



CROBECO

Subsidiarity and Proportionality Aspects





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- I. Introduction
- II. CROBECO as a national (non-EU) alternative – The facilitating model approach
- III. CROBECO as a European (optional model) alternative?
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- V. Conclusion



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- **I. Introduction**

- CROBECO does not change any existing national law or national legal procedure
- CROBECO uses existing national private international and substantive law
- CROBECO is a bottom-up and practice-oriented legal coordination project



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- II. CROBECO as a national (non-EU) alternative – Facilitating model
 - National private international law accepts foreign deeds
 - Technical interoperability
 - Close cross-border cooperation on the basis of mutual trust



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- III. CROBECO as a European (optional model) alternative?
 - Conferral
 - Negative: 345 TFEU? See, however, 207 TFEU and the Essent Case
 - Positive: 50(2)e, 81 and 114 TFEU
 - Subsidiarity and Proportionality



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Article 5 TEU

1. The limits of Union competences are governed by the principle of **conferral**. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of **subsidiarity**, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of **proportionality**, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.



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- IV. Parallel developments?
 - The EU Certificate of Inheritance as an example
 - A national issuing authority draws up a document that can be registered in all participating Member States



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