



Forced Heirship in Cross-Border Succession: When Testamentary Freedom Meets Mandatory Rules

Succession planning within the European Union often involves a delicate balance between an individual's freedom to dispose of their estate and the mandatory inheritance rights protected under national law. One of the most sensitive and frequently disputed areas in this context is forced heirship.

While Regulation (EU) No 650/2012 (the EU Succession Regulation) provides clarity on jurisdiction and applicable law in cross-border cases, it does not harmonise substantive inheritance rules. As a result, forced heirship regimes continue to differ significantly across Member States, creating legal and practical challenges for testators and heirs alike.

What Is Forced Heirship?

Forced heirship refers to legal rules that reserve a fixed portion of an estate for certain close family members, typically children and spouses. These rules limit the testator's ability to freely distribute their assets through a will.

The scope and rigidity of forced heirship vary widely across the EU:

- In countries such as France, Spain, and Italy, forced heirship is strict and grants descendants strong, legally protected shares.
- Other jurisdictions, including Latvia, Germany, and the Nordic countries, allow more flexibility, although certain claims or protections for close relatives may still apply.
- Common law traditions, such as those in Ireland, approach the issue through judicial discretion rather than fixed reserved shares.

This diversity becomes particularly relevant when a succession involves more than one country.

Applicable Law and Its Consequences

Under the EU Succession Regulation, the law applicable to the entire succession is generally the law of the deceased's habitual residence at the time of death, unless a valid choice of law has been made.

This means that a person who relocates later in life may unintentionally subject their estate to a forced heirship regime they did not anticipate. For example, a national of one Member State who retires to another country may find that the law of the new country of residence significantly restricts testamentary freedom.

The Regulation allows individuals to mitigate this risk by choosing the law of their nationality to govern their succession. However, this choice must be made clearly and in compliance with formal requirements, typically within a will.

Public Policy and Limits to Choice of Law

Even where a valid choice of law is made, questions may arise as to whether forced heirship rules can be bypassed entirely. While the Regulation promotes legal certainty, it also preserves the public policy exception, allowing authorities to refuse the application of foreign law if it is manifestly incompatible with fundamental principles of the forum state.

In practice, however, this exception is interpreted narrowly. Courts are generally reluctant to override the chosen or applicable law solely because it leads to outcomes that differ from domestic inheritance traditions.

Practical Implications for Estate Planning

Forced heirship remains one of the most common sources of dispute in cross-border succession cases. Heirs may challenge wills on the basis of reserved shares, while executors and practitioners must navigate unfamiliar foreign rules when administering estates.



For individuals with international ties, early and informed planning is essential. This includes:

- Assessing whether forced heirship rules may apply under the law of habitual residence;
- Considering a valid choice of law where appropriate;
- Reviewing existing wills after relocation or changes in nationality;
- Seeking advice on alternative planning tools that may lawfully structure asset distribution.

Conclusion

The EU Succession Regulation has greatly improved predictability in cross-border inheritance cases, but it does not eliminate the complexity arising from divergent national inheritance systems. Forced heirship remains a key example of how deeply rooted legal traditions continue to shape outcomes in international successions.

Understanding how and when mandatory inheritance rules apply is essential for protecting testamentary intentions and reducing the risk of disputes. In an increasingly mobile Europe, succession planning is no longer purely domestic and ignoring cross-border implications can have unintended and lasting consequences.

Disclaimer

This publication is to be used for information purposes only and does not constitute legal advice.

Contact information

For more information, contact Theis Klauberg
theis.klauberg@klauberg.legal or Meldra Emilija Dzērve
meldra.dzerve@klauberg.legal

www.klauberg.legal SIA Zvērinātu advokātu birojs Klauberg
Elizabetes iela 85A-1
LV-1050 Rīga, Latvia