

Research Summary

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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About FOMENTO project and the study

The 2 years FOMENTO project '*Fostering Mediation in cross-border civil and succession matters*' - aims to contribute to conflicts prevention in cross-border in 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 had been analyzed in a 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.

The aim was, on the one hand, to show the specific succession law system in each examined country and to emphasize the changes due to the implementation of the Succession Regulation, which applied in every EU-country (except Great Britain, Ireland and Denmark) in August 2015. On the other hand, the mediation systems of all examined six European countries had been shown within the theoretical part.

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 – 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. The experts have all been specialised to cross-border and/or succession cases. Most of the interviews have been conducted via telephone. Research questions behind the guideline-based expert interviews were:

- How far does the Succession Regulation pose new legal uncertainties and which uncertainties may open opportunities for the application of mediation as a conflict resolution method? And
- What are the main obstacles and opportunities regarding mediation on succession matters in a cross-border context?

So, the particularities of succession cases, that have a cross-border context, have been examined from two different angles: from the juridical point of view and from the perspective of interpersonal conflict matters. Of course, depending on their professional background, the interviewees can report more about their experience either in cross-border inheritance matters or in cross-border succession mediation.

To analyse and quote the interview results, **acronyms** were used, which give indication of the origin of the expert¹ and his or her profession².

Results

Increasing importance of cross-border succession matters

To begin with, the collection of statistical data showed that the topic of cross-border succession matters is of increasing importance in Europe. The mobility amongst European citizens had raised in general over the last time.³

Within the online survey – where over 750 people had been reached – over 30% of them stated, that there has been a succession case with a cross-border context in there private live.⁴

¹ Austria (A), France (F), Germany (G), Italy (I), Poland (P), Sweden (S)

² mediator (m), lawyer (l), notary (n), judge (j), lawyer & mediator (lm), notary & mediator (nm)

³ See chapter 3.2. *Statistics on the frequency of cross-border succession cases.*

⁴ See chapter 3.3. *Outcome online survey.*

However, there are no clear figures about the frequency of cross-border succession cases. Therefore, the amount of heritage that is transferred over borders can only be estimated. In any case, the analysis of statistical data has shown that more and more people are and will be affected by heritages with some sort of international links. Be it because they themselves move to another (European) country or because they inherit from relatives living abroad: citizens of the European Union are very likely to be confronted with questions about applicable inheritance law, especially regarding the consequences of the Succession Regulation.

Succession Regulation

It shall not be concealed at this point that some of the experts told the interviewer that an evaluation of the **Succession Regulation** (which applied 17 August 2015) is still too early. They argued that they had not gained enough experiences with cases that are under the scope of the Succession Regulation so far. Nevertheless, the main effects of this Regulation could be gathered in the theoretical parts as well as a plenty of opinions, propositions and also experiences of the interviewed professionals.

➤ **General jurisdiction: habitual residence (Article 4 Succession Regulation)**

It became apparent that through the Succession Regulation there have been huge changes, most importantly regarding the general jurisdiction. Article 4 of the European Union Succession Regulation provides for the habitual residence of the deceased as connecting factor for jurisdiction in succession cases. This means the law applicable to the succession is the one of the country in which the deceased had his habitual residence at the time of death. Looking at the previous general jurisdiction in the examined countries, this means a change for all six countries.

The main advantage of the concept of habitual residence as connecting factor for applicable law is that courts can usually apply the law of their own country (*lex fori*). This creates more legal certainty and predictability in court decisions.

The main disadvantage which was named by the experts and which can also be found in the literature is that there is no uniform definition of habitual residence. The Succession Regulation says:

‘In order to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased’s presence in the State concerned and the conditions and reasons for that presence.’ (Recital 23)

This means that there is room for interpretation and that this could in some cases again lead to conflicts in terms of jurisdiction. Some of the experts expressed their worries about possible misunderstandings and interpretation conflicts that could emerge. One German lawyer criticised that the responsibility of identifying the habitual residence was put to the courts by the European Ordinance (G7I).⁵

➤ **Choice of law (Article 6 Succession Regulation)**

Yet, what has explicitly been highlighted as an advantage is the choice of law (Article 22 Succession Regulation). Through this possibility the successor can regain legal certainty. The questioned professionals expressed their hope that through this legal instrument – choosing the law of nationality in one’s testament – the number of planned heritages may increase.⁶ At the same time, some of them criticised that the decision to choose the

⁵ See chapter 3.4.3., *critics on Succession Regulation*.

⁶ See chapter 3.4.3., *advantages of the Succession Regulation*.

nationality as a criterion for the possible choice of law has been too restrictive. In fact, there have been demands for a choice of law according to the law of the habitual residence under the experts.⁷

➤ Awareness of the Succession Regulation

The main challenge at this point is to increase the awareness of the Succession Regulation among European citizens. Even among the interviewed experts – who are all dealing with cross-border conflicts (in succession cases) – only three out of four had a certain knowledge about this Regulation (77 out of 105 experts did know the Succession Regulation).⁸ Considering the changes which the Regulation brought along, an increasing knowledge about it is crucial. Especially regarding testaments that have been drawn up before the 15 August 2015 and to which the transitional regulations apply (Article 83 Succession Regulation).⁹ According to the experts, it is recommendable to seek advice in this situation and, if necessary, to draw up a new disposition of property.¹⁰ Many interviewed professionals have requested more information campaigns about the Succession Regulation – especially for groups of citizens that may be affected like immigration groups, students/workers/seniors that are living abroad.

European Certificate of Succession

In terms of the **European Certificate of Succession (ECS)**, the evaluation from the experts came from a very practical perspective. The interviewed professionals have highly valued the fact that now there is one document to prove the status of heirs and legatees which is accepted among the European countries (except Denmark, Ireland and the United Kingdom). If the document is accepted by the court, it leads to a simplification and standardization of proving the heir's status. Unfortunately, according to the experts with practical experience, that is not always the case however.¹¹

➤ Recognition of the European Certificate of Succession (ECS)

Even though the Certificate should be recognized by any EU country, at the same time the Succession Regulation declares that 'the requirements for the recording in a register of a right in immovable or movable property should be excluded from the scope of this Regulation.' (Recital 18 Succession Regulation). This is why many of the experts reported about additional documents they had to provide in order to carry out a registration especially for immovable property.

Furthermore, there are open questions about the index of the Certificate, e.g. in terms of the matrimonial property regime.¹² Other critical points have been the short validity period of six months as well as the high costs of issuing and translating the ECS.

Overall one can say, that the European Certificate of Succession has not fully arrived in the practice of succession cases but it will be applied more and more over time. According to the experts, there should be some changes in the form and index of the Certificate and maybe an extension of the validity period. So far, the motto is: 'Every beginning is difficult.' (A8nm)

Another suggestion was to enter the European Certificates of Succession automatically into European registers, so that these Certificates can be found more easily.¹³ In some countries there already exist registers for ECS, but not in every country and also just for their territory.¹⁴

⁷ See chapter 3.4.3, *choice of law*.

⁸ See chapter 3.4.3.

⁹ See chapter 3.4.3., *transitional provisions*.

¹⁰ See chapter 3.4.3., *choice of law*.

¹¹ See chapter 3.4.4., *European Certificate of Succession (ECS) – evaluation of the experts*.

¹² See chapter 3.4.4., *European Certificate of Succession (ECS) – evaluation of the experts*

¹³ An example had been ARERT (Association of the European Testament Network of Testaments, See chapter 2.2.4., *The European Regulation on succession: main problems of implementation of Succession Regulation & possible sources for conflicts*.

Mediation Directive

The effects of the Mediation Directive have been presented in the country reports within chapter 2.1. in this study. Due to the implementation of this Directive, in some countries a legislative process for mediation was initiated (e.g. Germany), in others the already existing mediation systems have been developed (e.g. Austria, Poland).

The experts who were aware of the Mediation Directive did underline that this edict did help to promote the idea and concept of mediation in general.¹⁵ Nevertheless, some of the interviewed criticized that the Directive is still too general and that the implementation varies very much between the European countries.

Details of the advantages and disadvantages of different mediation systems can be found in the next chapter, which gives the results of a SWOT Analysis regarding mediation in cross-border civil and succession matters.

Mediation in cross-border inheritance conflicts

In this chapter strengths and weaknesses of mediation in cross-border conflicts in succession matters, as well as opportunities and obstacles which mediation is facing in this field will be presented. Therefore, the outcomes of all theoretical parts¹⁶ and of the qualitative surveys¹⁷ have been summarised, analysed and interpreted with regard to consequences for cross-border mediation in succession matters. All collected data have been brought together in a so-called SWOT analysis, where each argument identified in the theoretical reports and from the interviews has been assigned to the sections 'strength', 'weakness', 'opportunity' and 'threat'. The former two are of an internal origin which means that they are attributes of mediation itself as a system. Which are the strengths and weaknesses of mediation as a conflict resolution method in cross-border succession conflicts. Opportunities and threats on the other hand contain attributes of external origin, like the implications of legislations or the state of mediation in relation to other conflict resolution methods.

The features named in each class can be additionally distinguished between universal and country-specific since the status quo of mediation in succession cases is in certain respects different in each country. The internal features of strength and weaknesses of mediation in this special field, are justifiably quite universal, whereas the external opportunities and threats are often based on the country-specific situation of mediation and of handling successions.

The following analysis will therefore examine the outcomes of the theoretical parts concerning the national and European legislation on mediation and on succession, separating universal from country-specific features.

➤ Strengths of mediation in cross-border inheritance conflicts

Since the theoretical reports in this study deal with the implementation of European regulations, the general and internal strengths of mediation in succession matters, were mostly gathered from the information given by the expert interviews.

Those professionals generally agreed that mediations are not only time- and cost saving but also give more satisfaction to clients. Mediation offers the unique opportunity for quarrelling parties to overcome communication problems and cultural differences, re-establish contact between them and bring them back on one table. Such an intervention on the level of human relationships, with a focus on both parties' interests rather than the juridical

¹⁴ For example in France (chapter 2.2.2.)

¹⁵ See chapter 3.4.10.

¹⁶ See chapter 2, *Theoretical part*

¹⁷ See chapter 3.4., *Qualitative Analysis of expert interviews*

situation only, provides outcomes which are generally more accepted by all sides and are therefore more satisfying and sustainable according to the experts.¹⁸

Furthermore, experts consider it as a significant advantage that mediation can be conducted even before somebody dies. This 'pre-mediation' can be seen as a family meeting with the future testator and his or her future heirs to develop a share of heritage that is accepted by everyone. After the interviewed experts, that would be the best way of conflict prevention in succession matters at all. Of course, this is a very delicate matter to talk about. That is why this moderated process should be conducted by a professional, who is experienced in mediation tools and methods to determine the actual interests and feelings of the participants.

➤ **Opportunities of mediation in cross-border inheritance conflicts**

Not only from an internal, but also from an external perspective, several positive features of mediation in cross-border conflicts in succession matters can be identified.

From all theoretical reports it can be derived that the importance of mediation as a tool of conflict resolution has been promoted by the **European Mediation Directive** from 2008. As already mentioned, the legal development of mediation systems has been initiated or advanced by this Directive. The national legislations on mediation contributed to the steady **institutionalization of mediation** in different ways, which also includes the standardization in terms of enforceability of settlements, the suspension of prescription periods and the duty of confidentiality.

In Austria following developments for mediation can be singled out in this context: the protection of confidentiality for mediators and the possibility to pause a court proceeding.¹⁹

The French Code of Civil Procedure provides the possibility for judges to attempt conciliation between conflict parties, either directly or by delegating to an impartial third party. Recent legislative interventions are leading to experimentation with forms of compulsory mediation, especially in the field of family conflicts. If any of these mediations are mandatory, the forms of conciliation delegated by the judge are always free of charge.

From the Italian theoretical parts on mediation legislation, equally positive features can be deduced. According to the Italian law, mediation is compulsory in the matter of inheritance cases. That means that a first informative meeting with a mediator is a mandatory step before starting a lawsuit in inheritance matters. In addition, the Italian law also provides that mediators have to be registered at the Ministry of Justice.

In Sweden there is the possibility of court-connected mediation, mostly through judges, but also the possibility to decide for an out-of-court mediation.

It's similar in Poland, where mediation can be conducted before the case is taken to court or after the proceedings have been initiated on the basis of the court's decision or out of court on the basis on the parties' decision. Unquestionably, this flexibility can be considered as a particular strength for the process of mediation.

Other opportunities for mediation in cross-border conflicts in succession matters arise from the respective **financial incentive systems** of the European countries.

For Austria it can be said, that there is the possibility to get support for family and child conflicts.²⁰

In the case of Germany, the fact that mediation is offered in a widespread way by legal expense insurance contributes to the increase in the acceptance of mediation in general. These insurances also offer insurance

¹⁸ See chapter 3.4.5. *Cross-border mediation: advantages and challenges*.

¹⁹ See chapter 2.1.1. *Mediation system in Austria: Integration of mediation in legal proceedings / judicial system*.

²⁰ See chapter 2.1.1. *Mediation system in Austria: Institutional incentive system*.

policies that cover mediation, which fosters the demand for mediation. Apart from that, the legal basis in Germany increases the prestige of mediation by allowing the initiation of mediation to suspend the statute of limitation. That means that if parties enter into mediation, the matters discussed may not be prescribed. In succession matters, this is connected with the claim of the compulsory part (three years claim of property (§2174 BGB); 10 years, surrender of inheritance (§2130 BGB)).²¹

Apart from the legislation on mediation, ***national and European legislation on succession*** also indirectly feature opportunities of mediation in cross-border succession matters. The choice of law, for instance, improves the inheritance and estate planning (if citizens are informed about this possibility) and enables testators to wilfully manage their own estate. This circumstance, yet again, can be seen as an incentive to get mediators involved earlier in the process.

Especially in Austria, it occurs that notaries are more and more trained as mediators and can implement mediations and mediation methods into a succession process that way.

In Germany, an evaluation report of the mediation law has been published in 2017. This report provides facts for the development of mediation and might foster the widespread of mediation due to the increasing level of awareness and indications for further development for the Federal Government. Furthermore, mediations can be performed within private, state-recognised arbitration committees ('Gütestellen') that ensure enforceability of mediation agreements as well as suspension of time limits. This may also be ensured by the inclusion of lawyers into the case when closing legal settlements (§§794 Nr. 4b ZPO). Yet, this is not the only feature that shows the opportunities provided by the flexibility that mediation models are offering. Such mediation techniques are also executed in court through so-called 'Güterichtermodell' where judges are appointed as mediators if both parties agree on it. Concerning mediation training in Germany mediation associations are currently elaborating a foundation of a joint organization, aiming for an introduction of higher quality standards than the minimum education and training standards established by German mediation law.

Furthermore, the Polish theoretical part has highlighted that the disadvantage of the slow juridical system in Poland can be turned into an advantage or, to be more precise, into an opportunity for mediation since that method of conflict resolution can be further promoted as a faster alternative method to use in all kinds of conflicts.

When taking a look at the results of the interviews, it becomes evident that experts see a big importance of the ***cooperation between professional groups***. Many of the experienced lawyers, notaries or mediators who work with cross-border cases explained that they already established a network of cooperation partner.²² That is why it recommended to establish more networks, especially on an international level. Furthermore, since there are many difficulties for foreign lawyers to identify the necessary formalities in matters of successions in another country, this could lead to a favoured use of mediation.

Other than that, many experts have identified, among the opportunities to be considered, the use of ***online tools*** as a supportive device in order to communicate faster and save costs, which can be useful especially for cross-border cases. Besides, online mediation is enabled by law in Italy, which can have several advantages especially concerning cross-border cases. Regarding the possibility of online mediation, it should be pointed out that Sweden is very advanced in this respect. Online mediation is possible and commonly used in courthouses in Sweden.²³ This provides opportunities for faster and more effective conduction especially of cross-border conflicts.

²¹ See chapter 2.1.3. Mediation system in Germany.

²² See Chapter 3.4.2. *Cross-border succession cases: specifics and challenges* and chapter 3.4.6. *Preparation of cross-border succession mediation*.

²³ See chapter 2.1.6. Mediation system in Sweden.

One consequence of the Mediation Directive is the trend towards **professionalisation in mediation**. There is an increasing number of regulations on definition of mediation and the role of a mediator as well as set up processes of minimum standards for mediation trainings. The formal requirements for mediators range from 'any natural person with a full capacity to perform acts in law and who enjoys full civil rights can become a mediator' in Sweden²⁴ to 'the qualification required in view of the nature of the dispute or demonstrate, depending on the case, training or experience appropriate to the practice of mediation' in France.²⁵

The standardised minimum education level for mediators in some countries generally reinforces confidence in mediation as a tool for conflict resolution from a public perspective.

➤ **Weaknesses of mediation in cross-border inheritance conflicts**

However, there are also several weaknesses of mediation in cross-border conflicts in succession matters which can be identified mainly from the statements of the interviewed experts.

First of all, it has to be recorded that, since mediation is institutionalised as a court-external conflict resolution procedure, conflict parties that do not know of its capabilities and existence, in case of doubt, continue to follow the path of juridical dispute. One of the main difficulties, named by mediators, is that there still is a lack of EU-citizens' knowledge of this alternative conflict resolution method.

Apart from the weaknesses which can be identified in the theoretical parts²⁶ the experts from the qualitative analysis pointed out numerous issues as well. Many of them complained that mediation in the field of succession is not particularly established and well-known yet. Especially in this sector, there are still some misconceptions about the role and function of a mediator. They explained, for instance, that clients expect to get legal advice from the mediator or refuse to meet a lawyer for that purpose at all.²⁷

Another issue mentioned in the interviews is the difficulty to identify experts, especially in cross-border cases. This, yet again, draws attention to the above-mentioned importance of networks at European level.

Furthermore, many experts remarked that there is nothing that can be done when extremely quarrelling parties are not willing to take part in mediation. Mediation is a voluntary procedure and can be stopped by every conflict party at any time. Furthermore, there are some juridical questions that need to be treated according to juridical proceedings which cannot be mediated.²⁸

➤ **Threats of mediation in cross-border inheritance conflicts**

Apart from the internal issues' mediation in cross-cross border conflicts is facing, there are also external obstacles that can be identified in all theoretical parts and in the qualitative survey.

The first question to be raised is the **professionalization of mediators**. In terms of the European legislation on mediation, it can be deduced from the theoretical analysis that, by law, mediation can still be performed by any professional in many countries. Often it is not a legally protected term. The risk is that poorly performed mediations might damage the reputation of mediation in general.

²⁴ See chapter 2.1.6. Mediation system in Sweden: *The role of the mediator*.

²⁵ See chapter 2.1.2. Mediation system in France: *The role of mediator*.

²⁶ See chapter 2 THEORETICAL PART.

²⁷ See chapter 3.4.6., *Preparation of cross-border succession mediation, preliminary talk with the parties*.

²⁸ For example setting up the estate inventory, See chapter 3.4.5. *Cross-border mediation: advantages and challenges, involve additional legal professionals*.

Nonetheless, as already mentioned, a trend towards professionalization can be seen in the field of mediation. According to the interviewed experts there are nevertheless critics about standards of mediation trainings.

Especially in Italy, the interviewed experts criticised that the Italian legislation is lacking in terms of training and selection procedures of mediators.²⁹ In addition, the Italian criterion of territorial jurisdiction and of specific mediation centers³⁰ could be an obstacle to the spread of cross-border mediation, especially regarding co-mediation.

In a similar way, French experts criticise the lack of legislation in terms of training and selection processes and point out that only a few French mediators have experiences in transnational mediation or in matters of succession. Furthermore, especially in France, there are no institutional initiatives for the dissemination of mediation and for the gathering of statistical data on mediation. Apart from that, experts have pointed out that there are still major problems in terms of relations between mediators and conciliators but also between family mediators and other mediators. Consequently, such factors weaken the position of mediation, also in cross-border conflicts in succession matters.

In the case of Germany, certified mediators need to take part in a 120-hour training course in order to be able to call themselves certified. This relatively low minimal requirement can turn out to be a threat to quality standards, like some of the interviewed mediators noted.³¹

Also, interviewed Polish mediators asked for a coherent training and certification system.³² Conversely, Swedish mediators consider the listing of mediators by Swedish courts as problematic. Accordingly, there are no quality standards about their trainings and information provided by them are not evaluated or verified.³³

The general state of ***institutionalization of mediation*** is another topic, where threats for mediation can be derived from.

In Sweden, where the system of free of charge court-based mediation has already been established and judges perform mediations themselves, this turns out as a disadvantage for independent mediators since it poses an obstacle for out-of-court mediations. Consequently, people might be less willing to make use of external conflict solution even though they might be the more sustainable. In addition, the parties must give their agreement to the court to decide on these mediations. Another special feature applying to Sweden is that mediation is commonly considered not to take more than one day, which raises questions about time and quality of such a resolution.³⁴ Considering the situation in Sweden, the theoretical reports state that out-of-court mediation is not financed by the court.

From a French legal perspective on mediation, it can be seen as problematic that its costs are poorly regulated and can be freely defined by the individual mediators. Consequently, this non-transparency and disparity hampers procedures and makes it more difficult to conform with other systems such as the Italian one for instance.

Unlike in other countries, in Germany there is no obligation to consider or to perform mediation before introducing a judgment. German mediation law states the procedure as absolutely voluntary which means that mediators need to act on a free market and are not allowed to compete with judicial conflict resolution. This situation can be seen as fairly harmful to the reputation and recognition of mediation in general public. Consequently, it is not surprising that mediation is commonly not regarded as a legal service in Germany and is therefore also not

²⁹ See chapter 3.4.11. *Legal framework on mediation: evaluation of the experts: Italy.*

³⁰ See chapter 2.1.4. *Mediation system in Italy: Main features.*

³¹ See chapter 3.4.11. *Legal framework on mediation: evaluation of the experts: Germany.*

³² See chapter 3.4.11. *Legal framework on mediation: evaluation of the experts: Poland.*

³³ See chapter 3.4.11. *Legal framework on mediation: evaluation of the experts: Sweden.*

³⁴ See chapter 2.1.6. *Mediation system in Sweden: Institutional incentive system.*

supported through a legal aid program. Some pilot projects were recently launched in order to evaluate the effects of assumption of cost for mediation in family matters.³⁵

In the case of France, the legal situation is similarly ambiguous. Apparently, there is still a lot of **confusion regarding the relationship between mediation and conciliation** which might turn out to be a threat to the development of mediation.³⁶ Also some Italian experts explained that, in their opinion, mediation in Italy takes place too close to the proceedings and that there is confusion between mediation and arbitration.

Furthermore, Italian as well as Polish experts complained about slow juridical proceedings in their countries which decelerates their negotiations.

It had been already named the fact of compulsory mediation for inheritance conflicts in Italy. At this point it should be noted that the question if mediation actually *can* be compulsory, there has already been put to the Italian Constitutional Court.³⁷ Besides, the law provides that in matters relating to inheritance, parties must collaborate with a lawyer in their cases. The fact that the involvement of external legal experts is necessary from the beginning, could also be a difficulty for the mediation process. This was made clear above all by the analysis of the expert interviews.³⁸

In terms of threats to mediation in succession matters, interviewees stated that sometimes Italian lawyers are not trained on the mediation subject and are not always in favour of mediation.³⁹ It might be that mediation proceedings are still not supported by lawyers and notaries as desired. These issues can become a threat in that sense, that rivalries between all sides can have negative effects on the public reputation of mediation.

In the case of Austria, the peculiarity of the inheritance proceeding ('Verlassenschaftsverfahren') is that notaries in the function of court commissioners ('Gerichtskommissär') conduct the whole proceeding.⁴⁰ This poses another threat to mediation in cross-border succession cases, since there are high obstacles for (non-notary) mediators to mediate.

Furthermore, the **effects of the European Succession Regulation** can also be interpreted in relation to the situation of mediation in cross-border inheritance conflicts. The experts stated that many citizens are unaware of the impact of the Succession Regulation, such as the new criterion of habitual residence. Many of them complain that also experts do not know where they can get valid information about changes introduced through the Succession Regulation. Moreover, in some cases citizens and experts are not aware of the Succession Regulation at all.

Yet again, such unawareness also exists toward mediation in general, according to the experts. Especially in the field of succession, there still exist procedural fears, a lack of trust and misunderstandings towards mediation.⁴¹ Hereditary matters are a highly regulated part of society that are treated by specialised jurists and notaries, which allows the rise in misperceptions and missing recognition of mediation procedures by heirs.

Apart from that, the experts considered several more technical issues as a threat to their work. In terms of **Online Mediation**, technical and security issues make face to face contact still irreplaceable for many experts.⁴²

Especially in terms of mediation cases with cross-border links, several other obstacles become evident. Self-explicitly, larger geographical distances make it more difficult to bring quarrelling parties on one table or summon

³⁵ See chapter 2.1.3. *Mediation system in Germany.*

³⁶ See chapter 2.1.2. *Mediation system in France: Introduction. Mediation and Conciliation: the peculiarity of the French legal system.*

³⁷ See chapter 2.1.4. *Mediation system in Italy.*

³⁸ See chapter 3.4.5. *Cross-border mediation: advantages and challenges: involve additional legal professionals.*

³⁹ See chapter 3.4.11. *Legal framework on mediation: evaluation of the experts: Italy.*

⁴⁰ See chapter 2.2.1. *Law of Succession in Austria.*

⁴¹ See chapter 3.4.5. *Cross-border mediation: advantages and challenges.*

⁴² See chapter 3.4.8. *Online mediation in cross-border succession cases.*

witnesses, and language barriers and cultural differences make cross-border mediation even more difficult. Likewise, foreign correspondence, translations and travel distances significantly increase the mediators' workload for such mediations.

Conclusion

All in all, it can be said that new legislation on mediation have generally strengthened the position of mediation in the field of extra-judicial conflict resolution and give citizens the chance to use this method of conflict resolution more and more. The systems of mediation nevertheless do still vary between the member countries a lot, as well as the quality of mediation trainings.

Summarized it can be said that the Succession Regulation brought many changes (applicable law according to the 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. Yet, there are many advantages to resolve or even prevent a conflict especially in this complicated field. The concrete advantages of mediation especially in cross-border inheritance cases are:

- ✓ avoid long-duration legal proceedings and save time and cost
- ✓ bring conflict parties together and maintain personal relationships
- ✓ overcome communication problems and cultural differences
- ✓ find consensual solutions on the basis of the personal needs of each conflict party

Last but not least, the interviewed experts within this study emphasized the significant advantages of a mediation in the forefront of a succession case. This 'pre-mediation' can be seen as best way of conflict prevention in succession matters at all.

Nevertheless, there is a great need of a better cooperation work between lawyer, notaries, judges and mediators to foster networks among the professional groups across borders.

Recommendations

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

- Raise awareness of the Succession Regulation among European citizens (including the applicable law of the habitual residence and the choice of law).
- Raise awareness on mediation in general and in succession conflicts in particular.
- Promote the possibility of mediation in the forefront of a succession case.
- Foster a better collaboration work between lawyers, notaries, judges and mediators.
- Develop and improve training standards for mediators.
- Enhance the index and validity period of the European Certificate of Succession.

Furthermore, there could 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 investigated.