

A detailed stone relief sculpture of a woman's face, likely a personification of Justice or a similar allegorical figure, set within an ornate, classical architectural frame. The sculpture is light-colored and shows signs of weathering.

International successions: Towards a reinforcement of forced heirship rights?

In France, article 13 of the new Bill comforting Republican principles is purporting to introduce under French law a **new mechanism organising a compensation** which would apply when the succession **would not be governed by French law** and when particular criteria, inter alia of nationality / residence, would be fulfilled.

This new mechanism of course reminds us of the **“droit de prélèvement”**, which was declared unconstitutional by a decision issued by the Constitutional Court on 5 August 2011 but it differs from it in certain aspects.

The question of the compatibility of such a measure with **the provisions of European Succession Regulation 650/2012** is also raised.

This new Bill also provides some guidance concerning the mission of “notaires”, when they are instructed in a succession matter in which transfers made by the deceased without any consideration lead to a violation of forced heirship rights and to the right, for some of the heirs and under French law, to ask for their reduction.

This Bill will undoubtedly lead to important discussions in France, in the wake of **the report** which was issued in December 2019 by the working group instructed by the Ministry of Justice to review **the question of forced heirship rights** and before which **Diane Le Grand de Belleruche** was heard as an expert (<https://www.vie-publique.fr/sites/default/files/rapport/pdf/272803.pdf>, page 165).

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The existence of a new mechanism organising a compensation:

The Bill would put into place a new mechanism organising a compensation which could be requested by a **child** if the **following two conditions** were fulfilled:

- 1) **The deceased, or at least one of the children, being a national of a Member state of the European Union or residing there** at the time of death:

The Bill clearly aims at respecting the principle of equality, which was at the origin of the declaration of unconstitutionality of the former “droit de prélèvement”, by extending these criteria to the other Member states of the European Union.

This measure would not apply if the nationality / residence was not that of a member state of the European Union, for instance **the United States** but also **the United Kingdom**, as the UK will definitely leave the European Union on 31 December.

We note also that **the surviving spouse**, who, under French law, benefits from forced heirship rights in the absence of any issue, would not benefit from this new measure.

- 2) **AND a succession law which does not know “a mechanism with a reserved portion protecting children”**: the foreign succession law would have to be analysed in details to determine if it organises an equivalent mechanism protecting children. This important criterion of **functional equivalence** was not part of the former “droit de prélèvement”.

If these **two cumulative criteria** were fulfilled, any child « **could use** the assets which are located in France to obtain a compensation, in accordance with the forced heirship rights from which (s)he would have benefited under French law.

The discussions to come on this Bill will of course raise the question of **the compatibility of such a mechanism with the provisions of the European Succession Regulation** (see article 35 and Recital 58 on **international public policy issues**), in particular when the application of the foreign law would stem from a **choice of succession law** which would be validly made under article 22 (see also Recital 38 on this point).

The information given to the heir on the existence and exercise of his/her right to claim this reduction:

The Bill also addresses the question of **clawback (“rapport successoral”)**, in particular the fact that, under French law, all the transfers which were made by the deceased without any consideration are normally considered to determine, at the time of death, whether the forced heirship rights were violated, with the possibility then, for the relevant heir, to ask for their reduction.

The Bill thus provides that, in such a situation, the “notaire” would inform the heir, **individually** and before the final apportionment of the estate assets, of his/her right to ask for this reduction and would explain to him/her the consequences which his/her decision not to use this right would have on his/her rights in the succession.

Professionals assisting clients in estate matters, among which Notaires, of course already fulfil this mission of legal advice but this clarification is most welcome, as the Bill provides information not only on **the content of this mission but also on its limits**, namely that the decision to ask, or not, for this reduction is taken by the heir, after (s)he has been fully informed of his/her rights.

This Bill, which has been submitted to the presidents of the Parliament’s chambers, will be discussed upon a Council of ministers on 9 December.

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