

The European Succession Regulation

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The European Succession Regulation, applicable since 17 August 2015 in all member states of the European Union except Denmark and Ireland, determines the law applicable to succession and the jurisdiction of courts in cross-border cases. As a general rule, the law of the state in which the deceased had his habitual residence at the time of death governs the entire succession. A person can choose the law of his nationality instead. The Regulation also introduced a European Certificate of Succession, which proves the status of heirs and executors throughout the member states.¹

Switzerland is not bound by the Regulation, yet its effects are felt daily in Basel. A German national who lives in Basel and dies there leaves an estate that is governed, from the Swiss point of view, by Swiss law as the law of his last domicile, unless he chose German law. From the German point of view, the Regulation applies the law of his habitual residence, which is also Swiss law, unless he chose German law. The two systems generally reach the same result, although differences remain in the details, in particular with regard to immovable property and the formal validity of the choice of law. Conversely, a Swiss national who lives in Lörrach or Saint-Louis is subject to the Regulation in Germany or France, which subjects his succession to German or French law unless he chose Swiss law.

For the author, whose practice is based in Frankfurt and whose clients often live on both sides of the border, the coordination of the Swiss rules and the European Regulation is a daily task. The choice of law in a will, the coordination of the formal requirements of wills and contracts of succession, the treatment of real estate in several countries and the use of the European Certificate of Succession in Swiss proceedings require a knowledge of both systems. The taxation of inheritances adds a further layer, because Germany taxes worldwide estates when either the deceased or the heir is resident in Germany, while Switzerland and Germany have a double taxation convention on inheritance taxes that dates from 1978.²

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Germany's extended unlimited inheritance tax liability for German nationals who have moved abroad within the past five years is a frequent source of surprise for families who have moved to Basel.³

1 Notes

1. Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, applicable since 17 August 2015. To be verified. ↩
2. Convention between the Swiss Confederation and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on estates and inheritances of 30 November 1978 (SR 0.672.913.61). To be verified. ↩
3. On the extended unlimited inheritance tax liability under § 2 para. 1 no. 1 lit. b ErbStG (German nationals who have not been resident in Germany for more than five years) and its treatment under the German-Swiss inheritance tax convention (Art. 4 para. 4 of the convention, five-year rule), see the German tax literature. To be verified. ↩

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