

4 December 2023

E.U. Successions Rules Applicable to Resident Aliens

A Third-Country person residing in a Member State of the European Union may choose the law of that Third Country as the law governing his or her succession as a whole (Court of Justice of the European Union, October 12, 2023).

About ten years after the Regulation (EU) no. 650/2012 (the “**Regulation**”) entered into force, the European Court of Justice has issued a landmark ruling on the validity of the choice of law governing the succession made by a non-EU citizen under the Regulation.

The case concerns a Ukrainian citizen residing in Poland (“**OP**”); she was the co-owner of certain immovable property in Poland and the Polish notary refused to draw up her notarial will because it contained a clause indicating that the law applicable to OP’s succession was Ukrainian law.

OP brought an action before the Regional Court, Opole, Poland, against the notary’s refusal claiming that the latter relied on a misreading of the Regulation.

That Court resolved to refer a question, *inter alia*, to the European Court of Justice to obtain a preliminary ruling on the interpretation of Article 22 of the Regulation, as to whether a person who is not a citizen of the European Union is entitled to choose the law of his/her native Country as the law governing all matters relating to succession.

The objectives of the Regulation are: (i) to remove the obstacles to free movement of persons who currently encounter difficulties in asserting their rights in the context of a succession having cross-border implications; (ii) to enable citizens to benefit from the advantages of the internal market with full legal certainty and to know in advance which law will apply to their succession; (iii) to harmonize the conflict-of-law rules in order to avoid contradictory results.

The main principal substantiating the rule is intended to state that the succession is governed by the predictable law which is most closely connected. For the sake of legal certainty and in order to avoid fragmentation of the succession, the applicable law should rule the succession as a whole, that is to say, all the property forming part of the estate, whatever its nature and irrespective of whether the property is situated in another Member State or in a third State.

In light of the above, Article 22 of the Regulation foresees that ‘*a person may choose as the law to govern his [or her] succession as a whole the law of the State whose nationality he [or she] possesses at the time of making the choice or at the time of death*’.

According to the Court, the wording of that provision encompasses any ‘person’, without making any distinction between nationals of Member States of the European Union and Third-Country nationals. The only restriction on the freedom of choice available to such a person is that he or she can choose only the law of a State of which he or she is a national, irrespective of whether or not that State is a Member State of the European Union. Therefore, it cannot be considered that only EU citizens may enjoy such freedom of choice.

The ruling is of particular interest for those citizens of non-EU Countries who decide to transfer their residence to EU-Countries, such as Italy, which provide for a reserved right of inheritance.

For instance, Italian inheritance law reserves a share of the existing inheritance to heirs who are the spouse, children and descendants of the deceased, regardless of their wishes. In addition, Italian law foresees that the value of the quotas of inheritance should be calculated in accordance with the value of the estate increased by

the value of all gifts made by the deceased during his/her lifetime in favor of any person or entity, including his/her heirs.

In view of the Court's ruling, therefore, an American citizen who moves to Italy will be able to take advantage of the Regulation and, by virtue of Article 22, stipulate that his/her entire succession will be governed by American law. Needless to say, this choice must be explicit and will be fully effective in all EU Countries but cannot derogate from any applicable domestic American provisions. However, even if American law should consider that part of the estate to be governed by the law of the Country in which immovable properties are located, and that - limited to these immovable properties - the succession law of a European country should apply, European judges in making their assessment may take into account the choice of American succession law made by the deceased and take decisions under that law.

This document is delivered for informative purposes only.
It does not constitute a reference for agreements and/or commitments of any nature.
For any further clarification or research please contact:

Emanuele Grippo
Partner
Co-Head of the
Financial Markets Department
Wealth and Trust
Milan
+39 02 763741
emgrippo@gop.it

Valentina Ottani Sconza
Counsel
Wealth and Trust

Milan
+39 02 763741
vottanisconza@gop.it



INFORMATION PURSUANT TO ARTICLE 13 OF EU REGULATION NO. 2016/679 (Data Protection Code)

The law firm Gianni & Origoni, (hereafter "the Firm") only processes personal data that is freely provided during the course of professional relations or meetings, events, workshops, etc., which are also processed for informative/divulgence purposes. This newsletter is sent exclusively to those subjects who have expressed an interest in receiving information about the Firm's activities. If it has been sent you by mistake, or should you have decided that you are no longer interested in receiving the above information, you may request that no further information be sent to you by sending an email to: relazioniesterne@gop.it. The personal data processor is the Firm Gianni & Origoni, whose administrative headquarters are located in Rome, at Via delle Quattro Fontane 20.