



Live and let die under the EU Succession Regulation's regime

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These days, many expatriates ('expats') live a happy life in the EU member states far from their home countries. The stay abroad opens, in all regularity, new opportunities to the brave ones who have accepted the offer of working in a foreign country for a few years. The other side of the coin is that their stay abroad makes the legal environment much more complex. Even employees of multinational concern which often offer a 'feel safe-package' connected with the promise 'we will retrieve you and your family in case anything happens', are well advised to take some precautions.

As long as the expats are happy and healthy in the foreign country, in most cases no serious legal problems come up. However, what happens if the expatriate passes away and who will receive his or her assets which are situated in the home country and/or the assets at his place of residence in the foreign country?

The experienced lawyer's answer to the above question will simply be: 'It depends'. Apart from other factors, the relevant legal cornerstone are the deceased's citizenship and/or his last domicile, his date and place of death and especially if he has died in a member state of the European Union and if so, whether he has passed away in Great Britain, Ireland or in Denmark.

Firstly, this article focuses on the passing away in an EU member state as the place of death of testators who have lived in that state for many years. Secondly, referring to the time of death, one has to differentiate between a passing away (i) before or respectively (ii) on or after August 17, 2015.

The reason for the distinction regarding the day of death is the EU Succession Regulation of 2012. It has already come into force but only is applicable to all cases of death on or after August 17, 2015. The headline indicates that the EU Succession Regulation will bring major changes from the current international inheritance law rules of some of the EU member states.

Different from the current, eg. German, French, Spanish and Italian, conflict of law rules the EU Succession Regulation does not ask for the deceased's citizenship. Under the EU Succession Regulation the law of the deceased's habitual residence at the time of death (law of the domicile) is

decisive. Therefore, it makes a major difference for a German testator, if he dies either before August 17, 2015 or on that date or later, as far as the international inheritance law rules are concerned. The same applies, for example, to citizens from Italy, France and Spain.

From a German perspective, until August 17, 2015 the law of his or her German citizenship (at the day of death) is the decisive law to start with in determining the applicable inheritance law. On or after August 17, 2015 the law of the deceased's last domicile becomes relevant, which can be different, especially in case of expatriates. They should not rely on the exception for cases in which the deceased had a manifestly closer connection with a state other than the one of his last habitual residence. What can be done to assure that the German inheritance law or the one of the expat's home country will be applied even after August 17, 2015, although the expat's domicile might have changed until then?

In most cases the own date of death is unknown. Therefore, good advice for testators in the given situation is to earnestly consider a choice of the applicable inheritance law up to the possible legal extent. A choice of law which was made before August 17, 2015 will remain valid even after the EU Succession Regulation is applicable directly.

Expatriates who consider such a choice of inheritance law for the future should keep in mind that the EU Succession Regulation is not (and will not become) valid in the two common law states Great Britain and Ireland, on the one hand, and in Denmark, on the other. Those member states have not ratified the EU Succession Regulation. If a longer stay abroad in one of those countries or in other non-EU-countries is intended, one has to deal with different legal basic points. A further very important factor is that the EU Succession Regulation is not merely relevant for EU-citizens who die in EU member states. It is also applicable for non-EU citizens who – might – have their future last domicile in an EU member state.

An expat's succession might be subject to the inheritance laws of the foreign country in which he resided at his date of death – in case he has had his 'last habitual residence' in that EU member state. Under the German national inheritance law rules, the 'habitual residence at the time of death' was – isolated seen – not relevant until the EU Succession Regulation

came into force in 2012. The EU Succession Regulation does not define the meaning of the term 'habitual residence at the time of death'.

Therefore, the concrete interpretation in the single EU member states and the application by a foreign probate judge or authority might be diverse in the EU member states. In that respect the EU Succession Regulation might face some obstacles and its intention to harmonise the various rules about international inheritance law could be partially foiled. Regardless of that, the above advice to check in time, if a choice of law is possible and makes sense, can be upheld or even strengthened: those potential uncertainties make a choice of inheritance law even more important for the prospective testators.

If the testator wants to make sure that his home country's inheritance law can and will be applied to his succession, he should contact an inheritance law expert from his home country in time, in the first place. Testators who would be fine with the foreign inheritance law's application, eg. because it is one of a very elaborated kind (like German inheritance law), he or she should contact an expert from that country.

Prior to August 17, 2015 there will be no harmonisation through the EU Succession Regulation. Without a proper estate or succession planning, an expatriate's succession will be subject to a patchwork of national conflict of law rules in the field of inheritance law: in some countries the law of the citizenship at the day of death is relevant, or the law of the last domicile for others. In that context, looking at the aforementioned laws only is the starting point of

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the applicable inheritance law's – often very complex – determination. In each case special legal rules for the deceased's real estate in a foreign country exist.

Last but not least, before or after August 17, 2015, more than one inheritance tax or estate tax law regime will remain or become relevant for most of the cases of succession. This does not simplify things.

Summing it up, the EU Succession Regulation's range of application is by far wider than a possible relevance only for EU citizens. The Regulation is important for all persons who (might) have their – future – last domicile in an EU member state, other than Great Britain, Ireland and Denmark. Even before the EU Succession Regulation becomes applicable on August 17, 2015 a professional international estate planning has to take its new rules into consideration. Expatriates who are planning on working and staying for a longer period in a EU member state should be aware of the EU Succession Regulation's new concept because it might become essential for their own case of succession. ■