

# Mediation in cross-border succession conflicts and the effects of the EU Succession Regulation – Research Report

Gernot Barth, Jonathan Barth,  
Bernhard Böhm, Judith Pfützenreuter (Eds.)



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## Abstract

The two 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 (mostly jurists and mediators) – underlines the increasing importance of cross-border succession cases. For the qualitative part, 105 expert interviews with lawyers, notaries, judges and mediators have been conducted and analyzed.

To summarize, 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 project team of FOMENTO

Leipzig, September 2018

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# 1 Introduction

The European integration process has been developing for decades. This integration is taking place while the world we live in is changing rapidly, which causes new challenges for politicians, families, organizations, consumers and of course European citizens that need to be addressed in ever shorter time frames. In terms of economic integration, the European Union has already established a fairly stable environment on which market players can rely. However, other aspects of life still suffer a lack of integration and harmonization of principles and methods. One of these was the field of succession in the European Union (EU) that has been analyzed within the EU-funded project 'FOMENTO – *Fostering mediation in cross-border civil and succession matters*', which has carried out the research and is also responsible for the publication of this research report.

Due to the principle of free movement of persons and to the absence of borders that people have known for centuries, procedures for dealing with inheritance matters had become increasingly difficult to handle. The European commission identified the problem of cross-border disputes in hereditary matters in the increased mobility of persons<sup>1</sup> and implemented '*Regulation No 650/2012 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*' in 2012. One of the main readjustments defined by the Succession Regulation is that it is no longer the principle of the deceased's citizenship to determine the applicable law, but that of his habitual residence. Another elementary reform is that of the choice of law, which enables individuals to choose the law applicable to their inheritance before their death. Furthermore, the European Certificate of Succession has been introduced, harmonizing national differences in the inheritance administration.

The FOMENTO-project initiative researches the impact of the regulation on succession cases and investigates possible interdependencies and links of the mentioned Regulation No 650/2012 with Directive 2008 / 52 / EC on certain aspects

1 European Migration Network (2016): Migration and Migrant Population Statistics in EU-28, available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration\\_and\\_migrant\\_population\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics) [2018-09-25].