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FOMENTO

FOSTERING MEDIATION IN CROSS-BORDER
CIVIL AND SUCCESSION MATTERS

GUIDELINES FOR CITIZENS

Succession conflicts with a cross-border impact



It is perfectly normal for people to worry about possible family disputes over inheritance arising after their own decease. Especially when succession involves cross-border implications of any kind, the situation can become even more precarious and unclear for all involved parties. Therefore, mediation is a highly advisable tool for conflict prevention and resolution - before and after the inheritance comes into effect.

These guidelines aim to explain and guide European citizens to alternative conflict resolution methods in cross-border succession conflicts.

Who is concerned?

Cross-border succession conflicts can affect more people than we might assume in the first place. Cases with cross-border impacts arise when descendants, heirs or the decedent's asset are located in different countries.

Who can benefit from cross-border mediation:

- ✓ **citizens** who (plan to) have their **habitual residence abroad** (e.g. students, workers, pensioners...);
- ✓ **Heirs and legatees** that are involved in a **cross-border succession conflict**;
- ✓ **Partners of bi-national couples** who want to plan their inheritance in advance;
- ✓ **Citizens** who fear possible family conflicts over inheritance after their own decease and want to **plan their inheritance in advance**.

What is the legal framework?

The EU Succession Regulation (No. 2012/650) is applicable in every European country except for United Kingdom, Ireland and Denmark. It regulates the applicable law in succession cases with a cross-border impact and which court or other authority has jurisdiction in these cases. However, the Succession Regulation does not affect the rules of substantive inheritance law or the inheritance tax law.

To get information about concrete provisions of the inheritance law in European Countries the following websites are recommended:

- [European e-Justice Portal](#) (available in many languages, it offers an overview of the legal situation in all Member States).
- [Successions in Europe](#) (information about inheritance law, inheritance tax law and rules about anticipated succession).

European Succession Regulation

Habitual Residence: The applicable law for a succession case is the national inheritance law of the country of permanent residence (Article 4 Succession Regulation) and not automatically the one of the country of citizenship.

Choice of law: However, citizens do have the right to choose the law of their country of citizenship (Article 22 Succession Regulation).

European Certificate of Succession: Along with the Succession Regulation, a European Certificate of Succession (ECS) has been introduced which, can be used to verify an heir's legal status. Once issued, it will be recognised in all Member States, except United Kingdom, Ireland and Denmark (Article 62 et seq. Succession Regulation).

What steps can be taken?

1. **Mediation before setting-up a testament** - in order to prevent conflicts at an early stage, seeking support from a mediator can be a sensible choice. The following questions and aspects should be considered:
 - ✓ *Who is involved?* - In order to guarantee a successful conflict prevention, it is indispensable not to exclude any parties of interest.

- ✓ *What could be possible conflicts?* - Reflecting upon possible conflicts of interest will help to find the suitable mediator for a specific case and will help the mediator to respond appropriately.
- ✓ *What outcomes do we want to obtain? What do we expect from our mediator and what skills should he/she possess?*

Examples:

- ❖ *After their retirement, a German couple moves to their apartment house in France. In order to prevent the sale of the house, when one of them dies, they ask for a joint inheritance mediation with the two children. After working out the needs of the parents as well as of the children, they decide to set up a joint will with the choice of law for German succession law.*
- ❖ *A Poland widower possesses an enterprise with 20 employees. His son and daughter are in conflict with each other and haven't got a good relationship. The widower wants to prevent the divestiture of his enterprise. That is why he asks for a mediation process with his children. With the help of two co-mediators, they are able to find suitable solution. Finally his notary sets up the testament regarding the mediation results.*

- 2. Mediation after the occurrence of the inheritance** - Mediation in succession conflicts can prevent long-term and expensive legal proceedings and maintain relationships. Especially in cross-border cases, where dependents live far away from each other, inheritance cases with no preceded mediations can bring up particular challenges. No matter if the parties involved were in good terms with each other in the first place or not. The decease of a family member is always a highly emotional situation and very often, interpersonal issues and conflicts of interest cannot simply be solved by working through legal aspects alone. Thus, all parties can benefit from taking up a

mediation in order to prevent any quarrels or solve them if it has come to an escalation already. In some countries (e.g. Italy) it is actually mandatory to conduct a preliminary mediation procedure in succession conflicts before going to trial. A successful mediation process can lead to a greater satisfaction among the heirs about the division and handling of the heritage.

Examples:

- ❖ *After the death of their parents, five Italian siblings are fighting over the division of the heritage. They agree to attend to a mediation in order to avoid a civil trial and a division auction, that could take several years.*

- 3. Seeking legal advice in addition** - At any time it is advisable to get legal advice in addition to the mediation process. The mediator's neutrality prohibits giving legal advice in favor of one of the parties. At the same time, it is indispensable that everybody is informed about the concrete legal situation and possible legal claims. That is why it is important to include external legal experts during the mediation process. In Italy it is even mandatory to have legal assistance during the mediation session. Coming to a mutual agreement at the end of the mediation, it is always important to ensure that the result cannot be contested in a court of law. Therefore, it is necessary to bring the mediation agreement into a legal form by experts.