

Devaux on the EU Succession Regulation

Angelique Devaux has posted *The European Regulations on Succession of July 2012: A Path Towards the End of the Succession Conflicts of Law in Europe, or Not?* on SSRN.

In recent years, the mobility of people within the European Union has created major problems such as the settlement of cross-borders inheritances that may accelerate in the coming years.

Europeans as well as foreigners own estates in different countries. This ownership triggers the application of multiple inheritance laws and creates conflicts of law. Currently in Europe, there are two types of inheritance law, the principle of scission (known in France, UK, and Belgium, but also outside Europe as in USA) and the law of the Unity Estate (currently applied in Germany, Spain, Italia or Portugal).

Previous attempts to unify the rules of succession in Europe have been unsuccessful. Nevertheless, since 2005 , the European Union has focused on succession. The European Parliament and the Council of the European Union adopted last July 4th 2012 a European regulation 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 Certification of Succession. Except for the United Kingdom, Denmark and Iceland, this text is primarily geared to avoid conflicts of law of succession with a universal character. This means, for example, that an American citizen, owner of a property in Europe, could use these regulations. It retains the principle of one law applicable to the succession by determining the deceased's habitual residence. This regulation denies all actual references to the rule of scission. It also admits the professio juris rule, holding that any citizen can decide the law applicable to his estates, which could be the law of his citizenship or the law of his habitual residence.

In this paper, I examine some of the potential problems with the new European legislation such as the theoretical aspects of the rule of the habitual residence.

Does the rule anticipate any conflicts of law? The paper also addresses the practical aspects of the regulations. One likely consequence is that the legal practitioners, who are mostly Notaries in the European continental law countries, will have to receive training about the relevant foreign laws. Till now, the question of how they will have access to this training and be ready to apply it to actual cases has not been adequately addressed.

I suggest a new approach to deal with these issues. Since the European countries will have three years to reform their national laws to conform to the European regulations, the time is ripe to discuss the challenges that law ahead with respect to the succession laws.

“Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.”