Regulation Nº 650/2012: Some Open Issues

The new Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 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 was published in the OJEU on 27 July 2012 and will apply on a general basis "*to the succession of persons who die on or after 17 August 2015*". The need for an instrument at Community level has been emphasized in order to solve the difficulties due to the treatment of the different international succession aspects by means of the respective national rules of Private International Law.

Nowadays, before the general application of the rules contained in the new EU Regulation, in the specific area of the determination of international jurisdiction in matters of succession problems such as positive and negative conflicts of jurisdiction, lack of legal certainty, contradictory answers to situations of international *lis pendens* and the following obstacles of recognition and enforcement of decisions arise. An interesting question is if the new Regulation will totally or only partially solve this situation.

One of the most delicate issues in this field is that the new legal instrument foresees the problematic term "court" when it refers to the competent authority to deal with an international succession case, establishing an important limitation on the total unification of this aspect at European level, due to the fact that the determination of the competent non-judicial authorities and legal professionals in matters of succession, such as notaries, will be still possible under some circumstances by means of the national legislations of the Member States. This situation will probably entail some compatibility problems.

The new EU Regulation 650/2012 provides different common rules for the allocation of international jurisdiction, starting from the premise of the unity of forum with some exceptions. As it has already been pointed out by the legal literature, this part of the EU instrument causes considerable problems of interpretation, and it does not regrettably incorporate certain aspects which were

underlined in the previous legislative proposals. The choice of the last habitual residence of the deceased as a general criterion seems to be reasonable, although in some cases it may be difficult to identify it. Besides, party autonomy plays an important role in this chapter of the Regulation; in this sense, the different mechanisms of choice of the competent authority are formulated in a very complex way that will also probably imply practical problems. Besides, the new instrument in matters of succession allows an exceptional possibility of remission of jurisdiction between authorities of Member States. The wording of this aspect in the final text also presents some significant difficulties relating to the operation and the effects of this flexibility mechanism.

Moreover, the new Regulation on Succession and Wills contains a rule on subsidiary or residual jurisdiction, giving an answer for cases where the deceased's last habitual residence is not located in a Member State. In this context, it is important to know if this rule will certainly allow identifying a real link between the specific case and the Community territory. Regulation 650/2012 also provides for jurisdiction based on *forum necessitatis*, an interesting option which had been supported in legal literature and which tries to avoid a loss of effective legal protection.

Besides, the new EU legal instrument incorporates some rules in order to establish a partial declaration of acceptance, waiver or limitation of liability and to adopt provisional measures. The treatment of *lis pendens* and related actions is also foreseen. Among other questions, providing further details on these rules would have been appropriate, such as time-limits or exceptions to the solution based on the chronological order of the bringing of the claims in the case of *lis pendens*.

All the aforementioned aspects are examined in a new book entitled *La autoridad competente en materia de sucesiones internacionales: el nuevo Reglamento de la UE* (Prólogo de *Alegría Borrás*), Marcial Pons, 2013 (translated into English, it would be "The competent authority in international succession matters: the new EU Regulation (Prologue by *Alegría Borrás*)"), written by Maria Álvarez Torné, a Postdoctoral Researcher in Private International Law of the University of Barcelona. This work analyzes the different criteria on international jurisdiction in the new Regulation on Succession and Wills, describing the interesting previous decision-making process and also including a brief chapter dealing with the rules on applicable law, recognition and enforcement of decisions, acceptance and

enforcement of authentic instruments and the European Certificate on Succession. Facing the new scenario, this book essentially aims to answer to the question of the advantages and missed opportunities in the way of allocation of international jurisdiction contained in the EU Regulation, taking into account that this aspect will condition the following treatment of a succession case with cross-border elements. It is necessary to use the time prior to the application of the EU Regulation to prepare for the application of all its rules, and in this sense opening up forums of debate to discuss about the numerous interpretation difficulties has an increasingly importance.