



Training of lawyers on EU Civil Law (TRADICIL) – Succession Law Seminar

Marta Casado Abarquero

Jurisdiction

Madrid, 21 October 2025



Co-funded by the European Union

I. SCOPE OF APPLICATION

MATERIAL SCOPE OF APPLICATION:

- *Cross-border successions* (deaths involving more than one country).
- *All civil-law aspects* of succession: heirs, legatees, reserved shares, administration, transfer of assets.

Excludes (Art. 1(2)):

- Tax matters
- Family law issues
- Company law, trusts, property rights themselves
- Administrative / registration procedures

PERSONAL, TERRITORIAL AND TEMPORAL SCOPE OF APPLICATION

- Applies to deaths on or after **17 August 2015**.
- Binding in all EU Member States **except Denmark and Ireland**.
- May also apply to **non-EU nationals** (e.g. if property or residence is in the EU).

PURPOSE

To create a *single legal framework* for jurisdiction, applicable law, recognition of decisions, and the European Certificate of Succession.

II. GENERAL JURISDICTION (ART. 4)

“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.”

- **Jurisdiction lies with the courts of the Member State where the deceased had his habitual residence at the time of death.**
- This court has competence over the entire succession (all assets, wherever located).



Sophie, a French national, lived in Germany for the last ten years before her death. The German courts have jurisdiction over her entire succession, including property she owned in France or Spain.

III. CHOICE-OF-COURT AGREEMENT (ARTS. 5–8 + 22)

“Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction.”

- If the deceased chose the law of their nationality to govern the succession (**Article 22**), the parties may also **agree** that the courts of that State have **exclusive jurisdiction** over the succession (**Article 5**).



*Luis, a Spanish national living in Italy, chose Spanish law to govern his succession. His heirs agreed in writing that the Spanish courts would have exclusive jurisdiction.
Therefore, even though Luis lived in Italy, Spanish courts can decide all succession matters.*

IV. JURISDICTION BASED ON APPEARANCE (ART. 9)

If some parties didn't sign the choice-of-court agreement, the court can keep jurisdiction if those parties accept it (don't object). If they object, the court must decline jurisdiction.

- If **some parties didn't sign** the choice-of-court agreement:
 - The court can **keep jurisdiction** if those parties **accept it** (don't object).
 - If they **object**, the court must **decline jurisdiction**.
- In that case, jurisdiction goes back to:
 - **Article 4:** Court of the habitual residence, or
 - **Article 10:** Court where assets are located.



Anna dies in France having chosen Spanish law. Her children accept Spanish jurisdiction, but one daughter didn't sign. If she does not object, Spain keeps the case; if she objects, it returns to France or Spain (assets).

V. SUBSIDIARY JURISDICTION (ART. 10)

“Where the habitual residence of the deceased is not in a Member State, the courts of a Member State in which assets are located shall have jurisdiction if the deceased had that State’s nationality or a previous habitual residence within five years.”

- If the deceased was not habitually resident in the EU, a Member State court can still deal with the succession if the deceased had that nationality or recently lived there. If not, jurisdiction is limited to assets in that State.
- **Example: Carlos, a Spanish citizen living in Argentina but owning a house in Madrid: Spanish courts can rule on the entire succession because he was Spanish and owned property in Spain.**

VI. FORUM NECESSITATIS (ART. 11)

“Where no court of a Member State has jurisdiction, the courts of a Member State may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted in a third State with which the case is closely connected.”

In exceptional cases, the courts of a MS rule of the succession:

- If no court of a Member State has jurisdiction; and
- The case has a sufficient connection with a Member State; and
- If proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected.



Luca, an Italian citizen, dies in a country where no functioning courts exist due to war. No EU court has normal jurisdiction, but since the case is closely connected to Italy, and it's impossible to bring the case abroad, an Italian court can take the case exceptionally to ensure justice.

VII. ACCEPTANCE OR WAIVER OF SUCCESSION (ART. 13)

“The courts of the Member State of the habitual residence of a person entitled to make a declaration on acceptance or waiver of the succession shall have jurisdiction to receive such declarations.”

- Besides the main court handling the succession, the **courts of a person’s habitual residence** can also act if:
 - That person needs to make a **declaration** (e.g. accept or renounce inheritance, legacy, or reserved share).
 - And the **law of that State** allows such declarations before a court.
- *In short:* A person can make inheritance-related declarations **before their local court**, not only where the succession case is handled. Example: Maria lives in Germany, but her father’s estate is in Italy. German law allows her to renounce inheritance before German courts, without going to Italy.



Maria lives in Germany, but her father’s estate is in Italy. German law allows inheritance declarations before German courts, so Maria can renounce the inheritance in Germany, without going to Italy.

VIII. LIS PENDENS (ART. 17)

“Where proceedings involving the same cause of action and between the same parties are brought in different Member States, any court other than the one first seised shall stay proceedings until jurisdiction is established.”

- If the **same case between the same parties** is started in **two or more Member States**:
 - The courts **other than the one first seised** must **pause (stay)** their proceedings.
 - Once the **first court’s jurisdiction is confirmed**, the others must **withdraw (decline jurisdiction)**.
- *In short*: Only the **first court** where the case was filed can continue — this avoids **duplicate or conflicting decisions**.



The heirs of Sofia start inheritance cases in Portugal and France. The French court must pause until the Portuguese court confirms jurisdiction and then decline.

IX. RELATED ACTIONS (ART. 18)

“Where related actions are pending in courts of different Member States, any court other than the first seised may stay proceedings or decline jurisdiction if consolidation is possible.”

If **related cases** are pending in courts of **different Member States**:

- Other courts (not the first seised) **may pause (stay)** their cases.
- They may also **decline jurisdiction** if:
 - The **first court** can handle **both cases**, and
 - Its law allows them to be **joined together**.

“Related actions” = cases so closely connected that deciding them separately could lead to **conflicting judgments**.

In short: Courts can **pause or transfer** related cases to avoid **contradictory decisions**.



A case on will validity is in Italy, and another on asset division in Spain. Spain may stay or transfer its case to Italy to avoid contradictory rulings.

Recap – Jurisdiction under Regulation (EU) 650/2012

MAIN JURISDICTION RULES SUMMARIZED:

- Default rule: habitual residence → broad jurisdiction.
- Flexibility: link to chosen law.
- Safeguards: fallback (subsidiary), emergency (forum necessitatis),
- and coordination (lis pendens, related actions).

Overall, the Regulation ensures predictable and unified rules for cross-border succession cases within the EU.

Type of Jurisdiction	Article(s)	Who Has Jurisdiction	Main Connecting Factor / Condition	Scope / Effect
General Rule	Art. 4	Courts of the Member State of the deceased's habitual residence at death	Deceased was habitually resident in that State	Jurisdiction over the entire succession, regardless of where assets are located
Choice of Court (Prorogation)	Art. 5	Courts of the Member State whose law was chosen by the deceased (nationality law)	Deceased made a valid choice of law under Art. 22, and parties agree to confer jurisdiction	Jurisdiction becomes exclusive
Subsidiary Jurisdiction	Art. 10	Courts of a Member State where assets are located	No court of the habitual residence State has jurisdiction or declines it	Jurisdiction only over assets in that State
Forum Necessitatis	Art. 11	Any Member State court with a sufficient connection	No other court is available or accessible abroad	Jurisdiction only to the extent necessary to ensure justice
Declining Jurisdiction (Transfer to third State)	Art. 12	Court of the Member State of habitual residence	A third-State court (of nationality chosen by deceased) is better placed to decide	Court may decline in favor of the third State
Lis Pendens & Related Actions	Arts. 17–18	The court first seised keeps jurisdiction	Same cause of action pending in two Member States	Avoids conflicting decisions
Examination of Jurisdiction	Art. 15	Any court before which proceedings are brought	Must check jurisdiction ex officio	If not competent, it must decline jurisdiction



Training of lawyers on EU Civil Law (TRADICIL) – Succession Law Seminar

Arantxa Cagigal Casquero

Applicable Law

Madrid, 21 October 2025



Co-funded by the European Union

Regulation EU No 650/2012 of the European Parliament and the Council of 4th July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions, acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (*ESR*)

INDEX:

- 1.- Preliminary remarks
- 2.- Applicable law on to the substance. List of connection factors
 - 1º National law of the deceased: *Professio iuris*
 - 2º Law of the State of the deceased's last residence
 - 3º Exception clause
- 3.- Scope of the applicable law to the succession on to substance
- 4.- Applicable law to the formal validity of wills
- 5.- Complementary rules to the applicable law to the succession:
 - Public Policy
 - States with more than one legal system
 - Reenvoi
- 6.- CONCLUSIONS

1.- PRELIMINARY REMARKS

PRINCIPLES OF THE SUCCESSION IN THE ESR:

- PRINCIPLE OF UNITY, recital 37 ESR- one law
- PRINCIPLE OF UNIVERSALITY- for the entire succession

Law governing the succession is a waterfall system of connecting factors, and the first one is based on the principle of party autonomy.

Scope of application:

- Temporal: 17/08/2015
- Material scope of application: cross border succession to property upon death, whether testate or intestate.
- Subject scope: all civil law aspects of succession to the estate of a deceased person
- Geographical scope of application: all Member State except Denmark, and Ireland.

Connection of ESR with the Hague Convention of 5 October 1961 regarding the form of testamentary dispositions; and bilateral conventions of any Member State.

2.- Applicable law on to the substance

LIST OF CONNECTION FACTORS: ARTICLE 21 AND 22 ESR

- LAW OF THE **NATIONALITY OF THE DECEASED** CHOSEN BY HIM/HER IN ACCORDANCE WITH **ARTICLE 22**. PROFESSIO IURIS
- IN ABSENCE OF PROFESSIO IURIS, LAW OF THE STATE WHERE THE DECEASED HAD HIS **LAST HABITUAL RESIDENCE**, **ARTICLE 21.1**
- Exception clause, **ARTICLE 21.2**, **closely connection of the deceased with another State**
- ESR stipulates that testator's intention shall be the primary factor to be considered, and if a *professio iuris* does not exist, applicable law will be the one of the habitual residence, with the exception of a closely connection with another State.

2.1 NATIONAL LAW OF THE DECEASED. PROFESSIO IURIS

ARTICLE 22

- Choice of only one law, no cumulatively choice; and it is prohibited to choose a law only to a part of the same succession (depacage)
- The law chosen could be the one of a third State
- The choice is between the law of any of the nationalities who holds the deceased at the time of making the choice, or at the time of death, even if he lost it before the date of this death
- The choice could be made either expressly or implicitly
- The substantive validity of choice is governed by the law chosen
- The form of choice should be made in a disposition of property upon death (mortis causa disposition): will or succession agreement. And it applies also to modification or revocation of the choice of law
- * ECJ 9th September 2021, C-277/10, ZL. The law chosen by the deceased must cover all his succession, all his assets, so it is not valid if only refers to a particular asset.
- * ECJ 12 October 2023, C-21/22, OP. The succession may be subject to a particular bilateral international convention, and in cases governed by ESR, a deceased who is national of a third State may choose that law to govern his succession (Ukrainian law) pursuant to article 22 ESR

2.2 LAW OF THE STATE OF THE DECEASED'S LAST RESIDENCE

Article 21.1

Recital 23 and 24: last residence refers to the circumstances of the life and relevant and regulatory presence in the State concerned, revealing close and stable connection.

Centre of interests of his family and his social life was located.

Concept of habitual residence is autonomous of any national law, and a factual issue. Two elements make up the concept:

- *corpus*, real and effective presence
- *animus*, intention to confer that presence continuity (settle purpose, *animus manendi*).

* ECJ 22 December 2010, C-497/10 Mercredi (student)

* ECJ 8 June 2017, C-111/17 PPU, the sole intention to come back a State doesn't matter

* ECJ 2 April 2009, C-523/07 A, the mere physical presence in a country is not sufficient to assert that a person has his or her habitual residence in that country

2.3 EXCEPTION CLAUSE. ARTICLE 21.2

Closest connection rule

Just in the case deceased didn't choose his national law through a *professio iuris*, and the one of the State where he had his habitual residence is not the State more closely connected with the deceased; then, the law of the State more closely connected should be applied.

An example of this clause is the situation of a person who moved abruptly his residence, but all the interests of his life remain in the State where he used to live, and is national of that State.

The exception clause should not be used in cases where the establishment of the habitual residence of the deceased at the time of his death is particularly complex, or if he chose the law governing his succession in accordance with article 21.

This is an exception of the general rule, and it operates when the deceased wanted to evade the rights of forced heirs.

3.- Scope of the applicable law to the succession on the substance

Specific issues covered by the law governing the succession:

- causes, time and place of the opening of the succession
- Determination of beneficiaries, their respective shares and other succession right
- Capacity to inherit
- Disinheritance and disqualification
- Transfer to the heirs and legatees of the assets, rights and obligations (including conditions and effects of the acceptance or waiver)
- Powers of heirs, executors of the wills and other administrators
- Liability for the debts
- Disposable part of the state, reserved shares and other restrictions on the disposal of property
- Any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries
- The sharing-out of the estate

* ECJ 1 March 2018, C-558/16, Doris Margret Lisette Mahnkopf. The ESR covers the increase of the surviving spouse's share of the inheritante, and this is not a question of matrimonial property

3.- Scope of the applicable law to the succession on to substance

Matters subject to special connecting factors:

- **Article 29:** law applicable to the appointment and powers of the administrators of the estate in certain situations.

The law of some MS states the mandatory intervention of an administrator, and the courts of MS with jurisdiction in a succession, when seised, will appoint one or more administrators according to their law.

- **Article 30:** *lex rei sitae*

Where the law of the State in which certain immovable property, enterprises or other particular categories of assets are located contains special rules which, for economic-family-social considerations, impose restrictions concerning or affecting the succession in respect of those assets, those special rules shall apply to the succession in so far as they are applicable irrespective of the law applicable to the succession

- **Article 32:** Commorientes

In case of two or more persons whose successions are governed by different laws die and it will be uncertain the order of death, none of the deceased persons shall have any rights to the succession of the other.

- **Article 33:** law applicable to an estate without a claimant

If under the law applicable to the succession pursuant to Regulation, there is no heir or legatee for any asset and no natural person is an heir by operation of the law, the law of that State may declare that the assets belong now to the State, otherwise those assets would be considered *res nullius*

3.- Scope of the applicable law to the succession on to substance

Acquisition of rights in rem over assets of the estate

General: law governing succession will be applied to the acquisition of rights *in rem*, irrespective of the law of the country where the property is located.

Exceptions:

1^o. Article 1.2.I.

If a registration of the property is required, *lex rei sitae* applies

2^o.- Article 31.

Regulation allows for the creation or the transfer by succession of a right in immovable or movable property as provided in the law applicable to succession, and it is possible the conversion of the closest equivalent right in rem under the law of the Member State in which the right is invoked

ECJ 12 October 2017, C-218/16, Aleksandra Kubicka. The *in rem* effects of the vindicatory bequest on immovable property located in Germany and governed by the Polish law chosen by the deceased in accordance with Article 22 ESR, must be recognised in Germany, although German law doesn't admit a bequest with direct effects.

4.- Law applicable to formal validity of wills

1.- The Hague Convention of 5th October 1961

This convention applies to the validity of testamentary dispositions made in writing, and it is in force in many of the Member States.

2.- Article 27 ESR deals with the validity of dispositions of property upon death made in writing, and it is an imitation of the Convention, establishing different connections factors:

- a) a will be valid as regards form if its form complies with the law of a State in which the disposition was made or the agreement as to succession concluded.
- b) a will be valid as regards form if its form complies with the law of a State whose nationality the testator or at least one of the persons whose succession is concerned by an agreement as to the succession possessed ante time when the disposition was made, or at the time or death.
- c) a will be valid as regards form if its form complies with the law of a State in which the testator or at least one of the persons whose successions is concerned by an agreement as to succession had his domicile, either at the time when disposition was made, or at the time of his death.
- d) a will be valid as regards form if its form complies with the law of a State in which the testator or at least one of the persons whose successions is concerned by an agreement as to succession had his habitual residence, either at the time when disposition was made, or at the time of his death
- e) in so far as immovable property is concerned, the law of the State in which that property is located.

These rules shall also apply to dispositions of property upon death modifying or revoking an earlier disposition

According to article 28 ESR, the validity as to form of a declaration concerning acceptance or waiver the succession, legacy or of a reserved share, or a declaration designed to limit the liability of the person making the declaration, shall be valid as to form where it meets the requirements of the law applicable to succession pursuant to article 21 or 22; or the law of the State in which the person making the declaration has his habitual residence.

* ECJ 2 June 2022, C-617/20, T.N.. The waiver of inheritance made in The Netherlands and not before the German authorities and not translated in to German in time implied the nephews has accepted the inheritance.

Article 75 ESR establishes that Member States which are contracting parties to the Hague Convention shall continue to apply the provisions set forth in that Convention. Including joint wills; however, succession agreements are governed by the Regulation.

* ECJ 12 October 2023, C-21/22, OP. The succession may be subject to a particular bilateral international convention, and in cases governed by ESR, a deceased who is national of a third State may choose that law to govern his succession (Ukrainian law) pursuant to article 22 ESR

5.- Complementary rules

1.- Public Policy

Article 35 ESR.

Application of a provision of the law of any State specified by the ESR may be refused if such application is manifestly incompatible with the public policy. This is never going to apply for the *legitima portio*.

2.- States with more than one legal system

Article 36 ESR.

Where the law specified by the ESR is that of a State which comprises several territorial units each of which has its own rules of law in respect succession, the internal conflict of laws rules of that State shall determine the relevant territorial unit whose rules of law shall be applied. This is the case of Spain, and it is important to notice that a foreign citizen will never have a civil neighbourhood in Spain. So, the applicable law will be the one with which the deceased had the closest connection.

3.- Reenvoi.

Article 34 ESR, the application of the law of any third State specified by the ESR 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 reenvoi.

6.- CONCLUSIONS

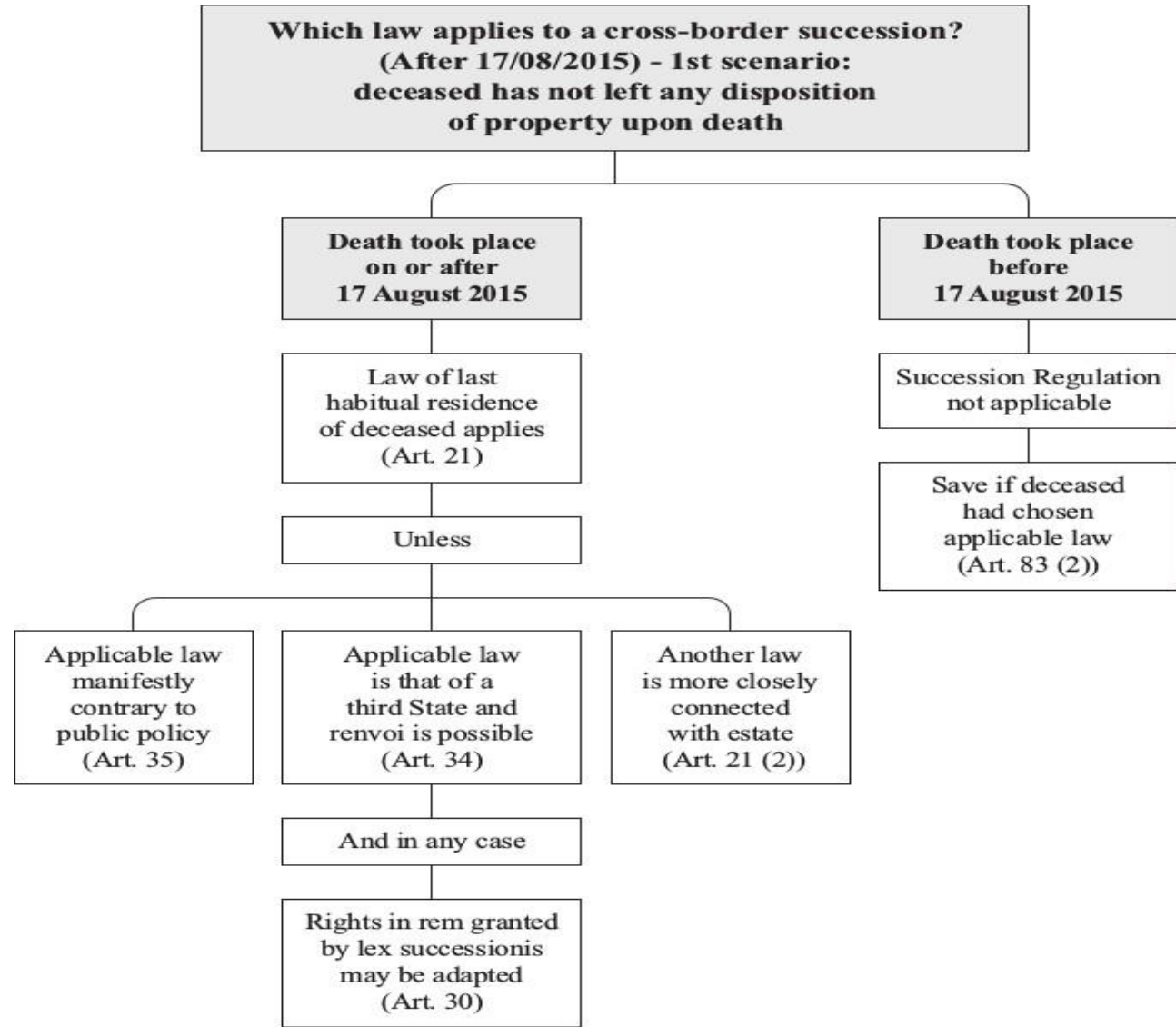
Good Practices and Common Mistakes

✓ Good Practices:

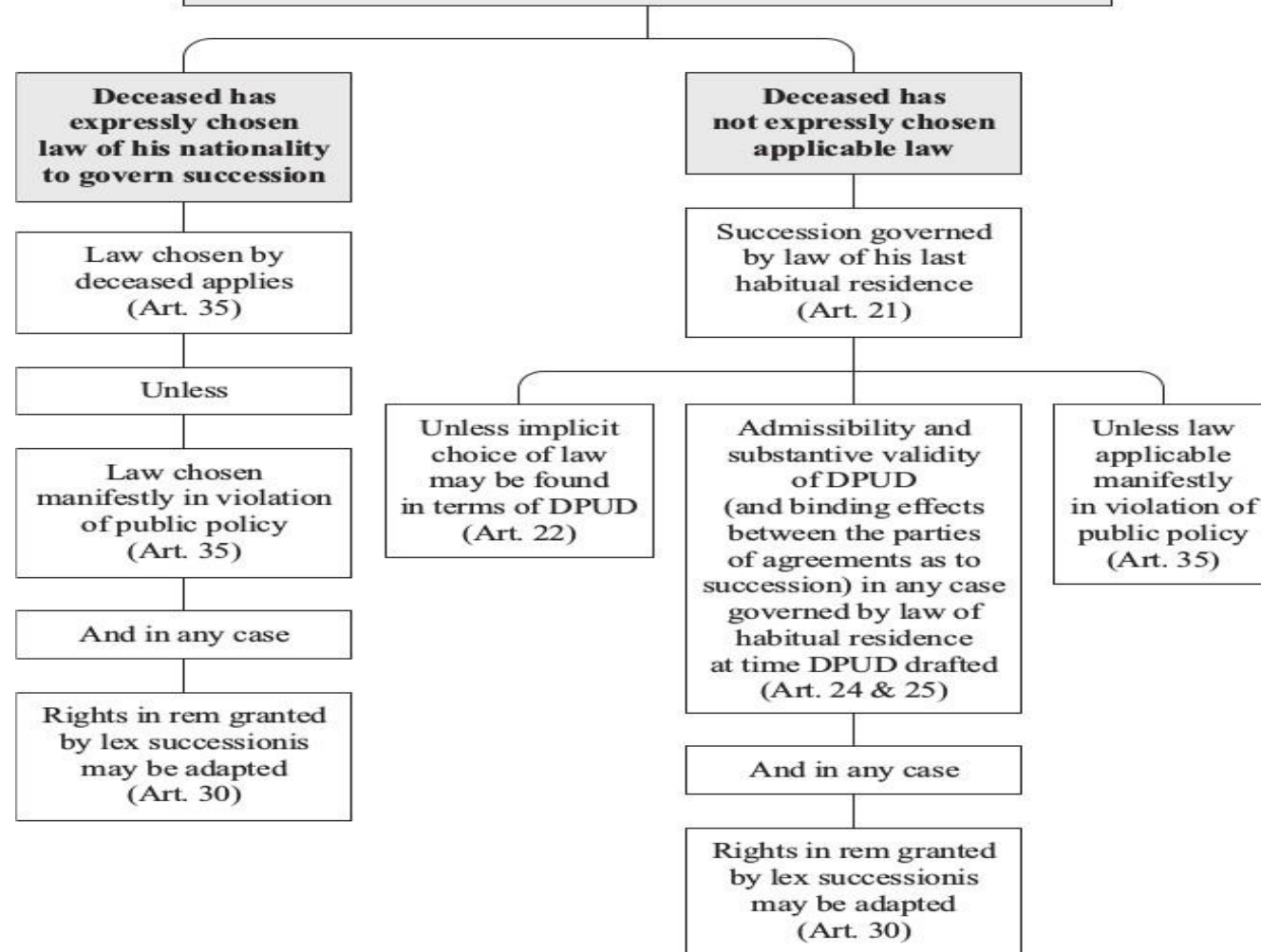
- Proper legal advising in succession law include knowing any bilateral convention between the States involved. Verify whether the law of a given country recognises the possibility to agree on a future succession.
- THINK OF FUTURE NOT PRESENT
- Check and look for any documentation necessary about the circumstances of the deceased, moreover relating the circumstances of the residency in a State.
- Cooperation with lawyers from other Member States where the deceased had assets is necessary; or whose State the deceased was national
- Work hand by hand with Notaries who know European regulations and PIL.
- Check validity of the will on to the form before fixing the law governing the succession
- Application of multiple PIL instruments dealing with closely related matters: Brussel II ter, maintenance, matrimonial property regimes and property consequences of register partnerships; insolvency regulation

✗ Common Errors:

- Missing appropriate documentation and certificates
- Inadequate study of the PIL instruments



**Which law applies to a cross-border succession?
(After 17/08/2015) - 2nd scenario:
deceased has left a DPUD
(will, joint will or agreement as to succession)**



Criteria in order to determine the habitual residence

- how long the deceased has actually been residing in a given country and whether this residence is a stable residence;
- the reasons why the deceased has been residing in a given country;
- where is the center of interests of his family and his social life located;
- where are the assets of the deceased located, in particular the physical assets;
- where is the professional life of the deceased located (giving more weight to current professional activity than to former activity) and other economic activities;
- what is the deceased's nationality or nationalities;
- whether the deceased mastered the local language;
- whether anything is known about the deceased's intention

Difficult cases to determine habitual residence

- ‘Sun seeking’ retirees who may spend 6 months a year in a sunny place, and the rest of the year in the country of origin;
- Cross-border commuters, who live in country A but work in country B;
- Persons who live in a country against their will (such as persons kept in jail in a foreign country) or without having expressed the intention of moving out (old age nursing care patients moved out to a country where such care is more affordable);
- Persons who have only very recently moved to another country – *e.g.* a person who has lived all his life in France and died just one week after moving out to Germany;
- Persons who have settled in a country only on a temporary basis, for a limited time such as researchers or students, but who overstay.

Information on the succession law

- Books offering a comparative treatment of succession law (see *e.g.* Louis Garb & John Wood, *International Succession*, 4th ed., OUP, 992 p. and CAE-IRENE-CNUE, *Les successions en Europe. Le droit national de 42 pays européens*, 2016), online tools may also offer helpful guidance on the law of certain countries.
- Within the EU, two online platforms offer access to the law of succession:
 - the CNUE has set up a platform including information on the law of 22 Member States (www.successions-europe.eu)
 - the European E-Justice Portal also offers access to basic information on the succession law of 26 Member States (https://e-justice.europa.eu/content_successions-166-en.do).
- A court may also make use of the European Judicial Network to obtain information on the law of another Member State. In order to find judges in other EU Member States, judges can use the contact point: <https://e-justice.europa.eu/contactPoint.do>.



Training of lawyers on EU Civil Law (TRADICIL) – Succession Law Seminar

María Asunción Cebrián Salvat

**Recognition and enforcement of decisions, and
acceptance and enforcement of authentic
instruments in matters of succession**

Madrid, 21 October 2025



Co-funded by the European Union

INDEX

- 1. REGULATORY MODEL**
- 2. STRUCTURE**
- 3. BASIC FEATURES**
- 4. MECHANISMS FOR THE EXTRATERRITORIAL
VALIDITY OF DECISIONS**
- 5. MECHANISMS FOR THE EXTRATERRITORIAL
VALIDITY OF PUBLIC DOCUMENTS AND COURTS
SETTLEMENTS**
- 6. FINAL REMARKS**

1. REGULATORY MODEL

- **Based in Regulation (EU) n. 44/2001 (“Brussels I Regulation”)**
- **Recital 59 Regulation (EU) n. 650/2012 (“ESR”)**
- **Consequences: application of case law**
- **Superseded by Regulation (EU) n. 1215/2015**

2. STRUCTURE

- **CHAPTER IV ESR: EXTRATERRITORIAL VALIDITY OF DECISIONS ISSUED BY COURTS (arts. 39-58 ESR)**
 - What is a “decision”?: art. 3.1.g ESR
- **CHAPTER V ESR: EXTRATERRITORIAL VALIDITY OF PUBLIC DOCUMENTS AND COURT SETTLEMENTS (arts. 59-61 ESR)**
 - What is a “public document”?: art. 3.1.g ESR
 - What is a “court settlement”?: art. 3.1.g ESR

3. BASIC FEATURES

- **Scope of application**
- **General objective**
- **Non-automatic system**

4. MECHANISMS FOR THE EXTRATERRITORIAL VALIDITY OF DECISIONS

- **Recognition:**
 - **Incidental recognition**
 - **Recognition by homologation**
- **Enforceability (“exequatur”)**

4.1.A. INCIDENTAL RECOGNITION

- **Art. 39.1 and 39.3 ESR**
- **Procedure**
- **Functioning**
- **Effects**
- **Requirements:**
 - **Conditions**
 - **No ground for refusal of recognition (art 40 ESR)**
 - **Recognition contrary to public policy of the MS addressed**
 - **Decision in involuntary default of defendant**
 - **Irreconciliability with a decision in the same MS**
 - **Irreconciliability with a decision in another State**
 - **Absences!**

4.1.B. RECOGNITION BY HOMOLOGATION

- **Art. 39.2 ESR**
- **Purpose**
- **Procedure**
- **Jurisdiction**
- **Effects**

4.2. DECLARATION OF ENFORCEABILITY

- **Art. 43 ESR**
- **Two steps for enforcement**
- **Exequatur in the first instance: “de plano”**
 - **Inaudita parte debitoris**
 - **Jurisdiction**
 - **Procedure**
 - **How to?**
 - **Documents**
 - **Translation**
 - **Decision and notice**
- **Exequatur in the second instance: grounds for refusal**
 - **Adversarial proceedings**
 - **Grounds for refusal of art. 40 ESR**
 - **Time limit**

5. MECHANISMS FOR THE EXTRATERRITORIAL VALIDITY OF PUBLIC DOCUMENTS AND COURTS SETTLEMENTS

- **Public documents**
 - “Acceptance”: art. 59 ESR
 - “Enforceability”: art. 60 ESR
- **Judicial transactions**
 - “Enforceability”: art. 61 ESR

6. FINAL REMARKS

- **Good system**
- **But underdeveloped...**
- **We trust in you!**



Training of lawyers on EU Civil Law (TRADICIL) – Succession Law Seminar

Stefanos Skordis

**European Certificate of Succession: simplifying
cross-border inheritance within the European Union**

Madrid, 21 October 2025



Co-funded by the European Union

Purpose of the Presentation

- **Explain E.C.S Framework under the EU Law**
- **How it supports cross border succession**
- **Importance for legal professionals and citizens**

EU Succession Regulation

- **Regulation No. 650/12 – Succession Regulation**
- **Adopted - 04/07/2012 and Enforced – 17/08/2015**
- **Objective: Simplification of succession cases**
- **Scope: Applicable to inheritance matters of EU countries, excluding taxes, matrimonial properties, and trusts**

What is the E.C.S?

- **Standardised document issued by competent authorities in EU states – Regulation EU 1329/2014**
- **Works alongside national documents and is not a substitute (Art. 62)**
- **Facilitates proof of (Art. 63):**
 - 1) Status as heir, legatee, executor or administrator**
 - 2) Rights and powers deriving from succession**

How the E.C.S Works

- **Application: Submitted to competent authorities (Art. 64 and 65).**
- **Procedure (Art. 66 and 67)**
- **Content: Identifies heirs, their rights and property included (Art. 68)**
- **Validity: Recognised across EU without further formalities (excluding Denmark and Ireland)**
- **Duration: Limited time but renewable (Art. 70(4))**

Benefits of the E.C.S.

- **Citizens: Saves time, cost, and complexity**
- **Lawyers: Provides certainty and speeds up procedures**
- **EU States: Enhances legal cooperation and integration**
- **Promotes legal security and trust in EU Law**

Conclusion

- **Empowers Lawyers, reassures citizens, and strengthens EU cooperation**
- **Reduces cross-border legal uncertainty through a standardised, EU-recognised certificate**
- **Encourages harmonisation of national succession laws**
- **Promotes trust in EU legal system and facilitates the practical exercise of rights across borders**
- **Highlights the importance of training and awareness for legal professionals**
- **Support European citizenship and enhances efficiency**



Training of lawyers on EU Civil Law (TRADICIL) – Succession Law Seminar

Béatrice Bloquel

**The French Legal Reserved Portion, foreign
applicable law and International Public Order**

Madrid, 21 October 2025



Co-funded by the European Union

Introduction

Focus on the French Reserved Portion (Réserve héréditaire) and its combination with the application of The EU Regulation 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.

Aim of the Succession EU Regulation :

- Unify the rules of private international law within the EU
- Secure and streamline the settlement of successions by providing for conflict-of-law rules that favor the use of a single law that converges with jurisdictional competence
- Principle of mutual recognition between EU Member States
- Promotion of advance succession planning with the possibility of choosing in advance the law applicable to one's future succession (national law as the only option)

What is the French Legal Reserved Portion ?

Legal mechanism that allows certain heirs, descendants, and, failing that, the surviving spouse, to be protected from excessive freedom of disposal by the parent (or spouse). It thus ensures family solidarity and the preservation of assets within families.

It is provided by article 913 of the French Civil Code :

“The reserved portion is the share of the estate and inheritance rights that the law guarantees will pass free of charge to certain heirs known as “reserve heirs,” if they are called to the succession and if they accept it.

The disposable portion is the share of the estate and inheritance rights that is not reserved by law and which the deceased was free to dispose of by way of gifts.”

Article 914 provides that :

“Gifts, whether inter vivos or by will, may not exceed half of the assets of the person making the gift if he or she leaves only one child upon death; one-third if he or she leaves two children; one-quarter if he or she leaves three or more children.”

Mechanism similar to the French Legal Reserved Portion also provided by other EU member States.

For instance, Luxembourg provides the same rules as in France. If the deceased has three children, therefore, he can only dispose of 15% of the disposable assets, as the Reserved Portion is 25% per child ($3 \times 25 = 75\%$).

However, what differentiates the EU members States is the importance they give to this legal mechanism.

- Germany, considers that an applicable law to a succession that ignores the Reserved Portion should be declared contrary to International Public Policy as the Reserved Portion is considered in Germany as a Constitutional Principle
- Other EU State members think that the Reserved Portion should not be protected by the exception of International Public policy (Spain, Greece, Portugal, Italy, Switzerland).

Raises several questions :

- ✓ How does French Legal Jurisdiction deal with a foreign applicable law that does not provide in its legal system a mechanism similar to French Legal Reserved Portion? Or in the contrary, provides other means of protection?
- ✓ How is the French Legal Reserved Portion protected by the Succession EU Regulation ?
- ✓ On the other hand, how is the French Legal Reserved Portion today a threat regarding the efficiency and the aim of to the Succession EU Regulation ?

We have to distinguish two periods, before (I) and after (II) the enforcement of the Succession EU Regulation on August 17th 2015.

I/ APPLICATION/ RECOGNITION OF A FOREIGN LAW APPLICABLE TO THE SUCCESSION BY A FRENCH JUDGE BEFORE THE ENFORCEMENT OF THE SUCCESSION EU REGULATION

- Whether the International Public Order could be opposed to a foreign law that would not provide or that would conceive differently the Reserved Portion was debated both by doctrine and jurisdiction.
- Answer depends on whether it is considered that French Legal Reserved Portion falls into the scope of International Public Policy.

Before 2012, the Reserved Share was not a question of International Public Policy.

 **Possibility to set aside foreign law which did not recognize the reserved portion of an estate by applying the right of withdrawal.**

Article 2 of the law of July 14, 1819, relating to the abolition of the right of inheritance and deduction :

*“In the event of the division of the same estate between foreign and French co-heirs, **the latter shall deduct from the assets located in France a portion equal to the value of the assets located in a foreign country from which they would be excluded, for any reason whatsoever, under local laws and customs**”*

- ✓ Reserved portion was indirectly protected by the mechanism of the right of withdrawal, but article applicable only for French heirs
- ✓ Allowed French courts to refrain from ruling on the status, whether or not it was a matter of international public policy

Repeal of the right of withdrawal by the French legislator in 2011

Arisal of the question if the French Legal Reserved Portion falls into the scope of International Public Policy

1) Doctrine

Some authors would consider Reported Portion is a fundamental principle of French law as it has three goals :

- ✓ Ensure minimum equality among children
- ✓ Reflect family solidarity
- ✓ Guarantee the individual freedom of the heir against the arbitrariness of the deceased

On the other hand, some other authors were of the opinion that it could not be considered as a fundamental principle of French Law, as it was a mechanism in decline, for two reasons :

- ✓ Possibility for an heir to advance waiver of the right to bring an action for reduction for gifts that have affected part or all of his Reserved Portion
- ✓ The repeal of the right of withdrawal by the French legislator in 2011 (decision of the French Constitutional Court August 5th 2011, QPC n°2011.159)

The French Constitution Council decided that :

*“Article 2 of the law of July 14, 1819 establishes a substantive rule that derogates from the foreign law designated by the French conflict of laws rule. This substantive rule of French law applies when at least one co-heir is French and the estate includes property located on French territory. The criteria thus adopted to set aside foreign law are directly related to the purpose of the law. **They do not, in themselves, violate the principle of equality. However, the provision is censured insofar as it reserves the right of withdrawal it establishes to French heirs alone.**”*

*“In order to restore the equality between heirs guaranteed by French inheritance law, the legislature could base a difference in treatment on the fact that foreign law favors foreign heirs to the detriment of French heirs. **However, the right to draw on the estate established by Article 2 of the Law of July 14, 1819 is reserved solely for French heirs. The contested provision thus establishes a difference in treatment between heirs who are equally entitled to the estate under French law and who are not favored by foreign law. This difference in treatment is not directly related to the purpose of the law, which aims, in particular, to protect the reserved portion of the estate and the equality between heirs guaranteed by French law. Consequently, it violates the principle of equality before the law.**”*

Decision with immediate effect, including on ongoing legal proceedings.

After the repeal of the right of withdrawal, the French trial judges were not unanimous :

- ✓ Some dismissed the international public policy nature of the reserved portion of the estate in some cases : Court of appeal of Paris, 16 december. 2015, RG n° 13/17078 – Court of appeal of Paris, 11 may 2016, RG n° 14/26247
- ✓ Some accepted it in others : Court of appeal of Versailles, 20 june 2013, RG no 11/00414

The French High Court (Cour de cassation) had finally the opportunity to answer the question, whether the French Legal Reserved Portion should be considered as falling under the scope International Public Policy **in two decisions, Jarre et Colombier, September 17th 2017** (n°16-17.198 and n°16-13.151).

In both cases, the French High Court decided that :

“A foreign law designated by the conflict rule that ignores the reserved portion of an estate is not in itself contrary to French international public policy and may only be disregarded if its specific application in the case in question leads to a situation that is incompatible with the principles of French law considered to be essential.”

The High Court decided to apply the Californian law of the last place of residence, established long ago, of the French deceased, who left real estate and personal property in the United States and personal property in France, e. **even though inheritance law allowed, through a clever legal arrangement involving a TRUST, the disinheritance of the French children from his first marriage**

However, the rulings of September 27, 2017, by the High Court did not exclude the possibility that a foreign law that ignores the reserved portion of an estate may be declared contrary to international public policy if its concrete application to the case in question leads to a situation that is incompatible with the principles of French law considered to be essential.

In this case, the Court outlined the fact that the heirs we're not in a **state of need**.

This decision was yet rendered in 2017 but under the scope of common French law, before the enactment of the EU Regulation.

II/ APPLICATION/ RECOGNITION OF A FOREIGN LAW APPLICABLE TO THE SUCCESSION BY A FRENCH JUDGE AFTER THE ENFORCEMENT OF THE SUCCESSION EU REGULATION

A. Reserved Portion in the Succession EU Regulation

1) Limited protection of the Reserved Portion provided by the Regulation

➤ Recital 38 (professio juris)

“This Regulation should enable citizens to organize their succession in advance by choosing the law applicable to their succession. That choice should be limited to the law of a State of their nationality in order to ensure a connection between the deceased and the law chosen and to avoid a law being chosen with the intention of frustrating the legitimate expectations of persons entitled to a reserved share.”

➤ Recital 50

*“The law which, under this Regulation, will govern the admissibility and substantive validity of a disposition of property upon death and, as regards agreements as to succession, the binding effects of such an agreement as between the parties, **should be without prejudice to the rights of any person who, under the law applicable to the succession, has a right to a reserved share or another right of which he cannot be deprived by the person whose estate is involved.**”*

➤ Recital 54 (lois de police)

*“For economic, family or social considerations, certain immovable property, certain enterprises and other special categories of assets are subject to special rules in the Member State in which they are located imposing restrictions concerning or affecting the succession in respect of those assets. This Regulation should ensure the application of such special rules. However, this exception to the application of the law applicable to the succession requires a strict interpretation in order to remain compatible with the general objective of this Regulation. **Therefore, neither conflict of laws rules subjecting immovable property to a law different from that applicable to movable property nor provisions providing for a reserved share of the estate greater than that provided for in the law applicable to the succession under this Regulation may be regarded as constituting special rules imposing restrictions concerning or affecting the succession in respect of certain assets.**”*

2) Reserved portion and Exception of International Public Policy in the EU Regulation

- ✓ International Public Policy = set of principles, written or unwritten, which, at the time of reasoning, are considered, in a legal system as fundamental and which, for this reason, require the effect to be set aside, in this legal system, not only of private will but also foreign laws and acts of foreign authorities.
- ✓ Its implementation is left to the EU States' margin of appreciation.

The acceptance of the Exception of International Public Policy has two consequences :

- The offensive provisions of the foreign law are set aside
- The law of the French forum is substituted to the extent necessary.
- It can also lead to refuse the recognition of a foreign decision.

Succession EU Regulation **limits strongly the application of the Exception of Public Policy.**

The exception of International Public Policy is an exception that must be applied very strictly by each EU State, which the EU Regulation reminds (article 35, recital 58), in order to guarantee the application of the EU Regulation which seeks a uniform implementation between the EU State members.

As far as the Reported Share is concerned, neither recital 58 nor article 35 states how it could be applied to protect the Reserved Portion. The Reserved Portion seems only to be protected by fraud (recital 38) or the abusive use of the rules of the Regulation (recital 50).

➤ Recital 58

“Considerations of public interest should allow courts and other competent authorities dealing with matters of succession in the Member States to disregard, in exceptional circumstances, certain provisions of a foreign law where, in a given case, applying such provisions would be manifestly incompatible with the public policy (ordre public) of the Member State concerned. However, the courts or other competent authorities should not be able to apply the public-policy exception in order to set aside the law of another State or to refuse to recognise or, as the case may be, accept or enforce a decision, an authentic instrument or a court settlement from another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.”

Two limits to the application of the Exception of International Public Policy :

- ✓ it can be applied in exceptional circumstances
- ✓ it cannot be applied by violation of the Charter of Fundamental Rights of the European Union of 26.10.2012

Being reminded that article 17 of the Charter dedicates to the right to property :

“Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions..”

➤ Article 35 of the EU Regulation :

*“The application of a provision of the law of any State specified by this Regulation may be refused only if such application is **manifestly incompatible** with the public policy (ordre public) of the forum.”*

Differs from the International Public Policy Order applied by French judge before the EU Regulation → stronger (manifestly incompatible).

Therefore, applying the Regulation, the French judge should, before setting aside the effect of a foreign law applicable to the succession, distinguish whether :

- ✓ the situation created by the applicable law is incompatible with International Public Policy : in this case, these should be tolerated
- ✓ the situation created by the applicable law is **manifestly incompatible** with International Public Policy : in this case, it cannot be tolerated and the effect of the foreign law should be set aside

Appreciation **in concreto** by judges

B. Jurisprudence and new difficulties raised by French law in applying the EU Regulation

“Why make things simple when you can make them complicated ?”

1) New difficulties raised by the French legislation, in opposition to the EU Regulation and the European Court of Justice

a. Article 913 paragraph 3 of French civil code : the reintroduction of a right of withdrawal

Article 24 of the law 2021-1109 of 24 August 2021 introduced a third paragraph to Article 913 of the French Civil Code, which provides that :

"where the deceased or at least one of his or her children is, at the time of death, a national of a Member State of the European Union or habitually resides there, and where the foreign law applicable to the succession does not provide for any mechanism to protect the children's reserved portion, each child or his or her heirs or successors may make a compensatory withdrawal from the assets existing in France on the date of death, so as to be restored to the reserved rights granted to them by French law, within the limits of those rights."

b. Reply of the French Ministerial November 21st 2023

The minister was questioned about the meaning and scope of Article 913, paragraph 3 of the Civil Code, a text introduced by Law No. 2021-1109 of 24 August 2021.

The French Ministerial reply on November 21st 2023 (Rep.min. n°7936 : JOAN) confirmed that **the French Legal Reported Share must be from now on considered as a principle incorporated into French International Public Policy.**

The response states that "*by allowing children who have been excluded from an inheritance that is not governed by French law to recover a share of the inheritance on property located in France, the legislature has reversed the case law of the Court of Cassation (1st Civil Chamber, September 27, 2017, appeal no. 16-13.151) and made **the reserved portion of an estate a principle of international public policy.***"

c. On the other hand, Jurisprudence of the European Court of Human Rights

✚ CEDH, February 15th 2024, COLOMBIER c/ France, [14925/18](#)

« On the French reserved portion and international public policy :

*The principle of equality between children with regard to their inheritance rights, enshrined in Article 912 of the Civil Code, which provides for a reserved portion for each child, is undoubtedly a matter of **French public policy** within the meaning of Article 6 of the Civil Code.*

Where, in application of the conflict of laws rule, the dispute brought before a French court is governed by foreign law, the court seised must ensure, by means of the international public policy exception, that the practical application of that law does not violate values considered essential.

In the present case, the Colombier family has not demonstrated that the maintenance of the reserved portion of the estate is a matter of French international public policy. (...)

Despite its importance in French domestic law, the institution of the reserved portion of an estate has never been upheld by the Court of Cassation as contrary to values that the French legal system considers universal, as could be the case for any provision of foreign law that would reduce or eliminate a person's rights for social, racial, political, sexual, or religious reasons.

In this case, California inheritance law, which does not provide for any form of discrimination, is therefore not contrary to French international public policy in that it ignores the reserved portion of a French heir. (...)

Finally, the court notes that European Succession Regulation No. 650/2012 of July 4, 2012, applicable to successions opened on or after August 17, 2015 (Art. 83, § 1), now authorizes a professio juris, which allows the testator to organize his or her succession as of now by choosing between the succession law of his or her last habitual residence and that of his or her nationality, for a death occurring on or after August 17, 2015.

Article 27-2 of the aforementioned Regulation provides that the application of a provision of the law designated by this Regulation cannot be considered contrary to the public policy of the forum solely on the grounds that its rules on the reserved portion of the estate differ from those in force in the forum.

A French citizen habitually resident in a foreign country whose law does not recognize the institution of the reserved portion, such as countries with Anglo-Saxon law, may therefore validly exclude his descendants from his estate in favor of any other natural or legal person.”

The applicants criticized the fact that they could not benefit from right of withdrawal of the law of 1819 who was repealed in 2011.

“The Court notes at the outset that the complaint under Article 1 of Protocol No. 1 concerns the immediate effect of the repeal of Article 2 of the Law of July 14, 1819, by the Constitutional Council on August 5, 2011. (...)

This interference does not constitute expropriation or regulation of the use of property, but falls within the scope of the first sentence of the first paragraph of Article 1 of Protocol No. 1. The Court must therefore examine whether a fair balance has been struck between the requirements of the general interest of the community and the imperatives of safeguarding the fundamental rights of the individual (...)

The Court also emphasizes that the Constitutional Council has discretion to modulate the effects of its decisions over time, particularly in ongoing legal proceedings, with a view to ensuring legal certainty. Although its decisions concern a matter of general interest, namely the constitutionality of the domestic legal order, the Court observes that they also arise from the confrontation of individual interests requiring a concrete solution. In the present case, it goes without saying that recognition of the applicants' property interests in their father's estate through the application of transitional measures would inevitably have adversely affected the beneficiary, to date the sole beneficiary of the trust, Ms. Fui Fong Khong. The Court points out that the domestic courts hearing the case had no choice but to exclude the application of the provision previously declared unconstitutional by a binding decision of the Constitutional Council, which, as a matter of principle, is immediately applicable to pending cases, bearing in mind that the power to modulate over time is the exception.

The Court observes that, after concluding, in accordance with the rules of conflict of laws in private international law, that California law should apply, the domestic courts excluded the application of Article 2 of the Act of July 14, 1819 as a substantive rule derogating from the foreign law designated by the conflict of laws rule, thereby respecting the binding effect of the decisions of the Constitutional Council under Article 62 of the Constitution (see paragraphs 25 and 26 above) insofar as the applicants had not obtained recognition of a right acquired prior to the repeal of that provision, and, on the other hand, decided that the reserved portion existing in the French system did not have universal value to the point of triggering the French international public policy exception. In doing so, the domestic courts merely applied the law in force at the time of their examination, and there was nothing arbitrary about their decisions.

The Court therefore sees no reason to depart from the reasoning of the domestic courts insofar as, on the one hand, it has never recognized the existence of a general and unconditional right of children to inherit part of their parents' property (Marckx, cited above, § 53, and Merger and Cros, cited above, § 47), even though it has acknowledged “the place accorded to the reserved portion of an estate in the domestic legal order of most of the Contracting States” (Pla and Puncernau v. Andorra, no. 69498/01, § 26, ECHR 2004-VIII) and, on the other hand, in the present case, they verified that the applicants were not in a situation of economic insecurity or need before ruling out the exception of international public policy (see paragraphs 17, 18, and 19 above).

The Court notes that the domestic courts thus respected the deceased's freedom to make a will, which reflected a “continuous and well-defined” approach to ensuring that his surviving spouse would benefit from all of his assets, by noting the absence of any fraudulent intent in his approach and observing that the validity of the trust under California law was not disputed and should therefore be accepted (see paragraphs 18 and 19 above).

In view of all the foregoing, the Court considers that, in the presence of competing private interests, the immediate application of the Constitutional Council's decision leading to the rejection of the applicants' request was not disproportionate, upsetting the fair balance between the requirements of the general interest of the community and the imperatives of safeguarding the fundamental rights of individuals.”

2) The renewed protection of the Reserved Share by the French legislator : threat to the aim and efficient application of the EU Succession Regulation ?

a) Regarding the applicability of the foreign law

The French legislator seemed to have rehabilitated a right of withdrawal for the children, not for the spouse. Therefore, a foreign law which would not provide for a protection for a heir other than the deceased children should not be considered as contrary to French International Public Policy, if he's not in a state of need, according to the case-law of the Cour de cassation.

Furthermore, few hypothesis where the French judge, applying a foreign law, could apply French law and therefore, exclude the foreign law that doesn't know a mechanism such as Reported Portion

- Article 10 § 1 of the EU Regulation leads to the jurisdiction of the French judge for the entire succession
 - a. if the deceased had the French nationality when he died; or
 - b. if the deceased had his habitual residence in France, if, at the moment the Judge is seized the residence hasn't ceased more than 5 years since the change of residence
- **Article 10 § 2 : if no jurisdiction of any EU member state is competent according §1, the French judge is competent for the assets in France**

As far as the deceased will is concerned, the right of withdrawal a threat for the predictability of the choice of law of article 22 (law of the State of the deceased's nationality).

Recital 38 : the choice is limited to the law of a State of their nationality

- ✓ to ensure a connection between the deceased and the law chosen
- ✓ to avoid a law being chosen with the intention of frustrating the legitimate expectations of persons entitled to a reserved share.

What if the chosen law contains provisions protecting heirs or relatives in need ?

Most laws in common law countries that do not recognize the institution of Reported Portion provide for substitute mechanisms that guarantee subsidies to relatives in need, such as family provisions in English law.

Two approaches are possible for the French Judge :

- If a heir is disinherited and not in a situation of need, he will not be able to claim for family provisions. Therefore, article 913 § 3 could be activated.
- On the other hand, it can be considered that the right of withdrawal can only be activated if a foreign law knows no mechanism of protection for the children

The question remains open, but we see how disrupting such a mechanism if its conditions are reunited.

Example 1 :

The deceased has made no choice of law. He is British and has lived in France, where his assets are. He has moved to the UK less than 5 years before he died. His two children reside in Germany and in the UK.

France has jurisdiction according to article 10 § 1 b).

Applicable law will be British law according article 4 (last habitual residence).

However, as one of the children lives in Germany, he could ask for the French right of withdrawal to be applied for both of them

Example 2 :

The deceased has made a choice of law (English law). He is French and British and has lived in France, where his assets are. He has moved to the UK less than 5 years before he died. His two children reside in the UK.

France has jurisdiction according to article 10 § 1 a).

Applicable law will be British law according article 4 (last habitual residence).

However, as the deceased has French nationality and even though the children live in a third country, the heirs can ask for the French right of withdrawal to be applied

Example 3 :

The deceased has made no choice of law. He is British and has lived in France, where his assets are. He has moved to the UK less than 5 years before he died. His two children reside in the UK.

France has jurisdiction according to article 10 § 1 a).

Applicable law will be British law according article 4 (last habitual residence).

As the deceased is British and the children are living in a foreign country, the French right of withdrawal should not apply.

Therefore, could the heir claim the exception of International Public Policy to set aside English law?

b) Regarding the execution of a decision who would not consider the Reported Portion

Could a foreign decision that ruled on the division of estate assets in disregard of the rights of heirs entitled to a reserved portion be recognized and enforced in France?

❖ Decision rendered by a EU Member State

- ✓ Principle of mutual recognition
- ✓ Automatical recognition in the other Member States in accordance with article 39, unless one of the grounds set out in Article 40 of the Regulation can be invoked against it :
 - *if such recognition is manifestly contrary to public policy (ordre public) in the Member State in which recognition is sought;*
 - *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;*
 - *if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought;*
 - *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.*

In 2017, the High Court of Justice decided that a foreign decision who applied a foreign law not providing for a Reported Portion is not against International Public Policy and should be enforced, unless one of the heirs (child) is left in a state of need.

Will the solution be the same today? If we consider the Reported Portion falls into the scope of International Public Policy, a foreign law which doesn't know the Reported Portion and knows no mechanism of protection of the children should be considered against International Public Policy.

What about if the foreign law applied by the EU member state's judge only knows protective mechanism ? Or if the decision order the share of the assets according to the deceased will in a testament, applying a law that doesn't know the Reported Share but hasn't completely disinherited the children ? In that case, the mechanism of International Public Order shouldn't apply (not manifestly incompatible).

❖ Decision rendered by a Foreign State

In this situation, the European judicial area is no longer relevant as the EU Regulation doesn't apply.

- ✓ Therefore, the French will apply its jurisprudence Cornelissen (Cassation civ. 1, 20 February 2007, n°05-14082) :
- ✓ Absence of fraud,
- ✓ Indirect jurisdiction of the foreign court,
- ✓ The absence of conflict with French international public policy.

As there is no principle of mutual trust between the EU member states and foreign states and if we consider the reserved portion being now an essential principle of the forum as the French Legislator stated, there is no doubt that the French judge would refuse to grant exequatur to a judgment rendered in a third country if it settled an estate without regard to the heirs entitled to a reserved portion