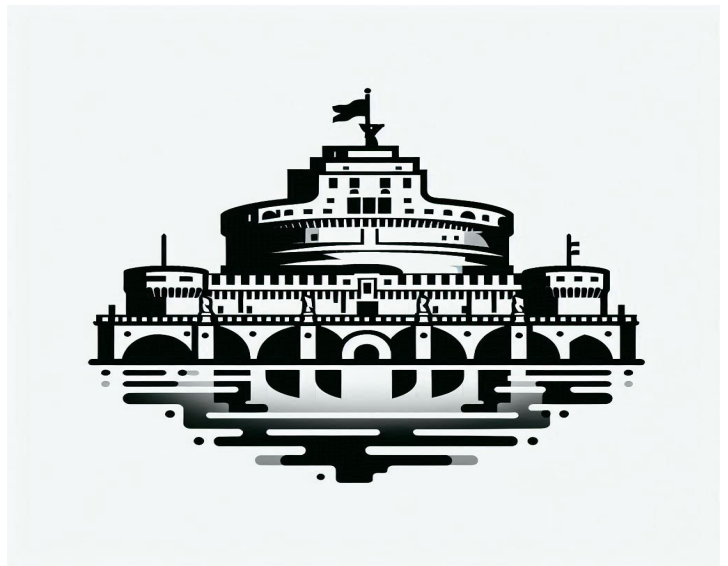


EU REGULATION 650/2012



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EU REGULATION 650/2012



EU Regulation 650/2012, also known as the EU Succession Regulation, governs cross-border inheritance matters within the European Union. Article 22 allows individuals to choose the law that will govern their succession, even if they do not reside in the country of that law. Specifically, Article 22 permits individuals to designate the law of their nationality as the applicable law for their estate, regardless of their habitual residence at the time of death. This offers a significant degree of flexibility for those with international ties.

The provision aims to simplify the process of cross-border inheritance by reducing legal uncertainty and offering a degree of predictability in estate planning. For example, if an individual from the UK owns property in Italy, Article 22 would allow them to designate English law as the law governing their entire estate, including their Italian assets.

A Warning About Employing Article 22

- If a person from common law country such as England, owns real estate in Italy, elects English law under Article 22 of EU Regulation 650/2012, Article 34 (Renvoi) becomes a critical issue. Renvoi refers to the situation where the law of a non-EU country (such as the UK, which is not bound by the Regulation) refers succession matters back to another legal system. This can create unintended consequences when dealing with Italian property.
- Under English private international law, succession to immovable property (real estate) is governed by the law of the country where the property is located. This means that, even if an English testator elects English law to govern their succession under Article 22, English law will refer the succession of Italian real estate back to Italian law.
- Article 34(1) states that if the law of a third state (such as England) refers succession matters back to an EU country, the renvoi must be accepted. Since English law directs real estate succession back to Italy, Italian succession law will apply to the Italian property. This could lead to the application of Italian forced heirship rules, overriding the testator's intention to distribute their estate according to English law.
- If the will does not account for Italian forced heirship laws, the division of the estate may be disrupted, requiring legal intervention in Italy to settle the matter.

How the Regulation Works

- **Habitual Residence as Default Rule:** The law governing succession is typically determined by the habitual residence of the deceased at the time of death.
- **Choice of Law Mechanism:** Article 22 allows individuals to choose their national law as the governing succession law, but this must be explicitly stated in a will. It is not possible to have two wills governed by different types of law because succession law generally requires a single, unified legal framework for the entire estate. If different legal systems apply to different parts of the estate, conflicts may arise, making probate and administration unnecessarily complex.
- **Jurisdictional Considerations:** Courts in the country of habitual residence generally have jurisdiction, though a valid choice of law may impact jurisdictional decisions, particularly regarding immovable property in Italy.
- **Recognition of Wills Across Borders:** Wills valid in one EU country are typically recognized in others, though local procedural formalities must still be met.
- **European Certificate of Succession (ECS):** The regulation introduces the ECS, which facilitates the recognition of succession rights across EU borders, though its effectiveness varies between jurisdictions.

Five Things to Keep in Mind When Employing Article 22

1. Ensure the Choice of Law is Clear and Explicit

It is essential that the chosen law is clearly stated in a legally valid will. Any ambiguity can lead to challenges, particularly in jurisdictions that may not readily accept foreign law applications.

2. Consider the Forced Heirship Rules in Italy

If Italian real estate is involved, forced heirship rules must be considered. These may override testamentary freedom, potentially leading to disputes and legal intervention.

3. Seek Professional Legal Advice to Avoid Pitfalls

Cross-border estate planning requires careful legal structuring. Consulting legal experts in both common law and civil law jurisdictions can help mitigate risks.

4. Review the Entire Estate, Including Non-EU Assets

If assets are located outside the EU, the chosen law may not be recognized in those jurisdictions, leading to fragmentation in estate administration.

5. Understand the Impact of Jurisdiction on Real Estate in Italy

Since common law courts defer to local laws on real estate succession, selecting a non-Italian law will not necessarily prevent Italian forced heirship rules from applying.