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Implementation of European instruments: Succession Regulation (EU) No 650/2012  
**Study Case: C-301/20: validity of a certified copy not having an expiration date**

**Feedback of CPs contributions and conclusions**

European Land Registry Network seminar, 4th March 2022

**Round table**

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## CPs contribution to the instrument Reg. 650/2012

**Aim:** results of a survey among ELRN Focal Points on the *Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions, acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession*

**The term:** December 2021 - January 2022; ELRA/ELRN seminar on 25.11.2021, topic: Judgment of the CJEU of 1 July 2021 in Case C 301/20 (ECS)

**Group of questions No 1** Please briefly describe the legal status of an heir, legatee, executor of a will or administrator of an estate under national law (Article 63 of Regulation 650/2012). What succession rights may they enjoy and under what conditions? What legal act regulates these issues?

**Group of questions No 2.** Please describe whether there have been problems in your country's practice with the use of European certificates of inheritance in the land register? Is this a common situation? If so, how have these problems been solved?

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## Judgment of the CJEU of 1 July 2021 in Case C 301/20 (ECS)

1. Article 70(3) of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession must be interpreted as meaning that a **certified copy** of the European Certificate of Succession, bearing the words ‘unlimited duration’, **is valid for a period of six months from the date of issue and produces its effects**, within the meaning of Article 69 of that regulation, **if it was valid when it was presented to the competent authority.**

2. Article 65(1) of Regulation No 650/2012, read in conjunction with Article 69(3) of that regulation, must be interpreted as meaning that the effects of the European Certificate of Succession **are produced with respect to all persons who are named therein**, even if they have not themselves requested that it be issued.

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## Group of questions no 1 – reasons to ask

- directly related to the second question referred by the Oberster Gerichtshof (Supreme Court, Austria) to CJEU under Austrian law, the content of the grounds and the judgment of the CJEU in Case C-301/20,
- the interpretation of article 65(1) in conjunction with art. 69(3) of the Regulation 650/2012,
  - to be interpreted as meaning that the Certificate has effect for the benefit of all persons who are mentioned by name in the Certificate as heirs, legatees, executors of wills or administrators of the estate
  - even those who have not applied for the Certificate to be issued may themselves make use of it pursuant to Article 63 of Regulation 650/2012
- even those who have not applied for the Certificate to be issued may themselves make use of it pursuant to Article 63 of Regulation 650/2012

"1. The Certificate is for use by **heirs, legatees** having direct rights to the succession and **executors of wills** or **administrators of the estate** who need to demonstrate in another Member State their status or exercise, respectively, their rights as heirs or legatees or their powers as executors of wills or administrators of the estate"

Article 63.1 Reg. 650/2012

„Article 69.3 Regulation 650/2012 (1) The Certificate shall **produce its effects** in all Member States without any special procedure being required"

Article 63.3 Reg. 650/2012

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## Group of questions no 1 – reasons to ask

- to correctly determine the circle of persons from the point of view of the presumption contained in Article 69.4 Reg. 650/2012
  - to correctly determined from the point of view of the procedure of entry in the land register of rights to immovable property in each Member State
  - for the authorized authority, which derives the legal-procedural effects specified in Article 69 of Reg. 650/2012, as well as substantive legal effects resulting from national law:
    - to apply the provisions correctly,
    - to understand the essence of cross-border relations between at least two Member States,
    - to have basic knowledge of what is meant by the legal concepts specified in Article 63 of Reg. 650/2012: heir, legatee, executor of a will or administrator of the estate **in a given national law,**
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## Group of questions no 2 – reasons to ask

- to give a very general picture of the situation related to the application of the ESC in individual countries in the procedure of registration of rights to immovable property in the land registers
  - for the assessment of the realization by Regulation 650/2012 of its basic objectives:
    - to maintain and develop an area of freedom, security and justice in which the free movement of persons is ensured (Recital 1),
    - to enable the creation or passing by succession of a right to immovable or movable property, in accordance with the law applicable to the succession (recital 15).
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## Group of questions no 2 – reasons to ask

- to support the gradual harmonization of the law of succession and land registry is necessary, in the civil area as set out in Article 81 TFEU :
    1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.
    2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:
      - (a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;
      - (b) the cross-border service of judicial and extrajudicial documents
      - (c) the compatibility of the rules applicable in the Member States concerning applicable law and jurisdiction disputes;
      - (d) cooperation in the taking of evidence
      - (e) effective access to justice
      - (f) the elimination of obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States
      - (g) the development of alternative methods of dispute settlement(h) support for the training of the judiciary and judicial staff.
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## Group of questions no 2 – reasons to ask

- some tasks have been given to the EU as an implementing body, including mainly information obligations, such as the transmission by the states to the EC of short summaries of their national legislation and procedures relating to succession (art. 77 of Reg. 650/2012)
  - Other information obligations of MSs are:
    - to provide the EC with information on contact details and procedure (art. 78 Reg. 650/2012)
    - to provide information on judicial authorities and all those performing judicial functions, certificates and forms (art. 79 Reg. 650/2012)
    - to report on the application of the Regulation, including an assessment of any practical problems with parallel succession settlements, by 18 August 2025 (art. 78 Reg. 650/2012)
  - „review obligation” also applies to the use of the European Certificate of Succession, in which high hopes have been placed (see Recital 67), especially with regard to entries in the land register (Recitals 67 and 68 and 18)
  - an instrument: European Judicial Network a pragmatic tool: e-Justice Portal (ELRN)
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## A questionnaire and CPs responses – basic facts

- written responses to the ELRN survey were submitted by 22 ELRN Member Organisations (two in total from Portugal)
- written responses to the ELRN survey addressed the status in 21 member states in total, i.e.:  
Austria, Belgium, Bulgaria, Croatia, Cyprus, Finland, Greece, Estonia, Ireland, the Netherlands, Italy (Libro Fondario), Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal (Instituto dos Registo and Assoc Sindical Consv Registos), Romania (ANCPI), Spain, Slovakia, Sweden  
No response: France
- different level of development of materia
- different understanding of questions (rarely, few situations)
- a lot of data (esp. GQs No. 1) – national law
- formula of open questions: more difficult to analyse, easier to gather different and wide data
- many information not accessible on e - Justice Portal: some work to do
- Many thanks to CPs: great work has been done

**As the first**, analysis of the practical issue shown in the group of questions number 2, which primarily relate to the registration practice in the Member States and the relationship of EU law (regulation) with national law (lex rei sitae v. lex registrationis).

**As second**, analysis of the practical issue shown in the group of questions number 1, which primarily relate to practical aspects of using European Successions Certificate and ways of solving problems, if any.

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## The analysis of the answers to the GQs No 2 – results and conclusions

- the vast majority of CPs - 17 countries/21:
    - no problem with the use of ECS in land registry proceedings: Austria, Belgium, Bulgaria, Croatia, Cyprus, Greece, Estonia, Finland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Sweden
    - there are very few, that specific number appeared e.g.: Austria - about 20-30 per year, Latvia: 20 cases in the last years
  - one country - 1/21: where it was indicated that a lot of registrations under ECS take place is the (a lot is received every day) : Netherlands
  - two countries – 2/21: where there is a noticeable amount of registration: Spain and Italy
  - Answers:
    - problems are solved in accordance with the national procedure, if there are formal or substantive deficiencies, as a rule, countries reject the application for registration (Lithuania, Spain, the Netherlands) or refer the judge (Estonia) to the procedure of adaptation of Article 31 of Reg. 650/2012 (Italy, Spain)
    - the most problems with the application of the ECS occurred at the beginning of the entry into force of the regulation (Greece and Austria)
    - specific problems were pointed out by: Croatia, Lithuania, Slovakia, Italy, Spain and the Netherlands
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## The analysis of the answers to the GQs No 2 – results and conclusions

### ➤ specific problems: Croatia, Lithuania, Slovakia

- the problem with the lack of property description in ECS:

a) issued by German authorities (Croatia, Lithuania)

b) the problem with the ECS also stems from a contradiction with the definition of real estate under Act of the National Council of the Slovak Republic No. 162/1995 (Slovakia). The national law requires the definition of the plot of land by stating its cadastral unit, plot number, type of land, area, whether it is a C-KN or E-KN plot, the building must be defined according to the inventory (registration) number and the number of the plot on which it is located. Also, if the property is jointly owned, the joint ownership must be expressed as a fraction of the whole. This data is not available in the ECS.

**Dissolution of the problem:** no description - in this respect, one has to refer to Art.68 par. l and m of Reg. 650/2012

It regulates the issue by indicating that the ECS shall, as appropriate, contain a list of rights or assets for each heir (par. l) and a list of rights or assets for each legatee (par. m).

In fact, the Regulation, with regard to heirs, contains **the clause "where appropriate"**, so not obligatorily and not always.

Of course, a prudent heir should be vigilant, check the requirements for registration in a book in a Member State (e.g. EJM), where there is a requirement to describe the property and make a request to that effect, as Article 65(3)(m) of the Regulation allows him to do.

Art. 65(3) reg 650/2012:

The application shall include the information listed below to the extent that the applicant has the information and to the extent that the information is necessary for the issuing authority to certify the circumstances for which the applicant seeks certification;

... (m) **any other information that the applicant considers useful for the purpose of issuing the certification.**

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## The analysis of the answers to the GQs No 2 – results and conclusions

- specific problems: **Italy**
  - an initial problem with the use of ECS and local certificates, since a local deed can only be issued by a judge and ECS also by a notary and they have a completely different legal form (National Law no. 161/2014 established that the specific provisions of Royal Decree no. 499/1929 on the Trentino succession deed remained in force).
  - this meant that in the case of local succession (without cross-border issues), the succession deed must be issued only by a judge and not by a local notary. In this country, succession deeds issued by foreign notaries are quite common, but apply to cross-border situations (e.g. a German deceased born and raised in Germany, with a second home in Trentino).
  - in September 2021, there was the first case involving a European succession deed issued by a notary on an Italian testator, with last residence and real estate in Trentino and also in Spain. In this case, the land registry judge approved this ECS issued not by a judge but by a local notary.
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## The analysis of the answers to the GQs No 2 – results and conclusions

### ➤ specific problems: **the Netherlands**

- with the application of the *lex registrationis*, which include:
    - no expiration date of the ECS copy,
    - not all mandatory fields of the form are filled in,
    - ECS drawn up in a foreign language,
    - uncertainty about the status of the issuing authority.
  
  - the Dutch cadaster solves these problems using national law:
    - either by refusing the entry (the first two situations),
    - by calling on the applicant to submit a translation of the document by a sworn translator (the third situation)
    - by requesting certification of the status of the issuing authority together with a translation by a sworn translator.
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## The analysis of the answers to the GQs No 2 – results and conclusions

- specific problems: **Spain**
    - the ECS is subject to the control of the Land Registry and therefore must meet certain requirements, such as the need to present it together with additional documents, i.e., the certificates set forth in Articles 14 and 16 of the national Mortgage Law
    - the ECS may not be sufficient to obtain registration, due to the fact that the registration of rights to real estate is in fact governed by national law (*lex rei sitae* v. *lex registrationis*)
    - in addition to the additional requirements from a formal point of view, proof of payment of taxes, as well as from a substantive point of view, there is the need to determine the overall share of the heir in certain assets
    - the division, if necessary, cannot be included in the deed of inheritance, so there may be a problem in determining the share of the property due to the richness of the regulation of national laws based on the principle of *lex rei sitae*
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## The analysis of the answers to the GQs No 1 – results and conclusions

The analysis of the answers to the questions from group 1 is important first of all because of the pragmatic value of a correct understanding of the concepts of national law, which is in direct interaction with EU law and refers to it.

The questions relate to the creation of concepts of succession law for those entitled under it, such as: **heir, legatee, executor of the will, and administrator of the estate**. The table with detailed answers has been prepared

**Important!** The analysis of the answers given leads to some basic conclusions, with the methodical indication that 2 countries did not answer (Belgium and Ireland ), some countries gave laconic answers (Malta, Sweden), which was of course acceptable given the lack of definition of their scale.

### **General notices:**

- firstly, **all the countries have a codified national regulation on succession law:**
    - mostly part of **the Civil Code** - 50% of the answers (12/21 countries): Austria, Belgium, Estonia, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Spain, Slovakia,
    - a **separate legislation on succession law** - 25% of the answers (5/21 countries): Bulgaria, Croatia, Finland, Italy, Sweden.
    - three (3) countries did not reply.
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## The analysis of the answers to the GQs No 1 – results and conclusions

- Secondly, in each Member State, at least **three succession rights holders** are known:
    - **heir/s** : all countries,
    - **legatee/s: 14 countries** - yes: Austria, Bulgaria, Croatia, Greece, Estonia, the Netherlands, Italy, Luxembourg, Malta, Poland, Portugal, Spain, Slovakia, Sweden; **5 countries** - no information: Belgium, Cyprus, Finland, Romania, Lithuania;
    - **the executor(s) of the will : 14 countries** - yes: Austria, Bulgaria, Croatia, Finland, Greece, Estonia, the Netherlands, Latvia, Lithuania, Malta, Poland, Romania, Spain, Sweden; **the rest** no information.
  
  - **the administrator(s) of the estate:**
    - a legal institution that is known in several countries (5 countries - yes: Austria, Bulgaria, Finland, Lithuania, Sweden), but in the majority of countries the requested information is not provided (the remaining countries).
    - only in the case of Croatia it is explicitly stated that it is an institution not known to Croatian law.
  
  - In the **case of Bulgaria**, it has been pointed out that there is no legal definition of heir or legatee in Bulgarian law.
  
  - It is therefore **difficult to draw clear conclusions**, presumably, this function can often be combined with the function of executor of a will or executor of an estate appointed ex officio. **This matter would therefore require further study.**
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## The analysis of the answers to the GQs No 1 – results and conclusions

- The following features of the questionnaire answers can be pointed out:
  - the answers varied and referred to heirs both by law and by will,
  - the answers concerned material legal issues such as the circle of heirs, liability for debts under the succession, etc., as well as the procedure related to their status and the registration of property,
  - the procedure for issuing a certificate.

### **Conclusions – GQ No 1:**

- The legal situation differs from country to country.
  - The lack of basic knowledge about the regulations of national law on the rights and obligations of individual subjects, their duration (e.g. an executor of a will in Romania) may result in legal problems in the field of proper determination of a person authorized to rights and obligations from the real estate, including its disposal.
  - It is important to protect not only the purchasers of real estate, but also third parties
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## The analysis of the answers to the GQs No 1 – results and conclusions

- A mechanism protecting against such situations:
  - a **set of presumptions** related to the acquired rights set forth in **Article 69.2 - 4** of the regulation

### **Article 69**

**(2)** The Certificate shall be presumed to correctly state the circumstances that have been established under the law applicable to the succession or under any other law applicable to the matters in question. Any person named in the Certificate as an heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate or to have the rights or powers set forth in the Certificate without any conditions or limitations relating to those rights or powers other than those set forth in the Certificate.

**(3)** Any person who, acting on the basis of the information certified in the certificate, makes payments or who transfers items to a person named in the certificate as a person entitled to receive payments or items shall be presumed to have transacted with a person entitled to receive payments or items, unless that person knows that the contents of the certificate are incorrect or is unaware of the incorrectness by reason of gross negligence.

**(4)** Where a person named in a certificate as the person entitled to dispose of succession property makes a disposition for the benefit of another person, that other person, if acting on the basis of the information certified in the certificate, shall be presumed to have performed a legal transaction with the person entitled to dispose of the property in question, unless that person knows that the contents of the certificate are incorrect or is unaware of the incorrectness due to gross negligence.

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## The analysis of the answers to the GQs No 1 – results and conclusions

➤ A mechanism protecting against such situations:

- the principle of establishing certification of circumstances established under the law applicable to the succession or under any other law applicable to these matters (Article 67.1 of the Regulation )

### **Article 67.**

(1) The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the circumstances to be certified have been established under the law applicable to the succession or under any other law applicable to the matters in question. The issuing authority shall use the form adopted in accordance with the advisory procedure referred to in Article 81(2).

- **may not be sufficient due to the wide variety of national laws**
- **there is no adaptation of rights *in rem* procedure as in Article 31 of Regulation 650/2012**

### **Art. 31**

Where a person invokes a right in rem to which he is entitled under the law applicable to the 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 shall, 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.

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## The analysis of the answers to the GQs No 1 – results and conclusions

- Problems' solving:
    - the proper informational role of the e-Justice portal as laid down in Article 77 of the Regulation 650/2012, according to which MNCs should provide brief summaries of their national legislation and procedures regarding succession, is very important.
    - **the question is: whether this information is sufficient in complex legal states ?**
  
  - It would be useful to have detailed, up-to-date information as to the national law and above all a link to the national legislation page (EC + MSs + **ELRN's role?**)
  
  - The latter tool sounds very promising given the widespread use **of Google's tool** of automating translations into national languages to a fairly decent level.
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## GQs No 1 & GQ No 2 – general conclusions:

- In conclusion, the topic of the ECS, *as sui generis* EU law instrument, and the information it contains, and consequently the legal effects it gives rise to as a document also in the sphere of registration of property rights, **should be deepened**, in terms of both the popularity of this instrument and its problematic nature.
- Therefore, it **should be proposed to collect, analyze and complete information** regarding the status of heirs, legatees, executors and administrators of individual Member States collected pursuant to art. 77 of Regulation 650/2012, **due to the fact that the adjustment procedure as provided for in art. 31 cannot be applied to them**, which in the case of discrepancies arising from national law may cause problems with the practical application of the ECS.
- These actions **would probably contribute to a greater popularity of this pragmatic, legal tool**, which, unfortunately, does not enjoy it, as indicated by the responses of the MS submitted in the group of questions number 2.
- The **detailed summary of the research has been prepared in English**: *Results of a survey among ELRN Focal Points on the Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions, acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession for the period December 2021 - January 2022* (ELRA/ELRN seminar on 25.11.2021), 14 pages.

**THANK YOU FOR YOUR CONTRIBUTION & ATTENTION!**

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attention

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