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The scope of freedom to dispose of property *mortis causa* under Luxembourg law¹

General characterisation of Luxembourg inheritance law

An analysis of Luxembourg inheritance law in terms of provisions protecting the family against the testator's unrestricted freedom to dispose of his or her estate reveals that the most important legal instrument, namely the Constitution of the Grand Duchy of Luxembourg contains no provisions directly addressing this issue. This applies both to the Constitution in force until 2023² and the current Constitution³. When analysing the provisions of the former Constitution, it should be emphasized that it contained no rules whatsoever concerning the inheritance law, as it was a strictly constitutional act regulating the most important public matters, namely

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² Constitution du Grand-Duché de Luxembourg du 17 octobre 1868, publiée au Mémorial A, n° 23 du 22 octobre 1868, p. 220, telle que modifiée.

³ Constitution du Grand-Duché de Luxembourg, version consolidée au 1er juillet 2023, Journal officiel du Grand-Duché de Luxembourg, entrée en vigueur le 1er juillet 2023.

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the position of the Grand Duke, the judiciary, the legislature, and the executive. The link between inheritance law and constitutional provisions was identified in legal doctrine solely through a systemic interpretation of Articles 10bis, 11(1) and (2), and 18 (Frank 2025, p. 1009). The first two concerned the equal standing of all Luxembourgers before the law and equality between women and men. Also, the Luxembourg Civil Code⁴ emphasises the equal status of children born in and out of wedlock (see Articles 757–758 of the Luxembourg Civil Code), as well as adopted and biological children (see Article 363 of the Luxembourg Civil Code); only in the case of persons adopted by simple adoption (adoption simple) do there occur restrictions on inheritance from the deceased's relatives, similar to those found in Polish law (cf. Article 937 of the Polish Civil Code⁵), and, as in the constitution, between women and men. This frequent emphasis on this fact stems from historical influences, as for most of the time the Code has been in force, its provisions have differentiated the legal consequences – including those relating to inheritance law – depending on membership of particular groups (e.g. the marriage-based origin of a child, or belonging to a specific gender). As regards Article 18, however, it is often emphasised that the prohibition on the use of the death penalty regulated therein applies both to provisions of criminal law and to so-called civil death (Frank 2025, p. 1009). This is also essentially due to historical experience, namely the long-standing presence of this institution in Luxembourg law. It should therefore be noted that all specific provisions are regulated in lower-level acts and cannot be found within the Constitution itself, which provides guarantees only for civil law entities.

The legal framework outlined above underwent significant changes in 2023 with the adoption of a new Constitution. However, in this context, the new Constitution differs only marginally from its predecessor. Former Articles 10bis and 11(1)–(2) are substantively equivalent to the current Article 15, while former Article 18 has been incorporated into Article 13 of the new Constitution.

⁴ Code civil luxembourgeois du 27 juillet 1804, publiée au Mémorial A, n° 5 de 1804 version consolidée applicable au 26 décembre 2025.

⁵ The Act of 23 April 1964 – Polish Civil Code, consolidated text: Journal of Laws of 2024, item 1061, as amended.

Accordingly, the observations made in the preceding paragraph remain fully applicable under the new constitutional framework. It follows that all detailed rules are set out in lower-ranking legal acts rather than in the Constitution itself, which limits itself to establishing general guarantees for civil law entities and does not regulate specific aspects of private law, concerning the inheritance law.

Inheritance law in Luxembourg is, for the most part, regulated by the aforementioned Luxembourg Civil Code. In terms of its structure and normative provisions, it is similar to the French Civil Code in force today, as in both cases it is, *de facto*, the Napoleonic Code⁶. As a result, up to a certain point in their history, these codifications shared a common political and legal fate. It was only with the intensified process of amendment in France that the original provisions of the code were significantly altered, whilst Luxembourg law largely remained unchanged. Nowadays, however, despite the similarities between them, the Luxembourg legislature is implementing an increasing number of modifications interfering with the existing rules. The code itself was structured along the lines of the Gaius system (i.e. *personae, res, actiones*), though in the spirit of the French Revolution, namely 'liberty, property, contracts' (Sójka-Zielińska 2008, p. 80). To this day, it is divided into three books: on persons; on property and various types of ownership; and on various methods of acquiring property. The third of these books is where the fundamental issues relating to inheritance law are regulated.

Luxembourg law permits inheritance by operation of law as well as by will, while inheritance agreements are not permitted, as is clear from the prohibition expressly set out in Article 1130(2) of the Luxembourg Civil Code ("future matters may be the subject of an obligation. However, one may not renounce an inheritance that has not yet opened, nor enter into any agreements concerning such an inheritance, even with the consent of the person to whom the inheritance relates"). The inheritance itself opens upon the death of the testator, and the liabilities and assets contained therein are transferred at that moment, by universal succession, to the heir, who may be either a natural or a legal person. As in most legal systems, the fundamental prerequisite for a natural person's capacity to

⁶ Code civil des français, de l'imprimerie de la République, an XII, 1804.

inherit is that they must outlive the testator. Where several persons die at the same time, of whom one was appointed to inherit from the other, and it cannot be determined which of them died first, the presumption applies that they died simultaneously (Article 720 of the Luxembourg Civil Code: "if several persons die, one of whom was appointed to inherit from the other, and it is not possible to determine whose death occurred first, it is presumed that they died simultaneously"). As in Polish law, a *nasciturus* has the capacity to inherit, provided he or she is born alive. The Luxembourg legislature has regulated this issue separately for statutory and testamentary succession, though the content of the regulations is identical. Interestingly, in the first case it has been regulated in a negative manner (a child conceived, but not yet born, cannot inherit if born dead – Article 725(1)(2) of the Luxembourg Civil Code), whilst in the second case it is regulated positively (it may inherit provided it is born alive – Article 906 of the Luxembourg Civil Code). Moreover, the Luxembourg legislator has emphasised *expressis verbis* that a person who is presumed missing is also entitled to inherit (in accordance with Article 112 of the Luxembourg Civil Code, a judge may establish a presumption of absence for a person who has ceased to appear at their place of residence or stay, and of whose whereabouts there is no known information. However, until such time as they are declared deceased, they are entitled to inherit).

Legal persons may inherit provided they exist at the time of the testator's death. In principle, this is the sole condition to be met in order to be eligible to inherit. However, in the case of dispositions in favour of the State or public legal persons, these are valid only if confirmed by a decree of the Grand Duke. This restriction does not, however, apply to municipalities, associations of municipalities, or public institutions or foundations overseen by municipalities, or to dispositions covering only movable property up to a value of 30,000 euros (Article 910 of the Luxembourg Civil Code). The Code itself does not explicitly provide for individual grounds concerning the capacity of legal persons to inherit; however, by not expressly restricting such capacity to natural persons, and by introducing certain restrictions regarding the admissibility of dispositions in favour of public legal persons (these arise from Article 910 of the Luxembourg Civil Code), the Luxembourg legislator effectively creates

a category of uniform capacity to inherit for all legal entities (for further details: Herrera de las Heras et al. 2019, p. 448).

As a Member State of the European Union, Luxembourg is subject to the provisions of Regulation (EU) No 650/2012⁷. However, this issue does not require separate consideration in the present article, as its scope is limited exclusively to the substantive aspects of Luxembourg succession law and does not extend to questions of private international law. Since the rules laid down in the Regulation are, in principle, uniform across the participating Member States, they do not warrant a separate analysis in the context of this study.

The structure and key characteristics of statutory succession

Under the statutory order of succession, a distinction is made between four classes of heirs (Frank 2025, p. 1009): the children and descendants of the deceased (Class I), the spouse (Class II), the ascendants (Class III), and the collateral relatives (Class IV). The issue of whether the spouse belongs to a particular inheritance group is a matter of dispute. Some authors maintain that the spouse belongs to Group II (see Frank 2025, p. 1009 and Verbeke, van Zantbeek 2002, p. 343), whilst others argue that the spouse holds the status of a privileged heir who is, in a sense, established alongside the existing inheritance groups (cf. Pereira, Zenthöfer 2017, p. 143 and Rau, Harles 2022, p. 581). However, the first view seems more convincing, as the privileged status applies only where there is a concurrence of inheritance with the testator's descendants, while their absence precludes the possibility of inheritance by more distant relatives if the spouse is still alive. Furthermore, the first view was formed on the basis of the legal situation in effect prior to the entry into force of the 1979 amendment, which significantly improved the position of the spouse inheriting by statute.

⁷ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, OJ L 201, 27 July 2012, pp. 107–134.

Groups III and IV may inherit only in the absence of eligible heirs within the first two groups (Frank 2025, p. 1009).

Furthermore, pursuant to Article 733 of the Luxembourg Civil Code, a further distinction is made between relatives in the paternal and maternal lines; the estate itself is divided equally between both lines and is inherited within them, unless there are no eligible heirs in one of the lines. Only in such a situation is it permitted for the estate to pass in its entirety to the other line. In the case of the testator's siblings who share only one parent with him (here a distinction is made between: *utérins*, which denotes the kinship relationship between children born of the same mother, but not of the same father; and *consanguins*, i.e. the kinship relationship between children born of the same father, but different mothers), they participate in the inheritance exclusively within one of the lines. However, this does not apply where none of the siblings or their descendants is entitled to inherit as second-line heirs (e.g. the testator has siblings only on the maternal side). In such cases, the siblings are entitled to inherit the entire estate. However, with regard to full siblings (*la fratrie germain*, the term *germain* alone – without the word *fratrie*, which does not appear as such in Luxembourg legal language – may describe first cousins, second cousins and full siblings, and the legislator uses it in all three contexts), they are immediately entitled to participate in the distribution of the estate within both lines.

The shares in the estate to which the testator's children are entitled are equal. Meanwhile, more distant descendants inherit by representation (regulated primarily in Articles 734 and 739 of the Luxembourg Civil Code), i.e. a form of legal fiction whereby the representatives assume the rights of the person represented (Verbeke, van Zantbeek 2002, p. 342). This means that these heirs, so to speak, step into the rights of the person who did not survive until the opening of the inheritance, acquiring the degree of kinship and place in the order of succession that the person would have had had they survived until the opening of the inheritance. It is thus *de facto* inheritance within the family line (*in stirpes*). With regard to ascendants and collateral relatives, the aforementioned division into the maternal and paternal lines exists. Within each of these, half of the estate is inherited, then subject to division (Article 745(2)

of the Luxembourg Civil Code) according to the main branch (*souche*), and subsequently, within each main branch, a division is made according to the sub-branches; only on this basis is it possible to determine the exact share of the inheritance for each of the statutory heirs.

Under Article 767 of the Luxembourg Civil Code, a spouse is entitled to inherit so long as he or she is married to the testator at the time of the testator's death and no legally binding separation has been granted. Where the testator has left no descendants, his or her spouse is entitled to inherit the entire estate. In the opposite situation (pursuant to Article 767-1 of the Luxembourg Civil Code), the spouse has the right to choose either a share of the estate equal to that which would have fallen to the testator's child (though this may not be less than one quarter of the estate), or the usufruct of the property jointly used by the spouses, including the furnishing thereof. However, usufruct may be established only where such property belonged entirely to the deceased or was jointly owned by the deceased and the surviving spouse. The spouse is required to exercise this right within three months and forty days from the date of the opening of the succession (Article 767-3 of the Luxembourg Civil Code). If the spouse fails to do so, usufruct is established. The same applies where the spouse has died without having selected either option. However, if the spouse chooses to inherit a share, the shares of the testator's descendants are reduced proportionally to the amount necessary to determine the spouse's share. However, if the surviving spouse chooses usufruct and subsequently remarries, the children and descendants may, within six months, demand that the usufruct be converted into a cash payment (Article 767-1(3) of the Luxembourg Civil Code).

Lineal relatives are eligible to inherit in all cases. In the collateral line, however, inheritance is possible up to and including the sixth degree of kinship, unless the deceased was unable to draw up a will (Article 755 of the Luxembourg Civil Code). In such instances, relatives up to and including the eighth degree of collateral kinship are entitled to inherit. Furthermore, the restriction on the inheritance rights of collateral relatives does not apply to the descendants of the deceased's siblings.

In the absence of relatives entitled to inherit and a spouse, the State Treasury inherits (Article 768 of the Luxembourg Civil Code).

The Luxembourg legal system also provides for the institution of unworthiness (*indignité successorale*), which results in exclusion from inheritance (Article 727 of the Luxembourg Civil Code). The following are deemed unworthy: 1) individuals who have been convicted of causing or attempting to cause the death of the testator; 2) individuals who brought charges against the testator punishable by death and, as a result, were found to have made defamatory statements; 3) adult heirs who, having learnt of the testator's murder, failed to report this fact to the court. The second of these circumstances appears to have no practical application, as Article 18 of the Luxembourg Constitution expressly prohibits the use of the death penalty. However, the last of these conditions has been further restricted by statute, as it cannot apply to the ascendants and descendants of the murderer, nor to his relatives of the same degree, his spouse, siblings, uncles, and aunts, or the children of his siblings. It therefore applies only to the testator's more distant relatives, persons unrelated to him, and collateral relatives. Moreover, the children of persons unworthy of inheritance are not excluded from inheriting from the testator, unless the institution of representation applies. However, a person disqualified from inheritance who is the legal representative of an heir is deprived of the right to use that part of the estate which was acquired by the child as a result of inheritance. Consequently, in the above situation, it would be inadmissible, for example, to allow the descendants of a person disqualified from inheritance to inherit, if any of their full siblings or the descendants of those siblings were alive.

It should also be noted that there is a fairly strong link between the right of the testator's parents to inherit and the provisions of family law. Under Article 387-10(1)(5) of the Civil Code of Luxembourg, a person who has been completely deprived of parental authority loses the right to inherit from their child in the case of intestate succession. If, however, parental authority has been deprived only partially, the court has the discretion to decide on the legal consequences, including with regard to the right to statutory inheritance.

Scope of testamentary freedom

In line with Articles 895 and 893 of the Luxembourg Civil Code, a will is defined as the sole gratuitous legal act by virtue of which the testator is entitled to dispose of part or all of his or her estate in the event of death, and which they may revoke at any time. Furthermore, under Article 968 of the Luxembourg Civil Code, a will may not be drawn up in a single document by two or more persons in the form of reciprocal dispositions. Thus, the Luxembourg legislature has expressly excluded the admissibility of joint wills.

Testamentary capacity is defined in positive terms, namely that everyone is in principle entitled to draw up a will, unless they are deprived of this competence by virtue of specific provisions. Under the current legal framework, the main prerequisites for the validity of a will are: the testator's sound mind (*sain d'esprit*) at the time of drawing up the will (Art. 901 of the Luxembourg Civil Code; as follows from Luxembourg case law, there is a presumption that the testator had testamentary capacity at the time of drawing up the will, which may be rebutted by evidence to the contrary (see the judgment of the Luxembourg Court of Appeal of 30 June 2022 (CAL-2021-00935, JUDOC), and the judgment of the Court of Cassation of 15 November 1989 (Cass., 1st Civ., 15 Nov. 1989, JCP G, 1990, IV, p. 116) cited therein), having reached the age of sixteen (Art. 903 of the Luxembourg Civil Code), and not being under guardianship (Article 904 in conjunction with Article 902 of the Luxembourg Civil Code). Moreover, a minor who has reached the age of sixteen may dispose of only half the assets that an adult would be able to dispose of. A minor who has subsequently reached the age of majority, as well as a person whose incapacitation has been revoked, may not draw up a will in favour of their current guardian until the latter has submitted an account of their administration (Article 907 of the Luxembourg Civil Code). This restriction does not, however, apply to ascendants of minors who have exercised or continue to exercise guardianship over them. Thus, a distinction can be made between full (relating to persons who have reached the age of eighteen) and limited testamentary freedom (Pereira, Zenthöfer 2017, p. 143).

The freedom of choice of the form of a will is quite broad, as three types of ordinary wills and three special forms are envisaged (some authors distinguish only two forms of special wills, namely maritime and military wills, making no mention of the provisions relating to the so-called 'plague will' regulated in Article 985 of the Luxembourg Civil Code – for more on the absence of such a distinction, see Frank 2025, p. 1017). The first group comprises: holographic (handwritten), notarial, and secret wills. Under Article 970 of the Luxembourg Civil Code, for a handwritten will to be valid, it requires only that it be written entirely in the testator's own hand, together with the date and the testator's signature. The absence of any of these elements renders the will invalid. No 'remedial' provisions have been provided, e.g. with regard to defects such as the absence of a date (cf. in this respect the current regulation in Polish law under Article 949 § 2 of the Polish Civil Code). Moreover, it has the character of a private document; consequently, it may be deemed not to have originated from the specific testator if evidence to the contrary is successfully presented during court proceedings (Judgment of the Luxembourg Court of Appeal of 7 October 2020, CAL-2019-00874, JUDOC). A notarial will (as provided for in Articles 971–975 and Article 980 of the Civil Code of Luxembourg) is subject to more stringent formal requirements. It must be drawn up before two notaries (or before one, but in the presence of two witnesses) and satisfy the requirements laid down by the Minister of Justice; furthermore, it must be read out to the testator and signed by him or her (however, the absence of a signature does not invalidate the will – in such cases, a note is made of the reason for its absence). A notarial will may be revoked only in the form prescribed for its execution.

A secret will (Articles 976–980 of the Luxembourg Civil Code) must be drawn up in written form; however, unlike a holographic will, it may be written either by hand or typed. Interestingly, it does not have to be executed by the testator himself or herself; he or she may use another person to do so (Verbeke, van Zantbeek 2002, p. 348). A will in this form must then be sealed, stamped, and handed over to a notary in the presence of two notaries (or alternatively a notary and two witnesses), or sealed in their presence. In either

case, however, the testator declares that the document handed over by him or her contains his or her last will and has been drawn up by him or her, or, if drawn up by another person, that he or she has acquainted himself or herself with its contents and that it constitutes his or her last will. Next, a so-called subscription deed is drawn up, whereby a relevant note is placed on the envelope containing the will. The deed is then signed by the testator and all witnesses. Persons who cannot read are not capable of drawing up a will in this form. However, Article 979 of the Luxembourg Civil Code provides that, where all the requirements for a secret will are not met, it constitutes a valid holographic will (provided it meets all the statutory requirements relating to this type of will), which constitutes an example of statutory conversion.

Beneficiaries, their spouses, or relatives or affinity relatives up to and including the fourth degree may not act as witnesses to a notarial will. Furthermore, relatives or affinity relatives up to and including the third degree of either the notary or the testator, as well as their spouses, employees, and persons employed in their household, may not be appointed as witnesses. Additionally, witnesses to notarial wills, deeds of subscription to a secret will, and deeds of revocation of a notarial will, must be of legal age, able to sign their names, resident in the Grand Duchy, familiar with the language in which the deed is drawn up and the language in which the will is dictated or translated by a sworn translator, possess full civil rights, and not be under guardianship or curatorship, on pain of the legal act being void. Under the same penalty, two relatives or affinity relatives up to and including the second degree, and two spouses, may not act as witnesses together in the same deed. Moreover, a notary's lack of knowledge of the language in which the will is drawn up (whether a notarial will or a secret will) also results in the absolute invalidity of the will, except in cases where a secret will is converted into a holographic will (cf. judgment of the District Court of Luxembourg of 10 July 2019, TAL-2018-06634, JUDOC).

Wills may also be drawn up in one of the special forms. However, as emphasised in the doctrine, these play virtually no role in practice (Frank 2025, p. 1017) and therefore it is sufficient to merely indicate them. The first of the special forms of will (and also the 'most

comprehensive', as it is set out in as many as ten sections, namely Articles 988–997 of the Luxembourg Civil Code) is the maritime will (although Luxembourg itself has no access to the sea). It should be noted that the regulations concerning this form of will have never been adapted to the conditions of the Grand Duchy and, in accordance with the original wording of the Napoleonic Code, refer to imperial vessels and French consuls (this is particularly evident in Articles 991–992 of the Luxembourg Civil Code). The second of the special forms provided by law is the military will (regulated in Articles 981–984 of the Luxembourg Civil Code), which – like its Polish counterpart – is inherently diverse and inconsistent. The final special form of will is the plague will (Articles 985–987 of the Luxembourg Civil Code). It may only be drawn up in places where all communication has been cut off owing to the plague or a similar infectious disease.

Luxembourg law permits ordinary substitution, whereas substitution of an heir on trust (substitution) is generally prohibited. Despite this categorical prohibition (explicitly stated in Article 896(1) of the Luxembourg Civil Code: 'substitution of an heir on trust [substitution] is prohibited'), certain exceptions to this rule were established. The testator may first appoint his or her children as trustee heirs, and subsequently – in the next order – his or her grandchildren (whether already born or not yet born) as ultimate heirs (Frank 2025, p. 1015). Similarly, if the testator has no children, he or she may appoint their siblings as trustees and the children of those siblings as ultimate heirs. The inclusion of a condition in a will is permissible provided that it does not involve the appointment of an heir.

As regards the freedom of testamentary disposition, doctors of medicine or surgery, and healthcare professionals and pharmacists may not be appointed as heirs or legatees where they treated the testator for the illness that caused his or her death, and the disposition itself was made during the course of that illness (Article 909(1) of the Luxembourg Civil Code). However, this does not apply where the intention is to provide a special reward to such a person, taking into account the services they have rendered and the deceased's financial circumstances (Article 909(1)(1) of the Luxembourg Civil Code). This only applies in the context of bequests that do not

confer the status of heir. With regard to universal succession, a person belonging to this group may be appointed as a testamentary heir only if they are related to the testator up to the fourth degree in the collateral line, provided that the testator has no heirs in the direct line (Article 909(1)(2) of the Luxembourg Civil Code). However, this restriction does not apply to relatives in that line. Furthermore, all these restrictions and exceptions also apply to clergy who have been appointed as heirs.

Testamentary provisions may be invalidated in only two strictly defined cases: where the beneficiary attempted to take the testator's life, or committed such an act, and where the beneficiary subjected the testator to abuse, criminal offences, or serious insults (Articles 954 and 955(1)-(2) in conjunction with Article 1046 of the Luxembourg Civil Code). However, this is done on request, which is subject to a time limit (one year from the date on which the aforementioned events occurred, or one year from the date on which the person entitled to make the request became aware of the fact, or could have become aware of it).

Restriction of testamentary freedom through the reserve system

Notwithstanding the considerable freedom to choose the form of a will, the scope of testamentary dispositions is rather limited. Under Luxembourg law, there is no provision for succession *sensu stricto* within a will through the appointment of heirs (in this study, however, the author uses the term 'heir' – for the sake of clarity – to refer also to persons appointed to inherit under a will by virtue of universal succession. In the light of Luxembourg law, however, these are universal legatees. In turn, legatees under a universal title may receive only a strictly defined type of bequest; they cannot be appointed to inherit the entirety of the dispositive part and must demand the delivery of the subject matter of the bequest. In contrast, legatees under a specific title receive a bequest exclusively in the form of singular succession. This is because such legatees can only be statutory heirs (Frank 2025, p. 1013). They too are entitled to a strictly defined portion of the testator's estate.

However, unlike the system of the legitimate share (present, for example, in Polish or German law), this claim is not of a monetary nature, but consists of receiving the untransferable portion of the estate in kind (Art. 1004 of the Luxembourg Civil Code). Moreover, there is no institution of disinheritance, which means that it is impermissible to deprive a forced heir, by means of a legal act, of the right to the non-disposable portion of the estate to which they are entitled.

However, performing a legal act that infringes upon the non-disposable portion of the estate does not render the act void; instead, it merely entitles the beneficiaries of the statutory share to claim a reduction of the benefit received. Any ratification of such an act by an heir produces no legal effect if it occurs prior to the opening of the succession (Judgment of the Luxembourg Court of Appeal of 8 December 2022, CAL-2022-00042, JUDOC).

Luxembourg inheritance law is founded on the principle of the reserved portion, which means that it places restrictions on the disposal of assets both during one's lifetime (by way of gift) and upon death (by way of a will). The size of the disposable portion depends on the number of surviving children (Article 913 of the Luxembourg Civil Code). Dispositions may not exceed half of the estate if only one child remains after the testator's death; one-third in the case of two children; and one-quarter if the testator leaves three or more children (Rau, Harles 2022, pp. 581–582). If, however, one of the children predeceased the testator, leaving descendants, those descendants would take the place of the deceased child by way of representation (Article 914 of the Luxembourg Civil Code). This means that even where there are several descendants related to the same degree, left behind by the prospective heir, the restriction on the disposal of the estate will still 'regard them' as a single person, as they collectively take his place. As a result, in principle, the testator has at his or her disposal only between 50% and 25% of the estate, a portion referred to as the *quotité disponible* (Pereira, Zenthöfer 2017, p. 143).

It is only when there are no surviving descendants that the testator is granted full freedom to decide the fate of his or her estate after death (this follows directly from the wording of Article 916 of

the Luxembourg Civil Code; Herrera de las Heras et al. 2019, p. 444). The same limitations also apply to any gratuitous dispositions made by the testator during his or her lifetime. Those entitled to receive a benefit under the reserved portion are vested with a number of powers (regulated in Articles 917–930 of the Luxembourg Civil Code) enabling them to claim their due share, whether through the admissibility of a claim for the limitation of both the executed and the future gain, but only after the testator's death (both in respect of acts *mortis causa* and acts creating obligations *inter vivos*). Such a claim is inheritable, and a claim for the limitation of the gain may be made, not only by those entitled to a reserved share, but also by their heirs and legal successors.

The testator may, during his or her lifetime, distribute the reserved portion amongst all those entitled to it (Verbeke, van Zantbeek 2002, p. 350). This takes the form of a gift and thus requires the agreement of the parties concerned. Under such a division, it is permissible to transfer either the entire reserved portion or a part thereof (Frank 2025, p. 1015). The future testator may also effect such a division by way of a will, whereby, whilst strictly observing the rules of the reserved portion, he or she may divide the estate in respect of the forced heirs. Luxembourg law also permits the transfer to them (both by will and by way of a gift) of the disposable portion, without crediting it towards their statutory share, provided this is expressly stated in the content of the legal transaction.

Special protection for a spouse

Aside from the aforementioned right to choose between usufruct or the spouse's statutory share of the estate, it is permissible to provide for a *mortis causa* gift in a matrimonial property agreement (Pereira, Zenthöfer 2017, p. 143). Ascendants, collateral relatives of the spouses, and even third parties may, under the terms of such an agreement, dispose of all or part of the assets they will leave upon their death, both in favour of the spouses (or one of them) and in favour of children yet to be born from that marriage, provided that the donor survives the spouse to whom the gift is made. The donor

loses the right to further gratuitous disposal (both in the form of a gift and by testamentary dispositions) of the assets covered by the gift agreement; however, *a contrario*, he or she does not lose rights regarding acts involving consideration (Pereira, Zenthöfer 2017, p. 143). A gift made in a marriage contract may jointly cover present and future assets (in whole or in part), provided that a statement of the donor's debts and liabilities existing on the date of the gift is appended to the deed. However, such a donation may not exceed the disposable portion of the assets (Pereira, Zenthöfer 2017, p. 143).

Nevertheless, by means of a *mortis causa* gift made under a matrimonial property agreement, either spouse may choose to enter into a form of 'survival agreement' (the Luxembourg legislature itself does not use this term, but the very nature of this institution corresponds in substance *de facto* to medieval and modern survival agreements). It applies to all assets held at the time of death and results in the transfer of the entire estate to the surviving spouse, even in respect of the non-disposable portion. This essentially leads to universal succession without the creation of an estate (Pereira, Zenthöfer 2017, p. 142), although it relates only to the spouses' share in the joint property (Frank 2025, p. 1012). This matter is governed by specific provisions of marital property law, particularly with regard to the considerable freedom to shape the spouses' property regime.

Regardless of the marital property regime, however, the surviving spouse is eligible for alimony from the estate if he or she is in need. This right is not excluded even if the couple were legally separated at the time of the death of the spouse who was the testator (Article 205(2) of the Luxembourg Civil Code).

Conclusion

Luxembourg law affords the testator relatively limited autonomy in deciding the disposition of their estate upon death. This is primarily evident in the institution of the reserved portion, which limits the disposable portion to 25–50% of the estate. This means that, in principle, the line of succession preferred by the legislator is that

prescribed by law. This limited autonomy is reflected not only in the terminology itself, but also in the numerous mechanisms enabling the testator to distribute his or her estate amongst the forced heirs. However, such far-reaching interference with the freedom to dispose of one's estate has been restricted solely to the testator's descendants (and thus, in practical terms, a very narrow group compared to potential statutory heirs). In the absence of such descendants, virtually no protection exists for the three remaining groups of statutory heirs (the spouse has certain rights, which are, however, incomparably smaller than those enjoyed by the testator's descendants), whilst the testator may decide almost without restriction on the fate of his or her assets. Thus, this creates an extremely contrasting situation in which the Luxembourg legislator places the potential testator at two diametrically opposed positions. Depending on how the heirs classified in the first inheritance group acquire their inheritance, the testator may dispose of the entirety of his or her estate or of a significantly smaller portion.

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Abstract

The scope of freedom to dispose of property *mortis causa* under Luxembourg law

The study aims to analyse the inheritance law regulations of the Grand Duchy of Luxembourg with regard to the scope of freedom to dispose of property upon death. The Luxembourg legislature has decided to retain its succession law regulations in a form that has remained almost unchanged since the beginning of the nineteenth century. Consequently, so-called 'legal survivors' continue to exist in Luxembourg, providing an exceptionally fascinating basis for legal research. They are manifested primarily in the regulation of the maritime will (despite Luxembourg having no access to the sea) and in its almost unchanged system of forced heirship. The scope of testamentary freedom in Luxembourg law is dual in nature. On the one hand, it imposes significant restrictions on the testator where descendants exist; on the other hand, in the absence of persons belonging to the first group of statutory heirs, the testator enjoys a disproportionately broader freedom of disposition. The position of the surviving spouse also remains strongly rooted in Napoleonic regulations, which historically reduced the spouse's shares and rights to a minimum. Although legislative amendments adopted in the second half of the twentieth century and at the beginning of the twenty-first century have strengthened the spouse's position, it is still considerably weaker than that enjoyed by the descendants of the deceased.

Key words: Luxembourg, inheritance law, scope of testamentary freedom

