



BRUSSELS IV

New Rules for Succession in the EU

If you have a property or other assets abroad, it is important to understand the new EU regulations covering cross-border succession known as *Brussels IV*. Prior to its introduction in 2015, people dealing with cross-border estates could find the administration and distribution of those estates at odds in different EU countries. Some European countries apply ‘forced heirship’ principles, meaning that certain family members are entitled to a portion of the inheritance. In other jurisdictions, such as England and Wales where full testamentary freedom exists, you can leave your estate to anyone you wish. Portugal has no inheritance tax.

Why *Brussels IV*?

The main purpose of *Brussels IV* is to allow individuals to choose the body of law that applies to the succession of their estate. You can opt either for the Law of the country of their nationality or the Law of the country of their last habitual residence. Alternatively, if you do not state your wishes expressly, the succession of your estate will be governed either by the law of the country in which you are habitually resident at the date of your death or the law of the country with which you are most closely associated. In many instances, this may not be clear and can lead to disputes. To avoid any doubt, you should explicitly stipulate which Law that applies by making the appropriate declaration in your Will (or codicil).

Succession in the EU

Brussels IV marks a considerable advance in EU succession rules which should result in faster, easier and cheaper procedures. Some of the most important advantages are:



- Being able to choose the law which will govern your estate reduces uncertainty when for those who have connections with more than one country;
- The ability to opt out of ‘forced heirship’ rules; for example, before *Brussels IV*, a man in the UK with a property in France would have been obliged to leave it to his wife and children due to French ‘forced heirship’ rules. Under *Brussels IV*, he can choose the law which applies to the succession of the property – so, if he wants, he can even leave it to someone else in his Will.
- A *European Certificate of Succession* has been created in order to allow heirs, executors and estate administrators to prove their status and facilitate the exercise of their rights/powers in other member states throughout the European Union.

Denmark, Ireland and the UK

Three EU countries – Denmark, Ireland and the UK – have opted out of *Brussels IV* in order to apply their own rules. However, if you are from one of these 3 countries, *Brussels IV* can still affect you if you have assets abroad. Under the laws of England and Wales, succession of your immovable property (i.e. land and buildings) is governed by the laws of the country in which the property is located. Succession of movable property (i.e. all other assets) is regulated by the laws of the country of your *domicile* when you die. *Domicile* is either a *Domicile of Origin* (i.e. in the country where you were born) or a *Domicile of Choice* (a new centre of interests where you express the wish to live out your days). Needless to say, *Domicile* is not always easy to determine. Also, even though *Brussels IV* does not alter the tax laws in any country, the amount of UK inheritance tax and similar taxes abroad that is due will often depend on who inherits your estate.



Portugal

The inheritance process in Portugal is generally governed by the laws of the deceased's nationality ("*Lei Pessoa*"), thereby avoiding potential conflicts of law. However, if spouses have different nationalities, Portuguese law determines that the national law of the country where they both habitually reside is applicable. In the absence of an habitual residence, it is the country where both spouses have close family connections.

In certain circumstances, the law of the country where the property is located may become applicable. For example, if the deceased was an owner of property in Portugal, and the law of his/her nationality or residence determines that the law of the country where the deceased's property is located takes precedence, then Portuguese succession law becomes relevant.

Additional points to consider:

- Some EU countries, such as France, do not recognise the role of executors. This means that an European Certificate of Succession must be issued for executors to be able to exercise their powers.
- If you decide that English law should apply, e.g. to avoid 'forced heirship' rules, you should be aware that any claims that could be brought against your estate in the UK could also then be brought against your foreign property as well.
- If you are primarily based in England, but you do not want English law to apply to the succession of your estate, then you will need to make this clear in your Will.
- Choosing to apply the law of your nationality will ensure that the succession of your estate is governed by the laws with which you are most familiar.



- At present, it is unclear whether a Will made prior to *Brussels IV* can be treated as making a choice of law. To avoid confusion, a statement covering your choice of law should be included in your Will or codicil.
- You do not have to be an EU national for *Brussels IV* to apply. For instance, if you are a US citizen living in Portugal, you can still choose US law to govern the succession of your estate.

Review your Will

Whatever your circumstances, it is highly recommended that you review your Will since the advice you have been given previously may no longer apply. Also, be aware that by not expressly stating in your Will the Law which should govern the succession of your estate does not mean that you are, in fact, not making a choice of law.

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euroFINESCO s.a.

HEADQUARTERS

Rua do Sol, 4
8200-448 GUIA (Algarve)
tel: +351 289 561 333
fax: +351 289 562 061

Madeira Branch

Rua do Aljube, 61, 2º Dtº
9000-067 FUNCHAL (Sé)
tel: +351 291 221095
fax: +351 291 221103

Lisbon Branch

Rua A.M. Cardoso, 15, 4ºD
1200-273 LISBOA (Chiado)
tel: +351 21 342 4210
fax: +351 21 342 4212

Internet

e-mail: info@eurofinesco.com
www.eurofinesco.com
PORTUGAL
mobile: +351 96 910 2813