

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

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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)

**International Colloquium**

**Enhancing Judicial Cooperation on the Implementation of the Succession Regulation  
(EU) 650/2012 in Croatia and Slovenia**

online

Friday, July 3, 2020

working language: English

**Panellists:**

*Dora Boras Grubić*, lawyer, Croatian Bar Association;

*Ines Brozović*, lawyer, Croatian Bar Association;

*Laura González Zulaica*, Legal Adviser, CNUE – Notaries of Europe;

*Hrvoje Grubišić*, Secretary of the European Judicial Network in Civil and Commercial Matters;

*Dr. Mateja Končina Peternel*, judge, Supreme Court of the Republic of Slovenia;

*Damir Kontrec*, judge and the President of the Civil Department of the Supreme Court of the Republic of Croatia;

*Denis Krajcar*, notary, Croatian Notaries Chamber;

*Larisa Kralj*, Head of Department, Directorate for European Affairs, International and Judicial Cooperation, Ministry of Justice of the Republic of Croatia;

*Sonja Kralj*, President of the Chamber of Notaries of Slovenia;

*Petja Plauštajner*, lawyer, Bar Association of Slovenia;



*Raul Radoi*, Secretary General CNUE – Notaries of Europe;

*Maja Rakić*, Head of Sector, Directorate for European Affairs, International and Judicial Cooperation, Ministry of Justice of the Republic of Croatia;

*Tihana Sudar*, notary, Croatian Notaries Chamber;

*Miha Verčko*, General Director, Directorate for Civil Law, Ministry of Justice of the Republic of Slovenia.

## **CONCLUSIONS**

1. The implementation and the results of the project "CISUR - Enhancing Judicial Cooperation on the Implementation of the Succession Regulation (EU) 650/2012 in Croatia and Slovenia" (hereinafter: Project) have considerably enhanced the knowledge and the understanding of the Succession Regulation (EU) 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: Succession Regulation No. 650/2012; Regulation) in the Republic of Croatia and the Republic of Slovenia.

2. Immediate results of the Project are:

- formation of the Croatian-Slovenian team of experts who conducted a scientific and professional analysis of the Succession Regulation No. 650/2012 and formed a team of potential educators;
- drafts of various preparatory and final research materials as a result of the analysis of the Regulation, including the preparation of a Guide to the Implementation of the Succession Regulation (Eu) No 650/2012;
- successful implementation of education – training programme for judges, notaries and practicing lawyers in Croatia and Slovenia;
- successful organization and implementation of the International colloquium;
- creation of analytical grounds for the preparation of the proposal for enhancing the European and national legislations concerning succession;

- confirmation of the possibility and necessity of cooperation of the partners on the Project from Croatia and Slovenia, particularly the Ministries of Justice, the Notaries Chambers and Bar Associations, as well as the Supreme courts of both Slovenia and Croatia.

**3.** There is an obvious need to continue with the education about the Succession Regulation No. 650/2012, especially within the framework of partner organizations and their respectful academies in Croatia and Slovenia. There is also a need for common educational programmes for all the mentioned institutions. Croatian and Slovenian citizens must be informed about the existence of the Succession Regulation No. 650/2012 and its instruments.

**4.** To establish and continue a collaboration between Croatian and Slovenian Ministries of Justice, their courts, Chambers of Notaries and Bar Associations is a necessity and would be of great help in solving any problems that might arise from this bilateral application of the Succession Regulation No. 650/2012. Organization of common educational projects or conferences on this matter might be potentially helpful, as well.

#### **5. Panel discussion I: The establishment of a special Register at the EU level and the Succession Regulation (EU) No. 650/2012**

**5.1.** In the first panel discussion, the need to establish a special register at the EU level was discussed, as well as the need to establish national registers, *i.e.* the system of continued management of data at the national level of EU Member States, *i.e.* Croatia and Slovenia. If such a register were established at the level of the EU, and an effective exchange of data between EU Member States ensured, there would be a possibility to propose a revision of the provision of the Regulation stipulating a period of a six-month validity of a certified copy of an ECS counting from its issuance. The right to information of citizens, the potential beneficiaries of the Regulation, must also be taken into account. The protection of the legal position of citizens in the cases of succession with a cross-border element is important, as well as the protection of the legal position of estate creditors. The necessity to establish and connect databases at the level of the EU was also highlighted when the topic of digitalization was discussed.

**5.2.** It was emphasized that such a register ought to specify the time of the institution of the succession proceedings, the circumstances relevant to the course of the proceedings, the application for and the issuance of the ECS, to whom the certified copy of the ECS had been

issued and all other circumstances related to a Certificate (its rectification, modification, withdrawal and temporary suspension of its effects).

**5.3.** The questions of persons and public bodies having access to the Register, as well as the importance of a timely update of the filled in information for the reasons of legal certainty were particularly pointed out. In addition, the effects of the situations that some data, relevant for the succession proceedings and the issuance of a Certificate would be entered in the Register in connection with the proceedings instituted and still ongoing in (another) Member State. The questions such as how exactly such a register would be established at the EU level, and in particular the possibilities of connecting national registers and databases were also emphasized.

**5.4.** Within the same Panel, the needs and methods of a systematic management of data related to the ECS at both national levels of Croatia and Slovenia were discussed. Such systematic management would increase legal certainty and allow for a more complete and efficient exchange of data between the Member States. Because of the fact that in most EU Member States, the Chambers of Notaries are already dealing with the matters provided for by the Succession Regulation No. 650/2012, some participants stated that the management of national registers related to the implementation and application of the Regulation should also be their responsibility. An example of good practice was mentioned, namely the Croatian and Slovenian registers of wills, as well as the possibilities offered by the existence of such a register in relation to the exchange of data between Member States and their connection with the European Network of Testament Registers (*Association of the European Network of Testament Registers* (ARERT)).

**5.5.** The panellists supported the Recommendations prepared within the Project, especially in relation to the establishment of a special Register at the EU level that would contain the time of the institution of the succession proceedings, the circumstances relevant to the course of the proceedings, the application for, and the issuance of the ECS, as well as other circumstances related to a Certificate (its rectification, modification, withdrawal and temporary suspension of its effects). The recommendation to establish a similar, national register and a database in relation to the partner countries, Croatia and Slovenia, was also endorsed.

The need to continue the conversation in Croatia and Slovenia about some issues connected with the national registers was highlighted. These issues include the questions such as who

would manage these registers, what they would contain, what would be their connection with the already existing registers of wills, etc.

The possibility to regulate some important questions regarding the application of the Succession Regulation No. 650/2012 by way of relevant contacts, or, perhaps, agreements on bilateral level was also brought up.

## **6. Panel – discussion II: Changes to the national implementing legislation and the uniform application of the Succession Regulation (EU) No 650/2012 - Croatian and Slovenian perspectives**

**6.1.** In the second panel discussion, some open issues related to the issuance of the European Certificate of Succession, persons authorized to require the issuance of certified copies of an ECS, the cost of issuance (notary fee, court fee, attorney's fee), the validity of certified copies and actions taken after the expiration of certified copies of a Certificate (including the question of the cost of issuance of additional certified copies), were discussed. The panellists have also discussed the issues concerning the rectification, modification or withdrawal of the Certificate, temporary suspension of its effects and how the competent authorities, i.e. the authorities in Croatia and Slovenia, act in such cases.

**6.2.** When the question of persons authorized to require issuance of an ECS was discussed, the problem of estate creditors popped up. They should be explicitly taken into consideration in the upcoming revision of the Succession Regulation (EU) No. 650/2012 as persons authorized to require the issuance of a Certificate for the purpose of proving their status and exercising their rights.

**6.3.** The complexity of the form for the issuance of a Certificate, and the complexity of a certificate itself was also discussed. The participants talked about the practice of issuing an ECS by filling out the complete form, even though certain parts were not relevant for the case at hand, as well as the translation and its costs.

Taking into consideration the fact that the purpose of the Regulation and of the Certificate is to make it easier for the beneficiaries to exercise their rights, it is necessary to simplify the forms and change the current practice. Additional thinking is required to make sure whether it is necessary to issue certificates by filling in the entire forms despite the fact that some of their parts are not relevant for a particular case. Even if such a certificate, issued in another Member State, is presented, it should be rethought if it is really necessary to insist on the

translation of the entire form, or would it not be sufficient to translate only the parts that are relevant. In such cases it should be enough to translate only the content of the form that the competent authority has filled in, in their national language, because the form itself is standardized and available in the languages of all Member States. In some border-areas, because of the knowledge of different languages, it may not even be necessary to translate the content of the Certificate.

**6.4.** The panellists stressed the need to consider the appropriate amendments to national regulations, such as the regulations on the notary's fees, the court fees and the attorney's fees for the issuance, rectification, modification or withdrawal and temporary suspension of the effects of a Certificate, as well as the issuance of new certified copies of a Certificate, after the expiration of the previously issued certified copies, taking into account the purpose of the Regulation. The necessity to harmonize the national tax legislation in Slovenia to equate the proceedings in the situations of succession with cross-border elements with those that do not have such an element was also mentioned.

**6.5.** The problem of validity of a certified copy of a Certificate for a limited period of six months was emphasised, as well as the proceedings conducted by the competent authority once the mentioned period had expired, along with all the pertaining costs. Even though the Regulation provides that, in exceptional and justified cases, the issuing authority should consider the possibility of issuing a certified copy of a Certificate where the period of validity was longer than six months, no such certified copies in practice.

There is a need to consider this question in the upcoming revision of the Succession Regulation (EU) No 650/2012.

**6.6.** When discussing the effects of a Certificate, the emphasis was placed on the implementation of appropriate entries in land registers on the basis of the Certificate, especially where it did not contain the necessary elements in accordance with the rules of the national land-registry law.

In that context, the judicial practice of national courts was discussed. Some courts insist on a protocol made by a notary to affirm the facts (Croatia), while some allow for a corresponding entry if the person authorized to seek an entry has described the immovable, or when the court itself could identify it using its official judicial functions. The judicial practice of the Republic of Slovenia and the legal understanding of the Koper Higher Court were mentioned.

Regarding the Certificates where the immovables were not described in the way required by *lex fori*, it was suggested that a possibility to initiate the proceedings before the Court of Justice of the EU should be considered to provoke the Court to come to a legal understanding on these issues. The participants warned that, in regard to contentious issues and divergent practices in the application of the Regulation in Croatia and Slovenia, the existing mechanisms for ensuring unity in application of law should be applied. In Croatia, for example, it could be done by discussing the contentious issues at common meetings of the representatives of the second instance courts and adopting the legal understanding by using the institute of revision when it is allowed, possibly the concept of “model proceedings”, etc.

**6.7.** The panellists supported the Recommendations developed within the CISUR Project. Taking into consideration special aims of the Regulation and the intention to alleviate the position of beneficiaries and to avoid the unnecessary costs, we should opt for an attitude according to which a Certificate would be the basis for a corresponding entry in the land register if an immovable can be identified on the basis of a form filled in by the party, and/or by using the official powers of the authority competent for making such entries. It was also pointed out that the competent authority issuing a Certificate, in accordance with the Regulation should take into account the requirements of the law of the Member State where a corresponding register is kept, including the necessary description of an immovable. The authorities of Member States should be encouraged to act in accordance with the provisions of the Regulation.

**7.** Finally, a question arose about the possibility, through a special arrangement between the EU and certain Western Balkan countries, to allow that they join a system of application of the Regulation even before becoming members of the EU. An alternative would be to arrange the questions related to the application of the Succession Regulation on a bilateral level between some of the Member States and the Western Balkans states that are candidate countries.

**8.** It was concluded that a separate team of experts should prepare recommendations on amendments to the Succession Regulation No. 650/2012, which would be agreed upon with the partners and associates on the CISUR project and would subsequently be sent to the European Judicial Network in civil and commercial matters and to the Council of the Notaries of the European Union.