Succession Mortis Causa: Applicable Law (Paper)

Isabel Rodríguez-Uría Suárez has just published a paper (click here) on the rules on the applicable law laid down by the Regulation 650/2012. The abstract of the paper, from the author, and different from the published version, reads as follows:

> *This paper analyzes the applicable law to the succession* mortis causa *as defined by the European Regulation on Succession. The general rules determining the* lex successionis *and the special rules setting out the applicable law to wills as well as the agreements as to succession are the main subject of this article. The scope of the aforementioned laws is also thoroughly analyzed.*
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> *On the upside, the author considers that the Regulation is an important improvement in the field of the international successions. She underlines the special features of the general rules laid down by the Regulation, and the special rules applicable to wills and to agreements as to succession. Furthermore the author highlights as extremely positive the distinction between agreements as to succession regarding the succession of one person and agreements as to succession regarding the succession of several persons. She also approves the flexibility of the general rules of the Regulation, welcoming the clause of exception to the more closely connected law, as well as the role played by the party autonomy. In respect to latter, the paper deals with the difference between* professio iuris *set out by art. 21, and the possibility of making a* pactum de lege utenda *according to art. 25.3. It is submitted that party autonomy should have been broader in its scope, and that the EU law maker has lost an opportunity to increase the role of the party autonomy, especially allowing a* professio iuris *to the law of the habitual residence of the deceased; this possibility would have been notably positive with regard to the agreements as to succession.*
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> *Notwithstanding her overall favourable assessment of the Regulation, the author is not blind to its downsides. Some options adopted in the Regulation are criticized in as far as they do not guarantee neither the predictability nor the legal certainty of estate planning: yet legal certainty is vital in this realm,*

especially when it comes to agreements as to successions, which require predictability from the very moment of their formal conclusion. In this sense, the classical approach adopted by the Regulation, placing the forced heirship under the scope of the lex successionis *and fixing the* lex successionis *at the moment of demise (as a general rule), may give raise to several problems, which the paper analyzes in depth. The author assumes that the* professio iuris *would become the key factor providing the security essential to estate planning: but, as nobody can be forced to choose the law applicable to his or her succession, the possibility of coming up against problems of uncertainly (in short, the possibility that the will of the deceased be ruined by the forced heirship rules of a* lex successionis *unknown at the moment of the drawing up of the will or the agreement) remains open.*

The paper has been drawn up as part of a global research project on succession law at comparative, international and inter-regional levels, sponsored by the Spanish Government. Linked to this same Project we have already given notice in a previous post of a paper on agreements as to successions according to the Proposal of Regulation on succession and wills. Other interesting publications related to the Project, on *Forced Heirship in the Regulation on Successions and Wills*, by Professor Álvarez González (abstract in English and full text in Spanish), and on the *Proposal and the Spanish Interregional Law*, by Isabel Rodríguez-Uría Suárez (abstract in English and full text in Spanish), can be found here and here.