



**Planning for a
Cross Border Succession**

You can choose the law of your country of nationality to apply to your succession. Your succession will usually be handled by an authority - often a court or a notary - in the EU country where you last lived. This authority will in most cases apply its own national law to your succession. EU rules however allow you to choose that the law of your country of nationality should apply to your succession - whether this is an EU country or not. If you have several nationalities, you can choose the law of any of your nationalities.

You should express your choice of law explicitly and clearly, in a will or in a separate declaration. Your will or declaration will be considered valid if it meets the requirements of:

- the EU country where you last lived, or
- the law of your country of nationality, if you so choose.

When authorities can refuse to apply your choice of law

(EU rules on succession do not apply in Denmark, Ireland and the UK.)

If your heirs decide to settle your succession with an authority in these countries, your choice of law may not be taken into account. However, Danish, Irish and British citizens can benefit from these EU rules and choose the law of their nationality for their succession if this is handled in an EU country other than Denmark, Ireland and the UK.

The authority of the EU country that handles your succession can refuse to apply certain provisions of the law of your nationality if they are contrary to local public policy. For example, authorities could refuse to apply provisions if these discriminate between heirs based on their sex or on whether they were born in or out of wedlock.



What the applicable law will govern

The national law applicable to your succession, whether it is the law of the EU country where you last lived or the law of your home country, will govern the succession of all your assets, regardless of their location and of whether they are movable (for example, a car or a bank account) or immovable (for example, a house).

That national law will determine issues such as:

- who the beneficiaries of your succession are: for example, your spouse/partner, children, parents;
- whether you can disinherit a family member;
- whether some parts of your estate should be reserved for certain persons;
- whether any gifts you made during your life should be restored to your estate before the estate is transferred to your heirs;
- transfer of ownership of your assets to your heirs;
- the powers of your heirs, of the executors of your will and of the administrators of the estate, including conditions to sell property and pay any creditors you may have;
- who will be liable for any debts you leave behind;
- how your assets will be shared among your heirs.

EU rules on succession do not determine which authority will handle or which law will apply to certain matters linked to succession, such as:

- the inheritance taxes that your heirs will have to pay on your estate;
- your civil status;
- the property regime of your marriage or registered partnership: how your property should be divided after the death of your spouse/partner;
- matters concerning companies: what will happen to the shares you own in a company.



Example

Giovanni is a Italian pensioner who retired to Portugal, where he owns a house and has been living for more than 8 years – the last 5 with his partner Maria.

As Giovanni lived in Portugal, it may be convenient for Giovanni's heirs to settle the succession with a notary in Portugal. Portuguese law will govern Giovanni's succession as Portugal was the last country where he lived. Portuguese law will thus determine who is to inherit, including what shares of the estate should be reserved for Giovanni's children and what are Maria's rights to the estate given that Giovanni and Maria were not married.

Italian law gives Giovanni more freedom to decide who should inherit his estate. That is why he decides to indicate in his will that Italian law should apply to his succession, and designates Maria to inherit all of his Portugal property.

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