



# 19th Annual International Wealth Transfer Practice Conference

**'Death and taxes: more than ever the only certainties'**  
*Essential update for all advisors to private clients in a changing world*

**3–4 March 2014**

**Claridge's Hotel, London, England**

## 19th Annual International Wealth Transfer Practice Conference

Death and taxes: more than ever the only certainties

# Brussels IV – On the advantages of dying abroad

London – Monday 3<sup>rd</sup> March 2014

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## Outline of the panel presentation

- Background
- Scope of application – what is not contemplated
- Entry into force and basic principles
- Jurisdiction
- Applicable law
- European Certificate of Succession – relevance
- UK peculiarities and in general issues related to EU States that have not opted in
- Swiss peculiarities – and in general issues related to third States
- Decisions in matters of succession given in one of the 24 EU Member States as well as authentic instruments issued by a notary in any of the 24 EU Member States will be recognized and enforceable throughout the EU
- Practical cases and discussion

**Regulation No. (EU) 650/2012 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**

Raul-Angelo Papotti

## Background

- 4<sup>th</sup> July 2012: Adoption of the Regulation No. (EU) 650/2012 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.
- Entering into force: The EU Succession Regulation has already entered into force on 16<sup>th</sup> August 2012 but it will have direct effect on deaths occurred on or after 17<sup>th</sup> August 2015.
  - ✓ As regards to deaths occurred before 17<sup>th</sup> August 2015, the 24 EU Member States will continue to apply their national conflict-of-law rules.
- Member States not taking part to the new Regulation:
  - ✓ United Kingdom,
  - ✓ Denmark,
  - ✓ Ireland.

## Purpose of the Regulation

- The EU Succession Regulation harmonizes the conflict-of-law rules on cross-border successions of other 24 members of the European Union (“24 EU Member States”).
- Regulation (EU) No 650/2012 of 4<sup>th</sup> July 2012 contains:
  - ✓ dispositions on jurisdiction (art. 4),
  - ✓ dispositions on applicable law (art. 21),
  - ✓ recognition and enforcement of decisions (art. 46 para. 3),
  - ✓ recognition of acceptance and enforcement of authentic instruments in matters of succession (art. 59 para. 1; art. 60, para. 2),
  - ✓ application for a European Certificate of Succession (art. 65), and
  - ✓ creation of a European Certificate of Succession (art. 67).

## What the Regulation aims at

- Due to the expanding mobility of persons, individuals more often move their residence abroad and own assets which are located in various States.
- Implementation of measures to harmonize relevant aspects on successions, such as the compatibility of the rules applicable in the Member States concerning conflict of laws and jurisdiction.
- Possibility for the deceased to choose a legal system other than that of his habitual residence to settle his legacy. While still living, he may choose the law of his nationality for the drafting of the will.
- Creation of a European Succession Certificate which will streamline the settlement of cross-border inheritance, particularly on matters of proof effects and legitimization.

## What is outside the scope of the Regulation

- This Regulation shall apply to succession to the estates of deceased persons. [Article 1(1)]
- The Regulation No. (EU) 650/2012 is not applicable
  - ✓ to revenue, customs or administrative matters (tax area),
  - ✓ the status of natural persons, as well as family relationships, the legal capacity of natural persons,
  - ✓ questions relating to the disappearance, absence or presumed death of a natural person,
  - ✓ questions relating to matrimonial property regimes,
  - ✓ other areas that potentially might have connections with the area of succession.



## Definition of “succession”

- “Succession” means *succession to the estate of a deceased person and covers all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession.*
  - ✓ In particular, "disposition of property upon death" means a will, a joint will or an agreement as to succession.
  
- The applicable legal system will rule the entirety of the inheritance.
  - ✓ “Unity of the succession” principle

## General overview on jurisdiction and exceptions

- As a general rule, the courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole (art. 4).
  
- Exceptions:
  - ✓ Article 22 allows a person to choose, as law to govern his succession, the law of the State whose nationality he possesses at the time of making the choice;
    - ✓ See Article 5(1) “... the parties concerned may agree ...”
  
  - ✓ Article 6: declining of jurisdiction in the event of a choice of law (in case the law of nationality chosen by the deceased is the law of a member State);
    - ✓ Possibility to decline jurisdiction provided that “*the courts of the member State of the chosen law are better placed to rule on the succession*”

(continue)

## General overview on jurisdiction and exceptions

### ➤ ... Exceptions:

- ✓ Article 10: subsidiary jurisdiction
  - ✓ “Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as:
    - a) the deceased had the nationality of that Member State at the time of death; or, failing that,
    - b) the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.”
- ✓ Article 16: in order to protect the fundamental right to defense, if a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court having jurisdiction may stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings in time to arrange for his defense.

## General overview on the applicable law

- As general rule, the law applicable to the succession shall be the law of the State in which the deceased had his habitual residence at the time of death, even if it is the law of a non-Member State (Art. 21, paragraph 1).
- Exemption: if it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State (Art. 21, paragraph 2).

## Definition of “last habitual residence”

- Under the EU Succession Regulation only one single criterion remains for determining the jurisdiction and the law applicable to cross-border successions: the last habitual residence at the moment of the death of the deceased.
- There is no definition of the term “last habitual residence”. The habitual residence should refer to a close and stable connection with the State concerned.
- Circumstances of the life of the deceased: (a) family; (b) permanent home available; (c) economic relationships; (d) assets.
- States with more than one legal system
  - ✓ Law of the territorial unit with which the deceased had the closest connection

## Manifestly closer connection to an another State

- Exception: instead of defining the term “last habitual residence” an exception clause has been created for cases where the deceased was manifestly more closely connected to another State than to the State of the last habitual residence (art. 21, par. 2).
- The inheritance law of that other State should rule the estate of the deceased.

## Choice of law

- According to article 22, a person may choose as the law to govern his succession the law of the State whose nationality he possesses at the time of making the choice or at the time of death.
- The choice shall be made expressly in a declaration in the form of a disposition of property upon death or shall be demonstrated by the terms of such a disposition. The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.
- A person possessing multiple nationalities may choose the law of any of the States whose nationality he possesses at the time of making the choice or at the time of death.

## Scope of applicable law

- The law applicable, as determined pursuant to articles 21 and 22, rules in particular:
  - a. the causes, time and place of the opening of the succession;
  - b. the determination of the beneficiaries, of their respective shares and of the obligations which may be imposed on them by the deceased, and the determination of other succession rights, including the succession rights of the surviving spouse or partner;
  - c. the capacity to inherit;
  - d. disinheritance and disqualification by conduct;
  - e. the transfer to the heirs and, as the case may be, to the legatees of the assets, rights and obligations forming part of the estate, including the conditions and effects of the acceptance or waiver of the succession or of a legacy;



## Scope of applicable law

- f. the powers of the heirs, the executors of the wills and other administrators of the estate, in particular as regards the sale of property and the payment of creditors, without prejudice to the powers referred to in Article 29(2) and (3);
- g. liability for the debts under the succession;
- h. the disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death as well as claims which persons close to the deceased may have against the estate or the heirs;
- i. any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries; and
- j. the sharing-out of the estate.

## Recognition, enforceability and enforcement of decisions

- According to article 39, the decision issued by a court of a Member State is recognized in the other Member States without any special procedure being required as a general rule.
- Safe harbor provision: *“Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedure provided for in Articles 45 to 58, apply for that decision to be recognised”*.

## Recognition, enforceability and enforcement of decisions

- A decision shall not be recognized in the following situations:
  - a. if it is manifestly contrary to public policy, where it was given in default of appearance;
  - b. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;
  - c. if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought;
  - d. if it is irreconcilable with an earlier decision given in another Member State or in a third State in proceedings involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

## Tax treaties to avoid double taxation

- Double taxation treaties
  - ✓ Inheritance tax
  - ✓ Gift tax
- Limited number of inheritance and gift tax treaties in force
- Tax credit

# **Last Habitual Residence And Testamentary trusts**

Andreas Richter

## Last Habitual Residence

- As a general rule, the law applicable to the succession as a whole shall be the law of the State in which the deceased person had his **habitual residence at the time of death** (Article 21 para. 1).
- The term “**last habitual residence**” is undefined in the Regulation.
- It is not the same as the “domicile” in Anglo-American Law.
- In order 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 person 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 habitual residence thus determined should reveal a close and stable connection with the State concerned taking into accounting the specific aims of this Regulation (Whereas No. 23).

## Last Habitual Residence

- Two examples following Whereas No. 24 illustrate the potential complexity:

### **Example:**

Thomas, a German national, went to France for professional reasons. He became interim manager of a German car manufacturer in France. He liked the job so much that he decided to stay in France until his retirement in 5 years. In his job he speaks German or English. He maintains a close and stable connection with Germany: He spends most weekends in Germany. His family continues to live there. In France, he lives in a serviced apartment of a hotel.

In such a case, Thomas can still be considered to have his **habitual** residence in Germany where the centre of interests of his family and his social life is located.

## Last Habitual Residence

### Example:

In the past few years, Karina lived in several States alternately without settling permanently in any of them. Karina is an IT advisor and helps clients all over Europe to implement new software products into their IT systems. She spent several months in Spain and Austria. Since 2013 she works and lives in Sweden. However, her nationality is German and she invests all her savings into German real estate in Frankfurt where she continues to have a flat.

Nationality or the location of the assets could be a special factor in the overall assessment of all the factual circumstances. Karina retains her **habitual** residence in Germany.



## Last Habitual Residence

- Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased person was **manifestly more closely connected with a State** other than the State in which the deceased person had his last habitual residence, the law applicable to the succession shall be the law of that other state (Article 21 para. 2).
- The Regulation does not define what constitutes “**close connection**”.

## Last Habitual Residence

### Example:

Franz, a German national and President of a professional football club in Munich, moved his main home to Kitzbühel in Austria a year ago. He drives to Munich almost on a daily basis and has most social contacts there. He stayed at his Munich apartment more than 100 days last year. Franz asks you which inheritance law would apply if something happened to him in the near future (Whereas No. 25).

- That manifestly closest connection should, however, **not be resorted to as a subsidiary connecting factor** whenever the determination of the habitual residence of the deceased at the time of death proves complex (Whereas No. 25).

## Last Habitual Residence

- Testators may opt for the application to their succession of their law of nationality.
- This **choice of law** is, however, restricted to the **law of nationality** of the deceased person
  - a. at the time of making the choice or
  - b. at the time of death

and should be made expressly (or demonstrated by the terms) in the **form of a disposition of property upon death** (Article 22 para. 1 and 2).

## Last Habitual Residence

- A person possessing **multiple nationalities** may choose the law of the States whose nationality he possesses at the time of making the choice or at the time of death (Article 22 para. 1).
- The **substantive validity** of the act whereby the choice of law was made shall be governed by the chosen law (Article 22 para. 3).
- Any **modification or revocation** of the choice of law shall meet the requirements as to form for the modification or revocation of a disposition of property upon death (Article 22 para. 4).

## Testamentary trusts

- The creation, administration and dissolution of **trusts** shall be excluded from the scope of the Regulation (Article 1 para. 2 (j)).
- This should not be understood as a general exclusion of trusts. Where a trust is created under a will or under statute in connection with intestate succession the law applicable to the succession under this Regulation should apply with respect to the devolution of the assets and the determination of the beneficiaries (Whereas No. 13).
- This is an interaction between the Regulation and the 1985 Hague Convention. The EU Member States which signed the Convention are Italy, Luxembourg, Malta, the Netherlands and the United Kingdom.

## Renvoi

- The application of the law of any third State shall mean the application of the rules of law in force in that State, including its rules of private international law in so far as those rules make a renvoi to the law of a Member State or to the law of another third State which would apply its own law (Article 34 para. 1).

### **Question:**

Are Denmark, Ireland and the UK Member States or Third States for the purposes of this rule?

German/ Swiss literature: They are Third States.

- If the deceased person has used the choice of law in favour of a third State, no renvoi shall apply (Article 34 para. 2, Article 22).

## **Jurisdiction to rule on successions**

Olivier Dauchez

## **Determination of the courts with jurisdiction to rule on the succession:**

- Defined under Articles 4 to 13 of the Regulation
- These provisions take precedence over the rules applicable in each Member State
- General rules to determine the international jurisdiction of the courts of a Member State as a whole
- The Regulation aims to ensure consistency between the courts with jurisdiction and the law applicable to the succession
- Notaries are not included in the Regulation's definition of a "court": notaries asked to deal with an uncontested succession are not granted jurisdiction by means of the Regulation (Whereas 20)



## **Determination of the courts with jurisdiction to rule on the succession:**

The Regulation provides for rules on:

- consistency between the courts with jurisdiction and the law applicable to the succession (Art . 4, Art. 5 to Art. 9)
  
- subsidiary jurisdiction (Art. 10)
  
- scope of jurisdiction of the court seised (Art. 12, Art. 13)

## Consistency between the courts with jurisdiction and applicable law:

Principle: Application of the rule of the deceased's habitual residence

- ✓ The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole (art. 4):

i.e. full jurisdiction, regardless of whether the succession comprises movable property or real estate assets

=> Judicial jurisdiction same as legislative jurisdiction

## Consistency between the courts with jurisdiction and applicable law:

If the deceased chooses his national law, jurisdiction is awarded, subject to conditions, to the courts of his State of nationality, if a Member State

- ✓ Where the deceased chooses the **law of a Member State**, the courts of such Member State shall have exclusive jurisdiction to rule on any succession matter **provided**:
  - ✓ the parties concerned agree to such exclusive jurisdiction (in a written agreement, dated and signed) (Art. 5)  
Note: “parties concerned”: heirs, legatees and creditors of the deceased?
  - ✓ the court seised pursuant to Art. 4 or 10 declines jurisdiction, considering that the courts of the Member State of the chosen law are better placed to rule on the succession (Art. 6)
  - ✓ the parties to the proceedings have expressly accepted the jurisdiction of the court seised (Art. 7(c) as well as Art. 5 and Art. 6)
  - ✓ any party to the proceedings that was not party to the choice-of-court agreement enters an appearance before the court of the Member State of chosen law without contesting its jurisdiction (Art. 9), otherwise the court will decline jurisdiction in favour of the courts of the Member State of habitual residence (Art. 4) or of the Member State in which the assets are located (Art. 10)

## **Subsidiary jurisdiction: exception to the rule of single jurisdiction to keep the proceedings in Europe**

Subsidiary rules provide for a *renvoi* to the courts of a Member State **even if the deceased was not resident in a Member State at the time of his death**, if:

**the assets are located in such Member State, and:**

- the deceased was a national of that Member State; **OR**
- the deceased had his previous habitual residence in that Member State (no more than five years previous) (Art. 10(1))

When no Member State fulfils the above conditions, then the courts of the Member State in which the assets are located shall nevertheless have jurisdiction over those assets (Art. 10(2))

*Forum necessitatis*: When no Member State court has jurisdiction, the courts of a Member State with which the case has “sufficient connection” may rule on the succession if proceedings “cannot reasonably be brought or conducted or would be impossible in a third state” (Art. 11)

## Scope of jurisdiction of the court seised

### PRINCIPLE

- Jurisdiction on the entire succession proceedings from devolution to sharing-out, for all assets, whether moveable property or real estate

### BUT

- If the estate comprises assets located in a third state, the court seised may, at the request of one of the parties, decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third state => risk of denial of justice? (Art. 12)

For greater simplicity:

- Courts of the Member State of habitual residence of any person may receive any declarations that the applicable law requires to be made before a court: declaration of acceptance, waiver of the succession, of a legacy or of a reserved share, or declaration designed to limit the liability of the person concerned in respect of debt. (Art. 13)

# **Recognition of decisions and European Certificate of Succession**

Nathalie Idsinga

## Jurisdiction

- The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.
- Exceptions

## Recognition of decisions

- A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.
- Exceptions



## Enforceability of decision

- Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when declared enforceable there after procedure
- Procedure
- Effectiveness

## European Certificate of Succession (article 62 – 73 Regulation)

- Purpose
- Scope
  - ✓ Not mandatory.
  - ✓ But, an issued certificate presented in other member state should be recognized.
  - ✓ Not replacing member state internal documents (subsidiarity principle) *i.e.* for internal situations.
  - ✓ Not an enforceable title in his own right (but evidentiary effect).

## European Certificate of Succession

- Application for a certificate
- Issue of the certificate
  - ✓ Each member state determines which authority is competent to issue the certificate. (In the Netherlands: notary).
  - ✓ The issuing authority uses the established form for issuing the certificate.

## European Certificate of Succession

- Contents of the certificate: *i.e.*
  - ✓ Details concerning the applicant, deceased, beneficiaries.
  - ✓ Information re the marriage contract entered into by the deceased.
  - ✓ The law applicable and the elements on the basis of which that law is determined.
  - ✓ The share of each heir, the list of rights and/or assets for any given legatee.
  - ✓ The powers of the executor.

## European Certificate of Succession

- Effects of the Certificate:
  - ✓ The Certificate is effective in all Member States.
  - ✓ The beneficiaries and executor mentioned in the Certificate are presumed to have the status mentioned in the Certificate.
  - ✓ The Certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable.
  - ✓ Persons (in good faith) acting on the basis of the information certified in a Certificate shall be considered to have transacted with a person with authority.

## **Peculiarities for the UK and other EU Member States that are not bound**

Richard Frimston

## European Union

- Treaties – TEU and TFEU (Protocols 21 and 22)
- Regulations
- Directives

## Some European Union Regulations

- Brussels I and I bis (B1R)
- Brussels II bis (B2R)
- Rome I
- Rome II
- Rome III
- Rome IV (in draft and ex Brussels III)
- Maintenance Obligations Regulation
- Succession Regulation (ex Brussels IV)





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## European Zones



## When and Where in force?

- EU Regulation (EU) No. 650/2012
- In Force since 17 August 2012 but not fully effective until 17 August 2015
- Ireland, UK or Denmark are not bound and the Succession Regulation has no effect in those Member States
- Are Ireland, UK or Denmark, Member States or Third states for the purposes of the Succession Regulation?

## Jurisdiction

- If no Member State has jurisdiction under Art.9, then subsidiary jurisdiction under Art.10.
- Jurisdiction in MS of habitual residence, but if none
  - ✓ Nationality of BIV zone state
  - ✓ Ceased to be resident in BIV within 5 years
- If UK, Ireland and Denmark are MS, then only subsidiary jurisdiction under Art.10.2 in relation to assets in another MS.

## Applicable Law

- Choice (explicit or implicit) of the internal succession law of **Nationality**.
- Within the UK and USA this would be the Law district of domicile or of most close connection.
- Does Art. 34 abolish *renvoi*?
- If so – **internal law only**, but
  - ✓ if the applicable law is that of a third state, the private international law rules of that third state are included in so far as they make a *renvoi* back to
    - the law of a Member State or
    - the law of another third state which would apply its own law.

## Applicable Law

- Does Art. 34 apply to Ireland, UK or Denmark?
- *Renvoi* if they are Third states, but not if they are Member States?
- No *renvoi* for Art. 22 choice of law or Art. 21.2 closest connection (and some other matters) – therefore safest to ensure a choice of law to avoid any uncertainty?
- Choice (explicit or implicit) of the internal succession law of **Nationality**.
- Implicit from an existing Will drafted using concepts from the law of a state of nationality?
- Safest to use an express form of choice in a Will valid under the law chosen?

## DoPuDs

- Form of Wills, but subject to reservations of the Hague Wills Conventions.
- Inheritance Contracts and Succession Agreements – mutual wills and promissory estoppel, but not if made orally.
- Uniform European Certificate of Succession – **ECS** – can only be issued in SR Zone Member States – will they be of value in other MS?
- Roles of Personal Representatives recognised but only within SR Zone?

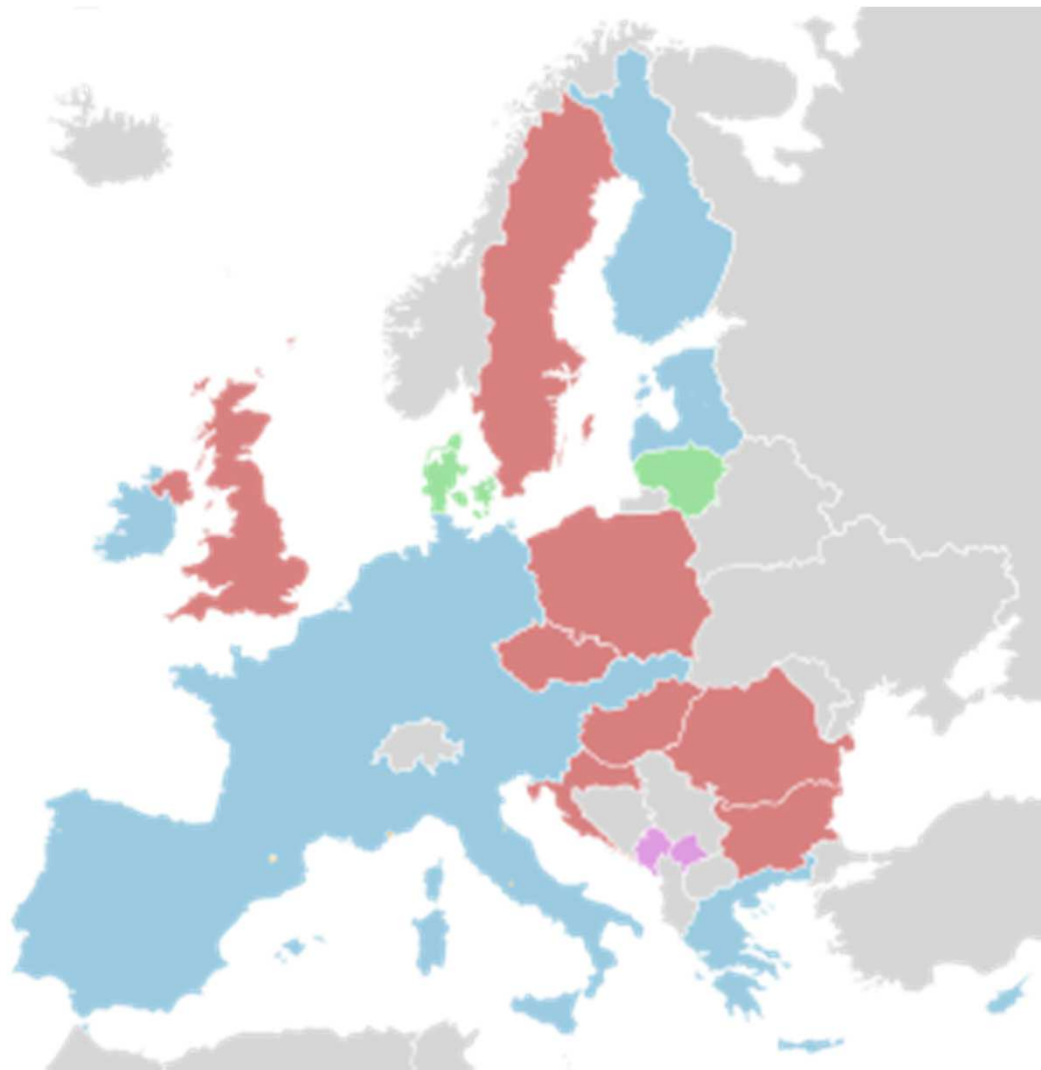
## What does it mean in practice?

- Irish and UK Nationals resident in the SR Zone.
- Irish and UK Nationals resident in Ireland or the UK with assets in the SR Zone.
- US Nationals resident in Ireland or the UK with assets in the SR Zone.
- SR Zone Nationals resident in Ireland or the UK with assets in the SR Zone.
- Former SR Zone Residents resident in Ireland or the UK with assets in the SR Zone.



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## European zones





## **Peculiarities for Switzerland – and other Non-EU-Member-States**

Manuel Liatowitsch

## Switzerland and the EU

- Not a Member State
- Complex cluster of treaties, the so-called “Bilateral Agreements”
- Everything in limbo after a Swiss Federal popular vote on 9 February 2014 to limit the free movement of persons from abroad, including from the EU

## Application of the Succession Regulation in Switzerland

- No direct application
- No “autonomous” implementation planned

## **Implications of the Regulation for Switzerland (and any other Non-Member-State)**

- Direct impact on persons residing in Switzerland and on Swiss nationals living in the EU (and further abroad):
  - Swiss citizen with last habitual residence in a Member State
  - Swiss resident (Swiss or EU or other national) with assets in a Member State
  - EU national residing in Switzerland making a choice of law in favor of the laws of a Member State

## Conflicts

- Swiss “last domicile” vs EU “last habitual residence”
- Swiss national residing in the EU submitting his or her estate to Swiss jurisdiction and Swiss law

# Annex

**Current conflict of law rules of the countries  
present on the podium**

## Current Italian conflict of law rules

- Under the current Italian conflict of law rules, the applicable succession law is that of the deceased's nationality.
  
- Exception: Italian citizens may choose as the law to govern their succession the law of the State in which they are resident.
  - ✓ The choice has to be expressed in the will
  - ✓ The deceased has to be resident in the foreign State at the moment of his death
  
- “Unity of the succession” principle

## Current French conflict of law rules

- Under the current French conflict of law rules, the law applicable to the succession is that of:
  - the deceased's residence at the time of his death in respect of movable assets
  - the state in which real estate assets are located, in respect of such assets
- No “Unity of the succession” principle
- French law does not apply if the deceased was not resident in France except in respect of any real estate located in France



## Current German conflict of law rules

- Under the current German conflict of law rules, the applicable succession law is that of the deceased's nationality.
- If the deceased was a foreign national, German succession law applies if the law of the deceased's nationality provides for a reference back to Germany (renvoi). This may be the case if one of the following criteria is met:
  - a) The deceased was domiciled in Germany at the date of his death.
  - b) The deceased's habitual abode was in Germany at the date of his death.
  - c) The deceased held property or assets in Germany at the date of his death.

## Current Swiss conflict of law rules

- Jurisdiction, general rule: General jurisdiction of the Swiss courts at a person's "last domicile" in Switzerland, extending to his or her worldwide assets, with certain exceptions for foreign real estate (Article 86 Swiss Private International Law Act, PILA)
- Applicable Law, general rule: Swiss substantive inheritance law, unless a foreign national chose the laws of his or her country of citizenship (Article 90 PILA)
- Recognition and Enforcement: Very liberal regime (Article 96 PILA: any decision originating in the state of a person's last domicile or in the state the laws of which were chosen to apply, or any decision recognizable in such states, etc.)

# Any Questions?

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# 19th Annual International Wealth Transfer Practice Conference

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