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A GUIDE TO THE IMPLEMENTATION OF THE SUCCESSION REGULATION (EU) NO 650/2012

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A. INTRODUCTION

This “Guide to the Implementation of the Succession Regulation (EU) No 650/2012” has been developed within the project called “CISUR – Enhancing Judicial Cooperation on the Implementation of the Succession Regulation in Croatia and Slovenia (hereinafter: the CISUR project) financed within the framework of the Justice Programme of the European Union (2014-2020). The CISUR project is aimed at contributing to the implementation of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, the recognition and enforcement of decisions and the acceptance and enforcement of authentic instruments in the matters of succession, and on the creation of a European Certificate of Succession¹ (hereinafter: Succession Regulation No 650/2012; Regulation) in Croatia and Slovenia but also in other Member States of the European Union (hereinafter: EU Member States). The Project is run by the Croatian Law Centre in partnership with the Ministry of Justice of the Republic of Croatia, the Croatian Chamber of Notaries, the Peace Institute (a civil society organisation from Slovenia) and the Chamber of Notaries of Slovenia, and in association with the Supreme Court of the Republic of Croatia.

Freedom of movement within the EU has prompted a higher number of migrations within Member States for reasons of employment or life after retirement, which often results in situations where EU citizens become property owners in different Member States. We must also add here marriages between EU citizens who are nationals of different EU Member States, or their presence in a Member State other than the State of their citizenship. In the case of death of these persons, numerous succession issues with crossborder elements arise. Since the European population is becoming older, the problem is even more obvious (see Commission of the European Communities 2009:4).

As a response to the described situation and a desire to enhance the fundamental principles on which the EU is based, one of them being freedom of movement within the EU, the Succession Regulation No 650/2012 was adopted on 4 July 2012. The idea of a broad

¹ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, the recognition and enforcement of decisions and the acceptance and enforcement of authentic instruments in matters of succession, and on the creation of a European Certificate of Succession, SL EU, L 201, 27/07/2012, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R0650> (5/9/2019).

Note: in the Guide, the term “enforcement” and its derivatives is used because this is the term used in the official Croatian translation of the Regulation. See Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, the recognition and enforcement of decisions and the acceptance and enforcement of authentic instruments in matters of succession, and on the creation of a European Certificate of Succession, SL EU, L 201, 27/07/2012, <https://eur-lex.europa.eu/legal-content/HR/TXT/HTML/?uri=CELEX:32012R0650 &from=EN> (05/09/2019).

acceptance and ratification of the Hague instruments by the Member States had turned out to be unsuccessful (see Max Planck Institute for Comparative and International Private Law 2010: 7; Ivanc, Kraljić 2016: 249-250; Aras Kramar 2018: 186).² Therefore, already in the “Vienna Action Plan” of 1998,³ it was laid down that the adoption of a European instrument in the area of succession was the priority. Then the Hague Programme followed: “Strengthening Freedom, Security and Justice in the European Union” of 2004⁴ which, among other things, emphasised the need to adopt a European instrument providing for the applicable law in the matters of succession, jurisdiction, mutual recognition and the enforcement of succession decisions, as well as the creation of the European Certificate of Succession. The “Stockholm Programme” – an open and secure Europe that serves and protects its citizens” of 2009⁵ was a step forward by expanding the proposal and the principle of mutual recognition of succession decisions and wills, taking into account the specificities of the legal systems of the Member States (for more see Popescu 2014: 8-9; Aras Kramar 2018: 186-187).

In 2005, the “Green Paper on Succession and Wills” was published and it included a questionnaire on principles and rules of the applicable law, on jurisdiction, recognition and enforcement of succession decisions which were the issues that should be taken into account in the creation of a European instrument in the area of succession.⁶ In 2009, a Proposal for a Decree was published, on jurisdiction, applicable law, and recognition and enforcement of judgments and authentic instruments in the matters of succession and the establishment of the European Certificate of Succession.⁷

² The Hague Convention of 5 October 1961 on the applicable law for the form of testate succession entered into force on 5 January 1964, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=40> (06/09/2019), the Hague Convention of 2 October 1973 on international administration of the estates of deceased persons entered into force on 1 July 1993, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=83> (06/09/2019), the Hague Convention of 1 July 1985 on the applicable law for *trust* and its recognition entered into force on 1 January 1992, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=59> (06/09/2019). The Hague Convention of 1 August 1989 on the law applicable to succession of the estates of deceased persons has not yet entered into force, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=62> (06/09/2019).

³ The Vienna Action Plan of 3 December 1998, SL EU, C 19, 23/01/1999, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31999Y0123%2801%29> (06/09/2019).

⁴ The Hague Programme: strengthening freedom, security and justice in the European Union, SL EU, C 53, 03/03/2005, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52005XG0303%2801%29> (06/09/2019).

⁵ The Stockholm Programme – An open and secure Europe serving and protecting citizens, SL EU, C 115, 04/05/2010, <http://www.eurojust.europa.eu/doclibrary/EUframework/EUframeworkgeneral/The%20Stockholm%20Programme%202010/Stockholm-Programme-2010-EN.pdf> (06/09/2019).

⁶ Green Paper on Succession and Wills, COM(2005) 65 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005DC0065> (06/09/2019).

⁷ Proposal for a Regulation of the European Parliament and the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of successions and the creation of

The Succession Regulation No 650/2012 contains provisions on jurisdiction, applicable law, recognition or, if applicable, acceptance, enforceability and enforcement of decisions, authentic instruments and judicial settlements in the matters of succession and the creation of the European Certificate of Succession (hereinafter: ECS; Certificate). The objective of the Succession Regulation No 650/2012 has been to facilitate proper functioning of the internal market by removing obstacles to free movement of persons who are currently experiencing difficulties in exercising their rights in the context of succession having cross-border implications. In addition, the European citizens must be able to organise their succession in advance. It is also necessary to protect the rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession (points 7 and 80 of the Preamble of the Regulation).

To achieve a uniform application of the Succession Regulation No 650/2012, the Implementing Regulation of the Commission (EU) No 1329/2014 of 9 December 2014 was adopted to establish the forms provided for in the Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance and enforcement of authentic instruments in the matters of succession and on the creation of a European Certificate of Succession⁸ containing the forms for the certification of the decision on succession, of court settlements and authentic instruments in the matters of succession and the requirements of the European Certificate of Succession.

At the national level, the Act on the Implementation of the Regulation (EU) No 650/2012 of the European Parliament and the Council of 4 July 2012 was adopted in Croatia on jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance and enforcement of authentic instruments in the matters of succession and on the creation of a European Certificate of Succession (hereinafter: the Act on the Implementation of the Regulation).⁹ The Act defines the territorial jurisdiction to decide on the estate, the authority for acting and rendering decisions and for the procedures within the scope of the Succession Regulation No 650/2012. In Slovenia, by the Act Amending the Inheritance Act, a third

a European Certificate of Succession, COM(2009) 154 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52009PC0154> (06/09/2019).

⁸ Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the forms referred to in Regulation (EU) No 650/2012 of the European Parliament and of the Council 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, SL EU, L 359, 16/12/2014, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32014R1329> (06/09/2019) (hereinafter: Implementing Regulation No 1329/2014).

⁹ Official Gazette of the Republic of Croatia, No 152/14.

chapter was added to the Inheritance Act¹⁰ entitled “Provisions for Implementing the Regulation 650/2012 EU” laying down the competent authorities for its implementation.

Despite its extensive provisions on the scope of application, recognition and enforcement of decisions in the matters of succession, the acceptance and enforcement of authentic instruments and court settlements, on the Certificate itself and its effects, as well as on the appropriate forms for its issuance, the application of the Regulation in the EU Member States is very challenging. Many problems emerged in the practice of both Croatian and Slovenian authorities already in the first phase of the implementation of the CISUR project, such as the question of determination of the “cross-border element” or of “habitual residence” in some matters of succession. Not less challenging were the situations of enforcement of Certificates issued in another EU Member State, primarily Germany, because they did not contain all the data to be entered in the corresponding land register in accordance with *lex fori*.

The aim of the CISUR project has been to find out to what extent and how successfully Croatia and Slovenia implement the Succession Regulation No 650/2012 and their national implementing acts. A secondary data analysis and empirical research were applied to detect the problems which the authorities of these two countries had encountered when implementing the Regulation. What actually increases the practical value of this Guide is the fact that within the CISUR project, carried out in Croatia and Slovenia, semi-structured interviews were conducted, as well as focus groups composed of three professional groups of participants: notaries, judges and (higher) court assistants and practicing lawyers (May-September 2019). The interviews and the focus groups resulted in a large collection of empirical data received from the interviewed legal practitioners who applied the Regulation in various territorial areas of Croatia and Slovenia. They have also been used in the development of this Guide.

B. SCOPE

1. Substantive scope of application

The objective of the Succession Regulation is to facilitate the proper functioning of the internal market by removing obstacles to free movement of persons who are currently

¹⁰ *Zakon o dedovanju* (Inheritance Act), *Uradni list SRS*, No 15/76, 23/78, *Uradni list RS*, No 13/94- ZN 40/94- Constitutional Court (CC) decision 117/00 – CC decision 67/01, 83/01 – OZ, 73/04 – ZN-C, 31/13 – CC decision 63/16 (hereinfter: SloIA).

experiencing difficulties in exercising their rights in the context of succession having cross-border implications.

How can the existence of a “cross-border element” be assessed?

In line with the substantive scope of application, the Succession Regulation No 650/2012 does not define the concept of a “cross-border element” when dealing with succession matters and its application and particularly, which circumstances a competent body of a Member State should take into account.

When assessing a “cross-border element” in the matters of succession in terms of the application of the Regulation, we should take into account all the circumstances of a case (the testator, the estate....), and in particular the fact that the assets are located in another EU Member State or in a third State.

As an example of a matter of succession with a “cross-border element”, it is necessary to explain a situation where the testator was the national of an EU Member State where his residence had been. His heirs are also nationals of the same Member State where they also reside and where some of the testator’s assets have remained, but at the same time also in another EU Member State (e.g. a savings account or a movable).

What issues does the scope of the Regulation cover?

By the Succession Regulation No 650/2012, the scope of application is provided for very broadly. It includes all civil-law aspects of succession to the estate of a deceased person, all forms of transfer of assets, rights and obligations by reason of death, whether by way of a voluntary transfer under a disposition of property upon death or a transfer through intestate succession (p. 9 of the Preamble to the Regulation).

What issues are excluded from the scope of the Regulation?

Point 11 of the Preamble to the Regulation lays down that it should apply only to succession and not to other civil-law areas. In addition, all public-law, revenue, customs or administrative matters are excluded from the substantive scope of application of the Regulation (Art. 1, para 1 of the Regulation).

In addition to revenue, customs and administrative public-law matters, the following is excluded from the scope of the Regulation:

- (a) the status of natural persons, as well as family relationships and relationships deemed by the law applicable to such relationships to have comparable effects;
- (b) legal and business capacity¹¹ of natural persons, with an exemption of a specific form of that capacity in the area of succession law;¹²
- (c) questions relating to disappearance, absence or presumed death of a natural person;
- (d) questions relating to matrimonial property regimes and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage;
- (e) maintenance obligations other than those arising by reason of death;
- (f) the formal validity of dispositions of property upon death made orally;¹³
- (g) property rights and assets created or transferred otherwise than by succession, for instance by way of gifts, joint ownership with a right of survivorship, pension plans, insurance contracts and arrangements of a similar nature, without encroaching upon the obligation to return or to compute the gifts, advance payments or entries when determining inheritance shares;
- (h) questions governed by the law of companies and other bodies, corporate or unincorporated, such as clauses in the memoranda of association and articles of association of companies and other bodies, corporate or unincorporated, which determine what will happen to the shares upon the death of the members;
- (i) the dissolution, extinction and merger of companies and other bodies, corporate or unincorporated;
- (j) the creation, administration and dissolution of funds (*trusts*);¹⁴
- (k) the nature of rights in rem; and
- (l) any recording of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register (Art. 1, p. 2(1) of the Regulation).

¹¹ In the official translation of the Regulation into Croatian, the term “legal capacity” is translated (only) as “legal capacity”. However, we do not deal here with “legal” but “business” capacity. See Aras Kramar 2018: 189.

¹² The Regulation thus applies to the capacity to inherit (Art. 23, para. 2 c), the capacity of a person disposing of property upon this person's death, and to particular causes which bar the person making the disposition from disposing in favour of certain persons, or which bar a person from receiving succession property from the person making the disposition.

¹³ The Regulation contains the provisions on the law which applies to the formal validity of disposition of property upon death. However, this pertains only to the dispositions made in writing (See Art. 27 of the Regulation).

¹⁴ Point 13 of the Preamble to the Regulation deals with a case of the creation of a fund by will or matrimonial succession. When a fund is created by will or intestate succession, the law applicable to succession under the Regulation applies to the devolution of the assets and determination of the beneficiaries.

Does the Regulation lay down the rules on the calculation and payment of the succession tax?

The Regulation does not apply to revenue or administrative matters of a public-law nature. Therefore, the national law should determine, for example, how taxes and other liabilities of a public-law nature are calculated and paid, whether these be taxes payable by the heir at the time of death or any type of succession-related expenses to be paid by the estate or the beneficiaries. The national law should also determine whether the release of succession property to beneficiaries under the Regulation or the recording of succession property in a register are subject to the payment of taxes (p. 10 of the Preamble to the Regulation).

- The empirical study conducted in Slovenia shows that practice related to succession tax, decided by the authority of another EU Member State, in accordance with the Regulation, is very diverse. It is recommended that in Slovenian regulations, the procedures should be prescribed to be dealt with by tax authorities before the enforcement of decisions or the European Certificates of Succession.

The question of the existence of matrimonial or other family relations is excluded from the scope of application of the Regulation (Art. 1, p.2(a) of the Regulation). What must be done if any of such questions appear in a concrete case before a competent authority of a Member State?

If any of these issues appear in any concrete case before a competent authority of a Member State, particularly in connection with the first line of succession, the competent authority will solve them in accordance with the rules on a preliminary question, by applying the conflict-of-law rules, *lex fori*, if these issues have not yet been harmonised within the territory of the EU (see Dutta 2013: 19; Popescu 2014: 12; Köhler 2016: 172-175; Aras Kramar 2018: 189-190).¹⁵

Therefore, the relationship between the Succession Regulation No 650/2012 and other secondary legislation of the EU is important:

- ❖ Council Regulation (EU) No 1259/2010 of 20 December 2010 on the implementation of enhanced cooperation in the area of the law applicable to divorce and the

¹⁵ In order to determine the law applicable to the area of divorce, the Council Regulation No 1259/2010 of 20 December 2010 on the implementation of enhanced cooperation in the area of the law applicable to divorce and legal separation were adopted (SL L 343, 29/12/2010, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010R1259&from=EN> (09/09/2019)).

termination of the life union, SL EU, L 343, 29/12/2010 – to determine the law applicable to divorce;

- ❖ Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, SL EU, L 338, 23/12/2003 – on applicable law and the issues of business capacity of children or representation restrictions regarding the holders of parental responsibility.

Relevant case law of the EU Court of Justice:

Case C-404/14 - the EU Court of Justice held that Regulation No 2201/2003 on matrimonial matters and the matters of parental responsibility must be interpreted in such a way that an approval of the agreement on a distribution of inheritance, made by a guardian on behalf of under-age descendants, is a measure to exercise parental responsibility pursuant to Article 1, para. 1, point (b) of the aforementioned Regulation and it, therefore, belongs to its scope of application and not the measure applied to succession in accordance with Article 1, para. 3, point f) of the mentioned Regulation.¹⁶

May the authority competent for ruling on succession in accordance with the Succession Regulation No 650/2012 also rule on the inclusion of the property acquired by the spouses to the estate of the surviving spouse?

The Succession Regulation No 650/2012 does not apply to questions relating to matrimonial property regimes of spouses and property regimes of relationships which, as known in some legal systems applied to them, have comparable effects to marriage. The competent authority dealing with succession under the Regulation, should take into account the winding-up of the matrimonial property regime of the spouses, or similar property regime of the deceased when determining the estate of the deceased and the respective inheritance shares (p. 12 of the Preamble to the Regulation). Questions relating to matrimonial regimes of spouses, or the property regimes of the relationships deemed to have comparable effects to marriage, will be solved as preliminary questions, based on the Council Regulation (EU) No 2016/1103 of 24 June 2016 on the implementation of enhanced cooperation in the area of jurisdiction, the applicable law and the recognition and enforcement of judgments in the area of property

¹⁶ Case No C-404/14, Matoušková, ecli: EU:C:2015, 653 of 6 October 2015, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=169198&pageIndex=0&doclang=HR&mode=lst&dir=oc=prvi&i dio=1&cid=12711558> (09/09/2019).

relations of spouses,¹⁷ based on the conflict-of-law rules of the cited Regulation between the EU Member States which participate in enhanced cooperation (see Aras Kramar 2018:190).¹⁸

In Article 4 of Regulation No 2016/1103 on matrimonial relations of spouses, it is set forth that if a court of an EU Member State institutes proceedings in a matter of succession upon their death based on the Succession Regulation (EU) No 650/2012, the courts of that Member State are competent to rule on the property relations of the spouses connected with that particular matter of succession.

Relevant case law of the EU Court of Justice:

Case C-558/16- the Court ruled the following: “Article 1 (1) of the Succession Regulation No 650/2012 of the European Parliament and the Council of 4 July 2012 on the jurisdiction, applicable law and the recognition and enforcement of judgments on the acceptance and enforcement of authentic instruments in the matters of succession and in the creation of the European Certificate of Succession, must be interpreted in such a way that its scope included the national provision, like the one in the proceedings as to the substance of the matter, which, upon death of one of the spouses, provides for a blanket equalisation of their common property by increasing the inherited share of the surviving spouse.”¹⁹ It follows from the cited explanation given by the Court, among other things, that the court, in the Member State agreeing to enhance the cooperation among EU Member States, in the matters involving the property of spouses, should take into account the common assets of the spouse, as well as the right of the surviving spouse to a corresponding share in inheritance proceedings. In conformity with the Regulation, the court should increase the estate of the spouses for the part ensuing from their common assets. Naturally, all heirs must agree to it (see Vodopija Čengić 2019: 11-12).

¹⁷ Council Regulation (EU) No 2016/1103 of 24 June 2016 on the implementation of increased cooperation in the area of jurisdiction, applicable law and recognition and enforcement of judgments in the area of matrimonial property matters, SL L 183, 08/07/2016, visit: http://eur-lex.europa.eu/pravni_sadrzaj/EN/TXT/HTML/?uri=CELEX:32016R1103&FROM=HR (09/09/2019) (HEREINAFTER: Regulation No 2016/1103 on matrimonial property).

¹⁸ EU Member States with enhanced cooperation, see Council Decision (EU) 2016/954 of 9 June 2016 providing for enhanced cooperation in the area of jurisdiction, applicable law and recognition and enforcement of judgments in the area of matrimonial property of international spouses, covering also matrimonial property regime and the consequences of registered partnerships, SL EU, L 159, 16/06/2016, visit: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?sati=CELEX:32016D0954> & from=HR (09/09/2019).

¹⁹ Case C-558/16, Mahnkopf, ECLI:EU:C:2018: 138, 1 March 2018, visit: <http://curi.jsf.europa.eu/juris/document.jsf?jsessionid=2A4D4467D7282E035290A04676BCF05E?Tekst=&docid=199805&pageIndex=0&doclang=SL&mode=1st&dir=&oc=first&part=1&cid=8038719> (09/09/2019).

Applications for any recording of rights in immovable or movable property in a register are excluded from the substantive scope of application of the Regulation (Art. 1, para. 2(l) of the Regulation).

In accordance with p. 18 of the Preamble to the Regulation, the law of the EU Member State in which the register is kept is competent to determine which authorities are in charge of the recording and all the requirements and procedures that must be carried out for the recordation. The effects of the recordation of a right in a register of declaratory or constitutive nature are excluded from the scope of the Succession Regulation No 650/2012 (p. 19 of the Preamble to the Regulation).

How should a Member State authority act if the law of that Member State does not know the right in rem relating to property located in that Member State, which right has been created or transferred to the beneficiaries by succession in other Member State

The Regulation does not affect the limited number (*numerus clausus*) of rights *in rem* known in the national law of some Member States. An EU Member State should not be required to recognise a right *in rem* relating to property located in its territory if that right *in rem* in question is not known in its law (p. 15 of the Preamble to the Regulation, Art. 1, para. 2(k) of the Regulation). However, in order to allow the beneficiaries to enjoy in another Member State the rights which have been created or transferred to them by succession, the Regulation should provide for the adaptation of an unknown right *in rem* to the closest equivalent right *in rem* under the law of that other Member State (p. 16 of the Preamble to the Regulation, Art. 31 of the Regulation; see also Köhler 2016: 180-182; Aras Kramar 2018: 189).

Relevant case law of the EU Court of Justice:

Case C-218/16 – the Court presented its interpretation of Art. 1, p. 2(k)(l) and Art. 31 of the Regulation on the nature of rights *in rem*, their adaptation and recording in the corresponding registers. The Court held that “Article 1, para. 2 (k) and (l) and Article 31 of the Regulation (EU) No 650/2012 of the European Parliament and the Council of 4 July 2012 on jurisdiction, applicable law and the recognition and enforcement of judgments and the acceptance and enforcement of authentic instruments in matters of succession, and on the implementation of the European Certificate on Succession, must be interpreted as being against a situation where the competent authority of a Member State rejects the recognition of material effects of a legacy ‘by vindication’ recognised by the law applied to succession which, according to Article 22, para. 1 of the Regulation, the testator has chosen, if such rejection is based on the

fact that the legacy concerns the right of ownership of immovable property located in the Member State in whose legislation the concept of legacies with direct material effect, when dealing with succession, is not known.”²⁰ If a right *in rem*, which by its nature and content is not known to the competent authority, appears in a case, information is available at the European portal e-Justice.²¹ The aim is to adapt that right *in rem* to the closest equivalent right *in rem*.

2. Territorial scope of application

The Succession Regulation No 650/2012 is applied in all EU Member States except in Denmark,²² the United Kingdom and Ireland (points 82 and 83 of the Preamble to the Regulation).²³

3. Temporal validity

The Succession Regulation No 650/2012 applies to the succession of persons who died on or after 17 August 2015 (Art. 83, para. 1 of the Regulation).

What happens if the testator had chosen the law that will be applied to succession or had made his will before 17 August 2015?

The Regulation expressly provides for cases where the deceased had chosen the law applicable to his succession and disposition of property and died prior to 17 August 2015.²⁴

If the deceased had chosen the law applicable to his succession prior to 17 August 2015, in conformity with Article 83, para. 2 of the Regulation, the choice will be valid if it meets the conditions laid down in Chapter III (Applicable law), or if it is valid in application of the rules of private international law which were in force at the time the choice was made, in the State in which the deceased had his habitual residence, or in any of the States whose nationality he possessed (Art. 83, para. 3 of the Regulation).

²⁰ Case C-218/16, Kubicka, ECLI:EU:C2017:755, 12/10/2017, visit: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=195430&pageIndex=0&doclang=SL&mode=lst&dir=&oc=prvi&i dio=1&cid=8040759> (09/09/2019).

²¹ European portal e-justice, visit: https://e-justice.europa.eu/content_adapting_rights_in_rem-486-en.do (09/09/2019).

²² A consolidated version of the Treaty on the Functioning of the European Union, Protocol (No 22) on the position of Denmark, SL EU, C 326, 26/10/2012, visit: <http://eur.lex.europa.eu/legal-content/EN/TEXT/churi=CELEX%3A12012E%2FPRO%2F22> (09/09/2019).

²³ A consolidated version of the Treaty on the Functioning of the European Union, Protocol (No 21) on the position of the United Kingdom and Ireland in the area of freedom, security and justice, S, EN EU, C 202 07/06/2016, visit: <http://eur-lex-europe.eu/legal-content/EN/TXT/?uri=CELEX%3a12016E%2FPRO%2F21> (09/09/2019).

²⁴ See Art. 83, paras 2, 3, 4 of the Regulation.

A disposition of property upon death made prior to 17 August 2015 is substantially and formally admissible and valid if it meets the conditions laid down in Chapter III, or if it is substantively and formally admissible and valid in application of the rules of private international law which were in force at the time the disposition was made, in the state in which the deceased had his habitual residence, or in any of the States whose nationality he possessed or in the Member State where the authority dealing with the succession is located.

If a disposition of property upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with the Regulation, that law is deemed to have been chosen as the law applicable to succession (Art. 83, para. 4 of the Regulation).

C. JURISDICTION

Chapter II of the Regulation provides for the jurisdiction as one of the most important concepts of private international law. The Regulation contains the rules for the establishment of general jurisdiction of the courts of EU Member States. Beside the provision on general jurisdiction, the Regulation also lays down a rule on the prorogation of jurisdiction, subsidiary jurisdiction and a provision on *forum necessitatis*. To prevent the adoption of incompatible decisions in various Member States, the Regulation also provides for the moment of the institution of the proceedings before the court and the proceedings in case of *lis pendens*.

1. The term “court” according to Art. 3, para. 2 of the Succession Regulation and the notaries

How is the term “court” defined pursuant to Art. 3, para. 2 of the Succession Regulation?

The Succession Regulation No 650/2012 takes into consideration the fact that different authorities in individual EU Member States are competent for matters of succession and it, therefore, gives a broad meaning to the term “court” to cover not only courts in true sense of the word, but also notaries or registry offices and all other bodies, as well as legal professionals who exercise judicial functions or operate by delegation of power by a judicial authority or under its control. All these other authorities and legal professionals must provide guarantees with regard to impartiality and the right of all parties to be heard and their decisions must be in line with the law of the Member State in which they operate: a) provided that their decisions may be made the subject of appeal to or review by a judicial authority and

b) provided that they have a similar force and effect as a decision of a judicial authority on the same matter (p. 20 of the Preamble to the Regulation, Art. 3, para. 2 of the Regulation).

Is the work of all notaries, who are competent for the matters of succession, in line with the Regulation?

The Succession Regulation should allow all notaries, who are competent for the matters of succession in the EU Member States, to exercise such competence. The validity of the rules on jurisdiction set out in the Regulation involving the notaries in a given Member State should depend on whether or not they are covered by the term “court” for the purposes of the Regulation. Documents issued by notaries in matters of succession in Member States should circulate in accordance with the Regulation. When notaries exercise judicial functions, they are subject to the rules of jurisdiction and the decisions they give must circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions.²⁵ When notaries do not exercise judicial functions, they are not bound by the rules of jurisdiction and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.²⁶ (points 21 and 22 of the Preamble to the Regulation).

The EU Member States had and still have an obligation to communicate to the Commission information on notaries, other authorities and legal professionals deemed to be “courts” in accordance with the Succession Regulation No 650/2012 (Arts 78 and 79 of the Regulation). A list of the authorities and legal professionals considered as “courts” in individual Member States can be found at: https://e-justice.europa.eu/content_succession-380-si-sl.do?init=true&member=1 (11/09/2019).

2. General jurisdiction

According to the Regulation, the courts having general jurisdiction in matters of succession are the courts of the Member State in which the deceased had his habitual residence at the time of death (Art. 4 of the Regulation). The connecting factor to establish general jurisdiction is thus the habitual residence of the deceased at the time of death.

²⁵ On recognition and enforcement of decisions on succession, see *infra* ad E.

²⁶ On rendering and applying authentic instruments see below under F.

What does the competent court of general jurisdiction decide on?

In accordance with the Regulation, the competent court decides on the entire succession, both in regard to movable and immovable property of the deceased, regardless of where it is located (in another EU Member State or in a third State).

How can habitual residence of the deceased at the time of death be established?

The connecting factor to determine the habitual residence is frequently applied in the European legislation because it should provide the existence of the real connection between an individual and the State where the jurisdiction is exercised (p. 23 of the Preamble to the Regulation). The Regulation also lays down the criteria for taking into account the “habitual residence” within the framework of the case law of the EU Court regarding this issue.²⁷

In accordance with p. 23 of the Preamble to the Regulation, the authority dealing with the succession should:

- ❖ make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all relevant factual elements, in particular the duration and regularity of the deceased’s presence in the State concerned and the conditions and reasons of that presence. When determining the habitual residence of an individual, the following should, for example, be taken into account: the family status and family relationships, the duration and continuity of his presence in the Member State concerned, his working situations (particularly the location where he usually worked), the duration of his housing situation, the State in which he was paying taxes, the reasons of moving elsewhere and, of course, other criteria which clearly point to the fact connected with his stay in a particular EU Member State;²⁸
- ❖ thus determined habitual residence should reveal a particularly close and stable connection with the State concerned, taking into account the specific aims of the Regulation.

²⁷ See, for instance, case C-523/07, A ECLI:EU:C:2009:225, 02 April 2009, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=73639&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=814531> (11/11/2019); Case C-497/10 PPU, *Mercredi v. Chaffee*, ECLI:EU:C:2010:819, 22 December 2010, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=83470&pageIndex=0&doclang=en&mode=lst&dir=&occ=prv> i dio=1&cid=814531 (11/11/2019).

²⁸ The Guidelines of the European Commission for the use of the “habitual residence”, 13 January 2014, http://europa-eu.rapid/press-release:IP-14-13_sl.htm (11/09/2019)

Complexity of the determination of habitual residence

“Habitual residence” is a fairly vague legal concept which leaves a significant room for the courts’ discretion in rendering their decisions (Dutta 2013: 14). In order to determine the habitual residence of the deceased as the general connecting factor (to determine the jurisdiction and the applicable law) may prove to be quite complex in certain cases as highlighted in point 24 of the Preamble to the Regulation where two such cases are identified:

- ❖ the deceased, for professional or economic reasons, had gone to work abroad, sometimes for a long time, but had maintained a close and stable connection with the State of origin.

In such a case, depending on the circumstances, the deceased could be considered still to have his habitual residence in his State of origin, in which the centre of interests of his family and his social life was located.

The results of the conducted empirical research show that the participants, in the research activities in Croatia and Slovenia, when thinking about the case of the deceased person who went abroad for economic reasons and kept a close connection with his country of origin, ascribed more weight, in the determination of the habitual residence, to the State in which the deceased had family and social connections.

- ❖ the deceased had lived in several States alternately, or travelled from one State to another without settling permanently in any of them.

If the deceased was a national of one of those States or had all his main assets in one of them, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances.

Although they had not come across with such cases in practice, the participants in the research in Croatia and Slovenia suggested additional examination of the circumstances, particularly where the deceased’s assets were located and what his nationality was.

Relevant case law of the EU Court of Justice:

Case (C-20/17 – the preliminary question was:” Is Article 4 of Regulation [No 650/2012] to be interpreted as meaning that it also determines exclusive international jurisdiction in respect of the granting, in the Member States, of national certificates of succession which have not been replaced by the European Certificate of Succession (see Article 62(3) of Regulation No 650/2012), with the result that divergent provisions adopted by national legislatures with regard to international jurisdiction in respect of the granting of national certificates of succession — such as Paragraph 105 of the [FamFG] in Germany — are ineffective on the ground that they infringe higher-ranking European law?” (p. 28 of the cited judgement of the EU Court). The EU Court took a stand that Article 4 of the Regulation (general jurisdiction) must be interpreted as confronting the legislation of the Member State, such as the one in the proceedings as to the substance of the matter, laying down that its courts, even if the deceased at the time of death had not had his habitual residence in that Member State, within the succession with cross-border consequences, continue to be competent for the issuance of national certificates on succession when the deceased’s assets are located in the territory of that Member State, or if the deceased had had the nationality of that Member State at the time of death (p. 60 of the cited judgment of the EU Court). Therefore, the provisions on jurisdiction referred to in Chapter II of the Regulation should provide for the issues of conducting succession proceedings with a cross-border element and for the issuance of national certificates of succession which in some Member States have not been replaced by a European Certificate of Succession. It is also necessary to take into consideration the questions of jurisdiction for the issuance of the ECS.²⁹

3. Choice-of-court agreement (prorogation of jurisdiction)

Is it possible to choose a court to rule on succession?

The parties may agree on the choice-of-court if the deceased had chosen the law to govern his succession upon death in accordance with Article 22 of the Regulation. If the deceased had chosen the law of the EU Member State whose nationality he had at the time of making the choice or at the time of death, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter (Art. 5, para. 1 of the Regulation).

²⁹ About the Certificate, see below under G.

Namely, the rules of the Succession Regulation 650/2012 are laid down in such a way that the authority, deciding on the succession, will in most cases apply its body of law (*lex fori*) (p. 27 of the Preamble to the Regulation). However, since pursuant to Article 22 of the Regulation, the deceased has a possibility of choosing the law of the State of his nationality to govern the succession as a whole, the Regulation also provides mechanisms for such situations based on the choice-of-law agreement (Arts 5-9 of the Regulation).

Therefore, the Regulation, beside the rule on general jurisdiction, also provides for the rule on the prorogation of jurisdiction. A prerequisite for its application is that the deceased had chosen the applicable law pursuant to Article 22 of the Regulation. In other words, the application of the provision on prorogation does not only depend on the choice-of-court agreement made by all the heirs but also on the previously expressed will of the deceased regarding the law to be applied (Popescu 2014:33).

Must all the heirs agree on the choice of the court?

The provision of Article 5 of the Regulation speaks about the “interested parties”, which makes a separate determination possible for every case depending on the question to which the choice-of-court agreement relates, namely, whether the agreement would have to be concluded between all parties concerned by the succession or whether some of them could agree to bring a specific issue before the chosen court in a situation where the decision by that court would not affect the rights of the other parties to the succession (p. 28 of the Preamble to the Regulation).

If not all the parties have made an agreement, what possibilities are there for the parties not having concluded an agreement?

The parties to the proceedings, who were not parties to the agreement, can expressly accept the jurisdiction of the court seised (Art. 7 (c) of the Regulation) or they can enter an appearance without contesting the jurisdiction of the court of the Member State whose law the deceased had chosen pursuant to Article 22. (Art. 9, para. 1 of the Regulation). In these cases that court will continue to exercise jurisdiction. The Regulation thus provides for an example of a explicit and a tacit acceptance of jurisdiction by engaging in the proceedings (Art. 7 (c) and 9 of the Regulation).

Alternatively, the parties to the proceedings who were not party to the agreement, may contest the jurisdiction of the court: in that case, the court will decline jurisdiction (Art. 9, para. 2 of the Regulation). The courts which have general jurisdiction (Art. 4 of the Regulation), or subsidiary jurisdiction (Art. 10 of the Regulation), will rule on the succession.

When is it possible to conclude a choice-of-court agreement?

An agreement on the choice of the court may be concluded after the opening of the succession, or even before it, if the deceased had chosen the applicable law (Popescu 2014:34).

What is the form in which a choice-of-court agreement must be made?

A choice-of-court agreement must be made in writing, dated and signed by the parties concerned (Art. 5, para. 2 of the Regulation). The Regulation lays down that any communication by electronic means which provides a durable record of the agreement, is deemed equivalent to an agreement made in writing (Art. 5, para. 2 of the Regulation). However, communication by electronic means must also be made in the prescribed form and must contain an electronic signature in order to be considered as equivalent (Popescu 2014: 34, 76).

What happens if the court which, under the Regulation, has jurisdiction pursuant to Article 4 (general jurisdiction) has already instituted the proceedings?

Article 6 of the Regulation lays down when the court, which has already instituted the proceedings based on general or subsidiary jurisdiction, may declare its lack of jurisdiction if the deceased, pursuant to Article 22 of the Regulation, had chosen the applicable law. In that case, the court before which the proceedings have been instituted, in accordance with the provision on general jurisdiction (Art. 4 of the Regulation), or the provision on subsidiary jurisdiction (Art. 10 of the Regulation)³⁰, do the following:

- ❖ on the request of one of the parties, **may** declare its lack of jurisdiction, if it holds that the courts of the Member State, whose law has been chosen, are more appropriate to rule on the succession based on its actual circumstances, e.g. where the parties' habitual residence is, or where the assets are located. We deal here with the court's

³⁰ On subsidiary jurisdiction see *infra ad C. 4*.

discretion that is close to the Anglo-Saxon legal tradition where an adjustment to the circumstances of a particular case is possible (Max Planck Institute 2010: 40).

- ❖ **declare** its lack of jurisdiction if the parties to the proceedings, in accordance with Article 5, agreed to confer jurisdiction to a court or the courts of a Member State whose law has been chosen. In that case, we deal with a mandatory decline of jurisdiction in favour of the courts of a Member State whose law had been chosen by the deceased if the parties agreed on the choice-of-court of that Member State.

In which cases there would be the jurisdiction of the courts of a Member State whose law the deceased had chosen pursuant to Article 22 of the Regulation?

To sum up, the Regulation provides for the jurisdiction of a court of a Member State whose law the deceased had chosen pursuant to Article 22 in the following cases:

- ❖ if the court, previously seised in accordance with Article 6 of the Regulation, has declined jurisdiction in the same case (Art. 7, para. 1 (a) of the Regulation);
- ❖ if the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of that Member State (Art. 7, para. 1 (b) of the Regulation);
- ❖ if the parties to the proceedings have expressly accepted the jurisdiction of the court seised (Art. 7, para. 1 (c) of the Regulation); or
- ❖ if the parties to the proceedings, who were not party to the agreement, enter an appearance without contesting the jurisdiction of the court (Art. 9, para. 1 of the Regulation).

4. Subsidiary jurisdiction

Beside the concept of general jurisdiction (Art. 4 of the Regulation) relating to the habitual residence of the deceased, the Regulation also provides for the subsidiary jurisdiction of the courts of Member States where the habitual residence of the deceased is not in any EU Member State at the time of death but in a third State.

What are the conditions for exercising subsidiary jurisdiction of the court of a Member State?

Subsidiary jurisdiction is exercised if assets of the estate are located in an EU Member State.

In Article 10 of the Regulation, the following conditions are referred to:

“(1) Where habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located nevertheless have jurisdiction to rule on the succession as a whole in so far as:

- (a) the deceased had the nationality of that Member State at the time of death; or failing that,
- (b) the deceased had his previous habitual residence in that Member State, provided that a period of not more than five years has elapsed since the change of that habitual residence.

(2) Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which assets of the estate are located, will nevertheless have jurisdiction to rule on those assets.”

In line with the 30th introductory provision of the Regulation, the criteria for subsidiary jurisdiction referred to in Article 10 are exhaustively listed in a hierarchical order and no other grounds for exercising subsidiary jurisdiction are possible.

The criteria referred to in Article 10 are also not of alternative nature but are specified according to their importance or hierarchy: priority is given to the courts of a Member State whose nationality the deceased had had at the time of death. Only if such a connecting factor does not exist, the courts of a Member State of the previous habitual residence are taken into account (p. 30 of the Preamble to the Regulation) (Art. 10, para. 1 of the Regulation; Popescu 2014: 36-37).

Subsidiary jurisdiction is subsidiary in relation to other jurisdictions laid down in the Regulation, including general jurisdiction: subsidiary jurisdiction may be taken into account only if general jurisdiction cannot be exercised in any EU Member State and the last habitual residence had been in a State which is not a Member State of the European Union.

Does subsidiary jurisdiction apply to the whole estate of the deceased?

Where the jurisdiction of the courts of a Member State is exercised on the basis of the circumstance that in that Member State the assets of the estate are located and the deceased had been its national at the time of death, or (if this has not been fulfilled), the deceased had had his previous habitual residence in it (provided that from the change of habitual residence until the court is seised, a period of not more than five years has elapsed), the jurisdiction is

also extended to the estate located in the territory of another Member State or in the territory of the so-called third State (Art. 10, para. 1 of the Regulation; Popescu 2014:37).

If the deceased was not a national of a Member State, or did not have his previous habitual residence in a Member State but the assets of the estate are located in that Member State, the subsidiary jurisdiction of the court of the Member State refers only to the assets of the estate located in the Member State concerned (Art. 10, para. 2 of the Regulation; Popescu 2014: 37). In practice, it can happen that separate inheritance proceedings may be conducted before the authorities of EU Member States for the estate located in their territory.

5. *Forum necessitatis*

The provision of Article 11 provides for *forum necessitatis* to avoid situations of denial of court protection, so that a court of a Member State may, on an exceptional basis, rule on a succession closely connected with a third State.

When can forum necessitatis be established?

In accordance with the Regulation, the courts of a Member State may on an exceptional basis rule on the succession if:

- ❖ no court of a Member State has jurisdiction under any other provisions of the Regulation (Art. 11 para. 1 of the Regulation);
- ❖ if in a third State, with which the case is closely connected, the proceedings cannot reasonably be brought or conducted or would be impossible in a third State (Art. 11, para. 2 of the Regulation);
- ❖ the case must have a sufficient connection with the Member State of the court seised (Art. 11, para. 2 of the Regulation).

What circumstances may prevent the proceedings conducted in a third State?

Forum necessitatis is applied in exceptional cases:

- ❖ when the proceedings are absolutely impossible, for instance, where there are circumstances of a non-legal character, such as natural catastrophes, epidemics, wars and armed conflicts (Popescu: 38); or

- ❖ when there are some relative circumstances where a beneficiary cannot reasonably be expected to initiate or conduct proceedings in that State (p. 31 of the Preamble to the Regulation).

How can the requirement of sufficient connection with the Member State of the court seised be interpreted?

The requirement of sufficient connection with the Member State of the court seised (Art. 11, para. 2 of the Regulation) could be met by the nationality of the deceased or by his previous habitual residence (but this is not a situation of a subsidiary jurisdiction pursuant to Article 10 of the Regulation because there is no estate in that Member State) (Popescu 2014: 38).

6. Other rules

6.1. Limitation of proceedings

On the request of one of the parties, the court may decide not to rule on one or several parts of the assets located in a third State if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State (Art. 12, para. 1 of the Regulation). On the principle of unity of the estate see *infra ad D.1*.

6.2. Acceptance or waiver of the succession, of a legacy or of a reserved share

One of the aims of the Regulation is to simplify the lives of heirs and legatees who do not live in the Member State where the proceedings are conducted (p. 32 of the Preamble to the Regulation). The Regulation makes it possible for them, in accordance with the law applied to succession, to make different declarations, e.g. concerning the acceptance or waiver of the succession, a legacy or a reserved share, or a declaration on the limitation of their responsibility for the obligations arising from the estate before the court of their habitual residence. The court must accept such declarations if under the public order of that Member State, it is possible to make them before the court (p. 13 of the Regulation).

On the applicable law under which the validity of the form of a declaration concerning the acceptance or waiver of the succession, a legacy or a reserved share, or a declaration whose aim is to limit the responsibility of a person making a declaration, see *infra ad D.5.2*.

6.3. Seising of a court

The aim of the Regulation is to prevent the adoption of incompatible decisions in various EU Member States. The provisions of Article 14 of the Regulation, providing for the moment when a court is deemed to be seised:

- (a) when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the defendant;
 - (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take in order to have the document lodged with the court; or
 - (c) if the proceedings have been opened at the court's own motion, at the time when the decision to open the proceedings has been taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.
- It is necessary to consider the establishment of a special register at the EU level where the institution of succession proceedings and all the important circumstances during the proceedings would be registered (as well as the application, issuance and other circumstances connected with the European Certificate of Succession).
 - The authorities of Member States competent for acting in conformity with the Regulation would have access to the Register.
 - Regardless of the establishment of a Register at the EU level (until the final goal is achieved), the establishment of a similar register for the countries, partners in the project (Croatia and Slovenia), should be considered.

6.4. Examination as to jurisdiction

Where a court of a Member State is seised of a succession matter over which it has no jurisdiction under this Regulation, it must declare of its own motion that it has no jurisdiction (Art. 15 of the Regulation).

6.5. Examination as to admissibility

The Regulation provides for the possibility that a defendant, who does not have a habitual residence in the Member State in which the proceedings against him are conducted, to take part in the proceedings.³¹

Where an interested party (habitually resident in a State other than the Member State where the action was brought) does not enter an appearance, the court having jurisdiction will stay the proceedings until the following is shown:

- ❖ that the interested party has been able to receive the document instituting the proceedings or an equivalent document, that the interested party was able to arrange for his defence, or that all the necessary steps have been taken (Art. 16, para. 1 of the Regulation).

The rules of service

When it is necessary, in accordance with the Regulation, to send a document on the institution of the proceedings, or an equivalent document, from one Member State to another, Article 19 of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service of judicial and extrajudicial documents in civil and commercial matters in the Member States is applied instead of Article 16, para. 1.³²

Where it is not possible to act in accordance with this Regulation, Article 15 of the Hague Convention of 15 November 1965 on the service of judicial and extrajudicial documents in civil and commercial matters abroad is applied.³³

³¹ It must be said here that the provisions of Article 16 of the Regulation are drawn up to follow civil proceedings, without taking into consideration the fact that in the case of succession, we deal with non-contentious proceedings in which more parties take part. Instead of the term “defendant”, we should use the term “interested party.”

³² Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents) and repealing Council Regulation No 1348/2000, SL EU, L 324, 10/12/2007, <https://eur.lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32007R1393&from=en> (11/09/2019) (hereinafter: Regulation (EC) No 1393/2007 on the service of documents).

³³ The Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil and commercial matters, [https://www.hcch.net/en/instruments/conventions/full-text/?cid=17\(11/09/2019](https://www.hcch.net/en/instruments/conventions/full-text/?cid=17(11/09/2019) (hereinafter: HK of 1965 on the service to the rest of the world).

6.6. *Lis pendens*

The provision of Article 17 of the Regulation on *lis pendens* is used to avoid irreconcilable decisions which applies if the same succession case is brought before different courts in different Member States. The rule will then determine which court should proceed to deal with the succession case (p. 35 of the Preamble to the Regulation).

- ❖ Where proceedings involving the same cause of action and between the same parties are brought before the courts of different Member States, any court other than the court first seised will of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established (Art. 17, para. 1 of the Regulation).
- ❖ Where the jurisdiction of the court first seised is established, any court other than the court first seised will decline jurisdiction in favour of that court.

Due to the fact that in some Member States, succession cases are dealt with by extrajudicial bodies – such as the notaries in some Member States – which do not meet the criteria laid down in the Regulation concerning the term “court” and which, therefore, are not governed by the rules on jurisdiction established in the Regulation,³⁴ it cannot be excluded that, in connection with the same succession case in various Member States, the procedure for an amicable out-of-court settlement and court proceedings, or two amicable out-of-court settlements may be initiated in parallel in different Member States.

- In such a situation, the parties to the proceedings should agree among themselves how to proceed once they have become aware of the parallel proceedings. If they cannot agree, the succession would have to be dealt with and decided upon by the courts having jurisdiction under the Regulation (p. 36 of the Preamble to the Regulation).

6.7. Related actions

Related actions are deemed to be very closely connected so that to hear and determine them together is expedient to avoid the risk of irreconcilable decisions arising from separate proceedings (Art. 18, para. 3 of the Regulation)

³⁴ See *supra ad C.1* on the term “court” under the Regulation.

Where related actions are pending before the courts of different Member States, any court other than the court first seised may stay its proceedings (Art. 18, para. 1 of the Regulation).

6.8. Provisional, including protective measures

Courts may order provisional measures on the basis of *lex fori*, including protective measures available under the law of the Member State, even if, under the Regulation, the courts of another EU Member State have jurisdiction as to the substance of the matter (Art. 19 of the Regulation).

D. APPLICABLE LAW

1. The principle of the unity of the estate

Taking into consideration the fact that in the conflict-of-law rules of Member States, there are no uniform positions regarding movable and immovable property, the principle of unity of the estate is the most important achievement of the European legislator (Popescu 2014: 39; Dutta 2013: 14).

Dual aspects of the unity of estate

- “For reasons of legal certainty and to avoid the fragmentation of the succession”, the law closely connected with succession should “govern the succession as a whole, that is, all of the property forming part of the estate, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State” (p. 37 Preamble to the Regulation).
- “The rules of the Regulation are devised so as to ensure that the authority dealing with the succession will, in most cases, apply its own law.” (*lex fori*).

Therefore, the Regulation includes a dual aspect of “the unity of the estate”: the application of a body of law, regardless of the nature of assets forming the estate and regardless of its location, and at the same time also the connection between the law governing the succession and the court (i.e. the authority) competent to decide on the succession. In accordance with Articles 4 and 21, para. 1 of the Regulation, this unity rests on the habitual residence of the deceased at the time of death.

Are there any exceptions to the principle of the unity of the estate?

- ❖ At the request of one of the parties, the court seised will decide not to rule on one or more of such assets if it may be expected that its decision in respect of those assets will not be recognised and, where applicable, declared enforceable in that third State (Art. 12, para. 1 of the Regulation).

The application of the rule on the limitation of proceedings or exception of the assets located in a third State is possible on the assumption that the court decision will not be recognised and enforceable because it is otherwise subject to the basic principle that in the succession proceedings under the Regulation, the whole succession is taken care of, including the assets located in a third State.

During the empirical research in Slovenia, an opinion was expressed that ruling on the property of the deceased, residing in a third State, may be problematic because the parties have no guarantee that a decision on succession in a third State has been enforced.

- ❖ The principle of deciding on the whole estate in individual cases will not prevail if, in accordance with the Regulation, the law of a third State is applied (Art. 20 of the Regulation), whose conflict-of-law rules, in a part of the assets constituting the estate, refer to the law of another State.
- ❖ The application of special rules *lex rei sitae* concerning the succession in respect of certain assets constituting the estate, or where the law of the State in which certain immovable property, enterprises or other special categories of assets are located contains special rules which, for economic, family or social considerations, impose restrictions concerning or affecting the succession, those special rules apply to succession in so far as, under the law of that State, they are applicable irrespective of the law applicable to the succession (Art. 30 of the Regulation).

2. The scope of the applicable law

In accordance with the principle of the unity of the estate, Article 23, para. 1 of the Regulation lays down that the law established pursuant to Article 21 (general rule) or Article 22 (the law chosen by the deceased), provides for the whole succession upon death. That law will also

determine who the beneficiaries are in any give succession – heirs, legatees and persons entitled to a reserved share (p. 47 of the Preamble to the Regulation).

According to the Regulation, may as the applicable the law of a third State be applied?

Article 20 of the Regulation provides for the principle of universal application: any law specified by the Regulation will apply whether or not it is the law of a Member State. Indeed, the Regulation does not give priority to the law of Member States and it can also be the law of a third State, as long as it is, according to the rule of the Regulation, closely connected with the succession case.

To which questions will the applicable law respond?

The applicable law should regulate succession from the institution of the proceedings to the transfer of ownership over the assets constituting the estate to the beneficiaries established by law. The questions concerning the administration of the estate and the responsibility for the deceased's debts should also be taken care of (p. 42 of the Preamble to the Regulation).

The list is very extensive but not exhaustive, which means that other legal issues may be taken into account provided for by the law specified in the Regulation.

According to Article 23, para. 2 of the Regulation, the applicable law governs in particular:

- (a) the causes, time and place of the opening of the succession;
- (b) the determination of the beneficiaries, of their respective shares and the obligations which may be imposed on them by the deceased, and the determination of other succession rights, including the succession rights of the surviving spouse or partner;
- (c) the capacity to inherit;
- (d) disinheritance and disqualification by conduct;
- (e) the transfer to the heirs and, as the case may be, to the legatees of the assets, rights and obligations forming part of the estate, including the conditions and effects of the acceptance or waiver of the succession or of a legacy;
- (f) the powers of the heirs, the executors of the wills and other administrators of the estate, in particular as regards the sale of property and the payment of creditors, without prejudice to the powers referred to in Article 29, paras 2 and 3;

- (g) liability for the debts under the succession;
- (h) 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 of the heirs;
- (i) any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries; and
- (j) the sharing-out of the estate.

3. General rule and the possibility of deviating from it

The general connecting factor to determine the applicable law is the habitual residence of the deceased at the time of death, as well as with regard to a determination of jurisdiction:

“Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death” (Art. 21, para. 1 of the Regulation).

The concept of habitual residence in individual cases leaves significant discretion to the authorities but in practice, the determination of the habitual residence of the deceased may be quite complex (see *supra ad C. 2*).

What deviations from the general rule are possible?

The Regulation lays down a clause according to which a deviation from the general rule is possible and it may exceptionally be applied in individual cases where the deceased, at the time of death, was “manifestly more closely connected” with a State other than the State whose law would be applicable in accordance with Article 21, para. 2. In such cases, the law applicable to succession is the law of that other State (Art. 21, para. 2 of the Regulation).

The cited provision, among other things, makes it possible for the authority to apply foreign law with which the deceased had been more closely connected and, at the same time, it does not affect the jurisdiction connected with the last habitual residence of the deceased (Dutta 2013:14).

Which circumstances may cause a deviation from the general rule?

The provision of Article 21, para. 2 does not provide any details about the circumstances which may lead to a deviation from the general rule. However, it arises from the introductory provisions of the Regulation that the European legislator did take into account situations where all the elements concerning the succession were in a particular State (the assets, the heirs, and perhaps even the deceased himself was the national of that State) at the same time when the previous habitual residence of the deceased still existed. The last habitual residence was registered fairly recently before his death (p. 25 of the Preamble to the Regulation).

In the 25th introductory provision to the Regulation, it is laid down that “the authority dealing with the succession may in exceptional cases – where, for instance, the deceased had moved to the State of his habitual residence fairly recently before his death and all the circumstances of the case indicate that that he was manifestly more closely connected with another State – arrive at the conclusion that the law applicable to the succession should not be the law of the State of the habitual residence of the deceased but rather the law of the State with which the deceased was manifestly more closely connected”.

In point 25 of the Preamble to the Regulation, it is also set forth that the manifestly closest connection should not be resorted to as a subsidiary connecting factor whenever the determination of the habitual residence of the deceased at the time of death proves complex. Moreover, the manifestly closest connection with a State other than the State of the last habitual residence arises precisely from “all the circumstances of the case” and at the same time, there must be a closer connection with another State and not with several (other) States (Popescu 2014: 41).

4. Choice of law

The possibility of choosing the law to be applied to succession is provided for in Article 22 of the Regulation. According to this Article, the deceased may choose as the law to govern his succession as a whole the law of the State whose nationality he possessed at the time of making the choice or at the time of death to (Art. 22, para. 1 of the Regulation). A person possessing multiple nationalities may choose the law of any of the States whose nationality he possessed at the time of making the choice or at the time of death (Art. 22, para. 1 of the Regulation).

Which law may be chosen by the deceased?

The autonomy of the choice is limited to the law of the State whose nationality the deceased possessed at the time of making the choice or at the time of death. This provides for the connection between the deceased and the chosen law. At the same time, the choice must be limited to the law of a State of their nationality to ensure a connection between the deceased and the law chosen. This limitation prevents a situation where the choice-of-law would only be intended to avoid legitimate expectations of persons entitled to a reserved share (p. 38 of the Preamble to the Regulation).

The choice of a body of law and the principle of universal application

The deceased may choose only one body of law which then governs the succession as a whole upon his death, as well as all the matters connected with it, including who are the heirs and who is entitled to a reserved share (Art. 23, para. 1 to the Regulation). The choice also excludes the possibility of applying the law of the State where the last habitual residence of the deceased had been (general rule). Even in the case of the choice-of-law, the principle of universal application referred to in Article 20 of the Regulation is in force. According to this principle, the deceased who is the national of the so-called third State, may choose the law of that State (Vassilakakis 2016: 223-224).

How can the connection between the chosen body of law and the jurisdiction of the court applying it be re-established?

The choice of law may lead to a disassociation between the jurisdiction and the applicable law. The Regulation is meant to achieve that the authority dealing with the succession, in most cases, applies its own law (*lex fori*). Therefore, it provides for a series of mechanisms which would come into play where the deceased had chosen, as the law to govern his succession, the law of a Member State of which he was a national. (p. 27 of the Preamble to the Regulation) The connection between the law and the jurisdiction can be re-established under the condition that the deceased had chosen the law of Member State.

Namely, in that case, the parties (the heirs) concerned may agree that a court of the Member State, whose law the deceased had chosen (Art. 5 of the Regulation) has exclusive jurisdiction to rule on any succession matter. The Regulation also provides for the possibility that the parties to the proceedings, expressly or tacitly, accept the jurisdiction of the court seised (Art. 7, c) and Art. 9 of the Regulation). Where the deceased had chosen the law of the so-called

third State, the connection between the law and the jurisdiction is not possible because the Regulation may not have any impact on the international jurisdiction of such third States bound by their own rules. On the prorogation of jurisdiction under the jurisdiction see *supra ad C.3*.

How can the deceased choose a body of law?

The deceased must expressly state the choice-of-law in a declaration given in the form of a disposition of property upon death, or the choice must clearly and indisputably ensue from the provisions of such disposition (Art. 22, para. 2 of the Regulation). The substantive validity of the document, whereby the choice of the law was made by the deceased, will be governed by the chosen law.

Any modification or revocation of the choice of law must meet the requirements as to the form for the modification or revocation of a disposition of property upon death (Art. 22, para. 4 of the Regulation).

The results of the conducted empirical research show that the participants in the research conducted in Croatia and Slovenia have hardly had any experience with the choice-of-court agreements applied in the context of the application of the Regulation, it being an interesting indicator of the situation in practice. However, some judges in Slovenia expressed their concern regarding the application of a foreign body of law, particularly in terms of how to appropriately determine its content.

5. Special conflict-of-law rules

The general conflict-of-law rule which, under the Regulation, is the last habitual residence of the deceased (if he failed to choose the law), cannot provide an answer to all the questions regarding succession. Specific connecting factors are necessary for an answer to individual aspects of the law on succession (Dutta 2013: 15).

5.1. Disposition of property upon death and agreements as to succession

In order to ensure the legal certainty of persons wishing to plan their succession in advance, the Regulation should lay down a specific conflict-of-laws rule concerning the admissibility and substantive validity of dispositions of property upon death (p. 48 of the Preamble to the Regulation). In order to make it easier for succession rights acquired, as the result of an

agreement as to succession, to be accepted in the Member States, the Regulation should determine which law is to govern the admissibility of such agreements, their substantive validity and their binding effects for the parties, including the conditions for their dissolution. Namely, the admissibility and acceptance of an agreement as to succession vary among the EU Member States (p. 49 of the Preamble to the Regulation).

Which law regulates the admissibility and substantive validity of a disposition upon death?

- ❖ Dispositions upon death which are not agreements as to succession: admissibility and substantive validity of a disposition upon death other than an agreement as to succession is governed by the law which, under the Regulation, would have been applicable to the succession of the person who had disposed of the property if he/she died on the day when the disposition was made (Art. 24, para. 1 of the Regulation).
- ❖ Agreements as to succession of one person: admissibility and substantive validity of an agreement as to succession regarding the succession of a person and its binding effects for the parties, including the conditions for its dissolution, are governed by the law which, under the Regulation, would have been applicable to the succession of that person had he died on the day on which the agreement was concluded (Art. 25, para. 1 of the Regulation);
- ❖ An agreement as to succession regarding the succession of several persons shall be admissible only if it is admissible under all the laws which, under this Regulation, would have governed the succession of all the persons involved if they had died on the day on which the agreement was concluded. An agreement as to succession which is admissible pursuant to the first subparagraph shall be governed, as regards its substantive validity and its binding effects between the parties, including the conditions for its dissolution, by the law, from among those referred to in the first subparagraph, with which it has the closest connection. concluded (Art. 25, para. 2 of the Regulation)

In both cases, the Regulation protects the autonomy of the person making the disposition and the parties to the agreement as to succession because they can choose the law which the person, or one of the persons whose estate is involved, could have chosen in accordance with Article 22 of the Regulation (Art. 24, para. 2 and 25, para. 3 of the Regulation).³⁵

³⁵ On the choice of the applicable law see *supra ad D.5*.

What are the elements of substantive validity of the disposition of property upon death?

In order to ensure a uniform application of specific rules, the Regulation provides elements which pertain to substantive validity of disposition upon death, including the agreement as to succession (Art. 26 of the Regulation).

The examination of the substantive validity of a disposition of property upon death may lead to the conclusion that that disposition is invalid (p. 48 of the Preamble to the Regulation). The following elements pertain to substantive validity:

- (a) the capacity of the person making the disposition of property upon death to make such a disposition;
- (b) the particular causes which bar the person making the disposition from disposing in favour of certain persons or which bar a person from receiving succession property from the person making the disposition;
- (c) the admissibility of representation for the purposes of making a disposition of property upon death;
- (d) the interpretation of the disposition;
- (e) fraud, duress, mistake and any other questions relating to the consent or intention of the person making the disposition.

Which law must dispositions of property upon death, made in writing, comply with?

Article 27 lays down the rules on the disposition of property upon death, made in writing. A disposition of property upon death made in writing is valid regarding its form if it complies with the law:

- (a) of the State in which the disposition was made or the agreement as to succession concluded;
- (b) of a State whose nationality the testator, or at least one of the persons whose succession is concerned by an agreement as to succession, possessed, either at the time when the disposition was made or the agreement concluded, or at the time of death;
- (c) of a State in which the testator, or at least one of the persons whose succession is concerned by an agreement as to succession, had his domicile, either at the time

when the disposition was made or the agreement concluded, or at the time of death;

- (d) of the State in which the testator, or at least one of the persons whose succession is concerned by an agreement as to succession had his habitual residence, either at the time when the disposition was made or the agreement concluded, or at the time of death; or
- (e) in so far as immovable property is concerned, of the State in which the property is located.

5.2. Validity as to form of a declaration concerning acceptance or waiver of the succession, a legacy or a reserved share

The Regulation provides for the law to accept the validity of declarations concerning the acceptance or waiver of the succession, of a legacy, or of a reserved share, or of declarations concerning the limitation of the liability of the person making the declaration (Art. 28 of the Regulation). These declarations are valid if their form meets the requirements of:

- (a) the law applicable to the succession pursuant to Article 21 of the Regulation (general rule) or the law chosen by the testator (Art. 22 of the Regulation), or
- (b) the law of the State in which the person making the declaration has his habitual residence.

See *supra ad C. 6.2.* on the jurisdiction of the court for making a declaration of the acceptance or waiver of the succession, a legacy or a reserved share.

5.3. Special rules on the appointment and powers of an administrator of the estate in certain situations

Article 29 of the Regulation lays down the rules on the appointment of an administrator where it is mandatory or mandatory upon request under the law of the Member State whose courts have jurisdiction to rule on the succession pursuant to the Regulation and the law applicable to the succession is a foreign law. The courts of that Member State may, when seised, appoint one or more administrators of the estate under their own law, subject to the conditions laid down in Article 29.

If the law applicable to succession does not give the administrator sufficient powers, the competent court may order additional measures based on its law (*lex fori*) if this is necessary to achieve the goal. Such additional powers may include, for instance, establishing a list of the assets of the estate and the debts under the succession, informing creditors of the opening of the succession and inviting them to make their claims known, and taking any provisional, including protective measures intended to preserve the assets of the estate (p. 44 of the Preamble to the Regulation).

5.4. Special rules imposing restrictions concerning or affecting the succession in respect of certain assets

Certain immovable property, certain enterprises or other special categories of assets, for economic, family or social considerations, are subjects to special rules in the Member State where they are located and some restrictions are imposed by that Member State concerning or affecting succession of those assets.

Under what conditions may these special rules be applied?

If the law of the State where certain immovable property, certain enterprises or other special categories of assets are located contains special rules which, for economic, family or social considerations, impose restrictions concerning or affecting the succession in respect of those assets, those special rules apply to the succession in so far as, under the law of that State (*lex rei sitae*), they are applicable irrespective of the law applicable to the succession. (Art. 30 of the Regulation).

The Regulation takes into account these special rules, *lex rei sitae*. However, p. 54 of the Preamble to the Regulation must be mentioned here, where it is laid down that this exception to the application of the law applicable to succession requires a strict interpretation so it remains compatible with the general goal of the Regulation.

Therefore, neither the conflict-of-law rules subjecting the immovable property to a law different from that applicable to movable property nor the provisions providing for a reserved share of the estate greater than that provided for in the law applicable to succession under the

Regulation, may be regarded as valid for special rules imposing restrictions concerning or affecting the succession of certain assets (p. 54 of the Preamble to the Regulation).

5.5. Adaptation of rights *in rem*

This Regulation is not intended to affect the rules of the rights *in rem* of individual EU Member States. Namely, p. 15 of its Preamble lays down that the Regulation “should not affect the limited number (*numerus clausus*) of rights *in rem* known in the national law of some Member States.” Therefore, “when a person invokes a right *in rem* to which he/she is entitled under the law applicable to succession and the law of the Member State in which the right is invoked does not know the right *in rem* in question, that right will, if necessary and to the extent possible, be adapted to the closest equivalent right *in rem* under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* and the effects attached to it” (Art. 31 of the Regulation).

On the adaptation of the rights *in rem* in the context of the Judgment of the EU Court, see *supra ad B.1.*

5.6. Commorientes

Where two or more persons whose successions are governed by different laws die in circumstances in which it is uncertain in what order their deaths occurred, Member States provide differently for such a situation. In cross-border cases, when the succession of those persons are governed by different bodies of law and the laws provide differently in such situations, or make no provision for it at all, none of the deceased persons will have any rights to the succession of the other or others (Art. 32 of the Regulation).

5.7. Estate without a claimant

To the extent that there is no heir or legatee, Article 33 of the Regulation allows a Member State or an entity, appointed for that purpose by Member States, to appropriate the assets of the estate located in its territory provided that the applicable law (*lex fori*) does not exclude such a possibility. However, this is possible under the condition that the creditors are entitled to seek satisfaction of their claims out of the assets of the estate as a whole.

5.8. *Renvoi*

The application of the law of any third States specified in the Regulation means the application of the rules of the law in force in that State, including the rules of private international law. If these rules envisage a *renvoi* to the law of a Member State or the law of a third State which would apply its own law to succession, such a *renvoi* should be accepted for the reasons of the international compatibility.

When is a renvoi not possible?

Renvoi should be excluded if the testator had chosen the law of a third State (p. 57 of the Preamble to the Regulation; Art. 34 of the Regulation). Namely, if that was the case, the application of conflict-of-law rules would affect the earlier decision of the parties and would thus constitute a violation of the principle of predictability (Vassilakakis 2016: 229).

5.9. Public policy (*ordre public*)

Pursuant to Article 35 of the Regulation, the application of a provision of the law of any State specified by the Regulation “may be refused only if such application is manifestly incompatible with the public policy of the forum”.

The courts or other competent authorities should not be able to apply the public-policy exception in order to set aside the law of another State or to refuse to recognise it or, as the case may be, accept or enforce a decision, an authentic instrument or a court settlement issued in another Member State when doing so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination (p. 58 of the Preamble to the Regulation).

5.10. States with more than one legal system

Where the rules specified by the Regulation refer to the application of the law of a State with more than one legal system, Article 36 provides that the relevant law is determined on the basis of internal conflict-of-law rules of that State. In the absence of such internal conflict-of-law rules, Article 36, para. 2 of the Regulation lays down the rules on how the reference to the law of the State is interpreted.

Where the law applied to succession knows the conflict-of-law rules applicable to different categories of persons, any reference to the law of that State will be construed as referring to the system of law, or a set of rules determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the deceased had the closest connection will apply (Art. 37 of the Regulation).

A Member State which comprises several territorial units each of which has its own rules of law in respect of succession will not be required to apply the Succession Regulation to conflicts of laws arising between such territorial units only (Art. 38 of the Regulation).

E. RECOGNITION AND ENFORCEMENT OF DECISIONS IN MATTERS OF SUCCESSION

1. Recognition of decisions on succession

The Regulation provides for simplified exequatur proceedings and it makes a distinction between recognition and enforcement of a decision in a matter of succession. A decision given in an EU Member State is recognised in other Member States without any special procedure being required (Art. 39, para. 1 of the Regulation).

What if someone does not want to recognise a decision rendered by a court of another EU Member State?

Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the Regulation, apply for that decision to be recognised (Art. 39, para. 2 of the Regulation). The recognition of a decision on succession may be decided upon as a preliminary question if the outcome of the proceedings in a court of an EU Member State depends on the recognition of a decision on succession (Art. 39, para. 3 of the Regulation).

To what kind of decisions does the Regulation apply?

- ❖ In the Regulation, the term “decision” means any decision in a matter of succession given by a court of a Member State, irrespective of what it may be called and whether they were given in contentious or non-contentious proceedings (p. 59 of the Preamble of the Regulation), including a decision on the determination of costs or expenses by an officer of the court (Art. 3, para. 1 (g) of the Regulation).

First, it must be a decision given within the scope of application of the Regulation (Art. 1 of the Regulation). On the scope of the Regulation see *supra ad B*.

Second, it must be a decision of a ‘court’ of a Member State (Art. 3, para. 2 of the Regulation). The term ‘Member State’ is used to cover all Member States of the European Union excluding Denmark, the United Kingdom and Ireland.

- ❖ If it were a decision outside the scope of the Regulation, or a decision of a court of a State where the Regulation is not binding, other regulations may apply (if they exist in the area), or the national law of the respective State.

Which authority is deemed to be a ‘court’ within the application of the rule on recognition, enforceability and enforcement of decisions in matters of succession?

The Regulation takes into account the circumstance that in individual Member States, different authorities have jurisdiction in the matters of succession and therefore, the term “court” is given a very broad meaning:

- ❖ it covers not only courts in the true sense of the word but also the notaries or registry offices, as well as all other authorities and legal professionals with competence in the matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:
 - (a) may be made the subject of an appeal to or review by a judicial authority; and
 - (b) have a similar force and effect as a decision of a judicial authority on the same matter (p. 20 of the Preamble to the Regulation, Art. 3, para. 2 of the Regulation).³⁶

Are notaries considered to be a ‘court’ within the application of the rule on recognition, enforceability and enforcement of decisions in matters of succession?

The Regulation allows all notaries, who have competence in the matters of succession in EU Member States to exercise such competence. When notaries exercise judicial functions

³⁶ For the list of authorities and legal professionals deemed to be ‘courts’ in individual Member States visit: https://e-justice.europa.eu/content_succession-380-hr.do?clang=hr (15/11/2019). Note: for detailed information on a particular Member State choose the corresponding flag on the given web page.

pursuant to Art. 3, para. 2 of the Regulation, they are bound by the rules of jurisdiction of the Regulation, and the decisions they give should circulate in accordance with the provisions of the Regulation on recognition, enforceability and enforcement of decisions. When notaries do not exercise judicial functions pursuant to Art. 3, para. 2 of the Regulation, they are not bound by the rules of jurisdiction of the Regulation, and the authentic instruments they issue should circulate in accordance with the provisions of the Regulation on recognition and enforceability of authentic instruments. On recognition and enforceability of authentic instruments, see *infra ad F*.

2. Member State of Origin

A ‘Member State of origin’ means the Member State in which the decision has been given, the court settlement approved or concluded, the authentic instrument established, or the European Certificate of Succession issued (Art. 3, para. 1(e) of the Regulation).

3. Member State of Enforcement

A ‘Member State of enforcement’ means the Member State in which the declaration of enforceability or the enforcement of the decision, court settlement or an authentic instrument is sought (Art. 3, para 1 (f) of the Regulation).

4. Grounds for non-recognition of a decision on succession

A decision on recognition will not be recognised if any of the grounds for non-recognition prescribed in the provisions of Article 40 of the Regulation exist:

- (a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought.

What does the concept of public policy (ordre public) include?

Although the concept of public policy and the values it includes differ from Member State to Member State, it must include a common basis of fundamental human rights and the European law principles contained, among other documents, in the EU Charter of Fundamental Rights, particularly in the provisions of Article 21 on the prohibition of any form of discrimination.³⁷ However, it must be noted that it is prohibited to review a decision

³⁷ Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth,

given in another Member State as to its substance (Art. 41 of the Regulation) even when its determination is manifestly different from the one according to the law of the Member State of recognition or acceptance. The European Court has expressly preserved the possibility of control of the boundaries of the application of the public policy mechanism by Member States although it may be questionable to what extent the Court may control the application of this mechanism (Case no C-7/98: *Dieter Krombach v André Bamberski*: points 23 and 37;³⁸ Case no C-38/98: *Renault SA v Maxicar SpA and Orazio Formento*: t. 27 *et seq.*;³⁹ comp. Köhler 2016: 187; comp. Popescu 2014:98).

- (b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, complying with the provisions of the Regulation (EC) No 1393/2007 on service of documents and the Hague Convention of 1965 on the service of documents abroad, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so.

How is the concept of “default of appearance” interpreted?

Taking into consideration “default of appearance” as a ground for non-recognition, it must be said that both the grounds for non-recognition and the proceedings of declaring enforceability are conceived bearing in mind contentious, contradictory proceedings, i.e. losing sight of the fact that succession proceedings are non-contentious proceedings where most frequently several parties take part. Instead of the term “defendant”, it would be more appropriate to talk about the “interested party” (comp. Dutta 2013: 19-20; see Aras Kramar 2018: 193).

“Default of appearance” must be interpreted in the context of the case law of the EU Court regarding, in the first place, the Brussels Convention/Regulation of the Council (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of

disability, age or sexual orientation shall be prohibited (Art. 21, para. 1 of the EU Charter on Fundamental Rights). Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited (Art. 21, para. 2 of the EU Charter of Fundamental Rights).

³⁸ Case C-7/98, *Dieter Krombach v André Bamberski*, ECLI:EU:C:2000:164, of 28 March 2000, <https://eur-lex.europa.eu/legal-content/HR/ALL/?uri=CELEX:61998CJ0007> (12/09/2019).

³⁹ Case C-38/98, *Renault SA v Maxicar SpA and Orazio Formento*, ECLI:EU:C:2000:225, of 11 May 2000, https://eur-lex.europa.eu/legal-content/HR/ALL/?uri=CELEX%3A61998CJ0038_SUM (12/09/2019).

judgments in civil and commercial matters⁴⁰ (see case C-474/93, *Hengst Import BV v Anna Maria Campese*⁴¹).

- (c) if the decision is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought.

How is the concept of “irreconcilable decisions” interpreted?

The Regulation contains the provisions on an “irreconcilable decision”, as a ground for non-recognition, inspired by the principle of *res iudicata*. The concept of “irreconcilable decisions” must be interpreted in the light of the case law of the EU Court as decisions encompassing mutually excluding legal consequences (Case C-145/86: *Horst Ludwig Martin Hoffman v Adelheid Krieg*: p. 22;⁴² Case C-80/00: *Italian Leather SpA v WECO Polstermöbel GmbH & Co.*: p. 40⁴³). Taking into account Article 17 of the Regulation on the principle of *lis pendens* and the obligation to stay the proceedings *ex officio*, until the jurisdiction of the court of the Member State first seised is established, it is unlikely that two (irreconcilable) decisions between the same parties in Member States would exist.

What happens if a decision, whose recognition is sought, is irreconcilable with the decision given in the Member State where recognition is sought?

If a decision whose recognition is sought is irreconcilable with the decision given in the Member State where recognition is sought, the Regulation gives priority to the decision on succession rendered in the Member State of recognition regardless of whether that decision is given earlier than the decision in the Member State where recognition is sought (see Popescu 2014:99).

- (d) if a decision is irreconcilable with an earlier decision given in another Member State, or in a third State, in proceedings involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

⁴⁰ SL EU, L 12, 16/01/2001, <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A32001R0044> (12/09/2019).

⁴¹ Case C-474/93, *Hengst Import BV v Anna Maria Campese*, ECLI:EU:C:1995:243, of 13 July 1995, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61993CJ0474> (12/09/2019).

⁴² Case C-145/86, *Horst Ludwig Martin Hoffman v Adelheid Krieg*, ECLI:EU:C:1988:61, of 4 February 1988, <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A61986CJ0145> (12/09/2019).

⁴³ Case C-80/00, *Italian Leather SpA v WECO Polstermöbel GmbH & Co.*, ECLI:EU:C:2002:342, of 6 June 2002, <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62000CJ0080> (12/09/2019).

What happens if an earlier decision on succession given in another Member State or in a third State is irreconcilable with the decision on succession whose recognition is sought?

In this case of “irreconcilability” of two decisions, the decision whose recognition is sought is irreconcilable with an earlier decision given in another Member State (not the one where recognition is sought) or in a third State and the same cause of action and the same parties must be involved. Here, the Regulation provides for the principle according to which priority is given to the earlier decision provided that the earlier decision meets the prescribed conditions for recognition in the EU Member State where the recognition is sought. Therefore, it is not necessary that the earlier decision has (already) been recognised in the Member State in which recognition is sought (see Popescu 2014:99).

How does the court watch for the grounds of non-recognition of a decision on succession and how important are other grounds such as those concerning the lack of jurisdiction of a court of the Member State of origin of the decision?

The court does not *ex officio* observe the grounds for non-recognition of a decision on succession. Other grounds, such as the lack of jurisdiction of a court of the Member State of origin of the decision, are not taken into consideration.

5. Staying the proceedings of recognition of a decision on succession

A court of the Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary legal remedy against the decision has been lodged in the Member State of origin (Art. 42 of the Regulation). The court of a Member State in which recognition of a decision is sought has a certain level of discretion (“*may stay*”) when assessing the appropriateness of the measure, different from the case where the proceedings of declaring enforceability of a decision on succession is pending (see Art. 53 of the Regulation).

6. Proceedings for declaring enforceability of a decision on succession

Decisions given in a Member State and enforceable in that State are also enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there (Art. 43 of the Regulation). It must be noted that the Succession Regulation contains a provision on the application for enforceability of a decision on succession but not its finality (Popescu 2014:114). The procedure for declaring enforceability

of a decision on succession is governed by the law of the Member State of enforcement (Art. 46, para. 1 of the Regulation).

What happens if a decision on succession must be enforced in several EU Member States?

If it is necessary to enforce a decision on succession in several Member States, appropriate proceedings of enforcement must be declared in each of them.

Must the applicant have a postal address or an authorised representative in the EU Member State of enforcement?

The applicant does not need to have a postal address or an authorised representative in the EU Member State of enforcement (Art. 46, para. 2 of the Regulation).

7. Jurisdiction of local courts

To which authority must an application for a declaration of enforceability of a decision on succession be submitted?

A declaration of enforceability of a decision on succession must be submitted to the court or competent authority of the EU Member State of enforcement communicated to the Commission by that Member State in accordance with Article 78 of the Regulation (Art. 45, para. 1 of the Regulation).⁴⁴ The local jurisdiction is determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement (Art. 45, para. 2 of the Regulation). The court of the Member State of enforcement before which the proceedings have been instituted must apply its national law to determine whether, for the purposes of the procedure to declare enforceability of the decisions, the party's domicile is in that Member State (Arts 45-58 of the Regulation) (Art. 44 of the Regulation).

Which authority is competent for the application for a declaration of enforceability of a decision on succession in Croatian and Slovenian bodies of law?

In Croatia, the municipal court rules on the application for recognition or enforceability of a decision on succession (and authentic instruments and court settlements) (Art. 4, paras 1 and 2 of the Act on the Implementation of the Regulation).

⁴⁴ For more data on the competent courts or authorities visit: https://e-justice.europa.eu/content_succession-380-hr.do?clang=hr (15/11/2019). Note: for detailed information on individual Member States select the appropriate flag on the given web page.

Under the Slovenian Inheritance Act, an application for a declaration of enforceability of a decision, an authentic instrument or a court settlement given or concluded in another Member State and enforceable in that State must be submitted to the County Court (*okrožno sodišče*) that has territorial jurisdiction in accordance with Article 45 of the Regulation (Art. 227 h), para. 1 of the Slovenian IA).

8. Application for a declaration of enforceability of a decision on succession

What must an application for a declaration of enforceability of a decision on the succession contain?

An application for a declaration of enforceability of a decision on succession must be accompanied by a copy of the decision which satisfies the conditions necessary to establish its authenticity and an attestation issued by the court or competent authority of the Member State of origin using the form that is a component part of the Implementing Regulation No 1329/2014 (Art. 46, para. 3 of the Regulation).⁴⁵ Taking into consideration the observed differences in the forms written in various languages, when filling them in, attention must be paid to their versions in other languages in order to better understand how they must be filled in.

The Regulation provides for the cases where an attestation of a decision on succession is not submitted (Art. 47, para. 1 of the Regulation). Therefore, the submission of an attestation by filling in the European form is optional (*Aras Kramar* 2018:193). If an attestation of a decision on succession made by using the form which is a component part of the Implementing Regulation No 1329/2014 is not submitted, the competent court or authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production (Art. 47, para. 1 of the Regulation).

If the court of competent authority so requires, a translation of the documents must be produced. The translation must be done by a person qualified to do translations in one of the EU Member States (Art. 47, para. 2 of the Regulation).

In the context of the Regulation, no legalisation or other similar formality is required in respect of documents issued in a Member State (Art. 74 of the Regulation).

⁴⁵ See Annex 1 of the Implementing Regulation No 1329/2014.

In the context of the Regulation, which authority is competent for the issuance of an attestation of a decision on succession according to Croatian law?

In the **Republic of Croatia**, the competent bodies for the issuance of an attestation of a decision on succession are the Municipal Court ruling in the first instance, or the notary who has rendered a decision on the application for an attestation (Art. 5, para. 1 of the Act on the Implementation of the Regulation). If the notary finds that not all the prerequisites for an attestation have been met, the application, together with the authentic instrument and the case file are submitted to the Municipal Court in whose territorial jurisdiction the notary's seat is located. The notary is bound to explain in writing why he/she considers that not all the prerequisites have been met for the issuance of an attestation and inform the applicant that the case has been submitted to the Court (Art. 5, para. 3 of the Act on the Implementation of the Regulation). A decision of the Municipal Court dismissing or rejecting the application for the issuance of an attestation may be appealed before the County Court (Art. 5, para. 4 of the Act on the Implementation of the Regulation).

In the context of the Regulation, which authority is competent for the issuance of an attestation of a decision on succession according to Slovenian law?

In the **Republic of Slovenia**, for the issuance of an attestation of a decision on succession for the purpose of recognition or declaration of enforceability in another Member State, the Court of Inheritance has jurisdiction (Art. 227 k) Slo IA). The SloIA does not directly provide for the subject-matter jurisdiction but it is provided for in Article 99 of the Courts Act,⁴⁶ pursuant to which municipal courts (*okrajna sodišča*) have jurisdiction for matters of succession.

9. Decision on the application for a declaration of enforceability of a decision on succession

What do the proceedings for a declaration of enforceability of a decision on succession consist of?

A decision on succession is declared enforceable without delay, immediately upon the completion of the formalities provided for in the Regulation (Art. 46, Art. 48 of the Regulation). The first stage of the proceedings are non-contentious. In the proceedings of declaring enforceability of a decision, the grounds for non-recognition are not examined and

⁴⁶ *Zakon o sodiščih*, Uradni list RS, No 94/07 – uradno prečiščeno besedilo, 45/08, 96/09, 86/10 – ZJNepS, 33/11, 75/12 – ZSPDLS-A, 63/13, 17/15, 23/17 – ZSSve in 22/18 – ZSICT (hereinafter: SloCA).

the party against whom enforcement is sought will not, at this stage of the proceedings, be entitled to file any complaints or submissions (Art. 48 of the Regulation).

The decision on the application for a declaration of enforceability will immediately be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement (Art. 49, para. 1 of the Regulation). The declaration of enforceability will be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party (Art. 49, para. 2 of the Regulation). At this stage, the proceedings for a declaration of enforceability become contradictory.

Is it possible to declare the enforceability of a part of a decision on succession?

The Regulation also contains the provisions on the enforceability of a part of a decision on succession (Art. 55 of the Regulation). If by a decision on succession it has been decided in respect of several matters, and the declaration of enforceability cannot be given for all of them, the competent court or authority declare the enforceability of a decision on succession for one or more such matters (Art. 55, para. 1 of the Regulation). Indeed, an applicant for a declaration of the enforceability of a decision on succession may request that a declaration of enforceability is limited to some parts of the decision on succession (Art. 55, para. 2 of the Regulation).

10. Legal remedy against a decision on the application for a declaration of the enforceability of a decision on succession

May a party lodge a legal remedy (an appeal) against a decision on the declaration of enforceability of a decision on succession?

After the decision on a declaration of enforceability has been served on the parties, either party may lodge an appeal against the decision (Art. 50, para. 1 of the Regulation). The appeal is lodged with the court of the EU Member State of enforcement communicated by the Member State concerned to the Commission in accordance with Article 78 of the Regulation (Art. 50, para. 2 of the Regulation)⁴⁷

A time limit of 30 days of the service of the decision is laid down in the Regulation for an appeal, and if the party against whom enforcement is sought is domiciled in a Member State

⁴⁷ For more data on competent courts visit: https://e-justice.europa.eu/content_succession-380-hr.do?clang=hr (15/11/2019). Note: for detailed information on a particular Member State, select the appropriate flag on the given web page.

other than that in which the declaration of enforceability was serviced either on him in person, or at his residence. No extension may be granted on account of distance. (Art. 50, para. 5 of the Regulation).

Does a legal remedy (an appeal) against a decision on the declaration of enforceability of a decision on succession have a suspensive effect?

A legal remedy against a decision on the declaration of enforceability of a decision on succession has a suspensive effect and until the time for its lodging has expired, and a decision is rendered upon this legal remedy, no measures of enforcement may be taken, other than protective measures against the property of the party against whom enforcement of a decision is sought (Art. 54, para. 3 of the Regulation).

In the context of the Regulation, which court has jurisdiction to rule on appeals against a decision on the declaration of enforceability of a decision on succession in Croatian law?

According to Croatian Act on the Implementation of the Regulation, a decision on dismissal or rejection of the application may be appealed before the county court (Art. 4, para. 3, Act on the Implementation of the Regulation). The counterparty may lodge a complaint against a decision accepting the application within 30 or 60 days in accordance with Article 50, para. 5 of the Regulation. The municipal court which has rendered the decision rules on the complaint (Art. 4, para. 4 of the Act on the Implementation of the Regulation). Before rendering a decision on the complaint, the counterparty and the applicant must be heard. The summons for the hearing must be serviced on the applicant together with the counterparty's complaint (Art. 4, para. 5 of the Act on the Implementation of the Regulation). The decision on the counterparty's complaint may be appealed before the county court (Art. 4, para. 6 of the Act on the Implementation of the Regulation).

In the context of the Regulation, which court has jurisdiction to rule on objections against a decision on the enforceability of a decision on succession in Slovenian law?

According to Slovenian IA, the court which has rendered a decision on the declaration of enforceability (a county court with territorial jurisdiction) rules on objections against the decision on the declaration of enforceability in accordance with Article 50 of the Regulation in the panel of three judges (Art. 227 i), para. 1 SloIA). The Slovenian IA does not expressly prescribe the time limit for lodging an objection against the decision on the declaration of enforceability but refers to Article 50 of the Regulation which, among other things, prescribes

also the deadline. In addition, the Slovenian Inheritance Act sets forth the time limit for an answer on objection being 30 days of service thereof. In the third paragraph of Article 227 i) of the Slovenian Inheritance Act, it is set forth that the court decides on objection following the hearing if the decision on objection depends on disputable facts. Furthermore, SloZN allows an appeal against the decision by which the district court decides on the objection. A party may file an appeal against the decision on the objection within 30 days of service of the decision (Article 227 j, paragraph 2 of the SloZN), and the Supreme Court of the Republic of Slovenia shall decide on the appeal (Art. 227 j, paragraph 3 of the ZD).

What do the proceedings on appeal according to the Regulation consist of?

The appeal is dealt with the rules governing procedure in contradictory matters (Art. 50, para. 3 of the Regulation). If the party against whom enforcement is sought fails to appear before the appellate court in the proceedings concerning an appeal brought by the appellant, the provisions of Article 16 of the Regulation apply even where the party against whom enforcement is sought is not domiciled in any of the EU Member States (Art. 50, para. 4 of the Regulation).

Pursuant to Article 16, para. 1 of the Regulation, if a defendant is habitually resident in a State other than the Member State where the action has been brought, does not enter an appearance, the court having jurisdiction will stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in time to arrange for his defence, or that all necessary steps have been taken to that end. The cited provisions of the Regulation will not apply if the document instituting the proceedings or an equivalent document must be transmitted from one Member State to another. In that case, the provisions of Article 19 of the Regulation (EC) No 1393/2007 on the service of documents apply (Art. 16, para. 2 of the Regulation). If the provisions of the Regulation (EC) No 1393/2007 on the service of documents are not applicable and a document on the institution of the proceedings, or an equivalent document must be sent abroad, Article 15 of the Hague Convention of 1965 on the service abroad applies (Art. 16, para. 3 of the Regulation).

The decision on appeal may be contested only by the procedure communicated by the EU Member State concerned to the Commission in accordance with Article 78 of the Regulation (Art. 51 of the Regulation).⁴⁸

Upon the appeal lodged, the court will refuse the application for a declaration of enforceability, or revoke the decision on enforceability only on the grounds specified in Article 40 of the Regulation (grounds of non-recognition; Art. 52, sent. 1 of the Regulation). The decision on appeal must be given without delay (Art. 52, sent. 2 of the Regulation).

Which body of law governs the enforcement of a decision on the succession of another EU Member State?

The enforcement of a decision on succession is governed in accordance with the national rules of the Member State of enforcement.

11. Staying the proceedings of enforcement of a decision on succession

The court of an EU Member State before which the proceedings on appeal against a decision on the application for a declaration of enforceability of a decision on succession are ongoing (Art. 50 of the Regulation), or the proceedings to challenge the decision given on appeal (Art. 51 of the Regulation) will, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal (Art. 53 of the Regulation).

12. Provisional and temporary measures

May the applicant of a declaration of enforceability of a decision on succession request provisional measures?

To secure the claim, the applicant may always request provisional measures, including protective measures, in accordance with the law of the Member State of enforcement, even if a declaration of enforceability of a decision on succession has not been required (Art. 54, para. 1 of the Regulation). Determination of provisional, including protective measures is conditioned neither by a previous application for a declaration of enforceability of a decision on succession nor by the court's assessment whether in the case at hand the conditions for the recognition of the decision on succession have been met. In the absence of the corresponding

⁴⁸ For more data on the procedure of challenging the decision on appeal visit: https://e-justice.europa.eu/content_succession-380-hr.do?clang=hr (15/11/2019). Note: for more detailed information regarding individual Member States select the corresponding flag on the given web page.

provisions of the Regulation, the questions of the court's jurisdiction to order provisional measures, and the types, conditions and procedures for their determination, the national law of the EU Member State concerned will apply.

May protective measures be taken during proceedings for a declaration of enforceability of a decision on succession?

The declaration of enforceability of a decision on succession includes, *ex lege*, the power to take protective measures (Art. 54, para. 2 of the Regulation). During the time for appealing against a decision on the application for a determination of enforceability of a decision on succession, and until the decision on appeal is rendered (Art. 50, para. 5 of the Regulation), protective measures may be taken against the property of the party against whom enforcement is sought (Art. 54, para. 3 of the Regulation).

13. Costs of the proceedings and free legal aid

The Succession Regulation contains provisions on the prohibition of requesting security, bond or deposit, regardless of their description, on the ground that the party seeking recognition, a declaration of enforceability, or enforcement of a decision on succession given in another Member State, on the ground that he/she is not domiciled or resident in the Member State of enforcement (Art. 57 of the Regulation).

No charges, duties or fees calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement during the proceedings for a declaration of enforceability of a decision on succession (Art. 58 of the Regulation).

Is the applicant of a declaration of enforceability of a decision on succession entitled to free legal aid?

The right to free legal aid is one of the general principles provided for in Article 47 of the EU Charter on Fundamental Rights. An applicant of a declaration of enforceability of a decision on succession who, in the Member State of origin, has benefited from complete or partial legal aid, or exemption from costs or expenses, is entitled, in any proceedings for a declaration of enforceability, to benefit from the most extensive legal aid or exemption from the costs or expenses provided for by the law of the Member State of enforcement (Art. 56 of the Regulation).

According to the Regulation, a distinction must be made between the applicant having been granted free legal aid in the Member State of origin and where this has not been the case:

- ❖ If the applicant has been granted free legal aid in the Member State of origin, the principle of recognition refers not only to a foreign decision on succession but also to legal aid, so that the court of the Member State of enforcement cannot re-examine property or other conditions for the entitlement to legal aid (see also Popescu 2014: 117). Since the scope of legal aid differs from State to State, the applicant is guaranteed “the most extensive scope” of legal aid. However, in the context of the principle of efficient legal protection, the court of the Member State of enforcement is authorised to carry out an overall assessment of the need for free legal aid (see also Popescu 2014:117).
- ❖ The circumstance that the applicant has not been granted free legal aid in the Member State of origin, is not an obstacle for him to seek it in the Member State of enforcement, in accordance with its national law.

F. ACCEPTANCE AND ENFORCEMENT OF AUTHENTIC DOCUMENTS AND COURT SETTLEMENTS IN MATTERS OF SUCCESSION

1. Acceptance of authentic instruments in matters of succession

In order to respect various systems of dealing with the matters of succession in the EU Member States, the Regulation also deals with public/authentic instruments⁴⁹ like, for example, the agreements between the parties on the distribution of the estate, wills and agreements as to succession.

- ❖ a special value of the Regulation lies in equalisation of authentic instruments drawn up in another Member State with those of the Member States of acceptance.

2. An authentic instrument in matters of succession

What is understood under the concept of an ‘authentic instrument’ in the context of the Regulation?

The Regulation contains an autonomous definition of the concept of an authentic instrument.

⁴⁹ In the official Croatian translation of the Regulation both the concept of public and authentic instruments are used (see points 58-66 of the Preamble to the Regulation). Visit: <https://eur-lex-auropa.eu/legal-content/HR/TXT/HTML/?uri=CELEX:32012R0650&from=EN> (05/09/2019).

- ❖ An ‘authentic instrument’ means a document in a matter of succession which has been formally drawn up or registered as an authentic instrument in an EU Member State and whose authenticity⁵⁰ relates to the signature and the content of the authentic instrument and which has been established by a public authority or other authority empowered for that purpose by the Member State of origin (Art. 3, para. 1 (i) of the Regulation). The authenticity of an authentic instrument must not be confused with the substantive validity of an act as a legal transaction.

3. Evidentiary force of an authentic instrument in matters of succession

What evidentiary effects does an authentic instrument have in another EU Member State?

An authentic instrument drawn up in an EU Member State has the same evidentiary effects in another EU Member State as in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy in the Member State where the acceptance of that instrument is sought (Art. 59, para. 1, sent. 1 of the Regulation).

When establishing the evidentiary effects of an authentic instrument in another Member State, the nature and the extent of evidentiary effects of this authentic instrument in the Member State of origin must be taken into account. If in the law of the Member State of origin, the evidentiary effects of an authentic instrument are prescribed that it does not have under the law of the Member State of acceptance, and Article 59, para. 1, sent. 1 alternatively refers to “the most comparable effect” the authentic instrument can have, the authentic instrument must not be ascribed stronger effects than the ones envisaged in the law of the Member State where its acceptance is sought (comp. Dutta 2013:20.).

How can the evidentiary effects of an authentic instrument drawn up in an EU Member State be described or established (in Croatia)?

A person who wants to use an authentic instrument in another Member State may request, from the body issuing an authentic instrument in the Member State of origin, a form to be filled in describing the evidentiary effects of the authentic instrument in the Member State of

⁵⁰ In the official Croatian translation of the Regulation, the concept of “authenticity” of an authentic instrument is used (see p. 62 of the Preamble to the Regulation, Art. 3, para. 1 (i), Art. 59, para. 2, sent. 1 of the Regulation). Visit: <https://eur-lex.europa.eu/legal-content/HR/TXT/HTML/?uri=CELEX:32012R0650&from=EN> (05/09/2019).

origin, which is a component part of the Implementing Regulation No 1329/2014 (Art. 59, para. 1, sent. 2 of the Regulation).⁵¹

An example of evidentiary effects of an authentic instrument drawn up in a Member State (in Croatia)

Under Croatian law, a document issued in the prescribed form by a state authority within the limits of its competence, and a document issued in such a form by a legal or natural person in the course of executing its authority, assigned to it by law or a regulation based on the law (a public document), is proof of the truth of what it certifies or regulates. At the same time, it is admissible to prove that facts in public documents are false or that the document has been improperly composed (Art. 230 of the Civil Procedure Act⁵²).

The described evidentiary effects of an authentic document in Croatian law, in accordance with Article 59, para. 1 of the Regulation, extend to other Member States, and its content may be described by using the prescribed form which is a component part of the Implementing Regulation No 1329/2014 (Art. 59, para. 1, sent. 2 of the Regulation).⁵³

An example of what is contrary to public policy of the Member State of acceptance (Croatia)

When establishing the evidentiary effects of an authentic instrument in another Member State, the nature and the scope of evidentiary effects of the authentic instrument in the Member State of origin must be taken into account. In the Croatian procedural law, the rule on evidentiary effects of public documents by which something is proven is *praesumptio iuris tantum*, and it is admissible to prove that facts in a public document are false or that it has been incorrectly composed (Art. 230, para. 3 of the CPA). If in a hypothetical example, facts have been incorrectly established in an authentic instrument of another Member State and according to procedural law of that Member State of origin of the instrument, the evidentiary effects of the authentic instrument certifying something, cannot be contested, the acceptance of such an instrument should be refused because it is contrary to the public policy of the Member State

⁵¹ See Annex 2 of the Implementing Regulation No 1329/2014, particularly p. 4 of Form II (Annex 2) of the Implementing Regulation No 1329/2014.

⁵² Civil Procedure Act of the Republic of Croatia, Official Gazette SFRJ, No 4/77 – 35/91; Official Gazette of RoC, Nos 26/91, 53/91, 91/92, 112/99, 88/01 – see Art. 50 of the Arbitration Act, Nos 117/03, 88/05 – see Art. 129 of the Act on Amendments to the Enforcement Act, 2/07 – see Decision CCRoC of 20 December 2006, 84/08, 96/08 – see Decision of the CCRoC of 9 July 2008, 123/08 – correction, 57/11, 148/11 – consolidated text, 25/13, 89/14 – see Decision of the CCRoC of 11 July 2014, 70/19.

⁵³ See Annex 2 of the Implementing Regulation No 1329/2014, particularly p. 4 of the Form II (Annex 2) of the Implementing Regulation No 1329/2014.

of its acceptance (Croatia). Namely, in this hypothetical example, the judge cannot be expected to base his/her decision on wrongly established facts (comp. also Dutta 2013:20).

4. Denying the authenticity of an authentic instrument in matters of succession

The authenticity⁵⁴ of an authentic instrument may be challenged only before the courts of the Member State of origin and in accordance with the law of that Member State (Art. 59, para. 2, sent. 1 of the Regulation). An authentic instrument, challenged in the Member State of origin, does not produce any evidentiary effects in another Member State as long as the challenge is pending before the competent court (Art. 59, para. 2, sent. 2 of the Regulation). An authentic instrument which has been declared invalid as a result of a challenge must cease to produce any evidentiary effects (p. 65 of the Preamble to the Regulation).

What does the concept of “authenticity” of an instrument include?

The term “authenticity” is an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up (p. 62 of the Preamble to the Regulation). The concept should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated in the instruments (p. 62 of the Preamble to the Regulation).

5. Challenging legal acts or legal relationships recorded in an authentic instrument in matters of succession

What is understood under the expression ‘challenging legal acts or legal relationships recorded in an authentic instrument’?

We must make a distinction between challenging the authenticity of an authentic instrument and challenging legal acts (e.g. agreements on the sharing-out or the distribution of the estate, or wills or agreements as to succession), or legal relationships (e.g. determination of the heirs, their respective shares, or other elements established under the law applicable to the

⁵⁴ In the official Croatian translation of the Regulation No 650/2012, the term “authenticity” of an authentic instrument is used (see p. 62 of the Preamble to the Regulation, Art. 3, para. 1 (i), Art. 59, para. 2, sent. 1 of the Regulation). See <https://eur-lex.europa.eu/legal-content/HR/TXT/HTML/?uri=CELEX:32012R0650&from=EN> (05/09/2019).

succession) recorded in an authentic instrument (p. 63 of the Preamble to the Regulation, Art. 59, para. 3 of the Regulation).

Before which Member State's authorities may legal acts or relationships recorded in an authentic instrument be challenged?

Legal acts or relationships recorded in an authentic instrument can be challenged before the courts having jurisdiction or bodies under the Regulation and under the law applicable pursuant to Chapter III of the Regulation (Art. 59, para. 3, sent. 1 of the Regulation). If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as a preliminary question in proceedings before a court of (another) Member State, that court should have jurisdiction over that question (p. 64 of the Preamble to the Regulation, Art. 59, para. 4 of the Regulation). Regarding the object of challenge (a legal act or a legal relationship), the authentic instrument challenged does not produce any evidentiary effects in another Member State as long as the challenge is pending before the competent court (Art. 59, para. 3, sent. 2 of the Regulation).

6. Declaration of enforceability of an authentic instrument in matters of succession

Regarding the declaration of enforceability of an authentic instrument, the Regulation lays down the application of the same system established for decisions on succession (Art. 60, Arts 45 - 58 of the Regulation). See *supra ad E*.

- ❖ Some particularities exist in relation to the grounds for challenging a decision on the application for a declaration of enforceability of an authentic instrument and they consist of the provision that it is possible only if enforcement of an authentic instrument is manifestly contrary to public policy (*ordre public*) in the Member State of enforcement (Art. 60, para. 3 of the Regulation).
- ❖ Other grounds, such as the violation of the right of the interested party to be heard, or the lack of jurisdiction of the authority of the Member State of origin, are not taken into account (Art. 60, para. 3 of the Regulation).

What must an application for the declaration of enforceability of an authentic instrument contain?

An application for a declaration of enforceability of an authentic instrument in the matters of succession is accompanied by a copy of the authentic instrument satisfying the conditions

necessary to establish its authenticity and an attestation issued by the competent authority of the Member State of origin which has drawn up the authentic instrument on the request of any interested party, using the form which is a component part of the Implementing Regulation No 1329/2014 (Art. 60, para. 2 in connection with Art. 46, para. 3 of the Regulation).⁵⁵ Taking into consideration the observed differences in the forms written in various languages, when filling them in, attention must be paid to their versions in other languages in order to better understand how they must be filled in.

The Regulation expressly lays down the cases where the attestation of a decision on succession (Art. 47, para. 1 of the Regulation) is not produced (Art. 47, para. 1 of the Regulation) and the same applies to a declaration of enforceability of an authentic instrument (Art. 60, para. 1 of the Regulation). Therefore, the production of an attestation using the European form is optional. If the attestation of a decision on succession or of an authentic instrument using the form which is a component part of the Implementing Regulation No 1329/2014 is not produced, the court having jurisdiction, or the competent authority, may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information, it may free the party from its production (Art. 47, para. 1 of the Regulation).

If the court or competent authority so requires, a translation of the documents must be produced and the translation must be done by a person qualified to do translations in one of the EU Member States (Art. 47, para. 2 of the Regulation).

No legalisation or other similar formality is required in respect of documents issued in a Member State in the context of the Regulation (Art. 74 of the Regulation).

Which authority, under Croatian law, is competent for the issuance of an attestation of an authentic instrument for the purpose of declaring its enforceability?

For the recognition or declaration of enforcement (enforceability) of an authentic instrument in another Member State, the authorities competent for the issuance of an attestation in the **Republic of Croatia** are the court or a notary public who has issued the authentic instrument for which the issuance of an attestation is proposed (Art. 5, para. 1 of the Act on the Implementation of the Regulation).

⁵⁵ See Annex 2 of the Implementing Regulation No 1329/2014.

If the notary finds that not all the prerequisites for attestation have been met, the application, together with the authentic instrument and the case file are submitted to the Municipal Court under whose territorial jurisdiction the notary's seat is located.

The notary must explain in writing why he/she is of the opinion that not all the prerequisites for the issuance of an attestation are met and inform the applicant that the case has been referred to the court (Art. 5, para. 3 of the Act on the Implementation of the Regulation). The Municipal Court's decision dismissing or rejecting the application for the issuance of an attestation may be appealed before the County Court (Art. 5, para. 4 of the Act on the Implementation of the Regulation).

Which authority, under Slovenian law, is competent for the issuance of an attestation of an authentic instrument for the purpose of declaring its enforceability?

Under **Slovenian IA**, the Court of Inheritance is competent for the issuance of an attestation referred to in Article 46, para. 3, point (b) of the Regulation for the purpose of acceptance or declaration of enforceability of an authentic instrument in another Member State (Art. 227 k SloIA).

7. Court settlement in matters of succession

What is understood under the concept of a court settlement in the context of the Regulation?

The Regulation contains an autonomous determination of a court settlement in the matters of succession.

- ❖ “Court settlement” means a settlement in a matter of succession which has been approved by the court or concluded before a court in the course of the proceedings (Art. 3, para. 1 (h) of the Regulation).

8. Declaration of enforceability of a court settlement in matters of succession

Regarding the declaration of enforceability of court settlements in matters of succession, the Regulation lays down the application of the same system established for decisions on succession (Art. 61, Arts 45 - 58 of the Regulation). See *supra ad E*.

- ❖ Some particularities exist in relation to the grounds for challenging a decision on the application for a declaration of enforceability of a court settlement, and they consist of the provision that it is possible only if the enforcement of a court settlement is

manifestly contrary to public policy (*ordre public*) in the Member State of enforcement (Art. 61, para. 3 of the Regulation).

- ❖ Other grounds, such as the violation of the right of the interested party to be heard, or lack of jurisdiction of the authority of the Member State of origin, are not taken into account (Art. 61, para. 3 of the Regulation).

What must an application for a declaration of enforceability of a court settlement contain?

An application for a declaration of enforceability of a court settlement in the matters of succession must be accompanied by a copy of the court settlement satisfying the conditions necessary to establish its authenticity and the attestation issues by the court of the Member State of origin which has accepted the settlement or before which the settlement has been made, on the application of any interested party and using the form which is a component part of the Implementing Regulation No 1329/2014 (Art. 61, para. 2 in connection with Art. 46, para. 3 of the Regulation).⁵⁶ Taking into consideration the observed differences in the forms written in various languages, when filling them in, attention must be paid to their versions in other languages in order to better understand how they must be filled in.

The Regulation expressly lays down the cases where the attestation of a decision on succession is not produced (Art. 47, para. 1 of the Regulation), which also applies to the declaration of enforceability of a court settlement (Art. 61, para. 1 of the Regulation). Therefore, the production of an attestation using the European form is optional. If the attestation of a decision on succession or of a court settlement using the form which is a component part of the Implementing Regulation No 1329/2014 is not produced, the court having jurisdiction, or the competent authority may specify a time for its production, or accept an equivalent document or, if it considers that it has sufficient information, it may free the party from its production (Art. 47, para. 1 of the Regulation). If the court or any competent authority so requires, a translation of the documents must be produced and the translation must be done by a person qualified to do translations in one of the EU Member States (Art. 47, para. 2 of the Regulation).

No legalisation or other similar formality is required in respect of documents issued in an EU Member State in the context of the Regulation (Art. 74 of the Regulation).

⁵⁶ See Annex 3 of the Implementing Regulation No 1329/2014.

Which authority, under Croatian law, is competent for the issuance of an attestation of a court settlement for the purpose of declaring its enforceability?

Under the Croatian Act on the Implementation of the Regulation, the competent body for the issuance of attestation of a court settlement is the court before which the court settlement has been made (Art. 5, para. 1 of the Act on the Implementation of the Regulation). The Municipal Court's decision dismissing or rejecting the application for the issuance of attestation may be appealed before the County Court (Art. 5, para. 4 of the Act on the Implementation of the Regulation).

Which authority, under Slovenian law, is competent for the issuance of an attestation of a court settlement for the purpose of declaring its enforceability?

Under **Slovenian IA**, the Court of Inheritance is competent for the issuance of an attestation referred to in Article 46, para. 3, point (b) of the Regulation for the purpose of acceptance or declaration of enforceability of a court settlement in another Member State (Art. 227 k) SloIA).

9. Incompatibility between authentic instruments, courts settlements and a decision on succession

What procedure is possible if a competent authority is presented with two incompatible authentic instruments, or if an authentic instrument is incompatible with a decision on succession?

- ❖ Should an authority, when applying the Regulation, be presented with two incompatible authentic instruments, it must first answer the question as to which authentic instrument, if any, should be given priority, taking into account the circumstances of the particular case. If it is not clear from the circumstances at hand which authentic instrument, if any, should be given priority, the question must be determined by the courts having jurisdiction under the Regulation. Where the question is raised as a preliminary question in the course of the proceedings, the court seised of those proceedings must answer it.
- ❖ Where incompatibility exists between an authentic instrument and a decision on succession, the grounds for non-recognition of decisions according to the Regulation should be taken into account (p. 66 of the Preamble to the Regulation; Art. 40, para. 1 (c) and (d) of the Regulation). The same should apply where a court settlement is

incompatible with a decision on succession (Art. 40, para. 1 (c) and (d) in connection with Art. 61, para. 1 of the Regulation).

G. EUROPEAN CERTIFICATE OF SUCCESSION (ECS, Certificate)

1. Creation and purpose of the ECS

The purpose of the creation of the ECS has been to ease the legal position of heirs, legatees, executors of wills or administrators of the estate.

- ❖ The ECS is for use by heirs, legatees, executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate (Art. 63, para. 1 of the Regulation).

What does a Certificate demonstrate?

Pursuant to Article 63, para. 2 of the Regulation, the ECS may be used to demonstrate one or more of the following:

- (a) the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective succession/inheritance shares;
- (b) the attribution of a specific assets forming part of the estate to the heirs
- (c) the powers of the person mentioned in the Certificate to execute the will or administer the estate.

Is the use of a Certificate mandatory? May a decision on the succession of another EU Member State continue to be presented?

The European Certificate of Succession does not take the place of internal documents used for similar purposes in the EU Member States (p. 67 of the Preamble to the Regulation, Art. 62, para. 3, sent. 1 of the Regulation). Therefore, the use of the Certificate is not mandatory (Art. 62, para. 2 of the Regulation). The interested party may present the decision on succession.

If the presented Certificate is issued in another Member State, the authority presented with it is not entitled to request a decision on succession, authentic instrument or a court settlement in the matters of succession (p. 69 of the Preamble to the Regulation).

Problematic may be situations where the contents of a decision on succession and of the Certificate are contradictory because the Regulation does not prescribe which of them should

be given priority, particularly if the Certificate would (possibly) be given priority in the application. Indeed, it must be taken into account what kind of contradiction is involved and, if necessary, refer the parties to the appropriate procedure of correcting the decision or the Certificate.

2. Competent authorities

Which body is competent to issue a Certificate?

The Certificate is issued by the courts in accordance with the Regulation, or other authorities or persons competent in the matters of succession (such as the notaries) in the Member State of issuance whose competence is established pursuant to the provisions of Chapter II of the Regulation (see *supra ad C*). It is left to the Member State to determine, in its national legislation, which authorities are competent for the issuance of a Certificate.⁵⁷ These do not have to be the courts referred to in Article 3, para. 2 of the Regulation.

- ❖ A European Certificate of Succession may be issued while the succession proceedings are ongoing or after they have been completed.

According to Croatian law, which authority is competent to issue a Certificate?

Under the Croatian Act on the Implementation of the Regulation, the authorities competent for the issuance of an ECS are municipal courts or a notary as the court's commissioner (Art. 6, para. 1 of the Act on the Implementation of the Regulation). The court gives the charge of conducting the proceedings and deciding on the application for the issuance of a Certificate to the notary with whom the succession proceedings are ongoing or brought to an end by a final decision. Exceptionally, the court will conduct the proceedings and decide on the application for the issuance of a Certificate if succession proceedings are still ongoing before it or have been brought to an end by a final decision (Art. 6, para. 3 of the Act on the Implementation of the Regulation).

According to Slovenian law, which authority is competent to issue a Certificate?

Under the Slovenian IA, an application for the issuance of an ECS is submitted to the Court of Inheritance (under the SloIA, it is the Municipal Court having territorial jurisdiction),

⁵⁷ For more data on the authorities competent for the issuance of a Certificate, visit: <https://e-justice-europa.eu/content/succession-380-hr.do?clang=hr> (15/11/2019). Note: for more detailed information regarding individual Member States, select the corresponding flag on the given web page.

which also decides on the application for the issuance of a Certificate (Art. 227, paras 1 and 2 of the SloIA).

What procedure is possible when an application for the issuance of a Certificate is submitted to the competent authorities of different EU Member States?

The provisions on jurisdiction contained in Chapter II of the Regulation (see *supra ad C.*), and the provision on *lis pendens* (Art. 17 of the Regulation) provide for the competent authority conducting succession proceedings with a cross-border element and for the issuance of national Certificates on succession which, in individual Member States, have not been replaced by an ECS, but also for the issues of competence of the authorities for the issuance of the ECS itself.

- ❖ Where proceedings involving the same cause of action and between the same parties are brought before the courts of different Member States, any court other than the court first seised will, of its own motion, stay its proceedings until such time as the jurisdiction of the court first seised is established (Art. 17, para. 1 of the Regulation). Where the jurisdiction of the court first seised is established, any court other than the court first seised will decline jurisdiction in favour of that court (Art. 17, para. 2 of the Regulation).

3. Application for a Certificate

Who is authorised to require the issuance of a Certificate?

According to the Regulation, the following persons are authorised to require the issuance of a Certificate:

- ❖ heirs, legatees, executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate (Art. 63, para. 1, Art. 65, para. 1 of the Regulation).

A question still remains whether estate creditors should also belong to the circle of persons authorised to seek the issuance of a Certificate for the purpose of proving their positions and exercising their rights (Ivanc, Kraljić 2016: 259; Aras Kramar 2018: 196). The data collected during the empirical research with the professional groups of judges, notaries and practicing

lawyers show that up to now, in both Croatia and Slovenia, there has not been a single case where a creditor would seek the issuance of a Certificate.

Taking into consideration p. 45 of the Preamble to the Regulation, according to which the Regulation should not preclude creditors from taking such further steps as may be available under national law, where applicable, in accordance with the relevant Union instruments and in order to safeguard their rights, we should opt for widening the circle of authorised persons seeking the issuance of a Certificate to include also estate creditors, should they have any legal interest in that direction.

What should an application for the issuance of a Certificate contain?

The Regulation prescribes the content of the application for the issuance of a Certificate (Art. 65, para. 3 of the Regulation). When submitting an application for the issuance of a Certificate, the form which is a component part of the Implementing Regulation No 1329/2014 (Art. 65, para. 2 of the Regulation)⁵⁸ can be used. The application form referred to in the Implementing Regulation is thus not mandatory. Taking into consideration the observed differences in the forms written in various languages, when filling them in, attention must be paid to their versions in other languages in order to better understand how they must be filled in.

- ❖ Pursuant to Article 65, para. 3 of the Regulation (according to the official Croatian translation of the Regulation):

“The application must contain the information listed below, to the extent that such information is within the applicant’s knowledge and is necessary in order to enable the issuing authority to certify the elements which the applicant wants to have certified, and will be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity, without prejudice to Article 66 (2):

- (a) details concerning the deceased: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;

⁵⁸ See Annex 4 of the Implementing Regulation No 1329/2014.

- (b) details concerning the applicant: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;
- (c) details concerning the representative of the applicant, if any: surname (if applicable, surname at birth), given name(s), address and representative capacity;
- (d) details of the spouse or partner of the deceased and, if applicable, ex-spouse(s) or ex-partner(s): surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable) and address;
- (e) details of other possible beneficiaries under a disposition of property upon death and/or by operation of law: surname and given name(s) or organisation name, identification numbers (if applicable) and address;
- (f) the intended purpose of the Certificate in accordance with Article 63;
- (g) the contact details of the court or other competent authority which is dealing with or has dealt with the succession as such, if applicable;
- (h) the elements on which the applicant founds, as appropriate, his claimed right to succession property as a beneficiary and/or his right to execute the will of the deceased and/or to administer the estate of the deceased;
- (i) an indication of whether the deceased had made a disposition of property upon death; if neither the original nor a copy is appended, an indication regarding the location of the original;
- (j) an indication of whether the deceased had entered into a marriage contract or into a contract regarding a relationship which may have comparable effects to marriage; if neither the original nor a copy of the contract is appended, an indication regarding the location of the original;
- (k) an indication of whether any of the beneficiaries has made a declaration concerning acceptance or waiver of the succession;
- (l) a declaration stating that, to the applicant's best knowledge, no dispute is pending relating to the elements to be certified;
- (m) any other information which the applicant deems useful for the purposes of the issue of the Certificate."

4. The procedure and issuance of a Certificate

The Regulation lays down the procedure applied by the authority competent for the issuance of a Certificate after receiving an application for its issuance, as well as the competences of that authority.

- ❖ Upon the receipt of the application for the issuance of a Certificate, the issuing authority verifies the information and declarations, as well as the documents and all other evidence provided by the applicant. It carries out its official enquiries and powers where this is provided for by its own (national) law or invites the applicant to provide any further data he/she deems necessary (Art. 66, para. 1 of the Regulation). If the applicant has not produced copies of the relevant documents which satisfy the conditions necessary to establish their authenticity, the issuing authority may decide to accept other forms of evidence (Art. 66, para. 2 of the Regulation). In addition, where this is provided for by the law of the issuing authority and if the conditions established *lex fori* are fulfilled, the issuing authority may require that declarations be made on oath or by a statutory declaration in lieu of an oath (Art. 66, para. 3 of the Regulation).

The issuing authority takes all the necessary steps to inform the beneficiaries on the application for a Certificate.

- ❖ If it is necessary for the establishment of the elements to be certified, it will hear any person involved or any executor or administrator of the will and make public announcements aimed at giving other possible beneficiaries the opportunity to invoke their rights (Art. 66, para. 4 of the Regulation). In the **Croatian Act on the Implementation of the Regulation** it is set forth that the information and public announcements of the parties are provided for accordingly by the provisions of the Succession Act⁵⁹ regarding invitation by public announcements regarding public announcements and the time limit for approaching the court or a notary is two months from the publication of the announcement in the Official Gazette (Art. 7, para. 2 of the Act on the Implementation of the Regulation).

⁵⁹ Official Gazette of the RoC nos 48/03, 163/03, 35/05 – see Art. 1164, para. 1 of the Obligations Act, 127/13, 33/15, 14/19 (hereinafter: SA).

Cooperation in exchanging the data for the issuance of a Certificate is extremely important and necessary. The Regulation generally provides for the communication between the competent authorities for the issuance of a Certificate and the competent authorities of other Member States.

- ❖ The competent authority of an EU Member State provides the issuing authority of another Member State with the information kept in the land register, in the civil status registers and in registers recording all documents and facts of relevance for the succession or for the matrimonial property regime, or an equivalent property regime of the deceased, where that authority would be authorised, under national law, to provide any other national authority with such information (Art. 66, para. 5 of the Regulation).

The issuing authority issues a Certificate without delay by using the form which is a component part of the Implementing Regulation No 1329/2014 (Art. 67, para. 1, sent. 1 and 2 of the Regulation).⁶⁰

There are cases where the issuing authority will not issue the Certificate.

- ❖ The issuing authority will not issue the Certificate in particular if:
 - (a) the elements to be certified are being challenged; or
 - (b) the Certificate would not be in conformity with a decision covering the same elements (Art. 67, para.1, sent. 3 of the Regulation).

The issuing authority takes all the necessary steps to inform the beneficiaries about the issuance of the Certificate (Art. 67, para. 2 of the Regulation).

5. Contents of the Certificate

The form of the Certificate is a component part of Annex 5 of the Implementing Regulation No 1329/2014 (Art. 67, para. 1, sent. 1 and 2 of the Regulation). Taking into consideration the observed differences in the forms written in various languages, when filling them in, attention must be paid to their versions in other languages in order to better understand how they must be filled in.

⁶⁰ See Annex 5 of the Implementing Regulation No 1329/2014.

- ❖ Pursuant to Article 68 of the Regulation (according to the official Croatian translation of the Regulation):

“The Certificate must contain the following information, to the extent required for the purpose for which it is issued:

- (a) the name and address of the issuing authority;
- (b) the reference number of the file;
- (c) the elements on the basis of which the issuing authority considers itself competent to issue a certificate;
- (d) the date of issue;
- (e) details concerning the applicant: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;
- (f) details concerning the deceased: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;
- (g) details concerning the beneficiaries: surname (if applicable, surname at birth), given name(s) and identification number (if applicable);
- (h) information concerning a marriage contract entered into by the deceased or, if applicable, a contract entered into by the deceased in the context of a relationship deemed by the law applicable to such a relationship to have comparable effects to marriage, and information concerning the matrimonial property regime or equivalent property regime;
- (i) the law applicable to the succession and the elements on the basis of which that law has been determined;
- (j) information as to whether the succession is testate or intestate, including information concerning the elements giving rise to the rights and/or powers of the heirs, legatees, executors of wills or administrators of the estate;
- (k) if applicable, information in respect of each beneficiary concerning the nature of the acceptance or waiver of the succession;
- (l) the share for each heir and, if applicable, the list of rights and/or assets for any given heir;
- (m) the list of rights and/or assets for any given legatee;

- (n) the restrictions on the rights of the heir(s) and, as appropriate, legatee(s) under the law applicable to the succession and/or under the disposition of property upon death;
- (o) the powers of the executor of the will and/or the administrator of the estate and the restrictions on those powers under the law applicable to the succession and/or under the disposition of property upon death.”

The information collected during the empirical research from the professional groups of judges, notaries and practicing lawyers highlights the complexity of the form of the Certificate. In addition, it has become a common practice to issue Certificates by filling in the entire forms, although some of their parts, in some cases, are not relevant at all. In addition, Croatian authorities regularly require a translation of the Certificate and this usually boils down to a translation of the entire form, although some of its parts are often not even filled in. In Slovenia, the experience with the translation of the form is similar. This approach significantly increases the costs of the translation of the content of a Certificate (as a rule, both Croatian and Slovenian authorities insist on it).

- bearing in mind the fact that the purpose of the Regulation and of the Certificate is to make it easier for the beneficiaries to exercise their rights, we should also consider whether it is necessary to issue certificates by filling in the entire forms despite the fact that in many cases, some of their parts are not relevant. Even if such a Certificate, issued in another Member State was presented, would it really be necessary to insist on the translation of the entire form of the Certificate, or would it not be sufficient to translate only the parts that exist in the national language and are, therefore, relevant? It should be enough to translate only the content of the form that the competent authority has filled in and not the mere content of the form, because the form of the Certificate is standardized and available in the languages of all Member States?
- Perhaps in some border-areas, because of the knowledge of different languages, it may not even be necessary to translate the content of the Certificate.

6. Effects of the Certificate

- ❖ The Certificate produces effects in all Member States and no special procedure is required for its acceptance (Art. 69, para. 1 of the Regulation). In particular, no

legalisation or other similar formality is required in respect of the acceptance of the effects of the Certificate in other Member States (Art. 74 of the Regulation).

- ❖ No control of the Certificate is allowed from the aspect of public policy (*ordre public*), or from the aspect of the competence of the issuing authority, or its harmonisation with the provisions of the Regulation regarding the content of the Certificate in the Member State where the Certificate is used (the Member State of its “acceptance”).

What kind of evidentiary effects does a Certificate have?

A Certificate is presumed to accurately demonstrate elements established under the law applicable to succession or under any other law applicable to specific elements (Art. 69, para. 2, sent. 1 of the Regulation). It is also presumed that the person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate has the status mentioned in the Certificate and/or holds the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate (Art. 69, para. 2, sent. 2 of the Regulation). However, the evidentiary effects of the Certificate do not extend to elements not governed by the Regulation, such as the questions of affiliation or the question whether or not a particular asset belonged to the deceased (p. 71 of the Preamble of the Regulation).

What is the position of third persons in good faith?

The Regulation provides for the position and protection of third persons in good faith. The protection will be ensured if certified copies of the Certificate, that are still valid, are presented (p. 71 of the Preamble to the Regulation, Art. 70 of the Regulation). At the same time, the Regulation does not set forth the question of the effects of such acquisition of property by a third person (p. 71 of the Preamble to the Regulation).

- ❖ Any person who, acting on the basis of the information certified in the Certificate, makes payments or passes on property to a person mentioned in the Certificate as authorised to accept payment or property will be considered to have transacted with a person with authority to accept payment or property, unless he/she knows that the contents of the Certificate are not accurate or is aware of such accuracy due to gross negligence (Art. 69, para. 3 of the Regulation).
- ❖ Where a person mentioned in the Certificate as authorised to dispose of succession property disposes of such property in favour of another person, that other person will,

if acting on the information certified in the Certificate, be considered to have transacted with a person with authority to dispose of the property concerned, unless he/she knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence (Art. 69, para. 4 of the Regulation).

Is a Certificate a valid document for the recording of succession property in the relevant register of an EU Member State, such as land registers?

A Certificate constitutes a valid document for the recording of succession property in the relevant register of a Member State, such as land register. Since the procedure of recording is prescribed by the national law of the Member State of the register, the Member State issuing the Certificate must have regard to the formalities required for the registration and prescribed by the law of that Member State (Art. 69, para. 5; Art. 1, para. 2 (k) and (l); p. 68 of the Preamble to the Regulation). The authorities competent for the registration of property in registers may ask the person applying for registration to provide additional information, or to present additional documents, as are required under the law of the Member State in which the register is kept (e.g. documents relating to the payment of revenue) (p. 18 of the Preamble to the Regulation).

- ❖ The applications for recording the rights to movable and immovable property in the register are excluded from the substantive scope of application of the Regulation (Art. 1, para. 2 (1) of the Regulation). The law of the Member State where the register is located (e.g. land register for immovables) is applicable for the determination of competent authorities and for the prerequisites and registration procedures (p. 18 of the Preamble to the Regulation). The effects of the recording of the rights in the register – like its declaratory or constitutive nature – are also excluded from the scope of application of the Regulation (p. 19 of the Preamble to the Regulation).

Examples from practice

Legal practitioners (judges, notaries, practising lawyers), who participated in the empirical research, pointed to different positions of the courts in their two countries when registering the Certificates (particularly those issued in Germany), without an accurate description of immovables but stating that a person was inheriting “the entire assets”. What was problematic

in those cases was the circumstance that the immovables were not described in the Certificate in the way required under *lex fori*.

In the conducted empirical research, it became clear that legal practitioners acted differently when dealing with the Certificates not containing precise descriptions of immovables in line with the requirements of *lex fori*:

- (a) According to some, such Certificates, without precise descriptions of immovables should be the basis for a corresponding recording in land registers if the immovable could be identified on the basis of (additionally) submitted documents (such as excerpts from land registers).
 - (b) According to others, it would be necessary to draw up – as a supplement to the Certificate – the notary’s minutes with an accurate description of the immovable and with additional and essential data.
 - (c) There were also those who opined that such minutes drawn up by notaries would be necessary every time a Certificate was presented “because of its connection with the corresponding registration”.
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- Taking into consideration various particular goals of the Regulation aimed at easing the position of beneficiaries and avoiding any unnecessary costs, it is necessary to opt for the position according to which the Certificate is a (sufficient) basis for a corresponding entry in the land register, naturally also under the condition that the immovable could be identified, for example, on the basis of (additionally) submitted documents (such as excerpts from land registers). Therefore, the insistence on the notary’s minutes to confirm the facts must be avoided.
 - It must be emphasised that the competent authority for the issuance of a Certificate in accordance with the Regulation must take into account the requirements laid down in the law of the EU Member State where the corresponding register is located, also regarding the description of the immovable. The authorities of EU Member States must be urged to act in accordance with the provisions of the Regulation.

7. Certified copies of the Certificate

The original of a Certificate must be kept by the issuing authority. The issuing authority issues one or more certified copies of the Certificate to the applicant or any other person

demonstrating a legitimate interest and it also keeps a list of persons to whom certified copies have been issued (Art. 70, paras 1 and 2 of the Regulation). This does not prevent a Member State from allowing copies of the Certificate to be disclosed to members of the public in accordance with its national rules on public access to documents (p. 72 of the Preamble to the Regulation).

The Croatian Act on the Implementation of the Regulation lays down that the municipal court, for the area under its jurisdiction, keeps a list of the issued Certificates and persons to whom they have been issued (Art. 8, para. 1 of the Act on the Implementation of the Regulation). Immediately upon its issuance, the notary services the Certificate on the municipal court in whose area of jurisdiction the notary's seat is located to add it to the list of issued Certificates (Art. 8, para. 1 of the Act on the Implementation of the Regulation).

Is the validity of a certified copy of a Certificate unlimited?

The certified copies of a Certificate are valid for a limited period of six months and this is indicated in the certified copy by way of an expiry date being marked accordingly (Art. 70, para. 3, sent. 1 of the Regulation). **The Croatian Act on the Implementation of the Regulation** expressly lays down that the validity of a Certificate of six months pursuant to Art. 70, para. 3 of the Regulation is counted from the moment of its issuance (Art. 7, para. 3 of the Act on the Implementation of the Regulation).

In exceptional and justified cases, the issuing authority may decide that the period of validity of the certified copy of the Certificate is to be longer (Art. 70, para. 3, sent. 2 of the Regulation).

Once this period has elapsed, any person in possession of a certified copy must, in order to be able to use the Certificate for the prescribed purposes, apply for an extension of the period of validity of the certified copy or request a new certified copy from the issuing authority (Art. 70, para. 3, sent. 3 of the Regulation).

Examples from practice

Legal practitioners (judges, notaries, practising lawyers) who participated in the empirical research pointed to the problems of the limited validity of a certified copy of a Certificate being six months, as well as to the question whether it is necessary, after the expiry of six months, to extend the validity of an already issued Certificate or to issue a new Certificate:

- (a) Croatian legal practitioners who took part in the conducted research did not have any experience with the extension of the validity or the issuance of a new copy of a Certificate by the Croatian competent authorities when the previously issued one ceased to be valid. They were also not familiar with the costs of either of the two options under their national bodies of law. According to the available data, there was a case in Croatia, where an applicant sought extension of the period of validity of a certified copy of the ECS and the notary issued a new Certificate and (again) charged for both his fee and the costs of delivery of the Certificate. Namely, in the national regulation, a uniform fee is prescribed for the issuance, rectification, modification, withdrawal or a temporary suspension of the effects of an ECS and it is not expressly laid down that the uniform fee also includes the extension of the validity of an ECS (see Art. 5 of the Rules on the amount of the fee and the compensation of the notary's costs (as the court's commissioner in the procedure for the issuance, rectification, modification, withdrawal or a temporary suspension of the European Certificate of Succession⁶¹).
- (b) Slovenian legal practitioners, particularly judges, have already come across some cases of extension of the validity of Certificates. However, the results of the research show that it is not sufficiently clear how to act when a party applies for extension. Most frequently, the Slovenian competent authorities have decided to issue a new Certificate.
- In exceptional and justified cases (like the institution of court proceedings, or the fact that the proceedings, in which the Certificate must be used, are ongoing, or where the property, constituting the estate, is located in several EU Member States), the competent authority of the EU Member State should consider the possibility of issuing a certified copy of the Certificate with a longer period of validity instead of only six months (Art. 70, para. 3, sent. 2 of the Regulation).
- It is necessary, *pro futuro*, in both Croatian and Slovenian (implementing) regulations, to opt either for an extension of the period of validity, or for the issuance of a new copy of a Certificate when the previously issued one has ceased to be valid, as well as to prescribe the incurred costs. In addition, attention must also be paid, particularly in terms of costs, to the fact that according to the Regulation, the applicant, or the person

⁶¹ Official Gazette of the RoC, No 99/15.

proving legitimate interest, are given “certified copies” of the Certificate, while “the original” is kept by the issuing authority and its “certified copies” are valid for a limited period of six months (Art. 70, paras 1 and 3 of the Regulation).

8. Rectification, modification or withdrawal of the Certificate

The Regulation contains the provisions on rectification, modification or withdrawal of a Certificate.

In what situations may a Certificate be rectified?

The issuing authority of a Certificate, on the request of any person demonstrating a legitimate interest, or if its own motion, rectifies a Certificate in the event of an administrative error (“clerical error”), such as some obvious mistakes in writing (last names of persons, dates or identification numbers) (Art. 71, para. 1 of the Regulation; Popescu 2014:105).

In what situations may a Certificate be rectified or withdrawn?

The issuing authority, on the request of any person demonstrating a legitimate interest or, where this is possible under national law (*lex fori*), of its own motion, will modify or withdraw a Certificate where it has been established that the Certificate or individual elements thereof are not accurate (e.g. when new heirs or wills are discovered) (Art. 71, para. 2, of the Regulation; Popescu 2014: 105).

- If a Certificate has been rectified, modified or withdrawn, the issuing authority must inform the persons to whom certified copies have been issued so as to avoid wrongful use of such copies (p. 72 the Preamble to the Regulation, Art. 71, para. 3 of the Regulation).

Which authorities, under Croatian and Slovenian laws, are competent for the rectification, modification or withdrawal of a Certificate?

According to the Croatian Act on the Implementation of the Regulation, the rectification, modification or withdrawal of the Certificate is carried out by the municipal court or the notary who has issued the Certificate, on its own motion or on the request of a person demonstrating a legitimate interest (Art. 9, para. 1 of the Act on the Implementation of the Regulation).

According to the Slovenian IA, the Court of Inheritance decides on the application for rectification, modification or withdrawal of the Certificate (Art. 227c SloIA).

Is it possible to request a temporary suspension of the effects of a Certificate if the proceedings for its modification or withdrawal are ongoing?

The Regulation prescribes a temporary suspension of the effects of the Certificate if its modification or withdrawal is ongoing, following an application by a person demonstrating legitimate interest (Art. 73, para. 1 (a) of the Regulation). The decision of the issuing authority on the temporary suspension of the effects of the Certificate may be challenged by a person demonstrating a legitimate interest by lodging a legal remedy before a judicial authority of the EU Member State of the issuing authority in accordance with the law of that State (Art. 72, para. 1, sent. 2 and sent. 3 of the Regulation).

- ❖ **According to the Croatian Act on the Implementation of the Regulation**, the municipal court or the notary before whom the proceedings of the modification or withdrawal of a Certificate are pending decide on the application for a temporary suspension of the effects of the Certificate (Art. 10, para. 1 of the Act on the Implementation of the Regulation). A complaint against the notary's decision on the temporary suspension of the effects of the Certificate may be lodged and decided by the municipal court. When deciding on the complaint, the provisions of the Croatian SA, providing for the procedure and decisions on the complaint against the decision on succession apply accordingly (Art.10, para. 2 of the Act on the Implementation of the Regulation). If the notary finds that the prerequisites for a temporary suspension of the effects of the Certificate have not been met, the application and the case file will be submitted to the municipal court in whose area of jurisdiction the notary's seat is located. The notary is obliged to explain in writing why he/she was of the opinion that the prerequisites for a temporary suspension of the effects of the Certificate are not met and inform the applicant that the case is referred to the court (Art. 10, para. 3 of the Act on the Implementation of the Regulation). The municipal court's decision may be appealed before the county court. The provisions of the Croatian SA providing for the procedure and decisions on appeal against the decision on succession, apply accordingly to the procedure and decisions on appeal against the decision of the

municipal court (Art. 10, para. 5 of the Act on the Implementation of the Regulation).

- ❖ **According to the Slovenian IA**, the court competent for inheritance decides on the application for a temporary suspension of the effects of a Certificate (Art. 227 d), para. 1 SloIA). The Slovenian IA lays down that the procedure for the submission of an application for a temporary suspension of the effects of the Certificate is necessary and must be given priority. An appeal against the court's decision on the application for a temporary suspension of effects may be lodged to the court competent for inheritance by the persons entitled to it pursuant to Article 72 of the Regulation (Art. 227 d), para. 2 SloIA). The time limit for the appeal is 30 days following the day of the receipt of the decision (Art. 227 d), para. 3 SloIA). The appeal does not postpone the enforcement of the decision (Art. 227 d), para. 4 SloIA).

Is a legal remedy allowed against a decision of the issuing authority during procedures of rectification, modification or withdrawal of a Certificate?

The Regulation lays down legal remedies against decisions of issuing authorities during the procedures of rectification, modification or withdrawal of Certificates. These decisions may be challenged by a person demonstrating his/her legitimate interest (Art. 72, para. 1, sent. 2 of the Regulation). The challenge must be lodged before a judicial authority in the Member State of the issuing authority in accordance with the law of that State (Art. 72, para. 1, sent. 3 of the Regulation). If, as a result of a challenge, it is established that the Certificate issued is not accurate, the competent judicial authority will rectify, modify or withdraw the Certificate or ensure that it is rectified, modified or withdrawn by the issuing authority (Art. 72, para. 2, sent. 1 of the Regulation).

While the challenge of a decision on rectification, modification or withdrawal of a Certificate on appeal is ongoing, the judicial authority, on the request of any person entitled to challenge a decision taken by the issuing authority, may temporarily suspend the effects of the Certificate (Art. 73, para. 1 (b) of the Regulation). On the temporary suspension of the effects of a Certificate see *infra ad* G.10.

What kind of legal remedies are prescribed against a decision on rectification, modification or withdrawal of a Certificate in Croatian law?

Under the Croatian Act on the Implementation of the Regulation, against the notary's decision on rectification, modification or withdrawal of a Certificate, a complaint is possible to be decided before the municipal court. When deciding on the complaint, the provisions of the Croatian SA, dealing with the proceedings and decisions on the complaint against the decision on the succession apply accordingly (Art. 9, para. 2 of the Act on the Implementation of the Regulation).

If the notary finds that the prerequisites for rectification, modification or withdrawal of a Certificate have not been met, the application, together with the case file, will be submitted to the municipal court having territorial jurisdiction over the area where the notary's seat is located. The notary must explain in writing why he/she is of the opinion that the prerequisites for the rectification, modification or withdrawal are not met and he/she must inform the applicant that the case is referred to the court (Art. 9, para. 3 of the Act the Implementation of the Regulation).

The decision of the municipal court on the rectification, modification or withdrawal of a Certificate may be appealed before the county court. The provisions of the Croatian SA dealing with the proceedings and decisions on appeal against a decision on succession apply accordingly to the proceedings and decisions on appeal against the municipal court's decision (Art. 9, para. 4 of the Act on the Implementation of the Regulation).

What kind of legal remedies are prescribed against a decision on rectification, modification or withdrawal of a Certificate in Slovenian law?

According to the Slovenian IA, the entitled persons referred to in Article 72 of the Regulation may lodge an appeal against the court's decision on the rectification, modification or withdrawal of a Certificate pursuant to Article 71 of the Regulation. The time limit for an appeal is 30 days from the day of the service of the decision (Art. 227 č), para 2, SloIA). An appeal does not postpone the enforcement of the decision (Art. 227 č), para. 3 SloIA).

9. Redress against decisions of the authorities issuing a Certificate

The Regulation provides for redress against decisions of the issuing authority, including decisions to refuse the issuance of a Certificate (p. 72 of the Preamble to the Regulation). The

challenge is lodged before a judicial authority in the Member State of the issuing authority in accordance with the law of that State (Art. 72, para. 1, sent. 3 of the Regulation). If, as a result of a challenge, it is established that the refusal to issue a Certificate was unjustified, the competent judicial authority will issue a Certificate or ensure that the issuing authority reassesses the case and makes a fresh decision (Art. 72, para. 2, sent. 2 of the Regulation).

Who is authorised to lodge an appeal against a decision of the issuing authority?

Decisions taken by the issuing authority on the application for the issuance of a Certificate may be challenged by any person entitled to apply for a Certificate (Art. 72, para. 1, sent. 1 of the Regulation).

What kind of legal remedies are provided for against a decision of the authority issuing a Certificate in Croatian law?

Under the Croatian Act on the Implementation of the Regulation, a complaint is provided for against a Certificate issued by a notary and decided by the municipal court. The provisions of the Croatian SA dealing with the proceedings and decisions on appeal against the decision on succession apply accordingly to the proceedings and decisions on the complaint against a decision on succession (Art. 7, para. 4 of the Act on the Implementation of the Regulation).

However, if the notary finds that the prerequisites for the issuance of a Certificate have not been met, the application, together with the case file will be submitted to the municipal court having territorial jurisdiction over the area where the notary's seat is located. The notary must explain in writing why he/she is of the opinion that the prerequisites for the issuance of the Certificate are not met and he/she must inform the applicant that the case is referred to the court to rule (Art. 7, para. 5 of the Act the Implementation of the Regulation). The decision of the municipal court on dismissal or rejection of the application for the issuance of a Certificate must be serviced on the parties (Art. 7, para. 6 of the Act on the Implementation of the Regulation).

An appeal before the county court is allowed against the Certificate issued by the municipal court and against the decision of the municipal court on dismissal or rejection of the application for the issuance of the Certificate. The provisions of the Croatian SA dealing with the proceedings and decisions on appeal against the decision on succession apply accordingly to the proceedings and decisions on the appeal against the decision of the municipal court (Art. 7, para. 7 of the Act on the Implementation of the Regulation).

What kind of legal remedies are provided for against the authority issuing a Certificate in Slovenian law?

According to the Slovenian IA, the entitled persons referred to in Article 72 of the Regulation may lodge an appeal against the court's decision on the application for the issuance of a Certificate pursuant to Article 71 of the Regulation (Art. 227 č), para. 1 SloIA). The time limit for an appeal is 30 days from the day of the service of the decision (Art. 227 č), para 2, SloIA). An appeal does not postpone the enforcement of the decision (Art. 227 č), para. 3 SloIA).

10. Temporary suspension of the effects of the Certificate

- ❖ While the challenge of the decision on the application for the issuance of a Certificate is ongoing, or on the rectification, modification or withdrawal of the Certificate on appeal, the judicial authority, on the request of any person entitled to challenge a decision taken by the issuing authority, may temporarily suspend the effects of the Certificate (Art. 73, para. 1 (b) of the Regulation).
- ❖ The issuing authority or, as the case may be, the judicial authority must without delay inform all persons to whom certified copies of the Certificate have been issued about the temporary suspension of the effects of the Certificate (Art. 73, para.2, sent. 1 of the Regulation).
- ❖ During the temporary suspension of the effects of the Certificate, no further certified copies of the Certificate may be issued (Art. 73, para. 2, sent. 2 of the Regulation).

According to Croatian law, which authority is competent to decide on the temporary suspension of the effects of a Certificate while a challenge to the decision on the issuance, rectification, modification or withdrawal of the Certificate is ongoing?

According to the Croatian Act on the Implementation of the Regulation, the municipal court which has issued the respective Certificate, and in whose area the seat of the notary, having issued the Certificate, is located, will decide on the application for a temporary suspension of the effects of the Certificate (Art. 10, para. 4 of the Act on the Implementation of the Regulation). An appeal before the county court is allowed against the decision of the municipal court on the application for a temporary suspension of the effects of the Certificate. The provisions of the Croatian SA dealing with the proceedings and decisions on appeal against the decision on succession apply accordingly to the proceedings and decisions on the

appeal against the decision of the municipal court (Art. 10, para. 5 of the Act on the Implementation of the Regulation).

According to Slovenian law, which authority is competent to decide on the temporary suspension of the effects of a Certificate while a challenge to the issuance, rectification, modification or withdrawal of a Certificate is ongoing?

According to the Slovenian IA, the court competent for inheritance decides on the application for a temporary suspension of the effects of a Certificate (Art. 227 d), para. 1 SloIA). It is stipulated by law that the procedure for the submission of an application for a temporary suspension of the effect of a Certificate is necessary and must be given priority. The entitled persons referred to in Article 72 of the Regulation may lodge an appeal against the decision by which the court has ruled on the application for a temporary suspension of the effects of the Certificate (Art. 227 d), para. 2 SloIA). The time limit for the appeal is 30 days from the day of service of the decision (Art. 227 d), para. 3 SloIA). The appeal does not postpone the enforcement of the decision (Art. 227 d), para. 4 SloIA).

H. COOPERATION AND EXCHANGE OF DATA

Efficient legal transactions of decisions, authentic instruments and court settlements and the legal transactions involving the European Certificate of Succession presupposes an efficient exchange of data among the EU Member States.

- ❖ To make data accessible within, among other things, the European judicial network in civil and commercial matters, the EU Member States make and provide the European Commission with short summaries of their national legislations and proceedings relating to succession, including information on the type of authorities having competence in the matters of succession and on the type of authorities having competence to receive declarations of acceptance or waiver of the succession, of a legacy, or of a reserved share (Art. 77, sent. 1 of the Regulation).
- ❖ the EU Member States provide fact sheets listing all documents and/or information usually required for the purposes of registration of immovable property located on their territory (Art. 77, sent. 2 of the Regulation).

- For information on succession law, inheritance proceedings, the competent authorities of EU Member States, including the competent authorities and proceedings referred to in the Succession Regulation visit: https://e-justice.europa.eu/content_succession-166-hr.do and https://e-justice.europa.eu/content_succession-380-hr.do?clang=hr (19/11/2019).

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