

Recommendations for improving cross-border technical cooperation

Mediation in cross-border succession conflicts and the effects of the ‘Succession Regulation’



Abstract

The 2 years FOMENTO project ‘*Fostering Mediation in cross-border civil and succession matters*’ - aims to contribute to conflicts prevention in cross-border succession matters. To reach a deeper understanding and impulses for a correct implementation of Directive 2008/52/EC (‘*Mediation Directive*’) and of Regulation (EU) No. 650/2012 (‘*Succession Regulation*’) the effects of both regulations have been analyzed in this research study. Therefore, country reports about the implementation of the Succession Regulation and the Mediation Directive in six European countries (Austria, France, Germany, Italy, Poland and Sweden) have been assembled.

In the second part of the study we gathered quantitative and qualitative data to show real-life implications of the juridical changes in these fields. The quantitative part – based on collected statistical figures and on an online survey with 752 participants (including mediators and lawyers) – underlines the increasing importance of cross-border succession cases. For the qualitative part, 105 expert interviews with lawyer, notaries, judges and mediators have been conducted and analyzed.

To summarise, it can be said that the Succession Regulation brought many changes (general jurisdiction attributed on the basis of the deceased’s habitual residence, choice of law, European Certificate of Succession) for succession cases with a cross-border connection. At the same time, the Regulation and its effects are still quite unknown among citizens. Mediation is not yet very common in the field of inheritance disputes as well. And yet, there are many advantages to conduct or even prevent a conflict, especially in such a complicated field. The concrete advantages, challenges and suggestions for improving mediation in cross-border succession conflicts can be found in the results of this research study.

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The following recommendations for policymakers on improvements for mediation in cross-border succession matters can be derived from the results of the research:

- **Raise awareness of the Succession Regulation among European citizens (including the applicable law of the habitual residence and the choice of law).**

The Succession Regulation had been set up in 2012 and entered into force in August 2015 in whole Europe (except of Great Britain, Ireland and Denmark). The unfamiliarity of this Regulation among European citizens, but also among juridical experts is still one major problem. The online survey with 750 participants showed that only one third of the participants did hear of the Succession Regulation. At the same time, the interviewed experts did complain about the level of awareness of this Regulation, which is on a very low level. According to lawyers and notaries there has to be done more information work. Especially the concerned population groups (people who live or plan to live abroad and people who have property abroad) have to be informed about the consequences of the Succession Regulation.

- **Raise awareness on mediation in general and in succession conflicts in particular.**

Although the Mediation Directive did support the legislative process for mediation in European countries this method of conflict resolution is not very common in the field of succession conflicts. This can be derived from the expert interviews. The interviewed mediators told in many cases there is no knowledge about mediation in general. Furthermore, there are misunderstandings about mediation. To promote the effective use of mediation, it would be helpful if also jurists know about the advantages and possibility of a mediation and support and recommend it. Also, general information campaigns about mediation – especially in the field of succession conflicts – had been proposed by some of the interviewed experts.

- **Promote the possibility of mediation in the forefront of a succession case.**

One specific field of action for mediation had been singled out as the possibility of mediation procedures in the forefront of a succession case. This would be the most effective way to prevent conflicts in succession matters. Of course, juridical experts must be involved in this process. Especially if the cases have a cross-border contexts where complex legal situations. The other way around it is imaginable that lawyers or notaries who arrange the succession arrangements can involve mediators, if it gets obvious that there are possible (family) conflicts.

- **Foster a better collaboration work between lawyers, notaries, judges and mediators.**

Essential for the development of mediation in cross-border civil and succession conflicts is a collaborative work between jurists and mediators. Succession conflicts are defined on the one hand on a great level of juridical extremely regulated field. At the same time, it might get very emotional where the topic of death and money are involved. A mediation process opens up space and time for direct communication between all involved parties (heirs). Conflicts that arise can be countered with a planned and structured approach. So, the different professional fields of mediators and jurists are asked to work together closely, so that citizens can resolve possible conflicts in succession matters in the best possible way.

- **Develop and improve training standards for mediators.**

It became apparent through the theoretical reports on mediation within this study that in each examined European country there are different quality requirements for mediators. The possibilities range from registered to non-registered mediators or from certified to non-certified mediators. The analysis of the expert interviews revealed that many mediators themselves were not satisfied with the different standards of mediation trainings. There had

been criticised the discrepancies in mediation trainings as well as the lack of conforming the quality of mediation competences. So, there should be improvements on training standards for mediators on a European level.

➤ **Enhance the index and validity period of the European Certificate of Succession.**

The idea of one certificate that proves the status of the heirs and is valid in every European country (again except Great Britain, Ireland and Denmark) had been praised by the interviewed succession experts. Most of them had to speak theoretically, because only a few of the interviewed experts personally had experience with the ECS. Nevertheless, they indicated several practical obstacles that hinder the effectiveness of the European Certificate of Succession. First of all, the short validity period of six months had been criticised by the experts. Another point for criticism had been the long and complex index of the document. Also, there is no possibility to section foreseen in the index for the matrimonial property regime.

Summarized it can be said that there should be follow-up studies regarding the further development of the implementation of the Succession Regulation when there will be more cases conducted under its scope of application. Also, the development of mediation, especially regarding the frequency of application and the quality and quantity of trainings, should be further investigate.