

Project „CISUR – Enhancing Judicial Cooperation on the Implementation of the Succession Regulation in Croatia and Slovenia“/„CISUR – Jačanje pravosudne suradnje u primjeni Uredbe o nasljeđivanju u Hrvatskoj i Sloveniji“

Coordinator: Croatian Law Centre (HR). Other beneficiaries: Peace Institute (SI), Ministry of Justice of the Republic of Croatia (HR), Croatian Notaries Chamber (HR) and Chamber of Notaries of Slovenia (SI). Associate: Supreme Court of the Republic of Croatia (HR)

Project “CISUR – Enhancing Judicial Cooperation on the Implementation of the Succession Regulation in Croatia and Slovenia” – Information kit

The project “Enhancing Judicial Cooperation on the Implementation of the Succession Regulation in Croatia and Slovenia (CISUR)” (hereinafter: the Project) deals with 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 matters of succession, and on the creation of a European Certificate of Succession (hereinafter: the Regulation). The Project is run by the Croatian Law Centre in partnership with the Ministry of Justice of the Republic of Croatia, the Croatian Notaries Chamber, 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. The Project implementation period is 20 months, from 1 December 2018 to 31 July 2020. The Project is co-funded by the European Union’s Justice Programme (2014-2020).

Reasons for the Project implementation

Freedom of movement within the European Union 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. Another reason for migration is marriages between EU citizens who are nationals of different Member States, or their presence in a Member State other than the State of their citizenship. In the case of the death of these persons, numerous succession issues with cross-border elements arise. Since the European population is becoming older, the problem is even more emphasised. It is estimated that approximately 4.5 million people die each year in the EU, which includes assets in a total amount of EUR 646 billion a year. It is also reasonable to assume that approximately 9-10% of the total number of successions (about 450,000 cases) includes an international dimension, which corresponds to assets to the total value of EUR 123.3 billion per year.



Therefore, Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession was adopted on 4 July 2012 (SL EU, L 201, 27. 7. 2012.).

Despite the exhaustive provisions in the area of the application, recognition and enforcement of decisions on succession, i.e. authentic instruments and court settlements, and despite the issuance of the European Certificate of Succession and its effects, and the appropriate forms for issuing the Certificate, the application of the Regulation can be very challenging, which is shown by certain problems that arise in practice (see more *infra*).

Objectives:

- To assess the extent to which Croatia and Slovenia have successfully implemented the Regulation and the national implementing legislation (through secondary data analysis and empirical research), as well as the problems encountered by the competent authorities when applying the Regulation, and to draw up recommendations regarding the implementation of the Regulation;
- To increase knowledge relevant for the implementation of the Regulation (through the development of a Guide for the implementation of the Regulation for legal practitioners, and training on the implementation of the Regulation for legal practitioners);
- To inform citizens about the Regulation, so that they can regulate in advance the issues they have related to succession, by publishing online information for the general public;
- To disseminate the Recommendations and the Guide among relevant institutions and the professional public;
- To contribute to the development of collaboration and mutual trust among national authorities and legal practitioners that apply the Regulation in Croatia and Slovenia (through the Mutual Learning Meeting for stakeholders applying the Regulation and through the final event of the Project/International Colloquium).

Project activities:

1. Research on the regulatory and institutional framework for the implementation of the Regulation, and on the current state of play in practice in Croatia and Slovenia. The principal purpose of these activities is to investigate the current state of implementation of the Regulation in Croatia and Slovenia, with a view to clarifying potential problematic points, developing guidance instruments to facilitate its coherent implementation, and producing recommendations for future changes of the implementation practice, both within the two countries, and at the level of the EU.



The research includes the drafting of a desk research report on the regulatory and institutional framework and on the empirical fieldwork research which will be developed through semi-structured interviews with public notaries, judges and lawyers and by focus groups. The research will be completed with the preparation of a Final Report, which will be the basis for recommendations regarding the implementation of the Regulation as a starting point for the preparation and implementation of all other project activities.

2. Development of instruments/knowledge products for the implementation of the Regulation

To facilitate the overall implementation of the Regulation, and to integrate the project results into professional practices and understanding of the Regulation among the members of relevant professional groups (public notaries, judges and lawyers), a Guide for the implementation of the Regulation will be developed under the Project. Based on the Guide, a training curriculum for practitioners applying the Regulation will be developed, and pilot training and on-line training will be conducted for the same groups of professionals.

Furthermore, material for the general population will be posted online, providing information and instructions for EU citizens, potential heirs from Croatia and Slovenia in EU countries and vice versa.

3. Mutual learning and awareness raising.

Following the completion of the research and the preparation of the Recommendations, an expert meeting will be organised for stakeholders implementing and applying the Regulation in Croatia and Slovenia to discuss the results of the research and the recommendations, to exchange knowledge and experience, and to draw conclusions as a contribution to the development of further project activities. All project results will be presented at the final public event (international colloquium), and, at the same time, this will provide a link for further cooperation between experts and public authorities in the area of the implementation of the Regulation in Croatia and Slovenia. During the entire 20-month period of the implementation of the project, information and project results will be disseminated, depending on the implementation phase, based on a Dissemination plan which will be drawn up at the beginning of the Project implementation.

Project Management Team (coordination of the implementation and professional implementation of the Project)

- Members of the team include: the project manager and national coordinator for Croatia (Anja Šupraha), the national coordinator for Slovenia (Katarina Vučko), and financial/administrative officers (Marina Jukić and Franja Arlič)



- Expert team: legal experts (Slađana Aras Kramar, DSc; and Katarina Vučko) and researchers (Marko Turk, DSc; and Katarina Vučko)
- Experts from the partner organisations: Maja Rakić (Head of the Sector for International Legal Assistance and Judicial Cooperation with EU Member States, Ministry of Justice of the Republic of Croatia) and Filip Milak (Advisor for International Cooperation and Public Relations, Croatian Notaries Chamber)

Project Board (control and evaluation of the project implementation regarding substantive implementation issues)

- Representatives of the project partners and associate institutions: CLC (Vesna Grubić, director), Ministry of Justice of the Republic of Croatia (Ivan Crnčec, Assistant Minister for the European Union and International Cooperation, European Union and International Cooperation Directorate), Croatian Notaries Chamber (Ljiljana Vodopija Čengiđ, public notary), Peace Institute (Katarina Vučko, legal expert), Chamber of Notaries of Slovenia (Sonja Kralj, President of the Chamber of Notaries of Slovenia), the Supreme Court of the RoC (Damir Kontrec, judge and President of the Civil Department of the Supreme Court);
- Key expert, Prof. Mihajlo Dika, DSc.

About the Regulation:

The Regulation contains provisions on jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance and enforcement of authentic instruments and court settlements in matters of succession, and on the creation of a European Certificate of Succession. The aim of the Regulation is to facilitate the proper functioning of the internal market by removing obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of succession with cross-border implications.

For the purpose of a uniform application of the Regulation, the European Commission has adopted 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 (hereinafter: Implementing Regulation).

With respect to the substantive scope of application, the Regulation applies to all civil law aspects of succession to the estate of deceased persons, i.e. to 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.



The Regulation also lists issues that are excluded from the scope of its application, such as revenue, customs or administrative matters; the status of natural persons, as well as family relationships and relationships deemed by the law applicable to such relationships to have comparable effects; the legal capacity of natural persons, other than special forms of such capacity in the area of succession law; questions relating to the disappearance, absence or presumed death of a natural person; 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; maintenance obligations other than those arising by reason of death; the formal validity of dispositions of property upon death made orally; property rights, interests and assets created or transferred other 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 prejudice to any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries, to which the law applicable under the Regulation for succession would be applied; 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; the dissolution, extinction and merger of companies and other bodies, corporate or unincorporated; the creation, administration and dissolution of trusts; the nature of rights *in rem*; any recording in a register 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.

With respect to the time and territorial scope of application, the Regulation applies to the succession of persons who die on or after 17 August 2015, in all Member States apart from Denmark, the United Kingdom and Ireland.

Habitual residence at the time of death is a general link for jurisdiction and applicable law in succession matters. It is determined by the authority dealing with succession upon 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 for that presence.

Besides provisions on general jurisdiction – habitual residence at the time of death – the Regulation also contains provisions on the choice-of-court agreement, subsidiary jurisdiction and *forum necessitatis*.

Where the law chosen by the deceased to govern his succession is the law of the Member State whose nationality he possesses 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.

Where the 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 shall nevertheless have jurisdiction to rule on the succession as a whole insofar as the deceased had the nationality of that Member State at the time of death; or, failing that, the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed. Where no court in a Member State has jurisdiction pursuant to previous criteria, the courts of the Member State in which the assets of the estate are located shall nevertheless have jurisdiction to rule on those assets.

Where no court of a Member State has jurisdiction pursuant to other provisions of this Regulation, the courts of a Member State may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected. The case must have a sufficient connection with the Member State of the court seised.

In matters of recognition of succession decisions, the Regulation regulates the simplified procedure of enforcement. Thus, a decision given in a Member State shall be recognised in the other Member States without any special procedure being required. A decision shall not be recognised in the case of any ground of non-recognition set by the Regulation.

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement communicated by that Member State to the Commission. The decision shall be declared enforceable immediately on completion of the formalities set by the Regulation without any review of the grounds of non-recognition and without the right of the party against whom enforcement is sought at this stage of the proceedings to make any submissions on the application. After being served on the parties, the decision on the application for a declaration of enforceability may be appealed against by either party.

An authentic instrument established in a Member State shall have the same evidentiary effects in another Member State as it has in the Member State of origin, or the most comparable effects, provided that this is not manifestly contrary to public policy (*ordre public*) in the Member State concerned. Considering the enforceability of authentic instruments and court settlements, the Regulation prescribes the same rules set for decisions in matters of succession.



Finally, the Regulation introduces the European Certificate of Succession to facilitate the position of legal heirs, legatees and executors of wills or administrators of the estate. It can be used by legal heirs, legatees and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate.

The use of the Certificate is not mandatory and it does not take the place of internal documents used for similar purposes in the Member States. However, no authority or person presented with a Certificate issued in another Member State should be entitled to request that a decision, authentic instrument or court settlement be presented instead of the Certificate. The Certificate shall be issued by courts or another authority which, under national law, has competence to deal with matters of succession (for example, public notaries), according to the Regulation's provisions of jurisdiction. The Certificate shall be issued upon application by the authorised person, on the application form which is part of the Implementing Regulation, as well as the form of the Certificate. The Certificate shall produce its effects in all Member States, without any special procedure being required. The Certificate is not an authentic instrument as defined by the Regulation; however, it is presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements.

Implementation of the Regulation in Croatia and Slovenia

In the Republic of Croatia, a special Act was adopted on the Implementation 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, which determines the jurisdiction of local courts for decisions on estate, competent authorities for decision-making and procedures in the area of application of the Regulation. The Croatian Act on the Implementation of the Regulation designates courts and public notaries as competent authorities for acting in accordance with the Regulation. On the other hand, in the Republic of Slovenia, the provisions on the implementation of the Regulation are contained in the Succession Act (Zakon o dedovanju). For the implementation of the Regulation, the Act on Amendments to the Succession Act (ZD-C) was adopted on 12 July 2016, and a court has been designated as the competent authority in the area of application of the Regulation.

The application of the Regulation in Croatia and Slovenia can be very challenging. In the current (modest) practice of the (Croatian) competent authorities in applying the Regulation, issues have been raised with the definitions of "habitual residence" and "cross-border element" in certain succession matters, with the question of to whom the European



Certificate of Succession should be delivered, and questions of where the original of the Certificate should be held. There are also issues regarding the complexity of the content of the Requests for the issuance of the Certificate, and problems with respect to the circumstance that the Certificate issued in another Member State does not contain all the information necessary for the entry of the right into the corresponding (Croatian) land register, according to the *lex fori*. Lack of knowledge about the Regulation and its content in this area should also be mentioned, as should the insistence of some persons / bodies (such as banks, pension insurance institutes) on a recognition procedure in the case of a succession decision made in another Member State, or on the European Certificate of Succession in the case where a decision on succession is made in another Member State and vice versa.

According to the available data, European Certificates of Succession issued in Slovenia predominate in Croatia, and vice versa, which indicates the existence of the legal transfer of succession documents among the partners of this project (source: Croatian Notary Chamber, Questionnaire HJK-O-2/18-41 of 7/11 2018).

Relevant literature in the area of the application of the Regulation in Croatia and Slovenia

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Contacts for the Project implementation in Croatia:

Anja Šupraha, the project manager

hpc@hpc.hr

+385 1 4854 934

Contacts for the Project implementation in Slovenia

Katarina Vučko, the national coordinator for Slovenia

katarina.vucko@mirovni-institut.si

+386 1 234 77 20



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