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EU LAW TRAINING IN ENGLISH LANGUAGE:
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING
FOR EUROPEAN NOTARIES AND JUDGES

This Project is funded by the European Union's Justice Programme 2014-2020

The Habitual Residence and the European Certificate of Succession (ECS)

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

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CASSA NAZIONALE DEL NOTARIATO

Magyar Országos Közjegyzoi Kamara

Notary Chamber of Bulgaria

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The Habitual Residence

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Regulation (EU) No 650/2012

The choice of "habitual residence" was taken into account by the European institutions since the late 90's, through the input given by International Treaties:

- The Hague Convention of 24th October 1956 *on the law applicable to maintenance obligations towards children* (drawn up in French only, where the expression is "*résidence habituelle*")
- The Hague Convention of 25th October 1980 *on the Civil Aspects of International Child Abduction*

→ The observed tendency is a **refrain from offering a definition**

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Habitual residence

A criterion with a natural attitude to foster the connection between **the person** and **the State** he or she lives in, rather than the citizenship State.

→ When migration flows across borders it increases circulation and expands communication.

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Habitual residence

The place where a person's affairs, interests and affective (emotional ties) and social life are **predominantly** located.

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Art. 4 - General jurisdiction

The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.

Art. 21 - General rule

(1) *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.*

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According to art. 4 “The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.” The Regulation also provides other criteria (such as article 7 - “event of a choice of law” or article 9 - “Jurisdiction based on appearance” or article 10 - “Subsidiary jurisdiction”), but these represent exceptions to the general rule of the “habitual residence”.

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Any of the deceased's life circumstances of the previous years or at the moment of his death will reveal to the competent Authority (i.e. a Court, a Public Notary, a public Office…) which State is likely to be the deceased's "habitual residence".

Obviously, the inner intentions of the person leave a sensitive margin of uncertainty, i.e. there might not be 100% certainty about a person's "habitual residence".

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Recital 23:

In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death. In order to determine the habitual residence, 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 for that presence. The habitual residence thus determined should reveal a **close and stable connection** with the State concerned taking into account the specific aims of this Regulation.

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Factual elements should be considered in order to determine “habitual residence”, just as Recital no. 23 suggests: in particular, the authority should be **taking account of all relevant factual elements,** so to set the deceased’s habitual residence in a connection that the Regulation defines as **close and stable.**

The habitual residence does not necessarily match with the domicile.

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The habitual residence criterion is vulnerable and may depend both on subjective and objective elements: the inner intention of the deceased may have relevance, but it has to match with his effective and objective presence inside the territory of the residence State.

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Recital 24:

In certain cases, determining the deceased's habitual residence **may prove complex**. Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a **close and stable connection with his State of origin**. In such a case, the deceased could, depending on the circumstances of the case, 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. Other complex cases may arise where the deceased 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 those States, his nationality or the location of those assets **could be a special factor** in the overall assessment of all the factual circumstances.

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Authors and Courts (see Tribunal de Nanterre for the Johnny Hallyday Case) tend to consider the habitual residence under two different aspects:

1. Objective
2. Subjective

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1. The objective element of the habitual residence is measured on the assessment of “duration and regularity of the deceased’s presence in the State concerned”;

2. The subjective element is measured on the assessment of the inner intentions of the deceased during the years preceding his death.

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If both the objective and the subjective elements are present, then the habitual residence is proven.

The lack of one of these elements may determine the non-existence of “habituality”.

For instance, circumstances where habitual residence should be excluded for the absence of the subjective element are:

- holiday trips, study trips, medical stay, etc. since there is no inner intention of the person to establish there his/her residence in a permanent way, even though an objective element was present (duration and regularity).

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On the contrary, the absence of the objective element while the subjective one is present, may still reveal the habitual residence:

Intepreters tend to enhance the subjective element of the residence rather than the objective element.

Furthermore, the predominant tendency among Authors leads to preferring the personal elements instead of the professional interests.

Anyway, doubtful cases should be resolved by giving preference to the original residence rather than otherwise the subsequent one.

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Case 1: “Philip”

Philip was born in Belgium, at the very close border to France. His home is in Belgium, but he works everyday in France, all his friends and colleagues are in France and he tells his family he plans to move there soon. He has an insurance policy in France and his bank accounts are both in France and Belgium. He starts searching for a new apartment in France and thus signs a Real estate Agency agreement with a French estate Agency.

Philip eventually dies. Which will be considered to be his habitual residence: Belgium (citizenship State) or France?

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The chosen Authority (a Belgian Civil law Notary) must identify where the center of the deceased's main interests was, and should be giving a special focus on duration and regularity of Philip’s stay in France and Belgium, as well as Philip’s inner intention to connect with a specific State rather than the other.

This assessment not only will establish the applicable law, but it will also determine whether he has competence over Philip’s succession or not.

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Case 2: “Maria”

Maria is an Italian citizen. She was born in Italy, but moved in her early years to Germany with her mother, where she attended school and University. She returns to Italy every year to see her father and friends. She works in Paris 6 months per year, as a seasonal worker, because her sister needs help to run a small business. During the rest of the year she is divided between Germany (where her mother lives and where her house is settled), Italy (where her father lives and where she has a small plot of land and a banking account) and France (where her sister permanently lives and where her economical interests are set). Every year she also travels to Guinea-Bissau, as she is a volunteer for an International Charity.

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Considering that Maria never spent more than 6 months in the same State ever since she started working, the habitual residence should be determined on a case-by-case assessment.

According to the provisions of Recital 24 “if the deceased was a national of one of those States or had all his main assets in one of those States, his nationality or the location of those assets could be a **special factor** in the overall assessment of all the factual circumstances”.

The Italian citizenship or the family home being located in Germany could both be indicators (***special factors***) in the overall assessment.

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This criterion has been criticized frequently, due to its uncertain and easily disputable terms. Anyhow, the European Commission, since the very beginning with The Vienna Action Plan back in 1998, strongly insisted to submit a person's residence to this rule.

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How to prevent these sort of hassles?

A good strategy (and a Civil law Notary wise advise) could be that of suggesting all the persons involved in cross-border situations to make a will, where they can express their choice of law, which is most commonly familiar with the latin term *professio iuris*. According to art. **22** of the Regulation: "**a person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death**".

→ The choice can only be directed towards the law of one's nationality (meaning citizenship)

→ In absence of that, applicable law and jurisdiction will be those of the habitual residence State (without a will, to prove may still be complex as seen in Maria's case)

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The choice of law is only allowed in favour of the national law, in order to avoid law-shopping situations, i.e. the practice of choosing the most favourable law, whenever this advantage is offered by law dispositions.

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We can recall a decision made by the Swiss Federal Court of 1976 (*Hirsch vs Cohen*, 17 August 1976) regarding the succession of a British national resident deceased in Switzerland. The litigation had been started by the daughter, first marriage child, against the second wife, whom he latter had nominated as his sole heir by means of a will expressly submitted to the English Law (as Swiss Law permitted – professio iuris).

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According to the Federal Court, the lack in British Law of a rule aimed at reserving a share of the estate for the descendants was not capable of producing effects contrary to the “ordre public”. The very fact that Swiss law permitted the profession juris sufficed actually to demonstrate that it did not consider the reserved share in favour of the deceased’s descendants as indispensable.

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The option that only allows European residents to choose their national law is made to avoid these sort of situations: in fact, the deceased in the Swiss case no longer had connection with Great Britain at the time of death. He had obtained the British nationality when he was a refugee from Germany during World war II, but had moved to Switzerland right after and had lost any connection with Great Britain.

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In the case above the "*professio iuris*" could be suspected to have been made just with the intention to disinherit the first daughter and circumvent the reserved share discipline, provided that the deceased did not have any connection with Great Britain at the time of his choice.

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Art. 20 - Universal application

“Any law specified by this Regulation shall be applied whether or not it is the law of a Member State”.

This provision sets an essential principle, according to which the applicable law (depending on the habitual residence of the deceased) can be that of a third State.

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Case 3

Singh is an Indian entrepreneur, who lived in Poland since he was a young student. Part of his family was in India, where he occasionally returned, but all his assets were located in Poland and Europe. Yet, he felt a deep connection with his homeland, and so he made a will choosing as the applicable law to his succession **Indian law** .

This is perfectly compatible and allowed by the Regulation, and even though Singh died in Poland, the Polish **jurisdiction** would apply **Indian Law**.

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Case 4

John is an English opera singer, who spent most of his life in Paris.

He plans to retire to England one day, the place he still considers to be his home. Meanwhile, he makes a will before a French Civil law Notary choosing English law to regulate his future succession.

The Regulation will apply to John's case as an English citizen, even though the UK did not opt in to the Regulation.

This is the direct effect of the disposal of the provision of article 20.

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Same jurisdiction and applicable law

Another important objective that the Regulation pursues is to settle the same jurisdiction and applicable law (or, using the latin terms, same *forum* and *ius*), so that the competent Authority, according to the criterion of the “habitual residence” (or eventually to one of the other criteria set out by the Regulation), will be able to apply its own law.

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Recital 27

The rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. This Regulation therefore 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".

This will help heirs or any person involved in a transnational succession to save time and reduce the costs linked to cross-border matters (travels, interpreters, consulting etc.).

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Art. 5 - Choice-of-court agreement

1. Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, 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.

2. Such a choice-of-court agreement shall be expressed in **writing**, dated and signed by the parties concerned. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

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Case 6

Delphine is a German teacher living in Luxembourg. She leaves a will expressing her intention that German law regulates her succession. She dies in Luxembourg (her habitual residence), thus the jurisdictional competence is in favour of the Luxembourg Authority. Delphine's heirs, according to the Regulation provisions, are allowed to agree that the German Courts have exclusive jurisdiction over any succession matter occurring. This agreement must be written, dated and signed by the parties involved.

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Case 6

The jurisdiction will be then transferred in favour of the German competent authority, which will apply German Law.

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Art. 6- Declining of jurisdiction in the event of a choice of law

Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the court seised pursuant to Article 4 or Article 10:

(a) may, at the request of one of the parties to the proceedings, decline jurisdiction if it considers that the courts of the Member State of the chosen law are better placed to rule on the succession, taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets; or

(b) shall decline jurisdiction if the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of the Member State of the chosen law.

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Furtherly on Case 6 (“Delphine”)

A member of Delphine’s family, living in a third State, belately discovered the presence of Delphine’s will and intended to appeal against it. In the event that he addressed his claim before the Luxembourg Court **after** the agreement between the parties was signed, according to article 5 of the Regulation, the Luxembourg Authority **shall decline jurisdiction** (letter b).

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In the very case that an agreement was not set out, the Luxembourg Court may still decline jurisdiction if these two conditions occurr:

- There must be a request of one of the parties to the proceedings;
- The Authority has considered *that the courts of the Member State of the chosen law are better placed to rule on the succession, taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets.*

(Letter a)

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Art. 7 - Jurisdiction in the event of a choice of law

The courts of a Member State whose law had been chosen by the deceased pursuant to Article 22 shall have jurisdiction to rule on the succession if:

(a) a court previously seised has declined jurisdiction in the same case pursuant to Article 6;

(b) 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; or

(c) the parties to the proceedings have expressly accepted the jurisdiction of the court seised.

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An advanced inheritance law structure:

- The model based on protecting family ties is been replaced by a new model that enforces one's connection to what he/she feels to be his or her home.
- The rules on international private law have become uniform all over the European territory (except for Denmark, UK and Ireland) and have revoked the internal former rules (in Italy, as is the case in the articles from 46 to 50 of the italian Law 218/1995).
- The new European succession system relies on the universal application of the Regulation, so that all Europeans living abroad (in any of the member States) as well as all the *extra* Europeans living in Europe as habitual residents (foreign nationals of non-member States).

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The European Certificate of Succession (ECS)

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Regulation (EU) No 650/2012

Habitual residence Criterion → Just the first step towards the harmonization of procedures

Since the first stage of the preparatory work in view of the Regulation, the European Commission appointed the Deutsches Notarinstitut to conduct a comparative Study of the existing European Succession law systems (that was then presented and discussed in Brussels back in 2004), in order to identify where the major complications in estates succession arise.

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«Étude de droit comparé sur les règles de conflits de juridictions et de conflits de lois relatives aux testaments et successions dans les Etats membres de l'Union Européenne»

Deutsches Notarinstitut, in cooperation with Professeur Heinrich Dörner (Westfälische Wilhelms-Universität, Münster) and Professeur Paul Lagarde (Université Paris I, Sorbonne-Panthéon) as scientific coordinators.

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As a direct effect of

- the growing mobility of people over Europe;
- the increasing frequency of unions between nationals of different Member States;
- the increasing circulation and transnational conveyancing across the Member States;

persons involved in a cross-border succession have had to face linguistic, bureaucratic and economic matters constantly and have found it extremely hard to prove their status of heirs, legatees or executors of a will abroad.

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Mindful of these complications, the European legislator created a new and original instrument through which heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate could invoke their status in any Member State, with no need of exequatur procedures: **the European certificate of succession (ECS)**.

The rules concerning the ECS are placed in Chapter VI of the Regulation (articles from 62 to 73).

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According to article 63 of the Regulation, an ECS is a document that enables heirs, legatees, executors of the will and administrators of the estate to prove their status and exercise their rights in other EU Member States. An ECS must be requested after a person's death (regardless of whether or not the deceased left a will). Any of the aforementioned persons who need to prove their status or exercise their rights in another EU Member State can apply for it.

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About the juridical nature of the ECS

Italian Jurists have investigated the juridical nature of the European Certificate of Succession, since there is no equivalent document in the Italian system, and to do so they followed a “process of progressive elimination”.

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Elimination #1:

The Regulation offers an authentic definition of

- "decision"
- "court settlement"
- "authentic instrument" (see article 3, par. 1, letters *g-h-i*)

So the ECS can not be referred to any of the above mentioned.

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“Decision” means any decision in a matter of succession given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court.

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A “court settlement” means a settlement in a matter of succession which has been approved by a court or concluded before a court in the course of proceedings.

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An “authentic instrument” means a document in a matter of succession which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:

- relates to the signature and the content of the authentic instrument; and

- has been established by a public authority or other authority empowered for that purpose by the Member State of origin.

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The fact that the legislator provided definitions of the aforementioned terms leads us to conclude that the ECS is not the same as a decision, nor as a court settlement, nor as an authentic instrument.

It must be something **original** and **more specific**.

Furthermore, there are substantial differences.

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The ECS can not be considered as a “decision”, at least in Italy, because **it is not issued by courts**. For the same reason it is not a “court settlement” either.

The issuing competence belongs to public notaries, who **do not** exercise juridical functions (and so they can not be considered as Courts, according to art. 3, par. 2 of the Regulation), even though they have competence to deal with matters of succession (coherently with article 64, letter *b*).

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Article 3, par. 2 defines Courts as “any judicial authority and all other authorities and legal professionals with competence in 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:

- may be made the subject of an appeal to or review by a judicial authority; and

- have a similar force and effect as a decision of a judicial authority on the same matter”.

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Article 64 foresees that the issuing authority shall be:

- a court as defined in Article 3, par. 2; or

- another authority which, under national law, has competence to deal with matters of succession.

So the Italian public notaries shall have jurisdiction over the ECS but not over decisions or court settlements, according to the Regulation.

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Elimination #2:

The issuing procedure is a second useful indicator of the ECS juridical nature.

The Regulation establishes that an ECS be released after a procedure that recalls the Italian “voluntary jurisdiction”.

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Voluntary jurisdiction typically refers to matters in which there is no quarrell issues between the parties and the trial only as a way of performing certain legal acts or transactions.

The question that Italian Jurists have tried to answer is if the ECS could be considered the result of a voluntary jurisdiction procedure.

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The ECS can not be considered as a provision resulting from voluntary jurisdiction proceedings as the Italian public notary is not a “judge” or a “court”, which are the only enabled authorities.

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Elimination #3:

Italian Jurists wondered about the ECS being included under the category of “public deeds”, but two circumstances call for the rejection of this thesis:

- duration
- signature

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Duration: certified copies of the ECS shall be valid for a limited period of six months (in exceptional, duly justified cases, the issuing authority may, by way of derogation, extend the period of validity).

An Italian public deed has no expiry date (unless it is declared null or revoked by a court).

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Signature: the ECS is signed by the issuing authority only.

An Italian public deed must be signed by all the present parties.

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In conclusion, the ECS must be considered, according to Italian Authors and Jurists, as a

sui generis public document

(operating under specific rules)

and it can not be included in any existing juridical category.

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Although it is not compulsory, the easiest way is to apply for an ECS using a standard form (Annex IV of the Commission implementing Regulation N. 1329/2014 of 9 December 2014).

See also EUCJ - Judgment of the Court, Sixth Chamber, of 17 January 2019 - Proceedings brought by Klaus Manuel Maria Brisch.

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ANNEX 4

FORM IV

Application for a European Certificate of Succession

(Article 65 of 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 ([1]))

NOTICE TO THE APPLICANT

This non-mandatory form may facilitate the gathering of the information needed to issue the European Certificate of Succession. Its annexes enable you to provide additional relevant information in specific situations.

Please check beforehand which information is relevant for the purpose of issuing the certificate.

Annexes included in the application form ([2])

- ☐ Annex I — Details concerning the court or the other competent authority which is dealing with or has dealt with the succession as such (MANDATORY if different from the authority referred to in section 2 of the application form)
- ☐ Annex II — Details concerning the applicant(s) (MANDATORY if the applicant(s) is (are) (a) legal person(s))
- ☐ Annex III — Details concerning the representative of the applicant(s) (MANDATORY if the applicant(s) is(are) represented)
- ☐ Annex IV — Details of the (ex-)spouse or (ex-)partner of the deceased (MANDATORY if the deceased had a(n) (ex-)spouse or (ex-)partner)
- ☐ Annex V — Details of possible beneficiaries (MANDATORY if different from the applicant or the (ex-)spouse or (ex-)partner)
- ☐ No Annex is included

1. **Member State of the authority to which the application is submitted** ([3]) (*)

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Greece ☐ Spain ☐ France ☐ Croatia ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta ☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland ☐ Sweden

2. **Authority to which the application is submitted** ([4])

2.1. Name (*): .....

2.2. Address

2.2.1. Street and number/PO box (*): .....

.....

2.2.2. Place and postcode (*): .....

2.3. Other relevant information (please specify): .....

.....

3. **Details concerning the applicant (natural person)**

3.1. Surname and given name(s) (*): .....

.....

3.2. Surname at birth (if different from point 3.1.): .....

3.3. Sex (*)

3.3.1. ☐ M

3.3.2. ☐ F

3.4. Date (dd/mm/yyyy) and place of birth (*): .....

3.5. Civil status

3.5.1. ☐ Single

3.5.2. ☐ Married

3.5.3. ☐ Registered partner

3.5.4. ☐ Divorced

3.5.5. ☐ Widowed

3.5.6. ☐ Other (please specify): .....

3.6. Nationality (*)

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Greece ☐ Spain ☐ France ☐ Croatia ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta ☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland ☐ Sweden

☐ Other (please specify ISO-code): .....

Sample of the standard form (extract)

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Issuing Authorities in the European Union

Court/Judicial Authority: Bulgaria, Cyprus, Germany (except for Baden-Württemberg Federate State, where the Amtsnotariat has competence), Greece and Slovenia.

Public Notaries: Italy, Belgium, Estonia, France, Latvia, Luxembourg, Holland, Romania.

Public Notaries and Courts: Spain, Hungary, Malta, Poland.

Public Notaries as “judicial commissioners”: Austria, Croatia, Czech Republic.

Civil Registry Offices: Portugal and Finland.

Tax Agency: Sweden.

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Application for a Certificate

The application shall contain all the information listed in art. 65, such as details concerning both the deceased and the applicant's (name, birthplace, date of birth, etc.), the intended purpose of the Certificate in accordance with art. 63 of the Regulation, the indication of whether the deceased had made a provision for their property upon death, etc. …

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Examination of the application

The issuing authority shall then verify the information and declarations as well as the evidence provided by the applicant, in accordance with art. 66 of the Regulation, and may require that declarations be made on oath or by a statutory declaration in lieu of an oath.

The issuing authority must inform the beneficiaries of the application for a Certificate: this specifically means that any person involved could be heard or public announcements could be made, so to give other potential beneficiaries the opportunity to invoke their rights.

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Effects of the Certificate

Once the examination is fulfilled, the competent authority issues the Certificate “without delay”.

The Certificate shall be 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. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold 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.

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Presumption

According to article 69, par. 4 of the Regulation:

“The Certificate shall be 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. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold 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”.

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In terms of evidence, the ECS creates a **presumption of accuracy of the certified elements**.

The evidentiary value of the ECS lies in Article 69 paragraph 2, which establishes a relative presumption, that can be reversed by proving otherwise.

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Effects of the Certificate

Any person who, acting on the basis of the information certified in a Certificate, makes payments or passes on property to a person mentioned in the Certificate as authorised to accept payment or property shall be considered to have transacted with a person with authority to accept payment or property, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

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Effects of the Certificate

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 shall, if acting on the basis of the information certified in the Certificate, be considered to have transacted with a person with authority to dispose of the property concerned, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

The Certificate shall constitute a valid document for the recording of succession property in the relevant register of a Member State.

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Content and circulation of the ECS

This Certificate produces its effects (i.e. it is valid) in all Member States, without any special procedure being required (art. 69, par. 1).

The Certificate contains all the information listed in article 68: the use of the standard form is in this case mandatory (Form V, under Annex V of the Regulation No. 1329/2014).

Both the original and the certified copy of the ECS are only signed by the issuing Authority.

The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies to the applicant and to any person demonstrating a legitimate interest.

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Header of the ECS (sample)

European Certificate of Succession

(Article 67 of 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 ([1]))

The original of this Certificate remains in the possession of the issuing authority

Certified copies of this Certificate are valid until the date indicated in the appropriate box at the end of this form

Annexes included in the certificate (*)

- ☐ Annex I — Details concerning the applicant(s) (MANDATORY if the applicant(s) is(are) (a) legal person(s))
- ☐ Annex II — Details concerning the representative of the applicant(s) (MANDATORY if the applicant(s) is(are) represented)
- ☐ Annex III — Information on the matrimonial property regime or other equivalent property regime of the deceased (MANDATORY if the deceased had such a regime at the time of death)
- ☐ Annex IV — Status and rights of the heir(s) (MANDATORY if the purpose of the certificate is to certify those elements)
- ☐ Annex V — Status and rights of the legatee(s) having direct rights in the succession (MANDATORY if the purpose of the certificate is to certify those elements)
- ☐ Annex VI — Powers to execute a will or to administer the estate (MANDATORY if the purpose of the certificate is to certify those elements)
- ☐ No Annex is included

1. **Member State of the issuing authority** (*)

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Greece ☐ Spain ☐ France
☐ Croatia ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta ☐ Netherlands
☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland ☐ Sweden

2. **Issuing authority**

2.1. Name and designation of the authority (*): .....

2.2. Address

2.2.1. Street and number/PO box (*): .....

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3. **Information on the file**

3.1. Reference number (*): .....

3.2. Date (dd/mm/yyyy) of issue of the Certificate (*): .....

4. Competence of the issuing authority (Article 64 of Regulation (EU) No 650/2012)

4.1. The issuing authority is located in the Member State whose courts have jurisdiction to rule on the succession pursuant to (*)

☐ Article 4 of Regulation (EU) No 650/2012 (General jurisdiction)

☐ Article 7(a) of Regulation (EU) No 650/2012 (Jurisdiction in the event of a choice of law)

☐ Article 7(b) of Regulation (EU) No 650/2012 (Jurisdiction in the event of a choice of law)

☐ Article 7(c) of Regulation (EU) No 650/2012 (Jurisdiction in the event of a choice of law)

☐ Article 10 of Regulation (EU) No 650/2012 (Subsidiary jurisdiction)

☐ Article 11 of Regulation (EU) No 650/2012 (*Forum necessitatis*)

4.2. Additional elements on the basis of which the issuing authority considers itself competent to issue the Certificate ([2]): .....

.....

.....

.....

.....

.....

5. Details concerning the applicant (natural person ([3]))

5.1. Surname and given name(s) (*): .....

.....

5.2. Surname at birth (if different from point 5.1.): .....

5.3. Sex (*)

5.3.1. ☐ M

5.3.2. ☐ F

5.4. Date (dd/mm/yyyy) and place of birth (town/country (ISO code)) (*): .....

.....

5.5. Civil status (*)

6. Details concerning the deceased

6.1. Surname and given name(s) (*): .....

.....

.....

6.2. Surname at birth (if different from point 6.1.): .....

6.3. Sex (*)

6.3.1. ☐ M

6.3.2. ☐ F

6.4. Date (dd/mm/yyyy) and place of birth (town/country (ISO-code)) (*): .....

.....

6.5. Civil status at the time of death (*)

6.5.1. ☐ Single

6.5.2. ☐ Married

6.5.3. ☐ Registered Partner

6.5.4. ☐ Divorced

6.5.5. ☐ Widowed

6.5.6. ☐ Other (please specify): .....

6.6. Nationality (*)

☐ Belgium ☐ Bulgaria ☐ Czech Republic ☐ Germany ☐ Estonia ☐ Greece ☐ Spain ☐ France ☐ Croatia ☐ Italy ☐ Cyprus ☐ Latvia ☐ Lithuania ☐ Luxembourg ☐ Hungary ☐ Malta ☐ Netherlands ☐ Austria ☐ Poland ☐ Portugal ☐ Romania ☐ Slovenia ☐ Slovakia ☐ Finland ☐ Sweden

☐ Other (please specify ISO-code): .....

6.7. Identification number ([4])

6.7.1. National identity number: .....

6.7.2. Social security number: .....

6.7.3. Tax number: .....

6.7.4. Birth certificate number: .....

6.7.5. Other (please specify): .....

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The authority certifies that it has taken all necessary steps to inform the beneficiaries of the application for a certificate and that, at the time of establishing the certificate, none of the elements contained in it were contested by the beneficiaries.

The following points have not been filled in because they were not deemed to be relevant for the purpose for which the Certificate was issued (*): .....

.....

.....

If additional sheets have been added, state the total number of pages (*): .....

.....

Done at (*) ..... On (*) ..... (dd/mm/yyyy)

Signature and/or stamp of the issuing authority (*): .....

.....

CERTIFIED COPY

This certified copy of the European Certificate of Succession has been issued

to (*): .....

.....

.....

(name of the applicant(s) or of the person(s) having demonstrated a legitimate interest) (Article 70 of Regulation (EU) No 650/2012)

It is valid until (*): ..... (dd/mm/yyyy)

Date of issue (*): ..... (dd/mm/yyyy)

Signature and/or stamp of the issuing authority (*): .....

.....

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Rectification, modification or withdrawal of the Certificate

In accordance with art. 71 of the Regulation:

The issuing authority shall, at the request of any person demonstrating a legitimate interest or of its own motion, rectify the Certificate in the event of a clerical error.

The issuing authority shall, at the request of any person demonstrating a legitimate interest or, where this is possible under national law, of its own motion, modify or withdraw the Certificate where it has been established that the Certificate or individual elements thereof are not accurate.

The issuing authority shall without delay inform all persons to whom certified copies of the Certificate have been issued of any rectification, modification or withdrawal thereof.

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Redress procedures

Decisions taken by the issuing authority may be challenged according to art. 72 of the Regulation.
The challenge shall be lodged before a judicial authority in the Member State of the issuing authority in accordance with the law of that State.
If, as a result of a challenge, the Certificate issued is not accurate, the competent judicial authority shall rectify, modify or withdraw the Certificate or ensure that it is rectified, modified or withdrawn by the issuing authority.
If, as a result of a challenge, it is established that the refusal to issue the Certificate was unjustified, the competent judicial authority shall issue the Certificate or ensure that the issuing authority re-assesses the case and makes a fresh decision.

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Suspension of the effects of the Certificate

The effects of the Certificate may be suspended by either the issuing authority, at the request of any person demonstrating a legitimate interest pending a modification or withdrawal of the Certificate (pursuant to Article 71) or the judicial authority, at the request of any person entitled to challenge a decision taken by the issuing authority (pursuant to Article 72) pending such a challenge.

The issuing authority or, as the case may be, the judicial authority shall without delay inform all persons to whom certified copies of the Certificate have been issued of any suspension of the effects of the Certificate.

During the suspension of the effects of the Certificate **no further certified copies** of the Certificate may be issued.

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Thank you - Merci - Grazie - Danke

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