Brussels IV in a nutshell

A. Existing Regulations

The regulations concerning Cross-Border Inheritance Law in the EU (International Private Law and substantive law) vary considerably from one EU country to another. For example, in some countries, it is the law of the nationality of the individual that applies while, in others, it is the law of where the person is resident. Major differences exist in regard to quotas, reserved shares, transformation of assets, contracts as to succession and so on. Find more information on national legislation on www.successions-europe.eu.

Information about how to keep, to register and to search for a will are also available on the website of the European Network of Register of Wills Association (ENRWA) in the section “Information sheet”. www.arert.eu

Hopefully some day in the future additional information will be made available (see Art. 77) within the framework of the European judicial network (http://ec.europa.eu/civiljustice).

B. The legislative process

As a result of increasing mobility there are currently around 12.3 million Europeans living in other EU countries. 450 000 cross-border successions occur every year in the EU representing a considerable value.

Article 67(1) of the Treaty on the Functioning of the European Union provides that the Union is to constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States. Paragraph 4 of that article lays down that the Union is to facilitate access to
justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters. Article 81 of the Treaty explicitly refers to measures aimed at ensuring 'the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases' and 'the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction'. Many instruments have already been adopted on this basis.

The basic dates of the legislative procedure leading to the EU Succession Regulation are described in recitals 2 - 6. Activities started somehow 1999 with the Council meeting in Tampere, focussing on judicial cooperation in civil matters in a larger framework. A major step to facilitate cross border successions was the adoption of the Regulation (EU) Nr. 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” which is also referred to as “Brussels IV” . It was adopted on 4th July 2012. Although in force, the regulation will only apply upon the deaths of residents of the succession countries after 17 August 2015.

C. Overview of the EU Succession Regulation

The text of the regulation is attached as training material on the EJTN web-side. You can download it from the internet as well in all languages: Go to eur-lex.europa.eu Search via official Journal (27.2.2012 L 201) and go to page 107.

The new regulation does not affect the situation of people who remain resident in their home country. It does not introduce any harmonization of national laws.

1. Habitual residence

The regulation provides a single criterion for determining both the jurisdiction and the law applicable to a cross-border estate. The adoption of the concept of “habitual residence” (instead of nationality or domicile) is the most important criterion. All inheritance issues will be governed by the law of the country where the deceased habitually lived just before the death.

Art. 4: The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.

Where the habitual residence of the deceased at the time of death is not located in an EU country, the courts of an EU country in which assets of the estate are located shall have jurisdiction to rule on the succession, provided that the deceased had:
the nationality of that EU country at the time of death; or
his previous habitual residence in that EU country, provided that, at the time the court is seised, no more than 5 years have elapsed since the habitual residence changed.

The law governs in particular:

- the causes, time and place of the opening of the succession;
- the determination of the beneficiaries, of their respective shares and of any obligations imposed on them by the beneficiary, and the determination of other succession rights;
- the capacity to inherit;
- disinheritance and disqualification by conduct;
- the transfer to the heirs and, as the case may be, to the legatees of assets, rights and obligations forming part of the estate;
- the powers of the heirs, the executors of the wills and other administrators of the estate, without prejudice to specific rules on the appointment and powers of an administrator of the estate in certain situations;
- liability for the debts under the succession;
- the disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death, as well as claims which persons close to the deceased may have against the estate or the heirs;
- any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries;
- the sharing-out of the estate.

The Succession Regulation adopts the principle of the unity of the succession. Article 4 provides that the Courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole, regardless of the nature of the assets (movables or immovables).

2. Choice of law

The general rule of habitual residence can be overridden by the use of the concept of “party autonomy” so that the testator is allowed to designate his national law as the law governing his succession as a whole, by expressing his choice expressly and in testamentary form. Article 22 provides “a person may choose as the law to govern his
succession as a whole the law of the State whose nationality he possesses at the
time of making the choice or at the time of death.”

3. Jurisdiction in one country

The courts of the EU country in which the deceased had his habitual residence at the
time of death shall have jurisdiction to rule on the succession as a whole.

Where the deceased has made a choice of law in accordance with the Regulation
and the law chosen by the deceased is of an EU country, the parties concerned may
agree that the courts of that EU country are to have exclusive jurisdiction to rule on
any succession matter.

The courts of the EU country in which the deceased had his habitual residence at the
time of death can decline the jurisdiction to govern the succession if it considers that
the courts of the EU country of the chosen law are better placed to rule on the
succession, taking into account the practical circumstances of the succession, such
as the habitual residence of the parties and the location of the assets.

The courts of an EU country whose law had been chosen by the deceased shall have
jurisdiction if:

- under specific conditions laid down in the Regulation, a
court previously seised has declined jurisdiction in the same
case;
- the parties to the proceedings have agreed to confer
jurisdiction on the courts of that EU country;
- the parties to the proceedings have expressly accepted the
jurisdiction of the court seised.

Decisions given in an EU country shall be recognised throughout the EU without any
special procedure being required.

Decisions enforceable in the EU country where they have been given shall be
enforceable in another EU country when, on the application of an interested party,
they have been declared enforceable there by the local court or competent authority.

4. loi uniforme

Universal application of the same succession rules so Article 20 of the Succession
Regulation provides that any law specified by the Regulation shall be applied
whether or not it is the law of a Member State.
D. The European Certificate of succession

The legal systems of the EU Member States have developed varying instruments that enable an heir or legatee to prove his position and protect third parties dealing with the holder of such an instrument ("certificates of succession"). However, these instruments are often of little use when presented abroad. Currently the circulation of documents issued in succession procedures in the member states is not regulated, because Regulation (CE) No. 44/2001 excludes successions from its scope (Art.1 paragraph 2a). In cases where the estate is located in more than one country, heirs or legatees are therefore required to apply for several national certificates.

The Regulation creates a European Certificate of Succession. It is a standard form certificate designed to enable heirs, legatees, executors or administrators to prove their legal status and/or rights in any or all of the Succession Regulation Countries. Art. 62 ff. create a supranational European Certificate of Succession (ECS) which may be applied for if heirs or legatees of a legatum per vindicationem need to invoke their status or exercise their rights in another Member State. It benefits from direct circulation, as no formality is needed for its recognition in the destination state.

There will be no obligation to use the Certificate of Succession. Art. 59 on the "acceptance" of authentic instruments enables the circulation of national certificates of succession. Under this approach, however, national certificates retain the effects attributed to them by their country of origin.

So far, the form is not available. According to Art. 80, 82 II the commission has to decide. The procedure for the decision and the consultancy of the Member states is described in Art. 3 and 4 of the regulation 182/2011.