

II. Executive Summary

Importance of cross-border estates within the European Union

The importance of cross-border estates within the European Union may be demonstrated statistically:

- The populations of some EU-member states include either a high number or a high percentage of citizens of other EU-member states (e.g. 1.8 million citizens from other EU-member states live in Germany, and, in Luxembourg, 20% of the population are citizens of other EU-member states).
- Also, a sizeable number of the citizens of some EU-member states live in other EU-member states (for example, over a million Italians, or 11.7% of the Irish).
- Many EU citizens have bank accounts (e.g. in Luxembourg) or own immovable property in other EU-member states: German banks estimate that about 1 million Germans own immovable property in other EU-member states: Probably also many British and Dutch people own immovable property in other EU-member states.

1. Jurisdiction, Recognition and Enforcement of Judgements and Other Decisions

In our view, it is not sensible to harmonise the rules on jurisdiction and the recognition and enforcement of judgements and other decisions in relation to wills and estates (which currently fall outside the Brussels I rules) **unless the conflicts of the law rules are also harmonised** (see under 2).

- a) The court of the **deceased's last habitual residence** should have **jurisdiction** over wills and estates (in relation to both movables and immovables)

The court of the member state in which any immovable property of the deceased is situated should also have jurisdiction, but only insofar as the *lex rei sitae* requires a national certificate of inheritance [or a national grant of probate] – and only on the basis that the court applies the same law as the court of the deceased's last domicile.
- b) Once the rules of conflicts of law have been harmonised, **additional bases for jurisdiction** could be created, at least for contentious litigation, and in particular where the parties concerned have agreed which courts shall have jurisdiction.
- c) If the conflict of law rules are harmonised, decisions could be recognised without review as to substance or to the applicable law, any review being

limited to the criteria mentioned in article 34 of the Brussels I rules and article 15 of the Brussels II rules.

2. Law applicable to estates and to the formalities for wills

The conflict rules concerning the laws of wills and estates in EU-members states should in any event be harmonised at the same time as the rules of jurisdiction and recognition of judgments.

- a) We would propose applying the **law of the deceased's last habitual residence** to the estate as a whole (both movables and immovables).
- b) The testator should be able to designate to govern the succession of the whole of his estate either **the law of his nationality** or the law of his habitual residence (both either at the time of the selection or at the time of death).
- c) In the case of a **joint or mutual will** or a succession agreement, the applicable law may be the law of the nationality or of the habitual residence of only one of the parties involved.
- d) These conflicts of law rules should apply **universally** also in relation to non-EU states (including the possibility of *renvoi*).
- e) As far as the formalities relating to wills are concerned, the **Hague Convention** on the Conflict of Laws relating to the **Form of Testamentary Dispositions** applies to all members states except Italy and Portugal. (Italy, however, has similar rules in its national law).

3. Uniform European Certificate of Inheritance and Certificate of Executor

- a) We would propose the establishment of a **uniform European Certificate of Inheritance** and of a European Certificate of an Executor/Administrator (*exécuteur testamentaire*, *Testamentsvollstrecker*, *albacea* etc.). These certificates would be accepted in all EU-member states as sufficient evidence of the status of an heir and of the power to dispose of the estate (provided that the conflict of laws rules have been harmonised).
- b) The certificate would be granted by the court or the notary of the **deceased's last permanent residence** (for these purposes, the court or the notary would normally apply their national succession law and there would be a parallelism between the applicable law and the jurisdiction).
- c) There would be a **legal presumption**, that the person stated in the certificate was the heir (or the executor), and that he had power to dispose of the estate (and that his powers concerning the estate were limited only to the extent stated in the certificate), but subject to proof to the contrary in legal proceedings.

The certificate would be sufficient evidence also for the **land register or other public registers** in order to register the heir as the new owner.

But anyone acquiring property of the deceased in **good faith** from the person who has been granted the certificate, and anyone delivering goods or making payments owed to the estate in good faith to this person, would be protected.

4. European Register of Wills

A uniform system of **central national registers of wills in Europe** (e.g. if all member states would ratify the Treaty of Basel of 16th May, 1972) would help in international successions to find existing wills more easily.

5. No Harmonisation of Substantive Estates Law Required – Publication of the Law of Member States on Estates on the Internet

- a) We do **not consider it possible, let alone desirable**, to harmonise the substantive laws concerning wills and estates of EU-member states. Each EU-member state has its own legal tradition and its own social values concerning marriage and the family, and these find particular expression in the rules concerning intestacy and forced heirship.
- b) Most of the problems arising from the differences between national legal systems can be avoided by **harmonising the rules of conflicts of laws**.
- c) However, useful assistance could also be given by the **publication of the various national laws concerning succession on the Internet**, in an updated and authoritative version by the respective national Ministry of Justice, accessible through an EU-portal (e.g. within the European judicial network for civil and commercial matters).