirs, etc.), but above all in how they define the extent of their applicability (to the citizens of the country concerned, to residents of the country, to property located in the country).*

*Every year there are some 450,000 "international successions" in Europe, and these differences frequently result in conflicts of laws. A single succession can be subject simultaneously to several national jurisdictions, and thus governed and possibly regulated by texts which are in open conflict one with another, with no possibility of the conflicts being resolved unequivocally.*


*As a result, legatees in dispute have been able to obtain diametrically-opposed judgements from the courts of different countries. Moreover, a judgement might not be enforceable in another country, if that country in turn claimed jurisdiction in the case, and decided it differently.*

*To avoid such conflicts of competence in cross-border disputes, and improve the management of them, a new European Regulation has been adopted and has been applicable since 17 August 2015. This international agreement, which the following pages summarise for our Members, does not affect the various positive provisions relating to wills and successions in the civil code or other legislation of each Member State. Its scope is limited to cross-border cases giving rise to a conflicts of laws, where it seeks to set out which national legislation is applicable and which national jurisdiction is competent to adjudicate in disputes.*

*Whilst this Regulation should succeed in resolving many hitherto inextricable situations, some problems persist and some questions remain unanswered, in particular because it is binding only on the 25 signatory states, i.e. all the EU Member States except Denmark, Ireland and the United Kingdom. And alas, it does nothing to change the applicable tax rules.*

*But even if you are neither a national nor a habitual resident of one of these 25 countries, and you do not die on their territory, the new arrangements may still under certain circumstances affect your succession. Note also that the new Regulation establishes a "European Certificate of Succession" valid across borders, and that in certain cases it allows the individuals concerned to choose which legislation will apply to their succession.*

# The new European rules on cross-border inheritance clarify many issues

The new European Regulation on International Successions[1] became applicable on 17 August 2015. This is a directly-applicable European legal instrument, in other words it does not need to be transposed into the national legislation of the countries concerned. Moreover, it is binding on only 25 EU Member States since Denmark, Ireland and the United Kingdom have chosen not to adopt it, although this certainly does not rule out its having incidental effects on the successions of British, Swiss or even non-European citizens or residents.

The new rules apply to the estates of individuals dying on or after 17 August 2015, but it must be made clear from the outset that they neither abolish nor replace the previously-applicable national provisions, nor do they amend their substance, except those provisions of international private law relating to competent jurisdiction.

Until now France and the United Kingdom considered that for the purposes of succession, financial assets and chattels should be dealt with under the law of the country of the deceased's last habitual residence, whilst real property ("real estate") followed the law of the country in which the property was situated. Germany, Italy, Spain and Portugal, meanwhile, recognised the law of the deceased's country of nationality or residence.

The new Regulation thus aims first at managing the conflicts of laws which can arise in international successions by affirming which national civil law is applicable, and secondly at determining the competent jurisdiction for the case in question.

Next, with the creation of a new legal instrument, the "European Certificate of Succession", the new rules facilitate the acceptance and application abroad of deeds of succession and judicial decisions relating to them. And lastly, the Regulation allows European citizens who are arranging their succession to opt explicitly for the applicability of the law of the country (or one of the countries) of which they are or have been a citizen at the time of opting or of death, in preference to that of the country of their last habitual residence.


The Regulation applies only to "international successions", so the vast majority of European citizens will clearly not be concerned by it. For the Frenchman who has lived and worked all his life in France, and dies there with no foreign possessions, there is no problem: the French civil code will continue to apply as it always has done, whether or not he made a will, and if there is any dispute it is the French courts which will be competent.

Unless of dual nationality, a citizen of a country who throughout his life has neither moved residence abroad nor worked abroad is remains indeed outside the scope of the Regulation. Furthermore, the Regulation in no way restricts the future right of national lawmakers to change the principles and procedures applying in their country, and it neither implements nor proposes any EU-wide harmonisation relating to successions.

A leading principle confirmed by the 25 signatory countries is the universal applicability of the legislation of the law of the deceased's "last habitual residence", even if that is a non-EU member, and thus possibly non-European country. The decisive criterion is thus firmly the last country of habitual residence, and not the country of death or that of final temporary residence, nor that where the estate is situated.

And whilst in one specific case a will may state that another country's law will apply (see below), the entire succession, at least within the 25 signatory countries, will always be dealt with as a whole, in accordance with the laws of the country selected.

The European Regulation covers all civil-law aspects of a cross-border succession, and thus cover all transfers of property, rights and responsibilities resulting from a death, whether or not a will was made. It covers all property, both real and movable, without regard to where it is situated.

The applicable national law will decide all the aspects to be considered, such

1 Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession
The full text of the Regulation can be found at:
http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012R0650&from=EN
More detailed information for the 22 European countries where the Roman-law notarial system applies (EU member states except Scandinavia, Ireland, the United Kingdom and Cyprus) are available at:
http://www.successions-europe.eu/

as the estate's causes and the time and place it is deemed to have opened, and the beneficiaries' roles in the succession. It determines their shares of the estate, and their share of any charges, the transfer of the properties, rights and responsibilities comprising the succession to the legatees and any other beneficiaries, the powers of the legatees, the executors and other administrators of the estate, and so on.

Certain matters are, however, explicitly excluded from the scope of the Regulation: gifts, life insurance contracts, trusts, questions relating to matrimonial property regimes and maintenance obligations. These are deemed not to form part of an estate, in other words, in such cases the rules predating this regulation continue to apply.

The Regulation brings one significant innovation and represents undeniable progress, notably in the case where real property situated abroad was previously subject to the law of the country where it was situated, not only for tax purposes (i.e. the Estate duty to be paid) but in civil law and in the event of dispute. It should be remembered that before this, when an estate included real property in two or more countries, separate procedures had to be followed for each, with different procedures before different authorities.

The decisive progress in the new European rules is thus the simplification resulting from the application of just one law of succession to the entire estate. This, however, applies only so long as the countries involved are all among the 25 signatories to the European Regulation. As an example, the estate of a German national who retired to Spain before dying in a hotel in Rome will in principle thus be governed by the Law of Spain (or in fact, in this specific case, the local law of the autonomous Spanish region of residence).

There is, however, as we have said, one important exception to this guiding principle of the "habitual residence of the deceased at the time of death". If at the time of death or of formulating his last wishes the deceased possessed a nationality other than that of his country of habitual residence, he may stipulate that his estate is to be settled in accordance with the law of that country, as designated by him (which would normally be the country whose laws he is most familiar with), this choice applying to the totality of the estate. The single procedure thus remains.

In our example, then, our German whose last residence was in Spain may prefer the application of German law, but in that case he must state it clearly and explicitly in the form required in a testamentary disposition.

Individuals with two or more nationalities thus have complete freedom of choice among their wider range of possibilities. But first, the option must be expressed explicitly and unambiguously, and secondly it can never involve the jurisdiction of a country of which the deceased had not been a national. There are thus limits to the freedom to choose the most advantageous jurisdiction.

The jurisdiction chosen and stated in the will is not irrevocable. If the choice no longer matches the testator's needs or wishes he can change it. It should moreover be borne in mind that the choice of one jurisdiction over another concerns only the civil law aspects of the estate, the formalities and procedures, and any disputes. It has no effect on fiscal matters: it is important to note that tax obligations and constraints are unaffected by the new Regulation, meaning that the risk of conflicts of jurisdiction and double taxation remains.

The new European Regulation is universally applicable, in so far as the country of habitual residence or of citizenship does not have to be one of the 25 signatory countries. This means that a US or British citizen living in continental Europe is free to choose his own country's legislation in preference to that of his country of residence.

In that particular case, the Regulation allows him to avoid the rules on "reserved shares" protecting "statutory heirs" which are not recognised by the laws of succession of most of the common-law countries. Since the extent to which the spouse and children are protected varies considerably from one country to another, the implications in this respect can be far from trivial. And this specific example is just one among many.

The vast majority of Europeans will not be affected by these changes. But international officials, like other expatriates, are almost bound to be concerned in one way or another: that is why we have chosen to draw the matter to members' attention. But the reader will have understood that this is a highly complex area, in which numerous details of application will continue to change, according to the whim of national lawmakers.

Our aim, then, was not to save AMFIE members the trouble of obtaining expert advice in their national jurisdictions in order to fully understand and manage their own succession, but to go out and seek it.

Paul Zimmer