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Article : Comment on Pascal Chassaing's Paper in Droit Européen des Successions Internationales, Le Règlement du 4 juillet, 2012

8th October, 2015.

Commentary on the position taken on the covert "prolongation" of the scissionist régime between France and the United Kingdom by Pascal Chassaing in his chapter in Part One of the work DROIT EUROPEEN DES SUCCESSIONS INTERNATIONALES (*The Work*), Présentation générale at page 37.

Pascal Chassaing is a "Notaire à Paris, Responsable du groupe de travail au Conseil des notaires de l'Union Européenne sur le projet de règlement succession et testaments.

His paper addressed the issue of how a French notary should prepare themselves for the issues raised in the Regulation. It does not address issues of English law as such¹, as that generally is outside even the competence of the notary in France, and even dare I say beyond that of their Cridons.

This short commentary results from his writing as follows at §85 at pages 38-39 of the Work:

Original version	Unofficial translation
"85. Ce fut un objectif privilégié, à la suite de la convention de La Haye de 1989 et d'un mouvement de doctrine souvent favorable en ce sens, de retenir le principe d'une loi successorale unique pour le règlement des successions ayant des effets transfrontaliers.	"85. Following the Hague Convention of 1989 and a movement in doctrine often favourable to this line, a privileged aim was to retain the principle of a single law of succession for the regulation of successions having transborder effect.
Peut-être oubliera-t-on vite, au sein de l'Union	Perhaps one would quickly forget, at the level

¹ although it does make an unfortunate sweeping generalisation as to its scope and effect within the operation of the Regulation.

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<p>européenne, l'ancienne distinction des pays scissionnistes d'avec les pays de régime unitaire. Longuement débattu par la doctrine et souvent critique par les praticiens, le régime scissionniste va quasiment disparaître au sein de l'Union européenne sauf quelques applications marginales, au vu notamment de l'exclusion de l'Irlande et du Royaume-Uni, c'est-à-dire des États tiers au règlement et de la règle de renvoi prévue à l'article 34.</p> <p>C'est l'exemple classique d'un Anglais résident à Londres, n'ayant pas effectué <i>d'option juris</i> et possédant des biens immobiliers situés en France. Ces derniers seront régis par la loi successorale française au maintien ici du principe de la <i>lex rei sitae</i>.</p>	<p>of the European Union, the ancient distinction between the scissionist jurisdictions and those with unitary régimes.</p> <p>Debated at length and often criticised by practitioners, the Scissionist régime will practically disappear at the level of the European Union saving for a few marginal applications and notably Ireland and the United Kingdom, in other words the third States outside the Regulation and the renvoi rule at article 34.</p> <p>Take the classic example of an Englishman <u>resident in London, who has not exercised the choice of law option</u> and who owns <u>immovable assets in France. These (immovables) will be governed by the French law of succession under the principle, here, of the <i>lex situs</i>.</u></p>
<p>86. A relever également que la législateur européen a pris la précaution de ne pas totalement faire disparaître l'application de la loi successorale de l'État où sont situés les</p>	<p>86. Note also that the European legislator took the precaution of not entirely eliminating the succession law of the state whether immovable asset are situate. The text of preamble 54</p>

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<p>biens immobiliers. La lecture du considérant 54 corroboré par l'article 30 tente d'argumenter un tel maintien pour << certains biens immobiliers, certaines entreprises et d'autres catégories particulières de biens >> qui font l'objet de << règles spéciales imposant des restrictions concernant la succession >>. Le règlement .doit alors permettre l'application de ces règles spéciales. par le maintien de la loi (scissionniste) de la situation des biens a la succession mais avec << une interprétation stricte afin de rester compatibles avec l'objectif général du règlement>></p>	<p>corroborated by article 30 seeks to argue such maintenance for "certain immovable property, , certain enterprises or other special categories of assets" which are subject to " special rules which, [for economic, family or social considerations,] impose restrictions concerning or affecting the succession [in respect of those assets]". The Regulation must therefore allow the application of these special rules by the maintenance of the law (scissionist) of the situation of the assets to the succession but with " a strict interpretation in order to remain compatible with the general objective of this Regulation".</p>
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The issue here is that the underlined bald unexplained comment "These (immovables) will be governed by the French law of succession under the principle, here, of the *lex situs*" has been accepted at face value by certain European commentators without further query as to what it, or even what law it is based upon.

The explanation of Maître Chassaing's perspective is simple, but needs expanding. Assuming that by "resident in London" he means habitually resident there; where the habitual residence jurisdiction is in force, the general rule in the absence of an option for the law of the nationality, is that English law will apply.

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From the perspective of English law to which the Regulation expressly attributes the concepts of substance and any *renvois*, there is only a need to consider the *lex situs*, as opposed to law of residence where there is an issue as to *renvoi* and the English Court has to determine whether it is to sit as an English Court or as a foreign Court. There is therefore only an issue as to *renvoi* where there is a conflict, under English rules to which the Regulation defers at Considerant 57 and then thereafter including article 34.

Where Maître Chassaing's point expires, is it a case where the laws of England do not conflict with the *lex situs*. In the case of an immovable situated outside the English jurisdiction, they do not; as I will show below.

In the case Maître Chassaing outlines, the law governing the succession is the habitual residence of the testator, namely English law includes the English common law.

It is well settled that the English common law, influenced by Norman custom as from the invasion in 1066, was and remains in relation to foreign immovables the direct seisin of heris and legatees on death; the parallel to the old French principle of *le mot saisit le vif*. There is therefore no conflict to be resolved. S.1 of The Land Transfer Act 1897, also known as the Real Representative Act, only applied to annul the common law concept of direct seisin to realty within the English jurisdiction. The English only seek to regulate land within their effective jurisdiction. As Islanders they do not seek to regulate the ownership of land elsewhere.

The question is, whether English internal law would actually *renvoi* to French law to achieve the transfer defined at Article 23, governed in Maître Chassaing's example effectively by English law? The answer to that question is simply no, there is no need to here. The distinction is subtle but fundamental. It has become obscured by force of habit over more than a century. The explanation at his §86 is simply not sufficient: there is no European common law as yet which could absorb and contain the dark arts of Brussels compromises in a "legal provision", even in a

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soviet environment, and the extrapolations made from two provisions which are not directly relevant to the issue in question are not explained.

As to article 30, it is an exception, not a general principle. Given what has been said beforehand there is no room for its specific application to be generalised to support an unnecessary and non-existent *renvoi*. I stress that the Regulation specified that it is the English concept of *renvoi* that applies here not the French. Maître Chassaing omits a significant amount of the text of article 30 [see Square Brackets in English] which tends towards extending the scope of article 30 from the exception that it is to a principle which he is effectively seeking to extrapolate from that exception, perhaps with a view to retaining covert notarial control over the "scissionist" marketing opportunity which he may be attempting to safeguard. I sense, perhaps wrongly, in his argument a desire to render French forced heirship rules applicable to an immovable in what is now an area of *ordre public international*, by definition as opposed to *ordre public interne*. In his example, the *de cuius* is resident in England, and the Regulation specifies English law as applicable, not French.

There is no attempt made to indicate the textual excisions in any formal sense, for example by using "....." to indicate his omissions. In short, he is attempting to turn a specific exception of limited scope into a general principle. That requires at least an explanation before his writing is given the status of *argent comptant*. The Regulation simply, whether in English or in French, as a legislative instrument of positivist Private International law does not support his contention, which can only support itself by the omission of restrictive parts of the very definition he is seeking to employ. Where his argument falls down in relation to English law is when he refers to *renvoi* as if it is a European Union concept, as opposed to a mechanism for the allocation of jurisdiction, in the laws of England and Wales. I speak not for Ireland, Northern Ireland nor Scotland although I believe the position there to be similar if not identical. In the French text of

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article 34 applicable to the choice of law as to "*renvois*", the terminology or rather the verb "*renvoient*" is clear:

1. Lorsque le présent règlement prescrit l'application de la loi d'un État tiers, il vise l'application des règles de droit en vigueur dans cet État, y compris ses règles de droit international privé, pour autant que ces règles renvoient.

....

Where Maître Chassaing appears to have deviated from the regulatory norm is in what I conjecture to be his concern for the English attitude towards French domestic forced heirship and its avoidance. There are other ways to address this under the Regulation which do not require it to be stretched beyond breaking point by the massacre of the foreign Third state's laws under the guise of some covert Brussels trade-off: "All the prudence and art of compromise, dear to Brussels' practice, appear here." Perhaps these dark, uncertain and undefined interpretative arts are not needed and all that is needed is the insertion of some *juris* before the ever present *prudence*? That is the thrust of this paper.

The *Caron* jurisprudence is the French jurisprudential reference point for the fundamental distinction between *ordre public national* and *ordre public international* and the limitation on forced heirship rules in an international context.. If the national rules apply, then the French forced heirship rules apply to the succession including the immovable succession. However, where the *ordre public international* rules apply, there is freedom to leave assets outside the forced heirship restrictions. Note that *Caron* was decided on the basis not that French forced heirship rules could apply to the foreign company, a movable, holding French immovables, but rather on that of a *fraude*. I agree that the distinction between movable, *Caron*, and immovable could be decisive here but counter that with the definite interpretative interdict upon a judge seeking to disapply the Law defined by the Regulation by invoking public order at article 35

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Here there may be an issue as to the Considérant 26 in other areas , which I do not need to address here:

(26) Aucune disposition du présent règlement ne devrait empêcher une juridiction d'appliquer les mécanismes destinés à lutter contre la fraude à la loi, par exemple dans le cadre du droit international privé.

The English language version hobbles along in a French linguistic construction and has to use the French phrase *à lutter contre la fraude à la loi*. It reads a little like a French fiscal enactment, and has little signification in any English legal sense, saving to indicate, as did the mediaeval maritime maps, that "there monsters lye". Whilst the term "fraud on a power" exists to designate where a power is used outside its legal objective innocently or otherwise, there is no such concept as a fraud on the law or abuse of right outside their imported fiscal connotation in English law.

Caron aside, the French texts are of little assistance as to whether the ordre public international freedoms can be invoked by a French habitually resident testator opting for the law of his foreign nationality. Does that render the succession international, and therefore by definition outside the scope of the French ordre public interne? If it is under the umbrella of the Regulation and by definition a transborder succession, then it follows that it should be. Does the fact that a testator habitually resident in another Member State or in a Third state such as the United Kingdom / England uses a will subject under article 31 to law will to dispose of their French immovable also render the succession outside French ordre public interne and free? It would seem so, as Considérant 58 only enables the public order exception in exceptional circumstances, and article 38 only allows ordre public to affect a disposition of a law of the State designated by the Regulation. It does not permit the setting aside of a testamentary disposition dealing with the issues exclusively reserved to its law under article 23 where there is no disposition of foreign law, which in the case of England and Wales none exists. There is however

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a drafting issue in the Regulation in that the English version of Considérant 58 states : *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* whilst the French version states: *Néanmoins, les juridictions ou autres autorités compétentes ne devraient pas pouvoir appliquer l'exception d'ordre public en vue d'écarter la loi d'un autre État membre* . The difference here is a matter of concern.

Maître Chassaing appears to intimate in his commentary on article 30 by inferred reference to article 34 on *renvoi* that the issue is simple and that English law makes a *renvoi* to French law as being the law of the immovable asset by virtue of its *situs*. That is not strictly speaking correct. The Regulation in French refers to both sets of laws, the actual domestic internal law and the rules of Private International Law. He has not researched whether and to what extent English law actually requires a). there to be any form of administration in England of foreign immovables at all, and then b). whether in fact there is any *renvoi* at all. I respond as follows:

a). The English court has no jurisdiction to institute any form of executorship over foreign land at all. The internal law of England in relation to the succession to foreign immovables has always been effectively what a French lawyer understands as *le mort saisit le vif*, as the positive statute introducing executorships over English realty or land was introduced only in the Land Transfer Act of 1897. Prior to 1897, even in England insofar as succession to land anywhere was concerned, the old rule going back to the Normans was that heirs and legatees took directly on death; without intermediate administration by a third party. For those interested in the influence of Norman custom over the common law, the Statute of Westminster 1275 was enacted in Norman French, which remains the language of its interpretation. The common law position in England and Wales until 1897 was that all realty and immovables wheresoever situate passed under a principle parallel to *le mort saisit le vif*. Where lies the need for any Private international law *renvoi*? I would reply to Maître Chassaing that the dark arts of Brussels need not enter the light, and that he may have omitted the most simple solution: the French immovable, if

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subject to English law does not pass under French law, but, if the Regulation is applicable, under English law.

b). English common law makes no *renvoi* to French law or to France as to the seisin of the heirs or legatees whether under Private International Law or otherwise, as under internal English law the foreign immovable passes directly. There is no need to look to the law of France, there is therefore no *renvoi* under article 34. Under English law as to the issues described in article 23, whether applicable under the General Rule set out at article 21, or opted for in the case of an Englishman or women with British, nationality under the Choice of Law option under article 22, there is no need to *renvoi* to the laws of France. Maître Chassaing's perception that he can use article 30 to resurrect the body of law of scissionism in order to protect foreign heirs at threat of dispossession by a parent seeking to advantage their second spouse may therefore be lawfully displaced. I assume that there is no issue that in the example he cites it is English law that applies as being that of the -habitual- residence in the absence of any option. The Regulation imperatively defines the scope of the applicable law at article 23:

Article 23

The scope of the applicable law

1. The law determined pursuant to Article 21 or Article 22 shall govern the succession as a whole.

2. That law shall govern in particular:

.....

(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;

.....

(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;

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(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;

.....; and

(j) the sharing-out of the estate.

In other words the English rules as to succession to foreign immovable are that there is no need for the appointment of an executor, the heirs and legatees to the succession have power over the succession to the French immovables; that succession in terms familiar to a French notary passes by the old Norman, now English principle of *le mort saisit le vif*, and further that there is no need for any *renvoi* for the foreign immovable property to pass.

Put in those terms, the need to retain scissionist rearguard defences appears superfluous. I refer again to the interpretative imperative at Considérant 57:

(57). Les règles de conflit de lois énoncées dans le présent règlement peuvent conduire à l'application de la loi d'un État tiers. Dans un tel cas, il convient de tenir compte des règles de droit international privé dudit État. Si ces règles prévoient le renvoi à la loi d'un État membre ou à la loi d'un État tiers qui appliquerait sa propre loi à la succession, il y a lieu d'accepter ce renvoi afin de garantir une cohérence au niveau international. ...

and in the case of a choice of law

.... Il convient toutefois d'exclure le renvoi lorsque le défunt avait fait un choix de loi en faveur de la loi d'un État tiers.

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The United Kingdom and therefore England is a Third State. Renvoi back to French law as the law of the *situs* is therefore excluded, as there is no need for a *renvoi* under English law, *le mort saisist le vif*. There is therefore little dark art that needs be adduced in Brussels to send it back to French law. As I am pointing out, that is not necessary as English law relating to foreign immovables answers the issue and the question adequately. There is no need to deploy the second sentence of Considérant 57, which reads as follows:

If those rules provide for renvoi either to the law of a Member State or to the law of a third State which would apply its own law to the succession, such renvoi should be accepted in order to ensure international consistency.

Why? There is no *renvoi* from the English Court to the French Court to be accepted by the French Court: the transmission of the foreign immovable asset under English law is direct.

It would be curious indeed were this considerable simplification be lost simply through a stubborn civilian obsession in Brussels with "international consistency" which is not required here. The whole point of this Regulation is to simplify succession, it is not the fact that the United Kingdom has abstained from opting in that should lead to an extra layer of complexity for its citizens and residents, as these categories both benefit from European Union protection in the area of the freedom of movement of capital which includes succession. To discriminate against the United Kingdom as a democracy with an ancient system of law which is older than most European States is a form of sovietisation which will be unacceptable.

Any reader interested as to the English interpretation of the term *renvoi* might wish to read the summary at www.OverseasChambers.com on the Resources page at the item: "The English concept of Renvoi confronted with the EU Succession Regulation".

For ease, and to the extent relevant, the references are as follows:

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French	English
Regulation 650/2012	Regulation 650/2012
(26) Aucune disposition du présent règlement ne devrait empêcher une juridiction d'appliquer les mécanismes destinés à lutter contre la fraude à la loi, par exemple dans le cadre du droit international privé.	(26) Nothing in this Regulation should prevent a court from applying mechanisms designed to tackle the evasion of the law, such as <i>fraude à la loi</i> in the context of private international law.
(52) La validité quant à la forme de toutes les dispositions à cause de mort établies par écrit devrait être réglementée par le présent règlement au moyen de règles qui soient compatibles avec celles de la convention de La Haye du 5 octobre 1961 sur les conflits de lois en matière de forme des dispositions testamentaires. Lorsqu'elle détermine si une disposition à cause de mort est valable en la forme en vertu du présent règlement, l'autorité compétente ne devrait pas prendre en considération la création frauduleuse d'un élément international en vue de contourner les règles relatives à la validité quant à la forme.	(52) This Regulation should regulate the validity as to form of all dispositions of property upon death made in writing by way of rules which are consistent with those of the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. When determining whether a given disposition of property upon death is formally valid under this Regulation, the competent authority should disregard the fraudulent creation of an international element to circumvent the rules on formal validity.
(54) En raison de leur destination économique, familiale ou sociale, certains biens immobiliers, certaines entreprises et d'autres catégories particulières de biens font l'objet, dans l'État membre de leur situation, de règles spéciales imposant des restrictions concernant la succession portant sur ces biens ou ayant une incidence sur celle-ci. Le présent règlement	(54) 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

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<p>devrait assurer l'application de ces règles spéciales. Toutefois, cette exception à l'application de la loi applicable à la succession requiert une interprétation stricte afin de rester compatible avec l'objectif général du présent règlement. Dès lors, ne peuvent être considérées comme des dispositions spéciales imposant des restrictions concernant la succession portant sur certains biens ou ayant une incidence sur celle-ci ni les règles de conflits de lois soumettant les biens immobiliers à une loi différente de celle applicable aux biens mobiliers, ni les dispositions prévoyant une réserve héréditaire plus importante que celle prévue par la loi applicable à la succession en vertu du présent règlement.</p>	<p>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.</p>
<p>(57) Les règles de conflit de lois énoncées dans le présent règlement peuvent conduire à l'application de la loi d'un État tiers. Dans un tel cas, il convient de tenir compte des règles de droit international privé dudit État. Si ces règles prévoient le renvoi à la loi d'un État membre ou à la loi d'un État tiers qui appliquerait sa propre loi à la succession, il y a lieu d'accepter ce renvoi afin de garantir une cohérence au niveau international. Il convient toutefois d'exclure le renvoi lorsque le défunt avait fait un choix de loi en faveur de la loi d'un État tiers.</p>	<p>(57) The conflict-of-laws rules laid down in this Regulation may lead to the application of the law of a third State. In such cases regard should be had to the private international law rules of that State. If those rules provide for renvoi either to the law of a Member State or to the law of a third State which would apply its own law to the succession, such renvoi should be accepted in order to ensure international consistency. Renvoi should, however, be excluded in situations where the deceased had made a choice of law in favour of the law of a third State.</p>
<p>(58) Dans des circonstances exceptionnelles, des considérations d'intérêt public devraient donner aux juridictions et aux autres autorités compétentes des États membres chargées du</p>	<p>(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</p>

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<p>règlement des successions la possibilité d'écarter certaines dispositions d'une loi étrangère lorsque, dans un cas précis, l'application de ces dispositions serait manifestement incompatible avec l'ordre public de l'État membre concerné. Néanmoins, les juridictions ou autres autorités compétentes ne devraient pas pouvoir appliquer l'exception d'ordre public en vue d'écarter la loi d'un autre État membre ou refuser de reconnaître — ou, le cas échéant, d'accepter —, ou d'exécuter une décision rendue, un acte authentique ou une transaction judiciaire d'un autre État membre, lorsque ce refus serait contraire à la Charte des droits fondamentaux de l'Union européenne, en particulier à son article 21 qui interdit toute forme de discrimination.</p>	<p>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.</p>
<p><i>Article 21</i> Règle générale 1. Sauf disposition contraire du présent règlement, la loi applicable à l'ensemble d'une succession est celle de l'État dans lequel le défunt avait sa résidence habituelle au moment de son décès. 2. Where, by way of exception, 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.</p>	<p><i>Article 21</i> General rule 1. Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death. 2. Where, by way of exception, 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.</p>
<p><i>Article 22</i> Choix de loi 1. Une personne peut choisir comme loi</p>	<p><i>Article 22</i> Choice of law 1. A person may choose as the law to govern</p>

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<p>régissant l'ensemble de sa succession la loi de l'État dont elle possède la nationalité au moment où elle fait ce choix ou au moment de son décès.</p> <p>Une personne ayant plusieurs nationalités peut choisir la loi de tout État dont elle possède la nationalité au moment où elle fait ce choix ou au moment de son décès.</p>	<p>his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.</p> <p>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.</p>
<p><i>Article 30</i></p> <p>Dispositions spéciales imposant des restrictions concernant la succession portant sur certains biens ou ayant une incidence sur celle-ci</p> <p>Lorsque la loi de l'État dans lequel sont situés certains biens immobiliers, certaines entreprises ou d'autres catégories particulières de biens comporte des dispositions spéciales qui, en raison de la destination économique, familiale ou sociale de ces biens, imposent des restrictions concernant la succession portant sur ces biens ou ayant une incidence sur celle-ci, ces dispositions spéciales sont applicables à la succession dans la mesure où, en vertu de la loi de cet État, elles sont applicables quelle que soit la loi applicable à la succession.</p>	<p><i>Article 30</i></p> <p>Special rules imposing restrictions concerning or affecting the succession in respect of certain assets</p> <p>Where the law of the State in which certain immovable property, certain enterprises or other special categories of assets are located contains special rules which, for economic, family or 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, under the law of that State, they are applicable irrespective of the law applicable to the succession.</p>
<p><i>Article 34</i></p> <p>Renvoi</p> <p>1. Lorsque le présent règlement prescrit l'application de la loi d'un État tiers, il vise l'application des règles de droit en vigueur dans cet État, y compris ses règles de droit international privé, pour autant que ces règles</p>	<p><i>Article 34</i></p> <p>Renvoi</p> <p>1. The application of the law of any third State specified by this Regulation 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 <i>renvoi</i>:</p>

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<p>renvoient:</p> <p>a) à la loi d'un État membre; ou</p> <p>b) à la loi d'un autre État tiers qui appliquerait sa propre loi.</p> <p>2. Aucun renvoi n'est applicable pour les lois visées à l'article 21, paragraphe 2, à l'article 22, à l'article 27, à l'article 28, point b), et à l'article 30.</p>	<p>(a) to the law of a Member State; or</p> <p>(b) to the law of another third State which would apply its own law.</p> <p>2. No <i>renvoi</i> shall apply with respect to the laws referred to in Article 21(2), Article 22, Article 27, point (b) of Article 28 and Article 30.</p>
<p><i>Article 35</i></p> <p>Ordre public</p> <p>L'application d'une disposition de la loi d'un État désignée par le présent règlement ne peut être écartée que si cette application est manifestement incompatible avec l'ordre public du for.</p>	<p><i>Article 35</i></p> <p>Public policy (<i>ordre public</i>)</p> <p>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 (<i>ordre public</i>) of the forum.</p>

❖ Conclusion

There is no need to evoke the issue of a *renvoi* to French law as the law of the situs of the immovable when the succession is governed by English law either by way of an option under article 22 or by way of habitual residence in England and Wales under the basic rule in article 21. English law does not make any *renvoi* to French law in the matter dealt with by the Regulation under article 23, as there is no conflict between English law as to direct seisin as to foreign immovables and French law, which applies the same principle canonised as *le mort saisit le vif*.

I am certain that there will be other views than this. However it opens up one path and should not be seen or interpreted as attempting to exclude others. There may in fact be several means of achieving the desired result, and there is no mandatory exclusive rule imposed as to domestic

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laws by the Regulation. It is purely and expressly limited to certain areas of the Conflict of laws and Private International Law, where these are applicable and then only to the extent that these are applicable.

For the record, I stress that as a Barrister, more so perhaps than a solicitor, part of my professional role is to advise on if and if so whether English Courts have or will accept jurisdiction or not, and if so, as which court they will sit: an English or a foreign Court.

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