

## New EU succession rules (Brussels IV)

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**CATEGORY:**  
[ARTICLE](#)

On 17 August 2015, new EU succession rules came into force which are of potential relevance to any person (EU national or otherwise) with assets in an EU country other than their own. We would advise anyone affected to take advice.

Understanding which national law applies to your estate is the key to the smooth administration of your succession process. The law that applies to the succession (who inherits what), the formal validity of wills and who has authority to deal with the assets (e.g. the executor named in the will, as opposed to the heirs) is determined by your personal status, as well as the location of your assets.

Determining the relevant law is particularly important where there are more heirs, as under the common law systems the estate is administered by an executor or administrator, whereas in most continental European countries the heirs have to act jointly.

THE BIG TANGLE

Does the country of nationality, residence or domicile determine which rules apply?

Prior to 17 August 2015, each European country has had its own rules to determine which law applies to someone's succession.

- A number of countries (e.g. Italy, Germany and Spain) looked at the individual's nationality.
- Others (e.g. Switzerland and – for movable assets – also France) looked at the country of the individual's residence.
- By contrast, in the majority of common law jurisdictions (England, Wales and Ireland), an individual's succession was determined by reference to the person's 'domicile' (in the English sense of the term). The exception to this is immovable assets, the devolution of which is governed by the law of the country in which the assets are situated (same as in France).

The position becomes particularly complex where an individual has assets in several jurisdictions, as this may lead to the overlapping application of several rules which, in the absence of any coordination, may lead to conflicts.

EU RULES TO THE RESCUE (AND THE UK'S CONUNDRUM)

Because of these complexities, the EU has adopted a new Regulation (The European Succession Regulation, 4 July 2012, no. 650/2012) which will harmonise the existing national rules by replacing them with a single set of rules. From 17 August 2015, EU Member States will look primarily at your habitual residence, albeit with the ability to make an election in favour of the national law.

The UK took part in the negotiations that led to the adoption of the new EU rules, but decided not to opt into them (as did Ireland and Denmark), mainly as a rejection of continental European-style 'claw-back' rules (under which close members of the family may 'claw back' or 'reduce' lifetime gifts made by the deceased). This means that individuals with a UK connection should take particular care when applying the new EU rules. On the other hand, the UK's opt-out may offer interesting planning opportunities if you wish to maximise testamentary freedom.

WHY NON-EU CITIZENS SHOULD ALSO SIT UP AND TAKE NOTICE

It would be wrong to assume that the new EU rules are only relevant for EU citizens (or to non-EU citizens who live in the EU). In fact the new EU rules will apply to anyone who has assets in the EU. Thus, say, an American, Malaysian, Saudi or Chinese individual owning property in the EU will need to consider the impact of the new rules for their estate planning.

NOW THAT THE 17 AUGUST DEADLINE HAS COME AND GONE, WHAT SHOULD I DO?

The interrelationship between the current national rules and the new EU rules means that in certain cases action is required now in order to extract the maximum benefit. We have reviewed the position concerning [Italians living in the UK](#), but the issue is more general and needs to be analysed carefully. Further information on the rules may be found [here](#).

If you arrange your succession planning on the basis that your estate will be governed by your national law as a result of your citizenship (e.g. Germans, Italians and Spaniards), domicile (e.g. Brits and Americans) or religion (e.g. many Middle Eastern clients), you will need to consider including a clear election in your Will in order to oust the 'habitual residence' rule.

HOW WE CAN HELP

If you need advice in relation to these Regulations and how they may affect you, please get in touch and a member of our team will be happy to help guide you through the complexities.

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Withers' tax lawyers wrote the national report for England and Wales commissioned by the European Commission and members of our firm acted as experts before the EU and the UK parliaments. With over 70 wealth planners in the UK and 100 wealth planners spread over three continents (Europe, the US and Asia), we have an unparalleled experience when it comes to dealing with complex estate planning taking into account both devolution and tax issues.

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