Tangled up in treaties

Some conventions will override the EU Succession Regulation, notes Richard Frimston. But which ones are they?

The date when the EU Succession Regulation will become fully effective, 17 August 2015, draws ever nearer. The details of the Succession Regulation (Regulation (EU) No.650/2012, hereafter 'SR'), the choices it gives and its transitional provisions are becoming more widely known. One aspect that has perhaps received less publicity is its interplay with other conventions and the effects of article 75. Some conventions override the regulation.

The most obvious relevant convention, referred to in article 75.1, is the *Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions* (Hague 11), since that is a convention in force in more than 40 states, although, in the EU, not in Italy or Portugal.

Although article 75.1 sets out that the SR will not affect the application of international conventions, article 75.2 states the SR 'shall, as between member states, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this regulation'. Since Hague 11 has been ratified by a number of states that are not EU member states, it has not been concluded exclusively between two or more member states and, therefore, it will still take precedence over the SR. Thus, Hague 11 will still apply both inside and outside the EU. It should also be remembered that, under article 1.2(f) SR, the question of formal validity of wills (and other dispositions of property upon death) made orally is outside the scope of the SR. I will come back to this in my column in the November issue.

There are other conventions of which practitioners should be aware too.

The next most obvious convention is the *Convention of 19 November 1934 between Denmark, Finland, Iceland, Norway and Sweden Comprising Private International Law Provisions on Succession, Wills and Estate Administration* (the 1934 Convention), referred to in article 75.3 SR.

Sweden and Finland use a connecting factor of nationality, while Denmark, Norway and Iceland use that of residence. The 1934 Convention uses residence, but subject to a five-year trigger, failing which the law of nationality applies. As between Finland and Sweden, the 1934 Convention will only continue to apply to the rules on the procedural aspects of estate administration and the simplified procedures for recognition and enforcement of decisions. As between Finland or Sweden and a different Nordic state, the whole of the 1934 Convention will continue to apply.

Things gets trickier when it comes to establishing the existence of treaties or conventions not specifically referred to in article 75. So far as I have been able to ascertain, the only relevant treaties are those that:

- Germany has with Iran (made in 1929), the CIS and other USSR succession states (made in 1958), and Turkey (made in 1929);
- Austria has with Iran (made in 1966), the CIS and other USSR succession states (made in 1958); and
- Italy has with Turkey (made in 1929).

If you are aware of any further relevant conventions, please let us know.

The effect of article 75.1 is that, for cross-border successions between these states, the SR will not apply, and the treaty in question will still apply.

My understanding is that all of these states use nationality as the connecting factor and all, other than Iran, are schismatic, using the *lex situs* for immovable property.

I am grateful to Professor Dr Guillermo Palao Moreno of Valencia University for drawing these treaties to my attention. I understand that the treaties are limited in scope but that the Turkish treaties include issues of jurisdiction and recognition and enforcement. I hope we will see some detailed articles from German, Austrian and Italian practitioners as to the actual effects and working of these treaties.

To the extent Russians and nationals of other USSR succession states, such as Kazakhstan, may have significant wealth, the treaties with Germany and Austria may cause particular difficulties. For example, the French house of a Russian national resident in Germany will be subject to the jurisdiction of the German courts and German law under the SR, but French law under the 1958 treaty as between Germany and the CIS. How is this conflict to be resolved?

Second-generation Turks living in Germany or Italy, or Iranians in Germany or Austria, may have difficulty in establishing which is their effective nationality.

The particular historical reasons for the concluding of these treaties in 1929, 1958 and 1966 are of interest. The circumstances now, however, are somewhat different. Until Austria, Germany and Italy can renegotiate these treaties, they will cause confusion and difficulty.

In the meantime, it will pay to know your client and establish all possible relevant nationalities, to ensure that a convention is not in play.

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