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## Wills & Probate for Expats

### Wills after Brexit?

Until Brexit it was the case that Brits living in Spain could follow the succession law of the UK, if they wished.

For UK citizens, it meant that if you wished for UK law to be applied to your Spanish property (it only covers immovable property such as your holiday home), then EU Succession Regulation 650/2012 (known as “Brussels IV”) stated that you must declare this in your Spanish will – that would then allow you to leave your property as you wish rather than having to follow the Spanish system of “forced heirship”.

### Has that position has now changed after Brexit?

EU Regulation 650/2012 is an agreement between members of the EU, but the UK is no longer a member the EU, neither has EU Reg 650/2012 ever been written into primary legislation which would have given it continued effect – in effect the UK opted out of Brussels IV.

There is much division amongst commentators about whether the provisions of Brussels IV continue to apply. Those who believe the situation remains unchanged rely on the argument that the UK did not opt into Brussels IV in the first place, so the UK was and remains a 3<sup>rd</sup> country – meaning that, if Brussels IV could be relied on before when the UK was a 3<sup>rd</sup> country then it still be relied on now that the UK is definitely a 3<sup>rd</sup> country after Brexit.

Other argue that Brussels IV can no longer be relied upon for Brits after Bexit. The argument is that usefulness of Brussels IV to UK nationals came from two things:

1. the fact that Spain opted in (it is irrelevant that the UK did not opt in),
2. that when Spain opted in, the UK was still a member state and therefore Spain was obliged to apply Brussels IV to all member state nationals.

The fact that the UK did not opt in is only relevant to the fact that an EU citizen in the UK, cannot state in his English Will, that he wants his national law to apply and now that the UK is no longer a member state, Spain is not obliged to extend the rights assured under Brussels IV to citizens of non-member states.

At Diable Law our view is that Brussels IV **remains valid** for Brits after Brexit and it remains possible to state in your UK and/or Spanish Wills that your option is for UK inheritance rules to apply to your Spanish property.

This is a view shared by the European Union itself and their approach can be found [here](#). The EU themselves explain that Brussels IV remains an option for EU and non-EU citizens living or owning property in the EU.

So the advice remains that British Expats in Europe should continue to consider if they wish to have UK rules on succession or Spanish rules apply – so that if you wish to leave your Spanish property in its entirety, to your Spouse for example - you can still choose to do so and state exactly that in your Will.

You need to ensure that you have separate Wills for the UK and for Spain. You need to explicitly bequeath your UK property under UK inheritance rules if that is what you wish.

**Contact [simon@diablelaw.com](mailto:simon@diablelaw.com) for a free chat.**