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## The European Succession Regulation: Important New Estate Planning Risks and Opportunities for Americans Living, Investing or Owning Property in the European Union

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### Background

The European Succession Regulation (the “Regulation”), also known as Brussel IV, enacted on July 4, 2012, became effective on August 17, 2015. The Regulation, which has been adopted by 25 countries throughout the European Union, does away with the potential application of different succession laws of each EU Member State and provides for the application of one uniform law governing succession across all EU Member States. Notably, the Regulation is not binding in Denmark, the United Kingdom and Ireland.

The Regulation impacts:

- citizens of EU Member States;
- estates of persons with a habitual residence in an EU Member State at the time of death; and
- US citizens with assets located in an EU Member State.

### Law of Last Habitual Residence

Under the Regulation the law of the jurisdiction in which the decedent had a “habitual residence at the time of death” will govern the decedent’s entire estate. A decedent’s “habitual residence at the time of death” is determined according to a number of factors, including the decedent’s center of interests, state of nationality and location of main assets.

*Illustration:* The disposition of the worldwide estate of a US citizen who died without leaving a will and whose last habitual residence was in Paris, for French purposes will be governed entirely by French inheritance law.

Because the US is not an EU Member State, the United States will apply its own choice of law principles to the disposition of the decedent’s estate, which will likely conflict with those of the Member State of last habitual residence. Thus, the need for coordinated estate planning for US citizens living abroad, and in particular in Member States, is more acute than ever.

### Choice of Law Option

In some instances, the Regulation allows one to choose a different law from the law of last habitual residence to govern one’s succession as a whole.

Instead of having the law of one’s last habitual residence apply, a person can elect in his or her will to have the law of his or her nationality govern his or her worldwide estate. Individuals with multiple citizenships can choose the law of any of the countries of which they are nationals, either at the time of death or at the time of election, to apply. Notably, individuals do NOT need to be from a Members State in order to make this election.

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## Planning Opportunity

The ability to choose the law of nationality to govern one's estate presents an interesting planning opportunity for those with US citizenship (or UK citizenship or citizenship from any other non-Member State). This is because such individuals can bypass the local laws of the EU Member States (such as community property and forced heirship rules) where their property is located and elect to have the law of their nationality apply to the disposition of such property instead.

*Illustration:* A US citizen owning real estate in Paris can elect in his or her will to have US law apply to his or her estate, thereby enabling him or her to bequeath the entire Parisian property to charity (instead of being limited to his or her spouse and children).

## Next Steps

Individuals with connections to the European Union, whether through nationality, habitual residence or the ownership of assets in EU Member States, should review their estate plans in light of the Regulation. Estate planning documents should include appropriate choice of law elections to ensure that an individual's worldwide estate is disposed of in a manner consistent with the individual's wishes. Without planning, the Regulation can create a nightmare, but with proper planning, the Regulation can afford an unprecedented opportunity to override traditional choice of law limitations and create previously unavailable flexibility in dictating the disposition of one's estate.

If you would like more details, please do not hesitate to contact your Katten attorney or the following members of Katten's **Trusts and Estates** practice:

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