



**Droit de prélèvement compensatoire -
Compensary levy right**

Law 2021-1109 of 24 August 2021

- Objective of the text → to protect women's rights against discriminatory inheritance laws
- Amendment of Article 913 of the Civil Code (Art. 24): *"Where the deceased or at least one of his children is, at the time of death, a national of a Member State of the European Union or habitually resides there and where the foreign law applicable to the succession does not allow any mechanism for reserving rights to protect the children, each child or his heirs or successors may make a compensatory deduction from the existing property situated in France on the day of death, so as to be reinstated in the reservatory rights granted to them by French law, within the limit of those rights.*
- Summary → a right of levy on property situated in France is introduced where the applicable foreign law does not provide for a mechanism of forced heirship in favour of the children.

Context

- The fate of the "old" levy right → 2011
 - Created by the law of 14 July 1819 relating to the abolition of the right of bargain and detraction
 - Right of levy on property situated in France to protect French heirs who have been disinherited under foreign law
 - Art 2 → *"in the event of the sharing of the same estate between foreign and French co-heirs, the latter shall deduct from the property situated in France a portion equal to the value of the property situated in a foreign country from which they would be excluded, on whatever grounds, by virtue of local laws and customs"*
 - Provision deemed unconstitutional (Cons. const. QPC 5-8-2011 n° 2011-159)
 - The Constitutional Council has recognised the conformity of the right to levy in itself with the principle of equality
 - However, it noted that since the right of levy could only be invoked for French nationals, there was discrimination on the basis of nationality arising from this right
- The Succession Regulation → 2012 (entry into force 2015)
 - The primacy of European law → the source of the new French conflict-of-law rule
 - The generalisation of the application of foreign laws to the succession
- Is the application of a foreign law that does not recognise the reservation contrary to our international public policy? → 2017
 - 2 judgments of the Court of Cassation (Cass. 1e civ. 27-9-2017 n° 16-17.198 and Cass. 1e civ. 27-9-2017 n° 16-13.151)
 - Negative answer → *"a foreign law designated by the conflict rule which ignores the hereditary reserve is not in itself contrary to French international public policy and can only be disregarded if its concrete application, in the case in question, leads to a situation incompatible with the principles of French law considered as essential"*,
 - Trigger criterion → if descendants are in economic hardship or need

Conditions of application of the text

- EU nationals or residents
 - Deceased
 - One of the heirs
- Deceased owner of movable / immovable assets located in France
- Deceased who organised his succession according to a foreign law which does not recognise the forced heirship and disinherited (in the sense of French law) his children → "protective reserve mechanism".

Implementation → a case of triggering French international public policy

- The absence of a mechanism of forced heirship for the benefit of the children is deemed contrary to French international public policy
- Classic implementation of the international public policy exception
 - Eviction of foreign law accompanied by the application of French law
 - French law allows children to take all or part of the estate to reconstitute the reserve granted to them under French law
 - This levy benefits all heirs, whether or not they are nationals of or resident in a Member State
- Special public policy clause defining the international public policy requirement and the required proximity

Notion of "child protection reserve mechanism".

- Not defined in the law
- Appears to be aimed only at schemes reserving part of the inheritance rights to children

Avoidance of foreign law

- Not general
- Assumes a connection of the family situation with the EU → in some cases, the connection will be extremely tenuous with France or even non-existent if the State of nationality or residence of the deceased or an heir is not France

Non-conformity with the intended purpose (foreign inheritance rules that disadvantage women)

- Target → Muslim legislations that institute inequality between heirs based on their gender
- Analysis
 - Classical Muslim law provides for forced heirship
 - Discrimination in inheritance on the basis of sex or religion, which exists in certain legislations, was already contrary to international public policy → a foreign law of inheritance which would grant a double share to the son in relation to the daughter according to the "tafadol" rule in force in most Muslim countries was already rejected by the judge as contrary to French international public policy
 - *Common* law ensures equality between heirs regardless of gender

The need for the jurisdiction of the French judge → Practical implementation will require the jurisdiction of the French courts.

Any doubts about the conformity of this text with French legal principles?

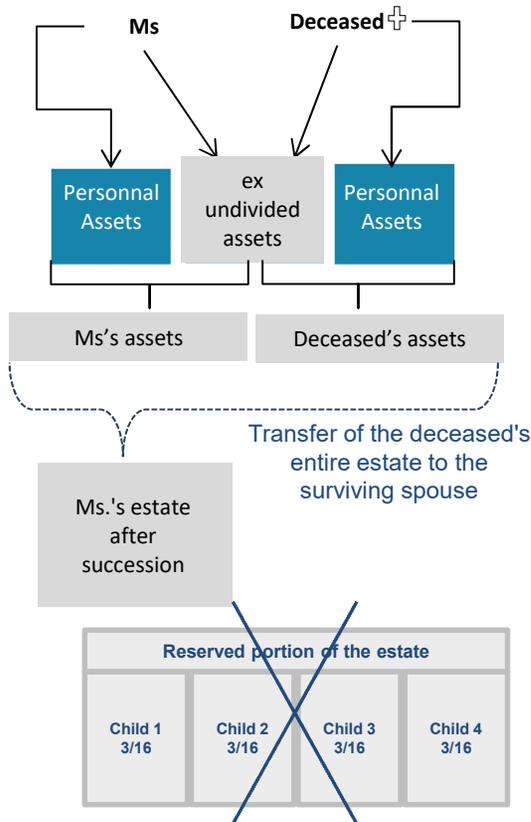
- No constitutionality review ... to date
- Compliance with the principles controlled by the CJEU?
 - The possibility for a State to disapply a provision of the designated law *"if its application is manifestly incompatible with the public policy of the forum"* (Art. 35).
 - Control by the CJEU of this implementation of the public policy exception by the States → it could rule on this broad application of the international public policy exception

PRACTICAL OVERVIEW

The implementation of the dpc

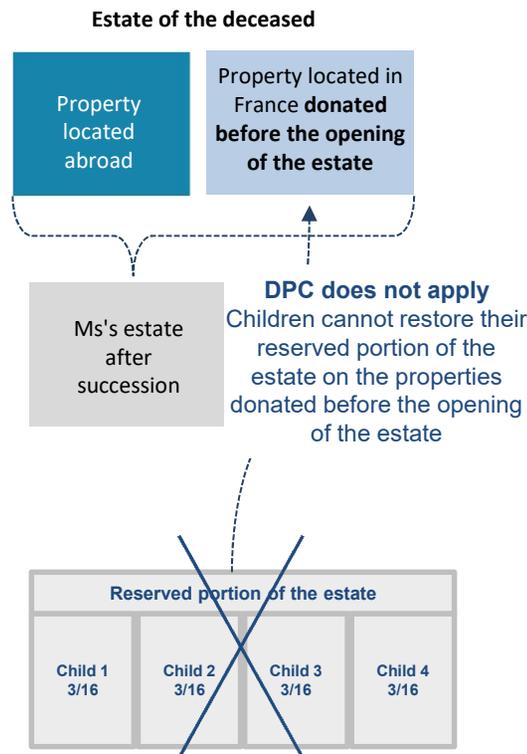
Assets abroad

Foreign Law is applicable : **all of the deceased's estate goes to the surviving spouse**



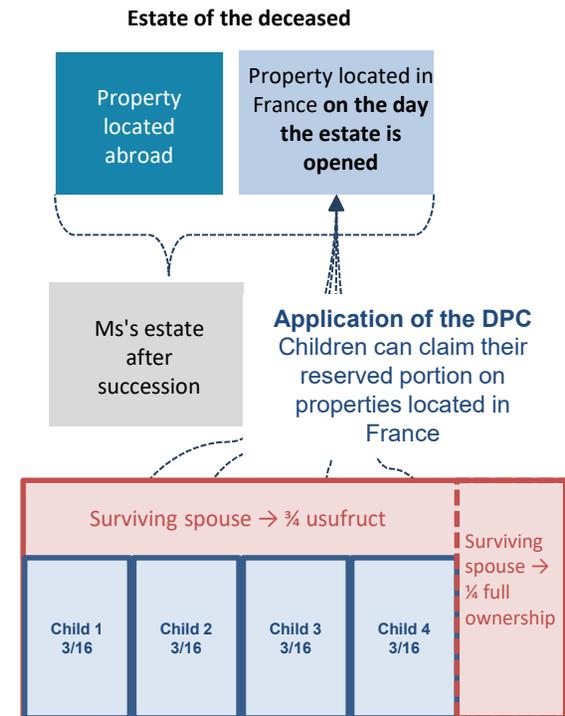
Assets in France given by the deceased during his lifetime

Foreign Law is applicable : **the entire estate goes to the surviving spouse** → no application of the DPC (the donated property is not "existing property on the day of death")



Assets in France existing on the day the estate is opened

French Law is applicable : **the DPC allows the children to restore the share of the reserved portion that they would have had under French law** → they draw from the existing assets located in France on the day of death





Experience

18 years of expertise in assisting managers and family groups

- 15 years in various Parisian notary offices specialising in asset management and international law
- 3 years with FIDAL PARIS as head of the Wealth Management team
- For 5 years notary at Lacourte & Associés

Qualifications

Diplôme Supérieur du Notariat (DSN) / ESSEC

Area of expertise

Wealth & Estate Planning :

- Business leaders
 - Transfer of the family business: audit of the existing legal and tax framework, in-depth analysis of the Dutreil deeds, structuring of the transfer (gift / estate), carrying out the transfer operations, follow-up of the post-transfer operations, *holding animatrice*
 - Protection of the company manager and the partner (incapacity, death): LPAs and « posthumous » mandates, trust
 - Setting-up of tailor-made transfer strategies (company director/partner): complex gifts, matrimonial regimes, successions, life insurance.
- International clients:
 - *estate planning, prenup / postnup agreements, LPA / guardianship*
 - matrimonial property regimes, inheritance, life insurance, trusts, protective powers of attorney
- Philanthropy: foundations, endowments

Languages

French - English

International network

Correspondents in over 50 countries