

SUCCESSION – NEW E.U. REGULATION [EU -No 650/2012]

- Heralds a move towards a system where the law of one jurisdiction applies to an entire Estate, even where the deceased held assets in multiple jurisdictions.
- Ireland, UK, and Denmark have opted out of the Regulation.
- In default of election (see below) the law which will apply to the entire estate shall be determined by 'where the deceased had their habitual residence at time of death'. There is no definition of 'habitual residence'. Regulation also applies concept of 'where the deceased was manifestly more closely connected to another country' which can 'override' the habitual residence test in certain cases.
- Person can chose by express declaration in their Will which law applies to their entire estate, but that choice is restricted to either where they habitually reside or their nationality.
- Applies to all deaths after 17 August 2015, not to those before.
- Does not cover taxation of Estates but it could impact on tax planning-e.g. could be used to avoid forced heirship rules in other EU countries.

As Ireland has opted out it is not immediately apparent how the Regulation impacts on Irish Estates and individuals or on nationals of other countries habitually resident in Ireland. However there is interplay between the laws, and consideration might be given to the following examples which demonstrate how the Regulation will apply depending on the particular circumstances:-

1. French national resident in Ireland dies in Ireland, declaring by Will they want French law to apply to entire estate - choice based on nationality. France, who have opted in, will treat worldwide assets under French law and Ireland who have opted out will treat Irish property under Irish Law.
2. French national resident in Ireland dies in Ireland declares by Will they want Irish law to apply to entire estate- choice based on habitual residence. Ireland has opted out and will only concern itself with Irish immovable assets only. France however are signed up to the Regulation, so when they look to the Will they are bound to follow the Testator's declaration and apply Irish law to the entire world wide Estate.
3. Irish national, living in Ireland, dies in Ireland and stipulates by Will they want Irish law to apply to their entire estate-choice based on nationality. The deceased owns a house in Spain. Spain will follow the Regulation and apply Irish law. Irish law, if followed, would apply Spanish law to any asset held in Spain. The Regulation prevents this and although Ireland has not signed up to the regulation will prevent Ireland from applying Spanish law- Irish law must be applied to entire Estate.
4. The Regulation will not always operate as outlined in no. 3 above. If you alter the scenario at no. 3 above relating to the Irish national with property in Spain very slightly, the result is extremely different: by Will the Irish national stipulates Irish law is to apply to entire estate but they state their choice of jurisdiction is based on their habitual residence (rather than nationality). Again Spain will follow the Regulation and apply Irish law. As above Irish law applies Spanish law to any asset held in Spain. The Regulation does not prevent this. If the declaration by Will does not state the grounds for the choice of jurisdiction it will be presumed to be on grounds of habitual residence.

As demonstrated above the wording of the express declaration in the Will, particularly the basis upon which the choice of jurisdiction is made; has a significant impact on how an estate is dealt with and we recommend that such clauses be drafted with care. If no express declaration is made by Will the law of the country of 'habitual residence' will apply.

Those clients with assets in more than one EU state, or who are nationals of, or are habitually resident in, a country signed up to the Regulation should give due consideration to the potential effect the Regulation may have on their Estates. We strongly recommend that people in this situation review their position and Wills- both Irish and foreign as there may be an opportunity to use the Regulation in an advantageous manner.