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Article : The Crown Dependencies, the British Islands and the United Kingdom in relation to the European Succession Regulation 650/2012.

8th September, 2015.

To repeat myself, and others, the law relating to the succession of European property outside the Probate jurisdictions of the United Kingdom and the Crown Dependencies changed on 17th August. Property in Eire and in Denmark is not affected by [EU Regulation n° 650/2012](#) .

It is no longer the law of the situs of the immovable that governs the succession within the EU (saving the United Kingdom Denmark and Ireland), and unless a choice of the law of the nationality of the testator has been made in a current will, or can be inferred into a prior will, then there is now a legal void.

As from 17th August it is the law of the habitual residence of the deceased which will apply within Europe. I do not use the term vacuum, as the inflowing air to fill that void needs to be cooled and channelled.

This is not a specific advice. It is simply there to assist those who may need help to isolate the issues and if necessary take advice in relation to what the problems are and how they can be resolved.

The main issue is the Regulation's attempt to start from the top down, and define what is a Member State, then a State and then, where that state has sub-jurisdictions, as between which sub-jurisdictions the applicable law should be allocated. Did the Notarial draftsmen of this Regulation attempt to resolve these issues for such jurisdictions where their subjects, in the wide sense had assets or interests within the EU? No. that is not their area of expertise. A Notary, or for that matter an employee of a Citizens advice bureau such as Your Europe is not a "lawyer" in the conflictual sense of the term in the same manner as say an English solicitor or an advocate in the Crown Dependencies. A civil law notary generally refers any conflict to a lawyer, and in certain countries simply places the assets in dispute into a central holding agency pending adjudication or settlement. That settlement sometimes can take a generation. I have already commented on other fora on a professional risking taking Your Europe's "advice", if it can be dignified with that term, and will refrain from repeating myself here.

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The issue is a universal one, as each politico-legal jurisdiction has its own reasons for having its internal divides. The United States and Switzerland for example, have reasonably well defined systems of internal allocation.

The difficulty is that whilst the Crown Dependencies are not part of the United Kingdom, their subjects tend to have British nationality, as opposed to any "UK" nationality. The passport issued within the CDs are European Passports issued either by the United Kingdom passport office, or by the CD's passport office. See the [Overseas Chambers statement on the Constitutional position of the Island in relation to the EU](#) for the underlying reasons.

How then will a lawyer faced with a succession in Europe address the issue of either the concept of "habitual residence" or that of nationality in the various planning and drafting stages, or if the deceased dies before action is taken, in ensuring that effect is given to the deceased's intentions or directing the chaos where these were not made apparent? Note that a will drafted and executed prior to 17th August is likely to longer be of any effect, if the Regulation was not taken into account, or was partly or badly understood.

The answer to these problems may to a certain extent be found within the Regulation which has produced these. That is a question of logic.

There is a general principle, inserted at the request of Germany at article 21 2. that where the deceased, despite habitual residence in one state retained close, or perhaps better closer connections, or "*liens plus étroits*" with the Fatherland, the concept of "habitual residence" instituted by article 21 1. be deflected and not available. That does not address the issue here but provides a thread to guide the lawyer through the maze to overcome the uncertainty.

It is therefore now the lawyer's and the draftsman's rôle to ensure that the law intended by the deceased is sufficiently insulated from subsequent changes in his or her circumstances after the will has been drafted and executed.

Article 36 attempts to provide one set of classification factors by relying on a State's internal conflict of laws resolution system. That will function within the United Kingdom within the jurisdiction of the Courts and the Parliament (s) concerned as the United Kingdom is a Member State, albeit an opt out state in its own right. Article 36 in all its erudite complexity for a lawyer representing a British national resident within the United Kingdom will be the first point of call.

However the Crown Dependencies are not within the United Kingdom. They never have been, as for the most part these entreprising Islands either were part of the invasion force or subsequently settled what then became the United Kingdom. That distinction remains a legal fact, independent of politics.

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The lawyer in the Crown Dependencies will therefore have to look further in deciding how to allocate the law of his jurisdiction upon which he will be called to advise over European assets and liabilities governed by that law.

Article 37 addresses the issue of allocation within a state and within its jurisdictions. It is the underlying principle, now if you like the catch all, once other solutions have been exhausted.

Article 37

States with more than one legal system – inter-personal conflicts of laws

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons in respect of succession, any reference to the law of that State shall be construed as referring to the system of law or set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the deceased had the closest connection shall apply.

Whilst this is of general application to for example different *shari'ah* inheritance rights or those for People of the Book, or other infidels in a given jurisdiction, the fundamental principle to look for, in the absence of such rules is "the system of law ... with which the deceased had the closest connection". In other words, the Crown Dependency of material property concentration, employment and/or residence.

That should incidentally avoid the old UK inheritance tax legal trap for non-domiciliaries which otherwise could involve a form of post death redomiciliation applying through an absence of choice of a succession law. Note that under the law of domicile such fundamental testamentary choices can influence post decease allocations of domicile by HMRC where there is a doubt as to whether a domicile of choice made prior to death has been maintained.

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