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“*

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FINAL REPORT ON THE CONDUCTED RESEARCH ON THE IMPLEMENTATION OF THE SUCCESSION REGULATION IN CROATIA AND SLOVENIA

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I. INTRODUCTION

This "Final Report on the Conducted Research on the Implementation of the Succession Regulation in Croatia and Slovenia" was developed within the project called "CISUR – Enhancing Judicial Cooperation on the Implementation of the Succession Regulation in Croatia and Slovenia (hereinafter: the CISUR project) financed within the framework of the Justice Programme of the European Union (2014-2020). The CISUR project is aimed at contributing to the implementation of Regulation (EU) 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[1] (hereinafter: Succession Regulation No 650/2012; Regulation) in Croatia and Slovenia but also in other Member States of the European Union (hereinafter: EU). The Project is run by the Croatian Law Centre in partnership with the Ministry of Justice of the Republic of Croatia, the Croatian Chamber of Notaries, the Peace Institute (a civil society organisation from Slovenia) and the Chamber of Notaries of Slovenia and in association with the Supreme Court of the Republic of Croatia.

Freedom of movement within the EU has prompted a higher number of migrations within Member States for reasons of employment or life after retirement, which often results in situations where EU citizens become property owners in different Member States. We must also add here marriages between EU citizens who are nationals of different Member States, or their presence in a Member State other than the State of their citizenship. In the case of death

[1] Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, the recognition and enforcement of decisions and the acceptance and enforcement of authentic instruments in matters of succession, and on the creation of a European Certificate of Succession, SL EU, L 201, 27/07/2012, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R0650 (5/9/2019).
Note: in the Final Report, the term "enforcement" and its derivatives is used because this is the term used in the official translation of the Regulation to the Croatian language. See Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, the recognition and enforcement of decisions and the acceptance and enforcement of authentic instruments in matters of succession, and on the creation of a European Certificate of Succession, SL EU, L 201, 27/07/2012, htps://eur-lex. Europa.eu/legal-content/HR/TXT/HTML/?uri=CELEX:32012R0650 &from=EN (05/09/2019).

of these persons, numerous succession issues with crossborder elements arise. Since the European population is becoming older, the problem is even more obvious. It is estimated that approximately 4.5 million people die every year in the EU, which involves the problem of assets in a total amount of 646 billion every year. It is also said that it is reasonable to assume that about 9-10 per cent of the total number of successions (about 450,000 cases) have an international dimension, which corresponds to assets amounting to 123.3 billion a year (See Commission of the European Communities 2009:4).

As a response to the described situation and a desire to enhance the fundamental principles on which the EU is based, one of them being freedom of movement within the EU, the Succession Regulation No 650/2012 was adopted on 4 July 2012. Despite its exhaustive provisions in the area of application, recognition and enforcement of decisions on succession and the acceptance and enforcement of authentic instruments and court settlements, the European Certificate of Succession (hereinafter: ECS; Certificate) and its effects, and the appropriate forms for the issuance of the ECS, the application of the Succession Regulation No 650/2012 in the Member States is very challenging. This was indicated by the problems manifested in the practice of competent Croatian and Slovenian bodies already in the phase of the preparation of the CISUR Project, particularly during the implementation of the first phase of the Project, such as the issues regarding the definition of the "cross-border element" or "habitual residence" in some succession matters, or the issues as to which persons must be summoned to a hearing in the light of the application for the issuance of the ECS, i.e. whether such a hearing is necessary and who must be serviced a Certificate, including the complexity of the content of the application for the issuance of a Certificate. The situation involving the enforcement of a Certificate issued in another Member State, primarily Germany, which does not contain all the necessary data for the rights to be entered in the corresponding register or land register in accordance with *lex fori*.

The objective of the CISUR project has been to assess, by way of a secondary data analysis and empirical research, to what extent and how successfully Croatia and Slovenia apply the Succession Regulation No 650/2012 and the national implementing legislation, as well as the problems encountered by the authorities when applying the Regulation. To do that, legal experts from Croatia and Slovenia, who participated in the project, had first developed "An Overview of the Current Regulatory and Institutionary Framework for the Implementation of the Succession Regulation – in Slovenia and Croatia" (April 2019). Later, in May and June

2019 in Croatia, and in June 2019 in Slovenia, semi-structured interviews with three professional groups of participants, notaries, judges and (senior) court advisors and practicing lawyers were conducted.[2] In Croatia, the interviews were conducted by students from the Croatian faculties of law who had previously attended a training, organised by the Croatian Law Centre, on the content of the Succession Regulation No 650/2012 and on interviews as a qualitative method of collecting data. In the interviews, fifteen Croatian legal practitioners took part: a group of notaries (7), a group of judges and (senior) court advisors (5) and a group of practicing lawyers (3). Protocols for these interviews for individual professional groups had previously been developed by Croatian legal experts, who participated in the CISUR project. In Croatia, the conducted interviews resulted in a wide range of empirical data obtained from legal practitioners who applied the Succession Regulation No 650/2012 in different parts of Croatia (Zagreb, Ivanec, Varaždin, Čakovec, Osijek, Pula, Novigrad). In the second part of the empirical research within the CISUR project conducted in Croatia, Croatian legal experts prepared and moderated four focus groups in which the legal practitioners took part (July 2019). Four focus groups were organised in Zagreb on the basis of the previously developed protocols and with a group of notaries (5), practicing lawyers (6), judges and court advisers (6). In Pula, a joint focus group was organised with legal practitioners and it was composed of 2 notaries, 2 judges or court advisers and 2 practicing lawyers. In total, twenty-one Croatian legal practitioners participated in the focus groups. In addition, the focus groups organised in Croatia were followed by discussions where various empirical data were collected from the legal practitioners who applied the Succession Regulation No 650/2012 in various territorial parts of Croatia (Zagreb, Ivanec, Varaždin, Mursko Središte, Osijek, Pula, Novigrad).

[2] On 15 April 2019, at the meeting of the Project Committee, it was agreed that the interviews would be conducted with a different ratio of participants from particular professional groups in each country. A different number in the sample of participants in the project across the professional groups was methodologically justified because of a phenomenological research where, after an analysis of the relevant literature and the situation in practice, the level of information within an individual group of the sample was established. Then, the so-called purposeful causation was chosen where the cases, or parts or groups of the sample were selected intentionally and functionally, because they possessed an abundance of key information necessary for the implementation of the research. On that basis, a ratio of the participants in the research in accordance with the professional groups in Croatia and Slovenia was agreed of a total of 15 interviewees in each country in the way presented in the text. This ratio was established because in Croatia, in practice, the sample of public notaries, generally informed the most in terms of the need to achieve the set goal, then to a lesser extent also judges, and finally also attorneys-at-law. Although the experience of the last professional group was present the least in the cases connected with the goal of the research, there were particular examples in practice that were important and had to be included in the research. In Slovenia, in the context of the implementation of the Succession Regulation, notaries public do not have the role in succession cases like their colleagues in Croatia. Therefore, in Slovenia, the largest group was that of judges, somewhat smaller was the group of the notaries public and the smallest was the one that included the attorneys-at-law. In such a way, it was possible to achieve a comparative perspective among various groups included in the sample and also between the two countries included in the research.

In Slovenia, in June 2019, semi-structured interviews with judges, practicing lawyers and notaries were conducted by The Peace Institute on the basis of protocols prepared in advance for each professional group, taking into consideration their specific national roles in the Implementation of the Succession Regulation. In Slovenia, there were also 15 participants: 7 judges or research assistants, 5 notaries and 3 practicing lawyers. When the interviewees were chosen, special attention was paid to the fact that they came from different parts of Slovenia and that the border areas were also represented. They were from Ljubljana, Maribor, Kopar, Kranj, Novo Mesto, Jesenica and Ilirska Bistrica. In the second phase of the empirical research, four focus groups were organised in Ljubljana (September 2019) with judges (2), practicing lawyers (3), notaries (4) and a mixed focus group with the participants coming from all three professions (practicing lawyers (2), notaries (1) and judges (1). A smaller number of participants than initially planned took part in the focus groups because some of them cancelled their participation on the day it was held for various unpredictable obligations at work or because of illness. Nevertheless, the focus groups fulfilled their purpose by confirming the experiences presented in the interviews and they also provided additional insights in the implementation of the Succession Regulation in Slovenia.

The main purpose of the project activities was to examine the situation regarding the application of the Succession Regulation No 650/2012 in Croatia and Slovenia aimed at analysing and discussing all open issues in order to develop some guidelines to facilitate its coherent implementation and recommendations for possible future change of its application in practice in the two countries and at the European level.

II. SUCCESSION REGULATION

A. SUCCESSION REGULATION AND EU ACTIVITIES IN GENERAL

After many long-lasting activities within the EU, the Succession Regulation No 650/2012 was adopted on 4 July 2012. The idea of a broad acceptance and ratification of the Hague instruments by the Member States had turned out to be unsuccessful (see Max Planck Institute for Comparative and International Private Law 2010: 7: Ivanc, Kraljić 2016: 249-250; Aras Kramar 2018: 186).[3] Therefore, already in the "Vienna Action Plan" of 1998[4], it was laid

[3] The Hague Convention of 5 October 1961 on the applicable law for the form of testate succession entered into force on 5 January 1964, https://www.hcch.net/en/instruments/conventions/full-text/?cid=40 (06/09/2019), the

down that the adoption of a European instrument in the area of succession was the priority. Then the Hague Programme followed: Strengthening Freedom, Security and Justice in the European Union" of 2004[5] which, among other things, emphasised the need to adopt a European instrument providing for the applicable law in the matters of succession, jurisdiction, mutual recognition and the enforcement of succession decisions, as well as the creation of a European Certificate of Succession. The "Stockholm Programme" – an open and secure Europe that serves and protects its citizens" of 2009[6] was a step forward by expanding the proposal and the principle of mutual recognition of succession decisions and wills, taking into account the specificities of the legal systems of the Member States (for more see Popescu 2014: 8-9; Aras Kramar 2018: 186-187).

In 2005, the "Green Paper on Succession and Wills" was published and it included a questionnaire on principles and rules of the applicable law, on jurisdiction, recognition and enforcement of succession decisions which were the issues that should be taken into account in the creation of a European instrument in the area of succession.[7] In 2009, a Proposal for a Decree was published, on jurisdiction, applicable law, and recognition and enforcement of judgments and authentic instruments in the matters of succession and the establishment of a European Certificate of Succession.[8]

The Succession Regulation No 650/2012 contains provisions on jurisdiction, applicable law, recognition or, if applicable, acceptance, enforceability and enforcement of decisions,

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

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

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

[6] The Stockholm Programme – An open and secure Europe serving and protecting citizens, SL EU, C 115, =4/05/2010, http://www.eurojust.europa.eu/doclibrary/EU-framework/EUframeworkgeneral/The%20Stockholm%20Programme%202010/Stockholm-Programme-2010-EN.pdf (06/09/2019).

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

[8] Proposal for a Regulation of the European Parliament and the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instrument sin matters of successions and the creation of a European Certificate of Succession, COM(2009) 154 final, http://eur-lex-europa.eu/legal-content/EN/TXT/?uri=CELEX%3a52009pc0154 (=6/09/2019).

authentic instruments and judicial settlements in matters of succession and the establishment of a European Certificate of Succession. The objective of the Succession Regulation No 650/2012 is to facilitate the proper functioning of the internal market by removing obstacles to free movement of persons who are currently experiencing difficulties in exercising their rights in the context of succession having cross-border implications. In addition, the European citizens must be able to organise their succession in advance and it is necessary to protect the rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession (p. 7, p. 80 of the Preamble of the Regulation).

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

At the national level, the Act on the Implementation of the Regulation (EU) No 650/2012 of the European Parliament and the Council of 4 July 2012 was adopted in Croatia on jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (hereinafter: the Act on Implementing Regulation).[10] The Act defines the territorial jurisdiction to decide on the estate, the authority for acting and rendering decisions and for the procedures within the scope of the Succession Regulation No 650/2012.

[9] Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the forms referred to in Regulation (EU) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instrument sin matters of succession and on the creation of a European Certificate of Succession, SL EU, L 359, 16/12/2014, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3a32014r1329 (06/09/2019) (HEREINAFTER: Implementing Regulation No 1329/2014).

[10] Official Gazette of the Republic of Croatia, No 152/14.

In Slovenia, by the Act Amending the Inheritance Act, a third chapter was added to the Inheritance Act[11] entitled "Provisions for Implementing the Regulation 650/2012EU" laying down the competent authority for its implementation.

B. SCOPE

1.Substantive scope of application

In the Succession Regulation No 650/2012, a very broad concept of the term succession has been adopted. It applies to all civil law aspects of transfer of succession upon death (Art. 1, para. 1, sent. 1 of the Regulation) and it covers all forms of ransfer 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 (Art. 3, para. 1 (a) of the Regulation.

By laying down the substantive scope of application, the Succession Regulation No 650/2012 does not determine the concept of a "cross-border element" when dealing with succession matters and its application and in particular which circumstances a competent body of a Member State should take into account.

Example, whether the case of a Croatian national, habitually resident in the Republic of Croatia, after whose death his assets remained in the RoC and in another Member State of the EU (e.g. money in a savings account, an immovable)? His heirs are Croatian nationals habitully residing in the Republic of Croatia.

This question falls within the scope of the Regulation and because of its substance and specificity, it was posed to all three groups of participants in the research (notaries, judges and practicing lawyers) both in the interviews and in focus groups in Croatia. In that context, we shall analyse the findings of the conducted research obtained in the participants' answers.

The notaries agreed that this case can be interpreted as a legal matter of succession with a cross-border element and they additionally explained their direct examples from practice in the following way: "……*the heirs who will inherit an account or an immovable located in a Member State of the EU will not be able to transfer ownership onto them without applying for a European Certificate of Succession. I must emphasise here that the European Certificate of*

[11] Inheritance Act

Succession is not mandatory and a foreign authority may take into consideration only the succession decision drawn up by me and translated by an authorised court interpreter. I can give you a concrete example from my practice: off the succession estate, I assigned a flat in Italy to an heir and I described it in accordance with all the documents received from the client. Later on, I asked the client to let me know whether she was able to register as the owner in the land register on the basis of that decision and her answer was positive. Indeed, the Italian authority did not ask her for a European Certificate of Succession for the respective flat." (JB2_RH)[12]

Another example: "*In my opinion, this is a cross-border case. Regardless of the fact that both the deceased and the heirs are Croatian nationals with their habitual residence in Croatia, the very circumstance that the property is located outside Croatia .....the case is defined and qualified as a cross-border case. This is the very role of a notary who, by conducting the succession proceedings, renders a succession decision. In the same way, a notary, upon the request obtained for the heirs, will provide a European Certificate of Succession that will include the property located outside the territory of the Republic of Croatia, in this concrete case an immovable and an account are mentioned. However, I must say here that in practice, Italian banks act already on the basis of a Croatian inheritance decision translated into Italian and containing an apostille. Indeed, they do not insist that heirs present a European Certificate of Succession as a condition for the disposition of the inherited financial means. On the other hand, when immovables are involved, the situation is much more formal. The Italian Register, beside on a succession decision, they also insist on receiving a European Certificate of Succession."* (JB4_RH) Different examples have also been given, like those emphasising the neccessity for notaries to know the rights existing in other countries. In this context, a participant in the research emphasised: "*Our situation is quite opposite, and my only comment regarding the Regulation is that it seems to me that we are expected to know the laws of other countries. We can make a mistake and not describe an immovable .... for example, in France you have a situation that they do not mark an immovable in terms of the cadastral unit, number of entry, cadastral municipality …… but they only specify all the testator's immovable property at the time of death. When you present it to our court, there is*

[12] Due to the fact that all the interviews and focus groups were recorded in the second phase of the research, they were later transcribed. Each participant was given a corresponding code. This code is used every time there is a quotation from a transcript. The given code reflects the affiliation to a particular group of participants (JB_RH-notaries; S_RH - judges; O_RH – attorneys-at-law, or: FGJB_RH – focus group notaries; FGS_RH – focus group judges; FGO_RH – focus group attorneys-at-law; and FGMJ_RH – a mixed focus group) The data base number is also given. The participants' personal data are known to the persons from the Croatian Law Centre involved in the project. In such a way, the research ethics and the anonymity of the participants in the research were observed.

no chance that it will be recorded. …We still have not arrived that far to ….. at least not in my office. I'm not sure, perhaps ….." (JB3_RH).

Just like the notaries, the practicing lawyers agree on this topic and point to the fact that this example can be interpreted as a legal matter of succession with a cross-border element. They illustrate it by saying: "*In my opinion, we can say that this is a cross-border element. I personally think that we are dealing here with a cross-border element and we can, of course, have many different factual situations. However, when I represent a client whose residence, or the main place of all his life activities is in one country, and it is necessary to take legal actions to solve legal issues involving rights or interests in another country, we are certainly dealing with a cross-border element. This must be treated seriously and we must check both the applicable law and the problem of jurisdiction. Sometimes I can do it alone but when the proceedings in a foreign country are involved, although I graduated in Italy and have validated my diploma… However, the necessary technical knowledge to solve these issues because of large differences in the systems require a cooperation between lawyers and notaries in Italy and me on our end."* (O1_RH).

Different from the notaries and practicing lawyers, judges who participated in the research did not give the same and consensual answers to explain the example. Some of these participants in the research emphasise, just like the notaries, that this issue can be interpreted as a legal matter of succession with a cross-border element. As a contribution to such interpretation, the following explanation was given: "*Yes, I would say that this is a case with a cross-border element. This is because the very fact that the client has an immovable in another country is a cross-border element. This cross-border element…., that is the objective of the Regulation … to discuss the estate in one location in the EU in order to facilitate the process of succession rather than dispersing it to various countries and, therefore, the purpose of this Regulation is to deal with the succession in a single location. This is why, if some property is in another country, the Succession Regulation must be applied as an instrument to speed up the proceedings and conduct them in one place. We must start from the very purpose of the Regulation and this is why, in my opinion, we must consider it as across-border element."* (S5_RH). Nevertheless, there were also some contrary positions presented by the participants in the research who said: "*This fact does suggest that we are dealing here with a cross-border element but if his habitual residence had been in Croatia and he was our national, I do not think that the application of the Regulation comes into play here, unless he*

entered into an agreement on the application of a foreign body of law because, as you say, he had an immovable in another country." (S1_RH). Or the following view: "*I do not think that we are dealing here with a cross-border example. This is because the heirs are Croatian nationals, the testator was also a Croatian national, the assets are in Croatia, or a part of the assets. In my opinion, you take into account the place of habitual residence. I would not interpret it as a cross-border element but it depends on where most of the property was located. We must also take into account the location where the proceedings started first."* S2_RH).

A "cross-border element" in succession matters in terms of the application of the Regulation must be assessed by taking into account all the circumstances of a partuclar case (the testator, the assets which constitute the estate in another Member State of the EU/ and/or in a third State. It must be said that the Regulation has adopted the principle of the unity of succession according to which the applicable law set forth in the Regulation must provide for succession as a whole, i.e. all the assets making up the estate, regardless of the type of assets and whether they are located in another Member State of the EU, or in a third State, so as to achieve legal security and avoid fragmentation of the succession. In addition, the rules of the Regulation are drawn up to ensure that the authority conducting the proceedings in most situations applies its own body of law (*lex fori*).

The same question in terms of its content (domicile in the Republic of Slovenia, the estate in the Republic of Slovenia and in another Member State of the EU – e.g. money on a savings account or an immovable – the heirs also Slovenian nationals domiciled in the Republic of Slovenia), was posed to judges, practicing lawyers and notaries who participated in the research in Slovenia. The question was asked both in interviews and in focus groups.

Judges agreed that in the presented case, a matter of succession with a cross-border element was involved: "*Yes. I think this is so ….this international element emerges first in connection with the volume of assets ….but if it turns out that at least some of these assets are abroad, then the international element emerges in that area. Naturally, a question arises where the domicile of the testator had been. In that connection, it is then established where he had lived and worked, where his family had been and so on, in order to determine that element. However, when there is a question or a challenge regarding jurisdiction, or transferring*

jurisdiction, the circumstances on the part of the parties are naturally established." (S4_SI)[13] The participants also stated that most of the succession matters with a cross-border element they had were similar: "*We mostly have cases where testators are Slovenian nationals, domiciled in Slovenia but having, of course, an immovable abroad…Mostly, as I have been informed, in Croatia and Italy."* (S3_SI) and "*When speaking of Ljubljana, in 90% of cases that is a summer house in Istria, ……..in most cases. However, we also come across individual cases where they are located along the border, or some have assets across the border. It is connected with the family situation. Namely, they have inherited them from their parents"* (S5_SI). The question of discovering the testator's assets abroad was emphasised because in succession proceedings, the Slovenian courts also determine the assets making up the estate (Art. 162 of the Succession Act): "*There are problems here again. The heirs may know that the deceased had an account abroad, but not necessarily. It often happens that they do not know. Who will then determine where else any assets are located? This is where a problem lies."* (S4_SI).

The notaries, in principle, agreed that it was the problem of succession with a cross-border element: "*Of course this would be succession with a cross-border element because if the testator had been here, beside the succession decision, they should also get a ECS and use it abroad. However, our task is completed after we have given our advice to the client on how to organise things abroad and then register their ownership in the Land Register. There are very few of such questions and I suppose that the court solves these problems by explaining things to the clients."* (N2_SI).

There were also different opinions: "…..*if a Slovenian national has his habitual residence in Slovenia then it is probably a matter of Slovenian law, namely, to decide on the assets. If a part of his assets is abroad ….., the heirs will on that basis request there that the account be closed and the money "transferred" to them. But whether an issue concerning the applicable law, or the court applying it, would appear….. in that segment, I see the case as being national and not international. However, it is a fact that there is…. that the assets located*

[13] In Slovenia, the interviews and focus groups were also recorded and later transcribed. Each participant was given a corresponding code. This code is used every time there is a quotation from a transctript. The given code reflects the affiliation to a particular group of participants (N_SI – notaries, S_SI – judges; O_SI – attorneys-at-law and FSN_SI – focus group notaries, FSS_SI – focus group judges, FSO_SI – focus group attorneys-at-law and FSMJ_SI – a mixed focus group). The data base number is also given. The participants' personal data are known to the persons from The Peace Institute (*Mirovni Inštitut*) involved in the project. In such a way, the research ethics and the anonymity of the participants in the research were observed.

abroad certainly invoke an international element. However, I have never come across with a clear definition what succession with an international element means." (FSN_SI)

The practicing lawyers who participated in the research also agreed that it was a matter of succession with a cross-border element: "*This is a typical example where the country involved is usually Croatia where people have summer homes. It is solved in the way that is easier for the heirs. If they are here, it is better that a Slovenian court solves the case. As a Slovenian practicing lawyer, I have no control of what is happening with a decision abroad before foreign courts and administrative bodies."* (O3_SI) And: *"It is important where they live. In that case the Slovenian court will apply the Slovenian law and in accordance with the Regulation, it will also include the assets located abroad."*(O1_SI) And: "*Mostly immovables are involved. When dealing with immovables, it is necessary to be very careful because we do not always pay attention…..For many years, prior to the Regulation, a rule prevailed that the court in the place where the immovable was located had jurisdiction."* (O2_SI)

Point 11 of the Preamble to the Regulation provides that the Regulation applies to succession only, and not to other civil law areas. From the substantive area of application, the aspects connected with public law have also been excluded: revenue, customs and administrative matters of a public law nature (Art. 1, para. 1, sent 2 of the Regulation. In relation to the matters of revenue, in point 10 of the Preamble to the Regulation, it is laid down that it is for national law to determine the calculation and payment of taxes and other liabilities of a public law nature, whether these be taxes payable by the testator at the time of death or any type of succession-related tax to be paid by the estate or by the heirs. It is also emphasised that it is for the national law to determine whether the release of succession property to beneficiaries under this Regulation or the recording of changes in the corresponding registers may be made subject to the payment of taxes (p. 10 of the Preamble to the Regulation).

Beside the matters of revenue, customs or administrative matters of a public law nature, the following matters are expressly excluded from the scope of the Regulation:

a) the status of natural persons, as well as family relationships and relationships deemed by the law applicable to such relationships to have comparable effects;
b) the legal and business capacity[14] of natural persons, except for some special forms of that capacity in the area of law of succession;[15]

[14] In the official translation of the Regulation in Croatian, the term "legal capacity" is translated (only) as „legal capacity". However, we do not deal with „legal" but „business" capacity. See Aras Kramar 2018: 189.

c) questions relating to the disappearance, absence or presumed death of a natural person;
d) questions relating to matrimonial property regimes and property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage;
e) maintenance obligations other than those arising by reason of death;
f) the formal validity of dispositions of property upon death made orally;[16]
g) property rights and interests created or transferred otherwise than by succession, for instance by gifts, joint ownership with a right of survivorship, pension plans, insurance contracts and arrangements of similar nature, without prejudice to the obligation to restore or account for gifts, advancements or legacies when determining the shares to which the law applicable to succession pursuant to the Regulation would apply (t. 14 of the Preamble to the Regulation, Art. 23, para. 2 (i) of the Regulation);
h) questions governed by the law of companies and other bodies, corporate or unincorporated, such as clauses in the memoranda of association and articles of association of companies and other bodies, corporate or unincorporated, which determine what will happen to the shares upon the death of the members:
i) other bodies, corporate or unincorporated;
j) the creation, administration and dissolution of *trusts*;[17]
k) the nature of rights in rem;
l) any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects or recording or failing to record such rights in a register (Art. 1, para. 2 of the Regulation).

As already said, the issues of the existence of marriage or other family relationships, or the relationships which under the applicable law have comparable effects, are excluded from the scope of the Succession Regulation. If any of these issues should appear in a concrete case before an authority of a Member State, particularly in relation to the first order of succession, the competent body would solve them under the rules on a preliminary question, by applying the conflict-of-law rules *lex fori,* unless the relevant issues have already been harmonised in

[15] The Regulation thus applies to the capacity to inherit (Art. 23, para. 2 c), the capacity of a person disposing of property and such disposal upon the person's death, and to special grounds to bar such disposal.
[16] The Regulation contains the provisions on the applicable law for the formal validity of dispositions of property upon death. However, this pertains only to the dispositions made in writing (See Art. 27 of the Regulation).
[17]However, in point 13 of the Preamble to the Regulation, a case of the creation of *trusts* under a will or under intestate succession. When a *trust* is created under a will or under intestate succession, the law applicable to the succession under this Regulation applies to the devolution of the assets and determination of the heirs or beneficiaries.

the territory of the EU (see Dutta 2013: 19; Popescu 2014:12; Köhler 2016: 172-175; Aras Kramar 2018: 189-190).[18]

When discussing succession cases, it may be interesting to study the relationship between the Succession Regulation No 650/2012 and other secondary law regulations of the EU:

Example: if a guardian/custodian of a minor on account of the latter enters into an agreement on the distribution of the estate which, to be valid, must be allowed by the court, does in this case the Succession Regulation No 650/2012 apply, or is it a measure concerning the execution of parental responsibility and the Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must apply?[19]

These issues were discussed in the course of the project with judges and notaries in Croatia. The results of the research show that not a single participant has had any experience with the application of the Regulation No 2201/2003 on matrimonial matters and the matters of parental responsibility at the time when the succession cases were discussed.

In Slovenia, the question was posed to judges. None of them had any experience with such cases in practice and with the application of the EU Regulation 2201/2003. Some participants gave us their opinion on which of these regulations should be applied: "*No, I don't have any such experience….. because this is not a matter or succession but a property law question. However, the Regulation deals with the matters involving succession but in relation to other (issues), it invokes other (regulations) because that is actually correct… it is an area of exclusion."* (S3_SI) Or: "*The Succession Regulation at the very beginning also excludes the situations where it cannot be taken into account, if I remember well, there was such a case*."

[18] As regards the determination of the applicable law to govern divorce and the statutory dissolution of marriage, a Council Regulation (EU) No 1259/2010 of 20 December 2010 was adopted on the implementation of enhanced cooperation in the area of law applicable to divorce and the statutory dissolution of marriage, SL EU, L 343, 29/12/2010, http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010r1259&FROM=hr (09/09/2019).

[19] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition anbd enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, SL EU, L 338, 23/12/2203, http://eur-lex-europa-eu/legal-content/HR/TXT/PDF/?uri=CELEX:32003R2201&from=EN (09/09/2019) (hereiafter: Regulation No 2201/2003 on matrimonial matters and matters of parental responsibility).

(S1_SI). They also emphasised that succession proceedings are non-contentious proceedings where no disputable issues are decided: "*Well, it is possible that we do not talk about non-contentious (proceedings), (this is the case) only if the volume and the shares are incontestable. So, the volume of the assets and the shares. If any of these are contenstable, they (the parties) are referred to a lawsuit."* (S5_SI).

In the case C-404/14, the EU Court took the stand that Regulation No. 2201/2003 on marital disputes and the question of parental responsibilities "…. should be interpreted in such a way that the approval of the agreement on the distribution of the estate made by the guardian on behalf of minor descendants was a measure related to the execution of parental responsibility pursuant to Article 1, para. 1, point (b) of the Regulation and it thus falls under its scope, and not the measure which relates to succession pursuant to Article 1, para. 3, point (f) of the mentioned Regulation…" (The Succession Regulation No 650/2012; added by the authors).[20] The Succession Regulation 650/2012 does not apply to questions concerning matrimonial property and property regimes of relationships deemed to have comparable effects to marriage. However, it is expressly laid down that under the Regulation, the competent body should take into account the termination of the matrimonial property regime or a similar property regime of the deceased when determining his estate and the respective inheritance shares (p. 12 of the Preamble of the Regulation). Questions related to matrimonial property or the property regime of a relationship comparable to marriage should be solved as preliminary questions such as those (after the adoption of the Council Regulation (EU) 2016/1103 of 24 June 2016) on the implementation of increased cooperation in the area of jurisdiction, applicable law and recognition and enforcement of decisions in the matters of matrimonial property regimes,[21] in accordance with the conflict-of-laws rules of the cited Regulation among the Member States taking part in the enhanced cooperation (see Aras Kramar 2018: 190).[22]

[20] Case C-404/14, Matauškova, ECLI:EU:C:2015:653 of 6 October 2015, http://curia.europa.eu/juris/document/document.jsf?text=&docid=169198&pageIndex=0&doclang=HR&mode=1st&dir=&occ=first&part=1&cid=12711558 (09/09/2019).

[21] Council Regulation (EU)2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, SL EU, L 183, 08/07/2016, http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016r1103&FROM=hr (09/09/2019) (hereinafter: Regulation No. 2016/1103 on matrimonial property regime).

[22] The Member States taking part in enhanced cooperation se in: Council Decision (EU) 2016/954 of 9 June 2016 on the approval of enhanced cooperation in the area of jurisdiction, applicable law and recognition and enforcement of decisions on property regimes of international couples, which includesmatters related to matrimonial property regimes and the property consequences of registered partnerships, SL EU, L 159,

Pursuant to Regulation No 2016/1103 on matrimonial regimes, when proceedings are instituted before the court of a Member State in the matters of succession after a spouse based on the Succession Regulation No 650/2012, the courts of that Member State have jurisdiction to decide on matters of matrimonial property regimes connected with that particular matter of succession (Art. 4 of Regulation No 2016/1103 on Matrimonial Property Regime). Therefore, when deliberating in succession cases, the relationship between the Succession Regulation No 650/2012 and Regulation No 2016/1103 on Matrimonial Property Regime can be very interesting:

Example, if a Croatian notary is competent to decide on succession in accordance with the EU Regulation No 650/2012 on Succession, can he or she also decide on matters of the matrimonial property regime of the surviving spouse in accordance with the EU Regulation No 1103/2016 on Matrimonial Property Regime? According to your experience, would such a solution on succession made by a notary be the basis for the implementation of a corresponding entry in the land register?

These problems were discussed in the course of the research with judges and notaries in Croatia. The results of the research tell us that there are very few notaries who have experience in these matters. However, we must highlight the obtained results and their experience: … *The conclusion is that notaries will be competent to decide on the regime of the surviving spouse if they are deciding on the estate or inheritance upon the testator's death. I have just learned that this will be our new competence. In regard to my experience, and have I ever decided, within inheritance proceedings, about the assets of the surviving spouse?Yes, I have. I have three examples, three succession decisions and mostly wives were involved. The cases involved property: an immovable, a house. Husbands were always registered as the owners of immovables. In the proceedings, the wives wanted to inherit a half of a house or any other immovable and to be registered accordingly based on the matrimonial property becase they had acquired it together with their husbands. I have had three succession decisions entered in the Land Register in Sesvete. A half of the house was not actually specified as the estate but I later separated it as the property of the surviving spouse and on that basis, an entry in the land register was made by the authority of the Sesvete*

16/06/2016, http://eur-lex.europa.eu/legal-eontent/EN/TXT/HTLM/?uri=CELEX:32016D0954&from=HR (09/09/2019).

municipality. As far as I know, the competent court in Zagreb agrees with such a procedure but the Court in Velika Gorica does not. The latter court's position is under the Succession Act, notaries are not entitled to decide on the matrimonial regime of the surviving spouse and they do not want to implement such decisions. Although we have said now that we are directly competent for rendering such decisions, a question arises how our courts will implement them and what will our case law be. A regulation must be directly implemented but registration in the land register is to be carried out in accordance with national regulations and this is where a problem arises. I am not sure whether to go any further into it. Namely, the Land Register Act provides that the documents on the basis of which land register entries are made are public or private documents. However, the European Certificate of Succession is none of these two things, it is some kind of a new international law concept, some kind of sui generis. This is, I believe, what theoreticians call it. Therefore, some courts take a stand that this document, or better to say, on the basis of this document, a direct registration should not be made." (JB1_RH).

In the group of judges, no one had any experience with the relevant case law issues.

In Slovenia, the following question was posed to judges: 'If a Slovenian court has jurisdiction to decide on succession under the Succession Regulation No 650/2012, may the Slovenian court also decide in the cases dealing with property relations of the surviving spouse, in accordance with the EU Regulation No 1103/2016 on the property relations between the spouses?' Like in the case described earlier involving a minor's guardian, the judges said they were not supposed to rule on contestable issues: "*Joint property is created during marriage. However, if something is incontenstable between the parties, if there is something that is jointly owned, we do not need to specifically establish it. I do not rule on indisputable facts. If those who are entitled to inherit all agree that a flat is really recorded as belonging to the mother…… If disputes arise, then they are referred to a court action. If there is a dispute, whether there is any property or not, and in what shares, then it is always reference …… and this is a matter for a civil court."* (S5_SI) And: "*Indeed, the Court of Succession establishes the volume of the assets as it arises from the documents and from what is not disputable between the parties. If there are some disputable facts with regard to the volume of the estate, or if there is a dispute regarding the applicable law, we do not rule on the volume of the estate, or exclusion of a part of assets from the estate, but one of the parties is referred to a*

civil action. In my opinion, in order to decide (on these issues), this Regulation on property relations between the spouses should be taken into account in civil proceedings." (S6_SI)

The EU Court has also dealt with the problem of whether the authority competent to decide on succession pursuant to the Succession Regulation No 650/2012 could also decide on the incorporation of the matrimonial property into the estate of the surviving spouse. In the case C-558/16, the Court took a stand according to which "Article 1, para. 1, of the Regulation (EU) No 650/2012 of the European Parliament and 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 ought to be interpreted in such a way that a national provision is included in the scope of this Regulation, like the provision dealt with in the main proceedings providing, in the case of death of one of the spouses, for a division of matrimonial property on a blanket basis, by increasing the inherited share of the surviving spouse."[23] It arises from this position, among other things, that the notaries in Croatia, a country that agreed to enhanced cooperation among the Member States of the EU in the matters of matrimonial property regimes, should take into account, in succession proceedings, the matrimonial property and the right of the surviving spouse to a corresponding share in accordance with the Regulation and in their succession decisions increase the share of the surviving spouse by a corresponding portion resulting from the matrimonial property if, of course, all the heirs agree (see Vodopija Čengić 2019: 11-12).

The requirements for the recording in the register of a right to immovable or movable property are excluded from the substantive scope of the Regulation No 650/2012. Pursuant to point 18 of the Preamble of the Succession Regulation, the law of the Member State in which the register is kept is competent to determine which authorities are in charge and under what conditions, and how the recording will be made. Furthermore, the effects of the recording of a right in a register – such as its declaratory and constitutive nature – are also excluded from the scope of the Succession Regulation No 650/2012 (p. 19 of the Preamble to the Regulation). This Regulation does not affect the limited number (*numerus clausus*) of the rights *in rem* known in the national law of some Member States of the EU. A Member State

[23] Case C-558/16, *Mahnkopf*, ECLI:EU:C:2018:138 of 1 March 2018, http://curia.europa.eu/juris/document/document.jsf?text=&docid=199805&pageIndex=0&doclang=hr&mode=1st&dir=&0cc=first&part=1&cid=12722100 (09/09/2019).

should not be required to recognise a right *in rem* relating to property located in it, if the right *in rem* in question is not known in its legal system (p. 15 of the Preamble to the Regulation), (Art. 1, para. 2 (j) of the Regulation). Therefore, the Regulation provides for the adaptation of an unknown right *in rem* to the closest equivalent right *in rem* under the law of that other Member State aimed at making it possible for the heirs to enjoy the emerged rights, or the rights transferred to them by succession (p. 16 of the Preamble of the Regulation, Art. 31 of the Regulation; see also Köhler 2016; 180-182; Aras Kramar 2018: 189).

In the case C-218/16, the European Court gave its interpretation of Art. 1, para. 2, points k) and l) and Art. 31 of the Regulation on the nature of the rights *in rem,* their adaptation and recording in corresponding registers. According to the Court, Article 1, para. 2, points k) and l), and Art. 31 of 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 and acceptance and enforcement of authentic documents in matters of succession and on the creation of a European Certificate of Succession, must be interpreted as precluding refusal by an authority of a Member State to recognise the material effects of a legacy "by vindication" provided for by the law governing succession, chosen by the testator in accordance with Art. 22 (1) of that Regulation, where that refusal is based on the ground that the legacy concerns the right of ownership of immovable property located in that Member State whose law does not provide for legacies with direct material effect on the day of opening succession."[24] Otherwise, if in a case a right *in rem* appeared which by its nature and content would be unknown to the authority, information could also be found at the European portal e-justice[25], with the purpose of adaptation of an unknown right *in rem* to the closest equivalent right *in rem*.

2. Territorial scope of application

The Succession Regulation No 650/2012 applies in all Member States of EU, with the exception of Denmark,[26] the United Kingdom and Ireland (points 82 and 83 of the Preamble of the Regulation).[27]

[24] Case C-218/16, *Kubicka*, ECLI:EU:C:2017:755 of 12 October 2017, http://curia.europa.eu/juris/document/document.jsf?text=&docid=195430&pageIndex=0&doclang=hr&mode=1st&dir=&occ=first&part=1&cid=12699966 (09/09/2019).
[25] European portal e-justice, https://e-justice.europa.eu/content_adapting_rights_in_rem-486-hr.do (09/09/2019).
[26] Consolidated version of the Treaty on the Functioning of the European Union, Protocol (No 22) on the position of Denmark, SL EU, C 326, 26/10/2012, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FPRO%2F22 (09/09/2019).

3. Temporal scope of application

The Succession Regulation No 650/2012 applies to the succession of persons who die on or after 17 August 2015 (Art. 83, para. 1 of the Regulation). It particularly provides for the choice of law applicable to succession and a disposition of property in the case od death prior to 17 August 2015.[28]

The choice of the applicable law for the succession is valid if chosen prior to 17 August 2015 or after that date. However, if chosen prior to this date, in conformity with Art. 83, para. 2 of the Regulation, the choice is valid if it meets the conditions of Chapter III of the Regulation (applicable law) or if it is valid under the rules of private international law which were in force at the time of the choice in the State in which the deceased had his habitual residence, or in any of the States whose nationality he possessed. Similar is the case regarding the validity of a disposition of property upon death (Art. 83, para. 3 of the Regulation).

A disposition of property upon death made prior to 17 August 2015 is admissible both substantively and formally, if it meets the conditions laid down in Chapter III of the Regulation, or if it is admissible and valid both substantively and formally under the rules of private international law which were in force at the time the disposition was made in the State in which the deceased had his habitual residence, or any other State whose nationality he possessed, or in the Member State of the authority dealing with the succession. If a disposition upon death was made prior to 17 August 2015 in accordance with the law which the deceased could have chosen in accordance with this Regulation, the law shall be deemed to have been chosen as the law applicable to the succession (Art. 83, para 4 of the Regulation).

C. COMPETENCE

1. The term "court" pursuant to Art. 3, para. 2 of the Succession Regulation and notaries

The Succession Regulation No 650/2012 takes into account the circumstance that various authorities in individual Member States are competent in matters of succession and it gives the term "court" a very broad meaning so as to cover not only courts in the true sense of the word, but also the notaries or registry offices and all other authorities and legal professionals

[27] Consolidated version of the Treaty of the Functioning of the European Union, Protocol (no 21) on the Position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice, SL EU, C 202, 07/06/2016, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E%2FPRO%2F21 (09/09/2019).

[28] See Art. 83, paras 2-4 of the Regulation.

with competence in matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate: (a) may be made the subject of an appeal or review by a judicial authority, and (b) have a similar force and effect as a decision of a judicial authority on the same matter (p. 20 of the Preamble of the Regulation, Art. 3, para. 2 of the Regulation).

The Succession Regulation No 650/2012 should make it possible for all notaries with competence in matters of succession in the Member States to exercise this authority. Whether or not the notaries in the relevant Member State are bound by the rules on competence provided for by the Succession Regulation No 650/2012 should depend whether or not they are covered by the term "court" for the purposes of this Regulation. In addition, any acts issued by notaries in Member States regarding succession shoud circulate in legal transactions in conformity with the Succession Regulation No 650/2012. Therefore, if notaries exercise judicial functions, they are bound by the rules of competence and the decisions they render in legal transactions should be in conformity with the provisions on recognition and enforceability and enforcement of decisions.[29] If the notaries do not exercise judicial functions, they are not bound by the rules of competence and the authentic instruments they issue should circulate in legal transaction in conformity with the provisions on acceptance and enforceability of authentic instruments[30] (points 21 and 22 of the Preamble of the Regulation).

Member States have had an obligation to inform the European Commission about the notaries and other authorities and legal professionals considered as being a "court" pursuant to the Succession Regulation No 650/2012 (Arts 79 and 78 of the Regulation. For a list of authorities or legal professionals that are considered to be a "court" in individual Member States visit: https://e-justice.europa.eu/content_succession-380-hr.do?clang=hr (11/09/2019).

[29] On the recognition and enforcement of decisions on succession see *infra ad* II. E.
[30] On recognition and enforcement of decisions on succession see *infra ad* II.E.

2. General judrisdiction

Chapter II of the Succession Regulation No 650/2012 contains the provisions on jurisdiction as one of the most important concepts of private international law. In the Regulation, the courts of the Member State in which the deceased had his habitual residence at the time of death are the courts which have jurisdiction to rule on the succession as a whole (Art. 4 of the Regulation). The objective of this provision is to prevent the institution and conduct of several succession proceedings before the authorities of different Member States (Popescu 2014:30). The competent court rules in succession proceedings and in conformity with the Regulation regarding both movable and immovable property of the testator, regardless of where the property is located (Ivanc 2014:22).

A connecting factor for determining general jurisdiction is the habitual residence that is often used in the European law because it is the State in which the proceedings are conducted (p. 23 of the Preamble of the Regulation). Different from some European instruments from the area of judicial cooperation, this Regulation also sets forth the criteria according to which a "habitual residence" is determined that have obviously been inspired by the case law of the EU Court on this issue.[31] In accordance with point 23 of the Preamble of the Regulation, the authority dealing with the succession, in order to determine the habitual residence, should make an overall assessment of the circumstances of the life of the deceased during the last years preceding his death, and at the time of death, taking into account all relevant facts, in particular the duration and permanence of the deceased in the State concerned and the conditions and reasons for that presence. It is also emphasised that habitual residence determined in such a way should reveal a close and stable connection with the Member State concerned taking account of the specific objectives of this Regulation (p. 23 of the Preamble of the Regulation). The habitual residence is a very vague legal term which leaves the courts with quite a lot of space for discretion when rendering their decisions (Dutta 2013: 14).

Point 24 of the Preamble of the Regulation lays down that the determination of the habitual residence as a general connecting factor (to establish jurisdiction and the applicable law) may, in certain cases, prove complex. An example is given where the deceased, for

[31] See, for example, case C-523/07, A ECLI:EU:C:2009:225 of 2 April 2009, http://curia.europa.eu/juris/document/document.jsf?text=&docid=73639&pageIndex=0&doclang=EN&mode=1st&dir=&occ=first&part=1&cid=81453 (11/09/2019); case C-497/10 PPU, Mercredi v. Chaffea, ECLI:eu:c:2010:829 OF 22 December 2010, http://curia.europa.eu/juris/document/document.jsf?text=83470&pageIndex=0&doclang=en&mode=1st&dir=&occ=first&part=1&cid=814531 (11/09/2019).to es

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." (p. 24 of the Preamble of the Regulation). The conducted empirical research within the CISUR Project also points to the fact that the assessment whether the testator, at the time of death, had a habitual residence in a particular Member State was quite a challenge for the competent bodies.

With regard to the explanations given by the participants in the research about the determination of habitual residence, we would like to emphasise that the same question was given to both the notaries and the practicing lawyers in Croatia. The experience of these two groups of participants in our research and in the public policy of the Republic of Croatia was in many ways *different*. Here are some of their highlighted key elements of the research content:

The experience of the notaries: "*Well, I certainly take the habitual residence at the time of death and the assessment of the circumstances of the life of the deceased in the years preceding his death. I would always do the same. How do I determine the competence? By talking to the heirs……. I ask them about these circumstances in the life of the deceased: where he worked, where he was seeing his friends……. In my opinion, if his wife and children continued to live in Croatia, this is a signal that he continued to have a close connection with Croatia."* (JB1_RH).

Or: "*Well, as a factual question, it must always be determined from case to case. As for this concrete example that you have described, the so-called economic migrants do not belong to the category of persons who have a habitual residence in the country in which they work because a close and a stable connection, a much closer connection actually existed with their country of origin and the country of their nationality*. (JB2_RH).

A very interesting and an up-to-date approach to this topic was given by another participant who said: "*In such circumstances, I would not necessarily be inclined to say that this person's habitual residence was in the Member State to which he came for professional reasons. We have a current example of our members in the European Parliament. They have their mandate as members of the European Parliament, their families are in Croatia and it is where they had worked before they were elected. Their habitual residence had undoubtedly been in*

Croatia. By receiving the status of members of the European Parliament, they went to work in Bruxelles or Strasbourg. This circumstance of having been given a mandate, for five years, quite a long period of being our representatives in these two European cities, or two European countries, does not mean that their habitual residence is France or Belgium. I would say that their habitual residence is still in Croatia. It is because their families are here and probably most of their property, as well as family and other connections that define a person's habitual residence." (JB4_RH).

A group of judges participating in the research did not have much experience to be able to interpret this provision, so they mostly came up with different definitions of the concept of 'habitual residence' and very little from their own practice: "*This concretely means that at the time of death, the testator had lived in a country where he spent his social and working life and intended to live there, right? He can live in a country but this does not mean that he belongs there. We live near a border and many people work in the other country and they come back home every day where they live their habitual lives. I would not take this situation as an example. However, if someone left to live in Germany and work there, to live his future life there, in my opinion, this would be his habitual residence. We had the same, in a family…..a child who went to Slovenia, it is six years old and has lived in Slovenia for three years, goes to school there and before that to a kindergarten. The child is integrated in another social community. In my opinion, this is where the child's habitual residence is. But the County Court said it wasn't (laugh) This is how I see it…..*" (S4_RH)

In Slovenia, this question was posed to judges.
They mostly stated that, when deciding on jurisdiction, they would start from the data given in the death certificate and the place where the deceased had registered his domicile or residence. If there are indications that in relation to the deceased some other circumstance are also important, they must be additionally examined: "*Habitual residence ..... is the main connector ....habitual residence at the time of death. From the local administrative unit we get the death certificate .... we also check there what the last domicile and residence had been and if something is disputable or we are not sure, then we schedule a hearing, or summon the heirs to court to clarify the question of habitual residence."* (S3_SI) And: "*First, based on a death certificate, we check the last domicile or residence…. and on that basis we approximately establish the jurisdiction but if we think that something must be clarified, we schedule a succession hearing where we ask the heirs where was the centre of the social life*

of the deceased. To be honest, we have not had any problems with it, except in a case where a lady, during the last years of her life (before death) was in a nursing home and her entire assets were in Italy, she was an Italian national but we considered that her habitual residence was in Slovenia where she had lived for many years and where her social life had been…. she no longer went to Italy and people were visiting her here. We decided we had jurisdiction in this case." (S3_SI)

When deliberating on the mentioned case of the deceased, who went abroad for economic reasons and had a close connection with his State of origin, the judges attached more importance to the centre of his family and social connections: "*In this concrete case, I would choose the jurisdiction of the court where the person still had family, friends…. The circumstance that she worked abroad, in my opinion, is of secondary importance…. We speak of the centre of life relationships. In terms of family, social life of the deceased ….. The same can perhaps be related to education abroad. However, it happens that with time you transfer work, then your social life to another country and therefore, this moment in life must be taken into account. Citizenship is also taken into account, perhaps it is of secondary importance, then where the assets are located….. These are all secondary (circumstances) …. Many things must be taken into account in these cases."* (S4_SI) Or: "*There are also many people who for this or that reason and particularly for economic reasons, go abroad and are forced to stay there. I would check how long they had been abroad, why they had left in the first place, their social circle…. You must know that our region here is very intertwined, if I only speak of the Republic of Croatia, what is happening? A person had lived here all her life but eventually grew old, became fragile, a daughter lived, let's say in the Republic of Croatia, of course she took her to Croatia to take care of her more easily, registered her domicile there, cared for her and everything else …shall we then say that Croatia has jurisdiction? There were some reasons why that person had to leave. In short, it is necessary to check the circumstances. However, in most cases the heirs say what to do and how to do it."* (S2_SI)

Regarding the establishment of habitual residence, the practising lawyers mentioned several examples from their practice: "*I have had such experience, where it was clear that the habitual residence was in Slovenia but the heirs were not coordinated and (some) of them wanted the proceedings to be conducted in Germany, so that one of them kept insisting that the habitual residence was in Germany, while others were saying that it was here. They were heard before the court, asked about the relevant facts and the court established that he had*

lived here but his domicile was in Germany, he had lived for ten years here, so that then (the Slovenian court) declared its jurisdiction." (FSO_SI) And: "*We had another case where domicile continued to be registered in Slovenia, although it was actually in America where it was also registered and never cancelled his registration here. We then said that the jurisdiction was subsidiary, on the basis of citizenship, because he was a (Slovenian) national. His assets were in Germany but his habitual residence was not there. Unfortunately, it was not clear from the decision on what basis the court declared its jurisdiction and it did not explain it in its decision either. The court also issued the form but did not (fill in) the box where you tick which article of the Regulation was the basis for jurisdiction."* (FSO_SI).

Yet another example of very complex circumstances was a testator who had lived in several countries alternately, constantly travelling from one to the other, without permanently settling in any of them. In such a case, we must assess all the circumstances, such as whether the deceased was a national of any of these countries, or whether most of his property was located in any of them (p. 24 of the Preamble of the Regulation).

When discussing this case, the notaries from Croatia said the following: "*Well, we should apply different criteria. Perhaps we should establish where most of his property was located. In my opinion, this would be the best criterion to establish jurisdiction. If he had property in all these countries, then we should establish in which countries he had heirs, as the second criterion."* JB2_RH).

"*Well, we should again establish where he had exercised most of his… rights, customs….. whatever makes up a person's life….. Or we should establish jurisdiction depending on where his immovable is located*…." (JB3_RH).

Or in more details, the following explanation: "*Here we must establish some additional facts. For example, where was most of this person's property located, where he had his bank accounts, where were his immovables … we would be in a less favourable position if he had his bank accounts, cars or leased flats in all these countries. We would then be up in the air. We would have to choose a very sophisticated and pedantic way of trying to find out where he had spent most of his time, where he had more property and - after all – his family members would be here of great importance. If he had been married – where was his wife, his children etc. In such a way, by looking into all these facts and by applying the criteria provided for in the Regulation, we would be able to determine and define his habitual residence."* (JB4_RH).

The reasoning of Croatian judges' and the solutions they offered were also very similar. Here are some examples: "…..*at the hearing, I would ask his heirs to give me some data about his life. He had to be stationed somewhere and should have had a registered permanent or temporary residence. The length of his stays is very important. We should also establish if he had a flat, a house, any other immovable in any of these countries. Did he work, did he visit his physician, was he married, did he live with his wife and children, did his children go to school, a kindergarten? There are many elements that should be taken into account."* (S1_RH).

"*If he had not settled anywhere, I would say that his habitual residence was where his last stay had been. This is how I would decide because the estate is established on the day of the testators death, so I would make a connection by establishing where he had stayed last*." (S2_RH).

There were also some exceptions and very concrete examples of potential solutions like the following: "*If the situation was really such that he was not connected in any of the countries, I would go for his nationality*." S4_RH).

The judges who participated in the research in Slovenia have not yet come across such a case. In their hypothetical thinking, they said they would also check other circumstances that would connect the deceased even more with one of the countries: *"In that case, I would also check other connected circumstances, thus also citizenship. If the person had more than one citizenship, we would also take it into consideration……. first of all where was the main place of contacts…. In short, I would check all these circumstances and then decide ….but we still have not had such a case."* (S2_SI) And: "*But it would then be based on the basic citizenship. This is how it is here. If there is a dilemma, whether domicile or residence, I think that priority is given to domicile. If there is neither domicile nor residence, in that case we take into account citizenship. At the end of the day we would also take into account the assets (where they are located)."* (S5_SI) And: *"We would check where the person had anyone, his or her personal circumstances, family, perhaps siblings. If there was no one, we would summon unknown heirs and in such a way we would look for the heirs."* (S7_SI)

Another example was mentioned that was to some extent similar to the one from the question: "*The deceased had had a wife in Slovenia and he divorced her but they lived in the same house. They had two children. He had a summer house in Croatia and went there on a regular basis. One side claimed that he had actually lived there, and an allegation was also*

made that he had lived here for six months and in Croatia for another six months, or at least for a certain period of time. So, there are also border cases, especially when people retire. Given that we know that Slovenians own immovables in Croatia …. and stay there for several months ….difficulties arise when there is a dispute among the heirs (regarding jurisdiction)…. The backgrounds for the determination of jurisdiction may be different … which is disputable. One side favours Slovenian courts, the other Croatian courts. In the described case, it was quite disputable and the decision was annulled and the question of jurisdiction is still on the table. It will be necessary to hear all the parties and carefully decide where the jurisdiction will be, although such cases are very rare….. I think that the proceedings in Croatia are stayed until we decide." (FSS_SI)

In practice, the determination of habitual residence may cause many problems. When trying to find these general connectors, the guidelines given by the European Commission for the application of "the criteria of habitual residence" can be of some help. They are meant to be used when determining the right to social security but can certainly be very useful in the area of succession.[32] It is emphasised in these guidelines that when determining habitual residence, special criteria must be taken into account, such as the family status, family connections, the duration and continuity of a person's presence in the relevant Member State, his or her job (particularly the place where the work was usually done), the permanence of a housing location, the State where a person was paying taxes, the reasons for moving, as well as other criteria which clearly point to the facts connected with a person's stay in a particular Member State.

Apart from the provision on general jurisdiction, the Succession Regulation No 650/2012 also contains the provisions on prorogation of jurisdiction (Art. 5 of the Regulation), on subsidiary jurisdiction (Art. 10 of the Regulation) and on *forum necessitates* (Art. 11 of the Regulation).

The interpretation of the application of Article 4 of the Regulation (general jurisdiction) came up in the case law of the European Court in connection with the question of issuance of the national certificates of succession which in some Member States have not been replaced by the European Certificate of Succession and in the case C-20/17, it happened with German

[32] The Guidelines of the European Commission for the deterimination of „habitual residence", 13 January 2014, http:/europa.eu/rapid/press-release_IP-14-13_sl.htm (11/09/2019).

law.[33] The preliminary questions was: "Must Article 4 of the Regulation [650/2012] be interpreted in such a way to also determine exclusive international jurisdiction in the area of issuance of national certificates of succession which have not been replaced by the European Certificate of Succession in the relevant Member States (see Article 62, para. 3 of the Regulation No 650/2012), so that the deviating provisions of national legislators regarding international jurisdiction in the area of issuing national certificates of succession – like in Germany, for example, Article 105, [FamFGa] – do not have any effect because of the violation of the superior European law?" (p. 28 of the cited judgment of the European Court of Justice). The EU Court took a stand according to which Article 4 of the Regulation (general jurisdiction) "……. must be interpreted in such a way that the national regulation of a Member State is adverse to it, like the one in the main proceedings, providing that, although the deceased at the time of death did not have a habitual residence in that Member State, its courts remain competent for the issuance of of national certificates of succession within the succession with cross-border implications, when the estate is located in the territory of the relevant Member State, or if the deceased had been a national of that Member State." (p. 60 of the cited judgment of the European Court). Therefore, the provisions on succession contained in Chapter II. of the Regulation refer to both the question of conducting sucession proceedings with a cross-border element and to the issuance of national certificates of succession which in some Member States have not been replaced by a European Certificate of Succession and it is necessary to take into account the issues of jurisdiction for the issuance of the Certificate itself.[34]

3. Agreement on the choice-of-law (prorogation of jurisdiction)

The rules of the Succession Regulation No 650/2012 are based on the idea that the authority dealing with succession will apply its own law (*lex fori*) (p.27 of the Preamble of the Regulation). Since the testator had the possibility of choosing the right of the Member State whose national he had been at the time of making the choice, or at the time of death, the relevant parties may agree that the court, or the courts, of that Member State have exclusive jurisdiction to decide on all cases of succession (Art. 5, para. 1 of the Regulation). There is thus a presumption that the application of the provision on prorogation of jurisdiction, that the testator had chosen the applicable law in conformity with Article 22 of the Regulation.

[33] Case C-20/17, Oberle, ECLI:EU:C:2018:485 of 21 June 2018, http://curia.europa.eu/juris/document/document.jsf?text=&docid=203223&pageIndex=0&doclang=HR&mode=1St&dir=&occ=first&part=1&cid=12872265 (11/09/2019).

[34] On the Certificate see infra ad II. G.

Therefore, the application of the provision on the agreement on prorogation of jurisdiction does not only depend on the agreement of all heirs on the choice-of-law but also on the expressed will of the testator regarding the law that should be applied (Popescu 2014:33).

It must be emphasised that the provision of Article 5 of the Regulation speaks about "the parties concerned" and it offers a possibility that on a case-by-case basis, depending on the issue covered by the choice-of-court agreement, it is assessed whether the agreement must be concluded between all parties concerned by the succession, or whether some of them could agree to bring a specific issue before the chosen court in a situation where the decision by that court on that issue would not affect the rights of other parties in the succession proceedings (p. 28 of the Preamble of the Regulation).

The choice-of-court agreement can be made after the opening of the succession, as well as prior to its opening if the testator had chosen the applicable law (Popescu 2014:34). The choice-of-court agreement must be made in writing, dated and signed by the parties concerned (Art. 5, para. 2 of the Regulation). The Regulation expressly provides that any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to the form made in writing (Art. 5, para. 2 of the Regulation). However, even the communications by electronic means must be made in a prescribed form and they must be signed with an electronic signature to be considered as equally valid. A simple exchange of e-mail messages is not sufficient (Popescu 2014:34, in particular note 76).

Article 6 of the Regulation lays down the cases where the court may, as well as those where the court must decline jurisdiction (both general and subisidary) if the testator had made the choice of the applicable law in accordance with Article 22 of the Regulation. If the testator had chosen the applicable law in accordance with Article 22 of the Regulation, the court, before which the proceedings are instituted under the provision on general jurisdiction (Art. 4 of the Regulation, or the provision on subisidiary jurisdiction (Art. 10 of the Regulation)[35], may:

a) at the request of one of the parties 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

[35] On subsidiary jurisdiction see *infra ad* II.C.4.

residence of the parties and the location of the assets". This is the discretion of the court that is much closer to Anglo-American legal tradition which makes adaptation to the circumstances of individual cases possible (the reasons of purposefulness) (MaxPlanck Institute 2010:40).

b) decline jurisdiction if the parties to the proceedings have agreed to confer jurisdiction on a court or the courts of the Member State of the chosen law in accordance with Article 5 of the Regulation). In this event we speak of an obligatory transfer of jurisdiction in favour of the courts of the Member State whose law the testator had chosen if the parties have agreed to confer jurisdiction on a court of that Member State.

In the provisions of Article 7, the Regulation prescribes the jurisdiction of the courts of the Member State whose law had been chosen by the testator (Art. 22) to govern his succession:

a) if a court previously seised has declined jurisdiction in the way described *supra* (Art. 6 of the Regulation);
b) if the parties to the proceedings have agreed to confer jurisdiction on a court or the courts of that Member State (Art. 5 of the Regulation);
c) if the parties to the proceedings have expressly accepted the jurisdiction of the court seised; or
d) if the parties, who were not parties to the choice-of-law agreement, appear before the court without contesting the jurisdiction of the court (Art. 7 c) of the Regulation). The Regulation also lays down jurisdiction on appearance before the court (Art. 9 of the Regulation). If before the court of a Member State it is established, in accordance with Article 7 of the Regulation, that not all the parties to the proceedings have been parties to the choice-of-court agreement, the court will continue to exercise jurisdiction if the parties to the proceedings who were not party to the agreement enter an appearance without contesting the jurisdiction of the court (Art. 9, para. 1 of the Regulation). If any of the parties who were not party to the agreement, contest the jurisdiction of the court, the court will decline jurisdiction (Art. 9, para. 2, sent. 1 of the Regulation). In that event, jurisdiction to rule on the succession lies with the courts having general (Art. 4 of the Regulation) or subsidiary jurisdiction (Art. 10 of the Regulation) (Art. 9, para. 2, sent. 2 of the Regulation).

On the results of the empirical research within the CISUR Project, regarding the choice of applicable law, see *infra ad* II. D.)

4. Subsidiary jurisdiction

Except for the provision on general jurisdiction (Art. 4 of the Regulation) that provides for habitual residence of the testator at the time of death, the Regulation also lays down the subsidiary jurisdiction of the courts of Member States in cases where the habitual residence of the testator at the time of death is not in any of the Member States of the EU but in a third State.

Article 10 of the Regulation lays down the following: "(1) 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: (a) if the deceased had the nationality of that Member State at the time of death; or, failing that, (b) if 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. (2) Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on those assets."

These provisions of the Regulation depart from the general connector to habitual residence in a Member State. However, in order for subsidiary jurisdiction to take place, the estate must be located in a Member State. The connectors to exercise subsidiary jurisdiction are exhaustively listed; apart from these connectors, no other reasons for the exercise of jurisdiction in the context of the Regulation are possible (p. 30 of the Preamble of the Regulation). In addition, these connectors to exercise subsidiary jurisdiction are not of alternative nature, they are listed in a hierarchical order: the courts of the Member State whose nationality the deceased had had at the time of death have priority. Only where there is no such connection, the courts of the Member State of the previous habitual residence are taken into account (p. 30 of the Preamble of the Regulation) (Art. 10, para. 1 of the Regulation; Popescu 2014: 36-37).

Subsidiary jurisdiction is subsidiary in relation to other types of jurisdiction laid down in the Regulation, including the general jurisdiction: subsidiary jurisdiction is taken into consideration only if general jurisdiction cannot be exercised in any of the Member States and the habitual residence at the time of death is in a country which is not a Member State of the EU.

Among the connectors to exercise subsidiary jurisdiction, there is also a difference with regard to the estate for which such jurisdiction of a court of a Member State exists:

a) if subsidiary jurisdiction of the courts of a Member State is established on the basis of a connection via nationality or the previous habitual residence in a Member State (Art. 10, para. 1 of the Regulation), it applies to the entire estate and not only the estate located in the relevant Member State. Jurisdiction established in such a way applies also to the estate located in the territory of another Member State or in the therritory of the so-called third country (Popescu 2014:37);
b) if the deceased had not been a national of a Member State and had not had previous habitual residence in a Member State but the assets of his or her estate are located in a Member State, subsidiary jurisdiction of a court of a Member State exists only in relation to the assets of the estate located in the Member State concerned (Art. 10, para. 2 of the Regulation; Popescu 2014:37). It means that it may happen in practice that separate succession proceedings are conducted before the competent authorities for the assets located in their territory.

5. *Forum necessitatis*

The provisions *forum necessitatis* can be found in Article 11 of the Regulation. Their purpose is to prevent cases of denial of court protection. Therefore, the court of a Member State may exceptionally rule on the succession closely connected with a third State. Within the framework of this Regulation, this occurs if no court of a Member State, in accordance with other provisions of the Regulation, is competent and if it is not possible to bring the proceedings or conduct them within a reasonable framework in a third State with which the case is closely connected, or if it is impossible to conduct them at all in a third State (Art. 11, sent. 1 of the Regulation. However, the case must have a sufficient connection with the Member State of the court seised (Art. 11, sent. 2 of the Regulation).

Forum necessitatis applies in exceptional cases: if the proceedings are absolutely impossible (natural disasters, epidemics, wars or armed conflicts), or if some relative circumstances are involved, when the proceedings cannot be instituted or conducted within a reasonable framework (p. 31 of the Preamble of the Regulation). The case would be sufficiently connected with a Member State of the court seised (Art. 11, sent. 2 of the Regulation) if the testator had had the nationality or previous habitual residence in the Member State concerned.

However, it would still not be possible to exercise subsidiary jurisdiction either (Art. 10 of the Regulation) because there is no estate in the Member State concerned (Popescu 2014:38).

6. Other rules

6.1. Limitation of proceedings

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

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

One of the objectives of this Regulation is to alleviate the position of heirs and legatees who do not live in the Member State of the court seised (t. 32 of the Preamble of the Regulation). The Regulation allows any person entitled under the law applicable to the succession (legacy) to make declarations concerning the acceptance of a legacy or a reserved share, or waiver of the succession, of a legacy or a reserved share, or concerning the limitation of his or her liability arising from the estate before the courts of their habitual residence. The court must accept such declarations if under the law of the Member State concerned, such declarations may be made before a court (Art. 13 of the Regulation).

On the applicable law according to which the validity of the form of such declarations of acceptance or waiver of the legacy, or a reserved share, or a declaration to limit the liability of the person making a declaration is assessed, see *infra ad* II.D.5.2.

6.3. Seising of a court

The Regulation is aimed at preventing that incompatible decisions are rendered in various Member States. This is where the provisions of Article 14 of the Regulation also contribute providing for the moment when the proceedings before the court are deemed to have been instituted. A court is deemed to be seised:

A. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to service the documents on the opposing party;
B. if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has

not subsequently failed to take the steps he or she was required to take to have the document lodged with the court; or

C. if the proceedings are opened of the court's own motion, at the time when the decision to open the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

6.4. Examination as to jurisdiction

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

6.5 Examination as to admissibility

The Regulation provides for the possibility of participating in the case of a defendant who does not have his habitual residence in the Member State in which an action against him is conducted. It must be emphasised here that the provisions of Article 16 of the Regulation are designed bearing in mind contentious proceedings, i.e. overlooking the fact that when succession is involved, we deal with non-contentions proceedings where most frequently several parties take part. Instead of talking about a "defendant" we should use the term "interested party".

Indeed, if an interested party (with a habitual residence in a State not being a Member State where the proceedings have been instituted) does not enter an appearance, the court having jurisdiction must stay the proceedings so long it is not shown that the interested party has been able to receive the document instituting the proceedings or an equivalent document in time to arrange for his defence, or that all necessary steps have been taken to that end (Art. 16, para. 1 of the Regulation).

Instead of Article 16, para. 1 of the Regulation, the provisions of Article 19 of the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 apply (on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters)[36] if a document instituting the proceedings or an equivalent document

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

must be transmitted from one Member State to another pursuant to that Regulation. If a document instituting the proceedings or an equivalent document must be transmitted abroad and the provisions of Regulation (EC) No 1393/2007 on the service of documents are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters apply.[37]

6.6. Litispendence

The provision of Article 17 of the Regulation on litispendence is also aimed at avoiding incompatible decisions. It is applied if the same succession case is brought before different courts in different Member States. That rule will then determine which court will proceed to deal with the succession case and render its decision (p. 35 of the Preamble of the Regulation).

If parallel proceedings relating to the same case, with the same parties are conducted before the courts of different Member States, all the courts, other than the court first seised must of their own motion stay their proceedings until the jurisdiction of the court first seised is established (Art. 17, para. 1 of the Regulation). When the jurisdiction of the court first seised is established, all other courts other than the court first seised must decline jurisdiction in favour of that court (Art. 17, para. 2 of the Regulation).

In some Member States, the jurisdiction for acting in succession matters may be dealt with by non-judicial authorities that are not considered as courts under this Regulation – like the notaries in some Member States who do not satisfy the criteria prescribed by the Regulation for understanding the term "court" within its application and are not bound by its rules of jurisdiction,[38] there is potentially a possibility of and out-of-court settlement and court proceedings in the same matter of succession to be conducted in parallel, or two out-of-court settlements relating to the same succession matter. Pursuant to p. 36 of the Preamble of the Regulation, in such a situation, the parties once they become aware of the parallel proceedings, should agree among themselves how to proceed. If they cannot agree, the succession would have to be dealt with by the court having jurisdiction under this Regulation (p. 36 of the Preamble of the Regulation).

[37] Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, https://www.hcch.net/en/instruments/conventions/full-text/?cid=17 (11/09/2019) (hereinafter: HC of 1965 on the Srvice Abroad).

6.7. Related Actions

The provisions of Article 18 of the Regulation deal with related actions: actions are deemed to be related if they are so closely connected that there is sufficient interest for them to be dealt with together and to render a single decision to avoid the risk of irreconcilable decisions resulting from separate proceedings (Art. 18, para. 3 of the Regulation).

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

6.8. Provisional and protective measures

The jurisdiction of the courts of Member States is prescribed for the determination of provisional and protective measures according to *lex fori* even if, under this Regulation, the courts of another Member State have jurisdiction for rendering decisions as to the merits of the case (Art. 19 of the Regulation).

D. APPLICABLE LAW

1. Principle of the unity of the estate

The principle of the unity of the estate is one of the most important achievements of the European legislator, taking into account the circumstance that in the conflict-of-law rules of the Member States, there is not a unified approach to movable and immovable property constituting the estate (Popescu 2014:39; Dutta 2013: 14). Point 37 of the Preamble of the Succession Regulation No 650/2012 lays down that the law closely connected with succession should: "….govern the succession as a whole, that is to say, all of the property forming part of the estate, irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State", and "For reasons of legal certainty and in order to avoid the fragmentation of the succession…" (p. 37 of the Preamble of the Regulation). In addition, 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 (*lex fori*) (p. 27 of the Preamble of the Regulation).

Therefore, the Regulation prescribes a dual aspect of the principle of the unity of the estate: the application of a single body of law regardless of the nature of the assets and regardless of the location of the estate but at the same time also the connection of the law governing the succession and the authority competent to decide on the succession. Pursuant to Articles 4 and

21, para. 1 of this Regulation, this unity rests on the habitual residence of the testator at the time of death.

Beside the principle of the unity of the estate, the applicable law pursuant to this Regulation and deliberation in regard to the assets located in a third State, the provision of Article 12 of the Regulation must also be emphasised. Pursuant to this provision, the court seised to rule may decide, at the request of one of the parties, not to rule on one or more of such assets located in a third State if it may be expected that its decision in respect of that portion of assets will not be recognised and, where applicable, declared enforceable in that third State (Art. 12, para.1 of the Regulation). However, it is necessary to take into account the fact that the application of the cited rule on the limitation of the proceedings, or exclusion of the assets located in a third State, is connected with the prescribed assumption of the impossibility of recognition and, if necessary, the declaration of enforceability of a decision rendered in conformity with the Regulation in the third State concerned. On the other hand, there is a basic principle that in the succession proceedings, pursuant to the Regulation, the whole estate needs to be dealt with, even the one located in a third State, in accordance with the law applicable under the Regulation.

The empirical research conducted within the CISUR Project suggests that the application of the principle of the unity of the estate in relation to the assets located in a third State, and the assessment of the fulfilment of the preconditions for the limitation of the proceedings can be a challenge for the authorities.

Example: "*The testator was a Croatian national with temporary and permanent residence in Zagreb, his heirs were also in Zagreb but there were some assets in Bosnia and Herzegovina. My position was that the Succession Regulation had to be applied because it provided for the succession as a whole, so that the entire estate would be divided. Taking into consideration the fact that at that moment, Bosnia and Herzegovina had already acceded to the Stabilisation and Accession Agreement, I asked at the succession hearing to also distribute the movable and immovable property located in that country. That was a great experience for me but everybody looked at me with surprise, as if I wanted to propose something…… what do I want..?, what am I saying ?….. My idea was that the Regulation guaranteed rights to people, not to notaries, courts or …… but to concrete people and that it made their lives easier because it offered them all the advantages of the internal market and what the European*

Union brought about. However, I was declined in the Statement of Reasons, precisely because of the scope of application. They invoked the Conflict-of-Laws Act because according to that Act, for immovables located in Bosnia and Herzegovina, only a Bosnian court was competent, as well as for movables. They simply did not want to take into account the Regulation. The scope of application…. what did I want? They only mentioned, I think, Article 12, paragraph 1.. I can see it now. All the heirs in my case agreed and they wanted a decision to be made before a Croatian notary, as a commissioner of the Croatian court. I wouldn't propose anything like that had I not known what was the practice in Bosnia. I contacted my colleagues there and knew that their courts implemented the decisions made by our notaries, but I was still rejected." (O2_RH).

In Slovenia, the question of deciding on the estate of the testator who had been in a third State was discussed by the judges: *"There is a problem if third States are involved. If the parties do not exclude that (by requesting that the court does not decide on the assets in a third State), how will they be able to registrate what we have decided regarding the immovable in Serbia…. The parties, who tell us that the asset is in a third State, we draw their attention to the fact that we can decide on that based on the Regulation but we do not guarantee that on that basis, they will be able to regulate it. If the legal system of a third State rejects my decision, or does not recognise it…most of them decide they don't want (that we decide) and they separately regulate that problem. This jurisdiction towards a third State…is somewhat unusual…However, there are not so few assets in third States… particularly in the countries of the former Yugoslavia*." (S5_SI) And: "*There are cases where a part of the assets is in Bosnia and Herzegovina, in other countries of the former Yugoslavia…., in USA, and I think that in such cases …the Succession Regulation applies. Then we, of course, issue a European Certificate of Succession only in relation to the Member States because Article 62 of the Regulation provides that the Certificate is issued to be used in other Member States…. The parties are then told that they have to bring action for recognition and enforcement of our decision on succession there and if it is not successful, the succession proceedings must be seised there… most probably.*
I do not know how these issues are solved there." (S6_SI)

It is important to emphasise that the principle of dealing with the whole estate will not survive, not even when the law applicable to succession, pursuant to the Regulation, was the law of a third State (Art. 20 of the Regulation), whose conflict-of-law rules, in the part of the

assets forming the estate, refer to the law of another State. Article 30 of the Regulation must also be emphasised because it prescribes the application of special rule, *lex rei sitae,* to the succession of certain categories of assets forming the estate if the law of the State in which certain immovable property, certain enterprises or other special categories of assets are located contains such special rules which, for economic, family or social considerations, impose restrictions concerning or affecting the succession in respect of those assets. These special rules apply to the succession in so far as, under the law of that State, they are applicable irrespective of the law applicable to succession (Art. 30 of the Regulation).[39]

2. The scope of the applicable law

In accordance with the principle of the unity of the estate, the provisions of Article 23, para. 1 of the Regulation lay down that the law determined as the applicable law under Article 21 (general rule) or Article 22 (the law chosen by the testator) governs the succession as a whole. That law will also determine the beneficiaries in a particular succession case – the heirs, legatees and the persons entitled to reserved shares (p. 47 of the Preamble of the Regulation).

The Regulation does not bring to the fore the laws of Member States because any law to which the rules of the Regulation refer can apply regardless of whether it is the law of a Member State (Art. 20 of the Regulation). It can also be the law of a third State if that is in accordance with the rules of the Regulation and closely connected with succession.

In the second paragraph of Article 23 of the Regulation, there is a list of matters for which the applicable law will be the one referred to in the Regulation. The law applicable to succession should regulate succession from its opening to the transfer of ownership of the assets forming part of the estate to the beneficiaries as determined by that law. It is also necessary to include the questions relating to the administration of the estate and to liability for the debts under the succession (t. 42 of the Preamble of the Regulation). This list is very extensive but not exhaustive, so that also other legal issues can be taken into account if they are governed by the law chosen in conformity with the Regulation.

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

a) the causes, time and place of the opening of the succession;

[39] In relation to applicable law, on some special rules of the Regulation, see infra ad II.D.3, II.D.4 and II.D.5.4.

b) the determination of the beneficiaries, of their respective shares and of the obligations which may be imposed on them by the deceased, and the determination of other succession rights, including the succession rights of the surviving spouse or partner;
c) the capacity to inherit;
d) disinheritance and disqualification by conduct;
e) the transfer to the heirs and, as the case may be, to the legatees of the assets, rights and obligations forming part of the estate, including the conditions and effects of the acceptance or waiver of the succession or of a legacy;
f) the powers of the heirs, the executors of the wills and other administrators of the estate, in particular as regards the sale of property and the payment of creditors, without prejudice to the powers referred to in Article 29(2) and (3);
g) liability for the debts under the succession;
h) the disposable part of the estate, the reserved shares and other restrictions on the disposal of property upon death as well as claims which persons close to the deceased may have against the estate or the heirs;
i) any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries; and
j) the sharing-out of the estate.

3. General rule and the possibility of deviating from it

Like in the case of the determination of general jurisdiction, the last habitual residence is a general connecting factor also in relations to the provisions of the applicable law. "Unless otherwise provided for in this Regulation, the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death." (Art. 21, para. 1 of the Regulation). As already emphasised in Chapter C. of this report (jurisdiction), the term "habitual residence" leaves significant level of discretion to the authorities in a particular case but in practice, its determination can be quite complex.

The Regulation lays down possible deviation from the application of a general rule for a determination of the applicable law. By way of exception, if it is clear from all the circumstances of the case that, at the time of death, the deceased was "manifestly more closely connected" with a State other than the State whose law would be applicable under the general rule (Art. 21, para. 1), the law applicable to succession is the law of that other State (Art. 21, para. 2 of the Regulation). The clause of deviation can thus exceptionally be applied

in a particular case if, at the time of death, the deceased was "manifestly more closely connected" with the State other than the State where he, at the time of death, had had his habitual residence. In such cases, the law applicable to succession is the law of another State with which the deceased was manifestly more closely connected at the time of death. Among other things, the cited provision enables the authorities to apply foreign law with which the deceased is more closely connected but at the same time, it does not challenge its jurisdiction connected with the last habitual residence of the deceased (Dutta 2013:14).

In the provisions of Article 21, para. 2 of the Regulation, the circumstances are not expressly laid down on which the assessment of the authority dealing with the succession would depend, namely, whether it is necessary to deviate from the general rule when determining the applicable law. However, it ensues from the Preamble of the Regulation that the European legislator had in mind a situation where all the elements connected with the succession were in a particular State (assets, heirs, and the deceased may have even had the nationality of that State), as well as the previous habitual residence, whereas the last habitual residence came into play fairly recently before his death (p. 25 of the Preamble of the Regulation; Popescu 2014: 43). At the same time, in p. 25 of the Preamble of the Regulation, there is a warning that the manifestly closest connection should not be resorted to every time when the determination of the habitual residence of the deceased at the time of death proves complex. Indeed, a closer connection with a State which is not the State of the person's habitual residence should ensue from "all the circumstances of the case" and at the same time there must be a closer connection with just one other State and not with several (other) States (Popescu 2014: 41).

4. Choice-of-law

The possibility of choosing the applicable law for the succession as a whole is provided for in Article 22 of the Regulation. Pursuant to this Article, the testator may choose the law of the State whose nationality he possesed at the time of making the choice or at the time of death as the law to govern his succession as a whole (Art. 22, para. 1, sent. 1 of the Regulation). A person possessing multiple nationalities may choose the law of any of the States whose nationality he possessed at the time of making the choice or at the time of death (Art. 22, para. 1, sent. 2 of the Regulation). The autonomy of the choice is thus limited to the law of the State whose national the testator had been at the time of making the choice or at the time of death. The reason for the limitation of the autonomy of choosing the law, pursuant to p. 38 of the

Preamble of the Regulation, lies with the intension to ensure a connection between the deceased and the law chosen and to avoid a law being chosen with the intention of frustrating the legitimate expectations of persons entitled to a reserved share.

A testator may choose only one body of law which then governs the succession as a whole and all the questions connected with it, including the question who are the beneficiaries and those entitled to a reserved of share (Art. 23, para. 1 of the Regulation). The choice also excludes any possibility of the application of the law of the State where the testator had his last habitual residence (general rule). The principle of universal application is valid also when the choice of law is made, in compliance with Article 20 of the Regulation according to which the testator, who was a national of a third State, may choose the law of that State (Vassilakakis 2016: 223-224).

The choice of law may lead to a separation of the questions of jurisdiction and the applicable law. Indeed, the Regulation is devised so as to ensure that the authority dealing with the succession, in most situations, applies its own law (*lex fori*). It therefore provides for a series of mechanisms which would come into play where the testator had chosen the law of the State of which he was a national (p. 27 of the Preamble of the Regulation). The connection between the law and the jurisdiction may be re-established – under the condition that the testator had chosen the law of a Member State. In this case, the parties (heirs) may agree that, in order to decide on all issues connected with the succession, a court of a Member State whose law the testator had chosen (choice-of-law agreement), has exclusive jurisdiction. In addition, the Regulation also provides for a possibility for the parties to the proceedings to accept, expressly or tacitly, the jurisdiction of the court of a Member State whose law the testator had chosen (Art. 7, c), Art. 9 of the Regulation). However, if the testator had chosen the law of a third State, the establishment of the connection between the chosen and applicable law and the jurisdiction would not be possible because by this Regulation, it is not possible to have impact on the rules on the international jurisdiction of third States. On the prorogation of jurisdiction within the framework of the Regulation see *supra ad* II.C.3.

Pursuant to Article 22, para. 2 of the Regulation, the testator must expressly make the choice of law in a declaration in the form of a disposition of property upon death or the choice must clearly and indisputably ensue from the provisions on the disposition of property. The substantive validity of the disposition is governed by the chosen law. Any modification or

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

Within the CISUR Project, we intended to examine the functioning of the agreement on the choice of the applicable law in the context of the application of the Regulation.

The results of the empirical research clearly show that the participants, in the groups in Croatia, hardly have any experience with the choice-of-law agreements in the context of the application of the Succession Regulation which has been a very interesting indicator of the situation in practice. Nevertheless, it is necessary to point to very educative observations made by the participants in the research even for lay people. Here is what they highlight: "…. *I believe that the question of the applicable law is perhaps one of the most important issues of the Regulation because .... the choice of the applicable law .....when a testator chooses the applicable law, he makes it possible for his heirs to choose the jurisdiction ….. when we talk to people who have problems when going abroad searching for jobs, I always say that it would be smart for them to make a declaration with a notary stating that the applicable law for their estate is the law of the Republic of Croatia because in such a way, they make succession easier if it is carried out in the Republic of Croatia. However, I have no personal experience in this area*." (S5_RH).

Most judges who participated in the research in Slovenia did not have any experience with the choice of applicable law. However, some judges expressed their concern about the application of foreign law: "*How to pinpoint that law, who to turn to….in the Slovenian law, where case law is not an official legal source, many problems have been solved in case law. In some legal systems, where this is additionally emphasised, you have a problem if they, upon request, send you only the Act…. Who is the one who offers the Act when I ask for it alone and how can I be sure that what they have given me and sent me is really what I wanted. To be honest, I am somewhat afraid of that….We already submitted a request for a foreign Act and it was sent by the Ministry of Justice. The first obstacle is, of course, the language. The original is in the language of the country which has issued the transcript. If they send it to me in Polish, it does not help me much. Except a translation. As a rule, there are no official translations of Acts."* (S5_SI)

One of the judges had a case where the will had been made before the date of entry into force of the Succession Regulation: "*The will had been made in a foreign language in Germany, before the entry into force of the Regulation, which means, in the light of the transitional provision, that in that case it is considered that the deceased had chosen the law of Germany. It means that a party to the proceedings is entitled to challenge or apply for the transfer of the jurisdiction abroad under the principle of efficiency. An this is what the party has (now) applied for and I shall now decide on jurisdiction…… If the parties succeed (with their application)…. we shall declare lack of jurisdiction … The habitual residence is in Slovenia, at least according to my assessment…., but if the proceedings are conducted in Slovenia, it will be necessary to apply German law … The application of German law will be relevant also in civil proceedings that will, as it looks now, most probably be conducted… In this concrete case, I have a common-law partner, she is entitled to succession in Slovenia, but not in Germany."* (S4_SI)

One of the practicing lawyers came across the problem of the choice of law at a conference on testamentary disposition and making wills: "*I have had a few cases where I gave advice to clients….on how to, in the best way and rationally, make a will…., which law to apply and which court is going to have jurisdiction over inheritance proceedings, how to optimise the costs, taxes connected with their wishes and how the transfer of property to heirs will be carried out."* (O2_SI)

The notaries: "*We only have experience with wills made in our offices, by Slovenian nationals living abroad, and they never chose foreign law."* (N2_SI)
And: "*I already had a case where the client with both Slovenian and German citizenships chose Slovenian law."* (N5_SI). The notaries also expressed their concern about the application of foreign law: "*A Slovenian national lives in France, he made a will, left everything to his wife and he wanted the French law to be applied. There are problems in this case. How will this be ….when the case is before the judge, before a notary, how will they react and how will it be done? This is a question that we need to talk about and it must be additionally explained."* (N3_SI)

5. Specific conflict-of-law rules

A general conflict-of-law rule – which pursuant to the Regulation is the provision providing for the testator's last habitual residence (if he has not chosen the law) – cannot provide answers to all the questions related to succession. There is a need for specific rules to respond to individual aspects of succession (Dutta 2013: 15).

5.1. Disposition upon death and succession agreements

In order to ensure legal certainty for persons wishing to plan their succession in advance, this Regulation should lay down specific rules concerning the admissibility and substantive validity of dispositions of property upon death (p. 48 of the Preamble of the Regulation). In order to make it easier for the succession rights acquired as a result of a succession agreement to be accepted in the Member States, this Regulation lays down which law is to govern the admissibility of such agreements, their substantive validity and their binding effects on the parties, including the conditions for their dissolution. The admissibility and acceptance of succession agreements vary among the Member States (t. 49 of the Preamble of the Regulation).

The admissibility and substantive validity of the disposition of property upon death are governed by the law which, under the Regulation, would have been applicable to the succession of the person who made the disposition if he had died on the day on which the disposition was made (Art. 24, para. 1 of the Regulation). As to succession agreements, the specified law also provides for the binding effects between the parties to the agreement, including the conditions for its dissolution (Art. 25, para. 1 of the Regulation). When dealing with the disposition of property upon death and the agreement as to succession, the Regulation protects the autonomy of the person who made the disposition and of the parties to the agreement because they may choose the law which the person, or one of the persons whose estate is included in the agreement, could have chosen pursuant to Article 22 of the Regulation (Art. 24, para. 2, Art. 25, para. 3 of the Regulation).[40]

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

[40] On the choice of the applicable law see *supra ad* II.D.5.

disposition of property upon death may lead to a conclusion that that disposition of property upon death is invalid (p. 48 of the Preamble of the Regulation). These elements are:

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

Article 27 lays down the rules as to the form of written dispositions of property upon death. A disposition of property upon death made in writing is valid with regard to form if its form complies with the law:

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

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

The Regulation provides for the applicable law according to which the validity of the form of declarations concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or declarations designed to limit the liability of the person making the declaration (Art. 28 of the Regulation). These declarations are valid as to the form if the following requirements are met:

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

On the jurisdiction of the court for making these declarations on the acceptance or waiver of the succession, of a legacy or of a reserved share see *supra ad* II.C.6.2.

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

Article 29 of the Regulation contains the rules on the appointment of an administrator of the estate when it is mandatory or mandatory upon request under the law of the Member State whose courts have jurisdiction to rule on the succession pursuant to this Regulation and the law applicable to the succession is a foreign law. The courts may, in accordance with their law and under the conditions referred to in the Regulation, appoint one or more administrators of the estate whose task is to enforce the testator's will and/or to administer the estate in accordance with the applicable law.

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

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

Some States have special rules concerning the succession of certain immovable, enterprises or other categories of assets located in their territories which, for economic, family or social considerations impose restrictions concerning or affecting the succession of such assets. In conformity with Article 30 of the Regulation, these special rules apply to the succession to the extent to which under the law of these States (*lex rei sitae*), they are applicable irrespective of the law applicable to the succession.

The Regulation thus takes into account special *lex rei sitae.* However, p. 54 of the Preamble of the Regulation must be mentioned here because it expressly lays down that this deviation from the application of the law applicable to succession must be interpreted very strictly so it does not contradict the general objective of the Regulation. Therefore, neither the conflict-of-laws rules, which in the case of immovable property refer to the law other than that applicable to movable property, nor the provisions providing for reserved shares larger than those envisaged in the law applicable to the succession in the Regulation, should not be considered as special rules imposing restrictions concerning or affecting the succession of specified assets (p. 54 of the Preamble of the Regulation).

5.5. Adaptation of rights *in rem*

The Regulation does not want to encroach upon the rules on the rights *in rem* of individual Member States. In point 15 of the Preamble of the Regulation it is laid down that the Regulation should not "affect the limited number ("*numerous clausus*") of the rights *in rem* known in the national laws of some Member States." If "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 where the right is invoked does not know the right *in rem* in question, that right will, if necessary and to the extent possible, be adapted to the closest equivalent right *in rem* under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* attached to it." (Art. 31 of the Regulation).

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

5.6. *Commorientes*

In order to ensure uniform acting in the situations where it is uncertain in what order two or more persons died whose succession will be governed by various laws, the Regulation contains a rule according to which none of the deceased persons have any rights to the succession of the other or others.

5.7. Estate without a claimant

Where there are no heirs or legatees under the applicable law for the succession in conformity with the Regulation, the provisions of Article 33 of the Regulation provide for the law of a Member State or an entity designated by that Member State, under *lex fori*, of acquiring the estate located in its territory but under the condition that the creditors are entitled to request the settlement of their claims from the assets of the whole estate.

5.8. Reference to another law or *renvoi*

The rules on the applicable law contained in the Regulation may lead to the application of the law of a third State. In such cases, the private international law rules of that State must be taken into account. If these rule envisage reference either to the law of a Member State or to the law of a third State which would apply its law to the succession, such reference or *renvoi* should be accepted to ensure international consistency. However, such reference to another law or *renvoi* should be excluded in situations where the testator had chosen the law of a third State (p. 57 of the Preamble of the Regulation); Art. 34 of the Regulation). The application of the conflict-of-law rules would jeopardize the preliminary decision of the parties and would constitute the violation of the principle of predictability (Vassilakakis 2016: 229).

5.9. Public policy (*ordre public*)

Pursuant to Article 35 of the Regulation, the application of the provisions of the law of any State specified by the Regulation "may be refused only if such application is manifestly incompatible with the public policy." However, the courts should not apply the exemption regarding public policy to refuse the application of the law of another State if such acting would be contrary to the Charter of Fundamental Rights of the European Union,[41] and in particular its Article 21 which prohibits all forms of discrimination (p. 58 of the Preamble of the Regulation).

[41]Charter of Fundamental Rights of the European Union, SL EU, C 202, 07/06/2016, http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016P/TXT&from=HR (12/09/2019) (herenafter: EU Charter of Fundamental Rights).

5.10. States with more than one legal system

When the rules of the Regulation deal with the application of the law of the State with more than one legal system, Article 36 provides that the relevant law is determined on the basis of internal conflict-of-law norms of that State. In the absence of such internal conflict-of-law rules, para. 2 of Article 36 of the Regulation contains the rule on the interpretation of referring to the law of such a State.

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

A Member State which comprises several territorial units each of which has its own rules of law in respect of succession will not be required to apply this Regulation).

E. RECOGNITION AND ENFORCEMENT OF DECISIONS ON SUCCESSION

1. Recognition of decisions on succession

Different from some individual European instruments which have abolished the system of exequatur, the Succession Regulation No 650/2012 provides for a simplied exequatur procedure and lays down a distinction between the recognition and enforcement of a decision on succession. A decision on the recognition rendered in one Member State will be recognised in other Member States without any special procedure being required (Art. 39, para. 1 of the Regulation).

The term “decision” as used in the Regulation means any decision rendered by a court of a Member State in matters of succession, whatever the decision may be called, whether it is rendered in contentious or non-contentious proceedings (t. 59 of the Preamble of the Regulation), including a decision on the determination of costs or expenses of court officers (Art. 3, paras g) of the Regulation). First, it must be a decision rendered in regard to (substantive) scope of application (Art. 1 of the Regulation). Second, it must be a decision of a “court” of a Member State (Art. 3, para. 2 of the Regulation). The concept of a Member State means all Member States of the European Union, excluding Denmark, the United Kindgom and Ireland. Were it a decision outside the scope of the Succession Regulation, or a

decision of the court of a State where the Succession Regulation is not binding, other regulations might apply (if they exist in that particular territory), or the national law of the State concerned.[42]

On the term "court" pursuant to Article 3, para. 2 of the Succession Regulation and the competence of notaries see *supra ad* II.C.1.

2. Member State of origin

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

3. Member State of enforcement

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

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

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

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

The provision on public policy (Art. 40 (a) of the Regulation) deserves special attention as a ground for non-recognition of a decision on the succession. Although the concept of public policy and the values it comprises differ from Member State to Member State, it comprises a common ground of fundamental human rights and the principles of the European law. Pursuant to point 58 of the Preamble of the Regulation, the courts and other competent authorities should not be able to apply the public-policy exception in order to refuse to recognise, or to accept or enforce a decision, an authentic instrument or a court settlement in matters of succession from another Member State if doing so would be contrary to the Charter of Fundamental Rights of the European Union and in particular Article 21 thereof, which prohibits all forms of discrimination.[43] On the other hand, it must be mentioned that under no

[42] On the scope of the Regulation see *supra ad* II.B.

[43] Any discrimination based on any ground such as seks, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, bith, disability, age or sexual orientation shall be prohibited (Art. 21, para. 1 of the EU Charter on Fundamental

circumstances may a decision given in (another) Member State be reviewed as to its content (Art. 41 of the Regulation), even when its determination is essentially different from the one that would be given under the law of the Member State of recognition or acceptance. The European Court has expressly retained the possibility of controlling the boundaries of the application of public policy mechanisms by the Member States (although it may be questionable to what extent the Court may control the application of this mechanism) (case C-7/98: *Dieter Krombach v André Bamberski*; p. 23 I 37;[44] case C-38/: *Renault SA v Maxicar SpA and Orazio Formento*: p. 27 *et seq.*;[45] comp. Köhler 2016: 187; comp. Popescu 2014: 98).

Particularly problematic can be the decisions establishing the differences among the heirs on the basis of gender, birth or religion in terms of the size of a legacy, or those that determine the succession law to spouses/partners in same-sex marriages or partnerships, or to a woman in the case of polygamy (comp. Köhler 2016: 186-188; see Popescu 2014: 98; Aras Kramar 2018: 192-193).

Within the CISUR project, an empirical research was conducted on the application of public policy as a reason for non-recognition of a decision on succession.

This topic was particularly discussed with the group of Croatian judges but the results showed that there was no practical experience and that the participants had not come across such cases in practice. They did discuss these issues at a hypothetical level, mostly referring to the provisions of the Constitution of the Republic of Croatia and, in a wider context, the principles of the European law.

Judges, who also participated in the research project in Slovenia, said they did not have any cases involving public policy conflicts as a ground for non-recognition of a decision taken in another Member State. In the interviews, they primarily discussed cases where the question of public policy conflicts could be taken into account but those cases did not deal with the

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

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

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

recognition of foreign decisions (particularly in connection with polygamy or the issues involving the creation of a common-law union at the time when the previous marriage has not yet been dissolved).

(b)if it is rendered in the absence of the defendant and the defendant who did not appear before the court because he had not received any document informing him about the court action, or any other kind of communication to make it possible for him to prepare adequately his defence, by taking into account the provisions of the Regulation (EC) No 1393/2007 on the service of various types of communication, as well as the HC of 1965 on the service to foreign countries, unless the defendant had brought an action to contest the decision when there was an opportunity for him to do it:

-taking into account the "defendant's absence" in the first place, it is necessary to emphasise also that the grounds for non-recognition and the procedure of declaring enforceability are structured as contentious proceedings, while, on the other hand, succession proceedings are non-contentious and a few people usually take part in them. Again, it would be better to use the term "interested party" rather than "defendant" (comp. Dutta 2013: 19-20; Aras Kramar 2018: 193).

The "defendant's absence" ought to be interpreted in the context of the case law of the European Court and in the first place the Brussels Convention/Regulation of the Council (EC) No 44/2001 of 22 December 2000 on jurisdiction, recognition and enforcement of court decisions in civil and commercial matters[46] (see case C-474/93, *Hengst Import BV v Anna Maria Compese*[47]).

(c) if the decision is incompatible with the decision rendered in the proceedings involving the same parties in the Member State in which recognition is sought:
- the Succession Regulation No 650/2012 contains the provisions on the "irreconcilability of decisions" as a ground for non-recognition and which are inspired by the principle *res iudicata*. The concept of "irreconcilable decisions" must be interpreted in the light of the case law of the European Court as decisions encompassing legal consequences that are mutually

[46] SL EU, L 12, 16/01/2001 , https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A32001R0044 (12/09/2019).
[47] Case C-474/93, hengst Import BV v Anna Maria Campese, ECLI:eu:c:1995:243 OF 13 July 1995, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3a61993cj0474 (12/09/2019).

exclusive (Case C-45/86: *Horst Ludwig Martin Hoffmann v Adelheid Krieg*: p. 22;[48] Case C-80/00: *Italian Leather SpA v WECO Polstermöbel GmbH & Co*.: p. 40[49]. Taking into account Art. 17 of the Regulation and the duty of staying the proceedings *ex officio* until the jurisdiction of the Member State is established where the proceedings had first started, there is very little probability of the existence of two (irreconcilable) decisions before the courts of the Member States and between the same parties. It this were the case, the Succession Regulation gives precedence to the decision on succession rendered in the Member State of recognition, regardless of whether that decision had been rendered earlier in relation to the decision of the other Member State whose recognition is sought (*arg ex* Art. 40, para. 1 (c) of the Regulation) (see Popescu 2014:99).

(d) if a decision is irreconcilable with the previous decision rendered in another Member State, or in a third State in the proceedings on the same matter and between the same parties, and if the previous decision meets the prescribed conditions for recognition in the Member State where recognition is sought:

-in this case of the "irreconcilability" of two decisions, the problem is that the decision whose recognition is sought is irreconcilable with the previously rendered decision in another Member State (not the one where recognition was sought) or in a third State, so it must have been the same case and the same countries. In this case, the Regulation applies the principle according to which precedence is given to the earlier decision, under the condition that that decision meets the prescribed conditions for recognition in the Member State where recognition is sought. Therefore, it is not necessary that this previous decision had (already) been recognised in the Member State in which recognition is sought(see Popescu 2014: 99).

The Court does not *ex officio* observe these grounds for nonrecognition of a decision on succession (*arg ex:* Art. 48, Art. 50, Art. 51 of the Regulation). Other grounds, such as lack of jurisdiction of the court of the Member State where the decision originates from are not taken into account.

[48] Case C-145/86, *Horst Ludwig Martin Hoffman v Adelheid Krieg*, ECLI:EU:C:1988:61 of 4 February 1988, https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A61986CJ0145 (12/09/2019).
[49] Case C-80/00, *Italian Leather SpA v WECO Polstermöbel GmbH & Co*., ECLI:EU:C:2002:342 of 6 June 2002, https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62000CJ0080 (12/09/2019).

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

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

6. Proceedings on the declaration of enforceability of a decision on succession

A decision rendered in a Member State and enforceable in that State, is also enforceable in another Member State when, on the application of any interested party, it has been declared enforceable there (Art. 43 of the Regulation). It must be noted that the Succession Regulation contains the request of enforceability of a decision on succession but not of finality (Popescu 2014:114). The application procedure for the declaration of enforceability of a decision on succession is governed by the law of the Member State of enforcement (Art. 46, para. 1 of the Regulation). If it is necessary to enforce a decision on succession in more Member States, it is necessary to conduct a corresponding procedure of declaring enforceability. The applicant does not have to have a postal address or an authorised representative in the Member State of enforcement (Art. 46, para. 2 of the Regulation).

7. Local jurisdiction of courts

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 in accordance with Article 78 of theRegulation (Art. 45, para. 1 of the Regulation). The local jurisdiction is determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement (Art. 45, para. 2 of the Regulation). The court seised of the Member State of enforcement applies the national law of that Member State in order to establish whether the party has domicile in that Member State for the procedure of enforcement to be conducted (Art. 45 – Art. 58 of the Regulation) (Art. 44 of the Regulation).

Under the Croatian Act on the Implementation of the Regulation, the Municipal Court rules on the application for recognition of the decision on the declaration of enforceability of

the decision on succession (as well as of authentic documents and courts settlements (Art. 4, paras 1 and 2 of the Act on the Implementation of the Regulation).

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

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

An application for a declaration of enforceability of a decision on succession must be accompanied by a copy of the decision which satisfies the conditions necessary to establish its authenticity and the attestation issues by the court or competent authority of the Member State of origin using the form which is a component part of the Implementation Regulation No 1329/2014 (Art. 46, para. 3 of the Regulation).[50] If the court or competent authority so requires, a translation of the documents must be supplemented. The translation must be done by a person qualified to do translations in one of the Member States (Art. 47, para. 2 of the Regulation).

According to the Croatian Act on the Implementation of the Regulation, competent authorities in the Republic of Croatia for the issuance of the attestation of the decision on succession are the municipal court, which rules in the first instance, and the notary who made the decision upon the request for attestation Art. 5, para. 1 of the Act on the Implemenation of the Regulation). If the notary has established that not all the requirements for the production of attestation are met, the application, together with the authentic instrument and the case file, must be submitted for decision-making to the municipal court in whose area the notary's seat is located. The notary is obliged to elaborate in writing why he or she holds that not all the requirements have been met for the issuance of the attestation and inform the applicant that the case has been submitted to the court (Art. 5, para. 3 of the Act on the Implementation of the Regulation). The decision of the municipal court on dismissing or rejecting the application for the issuance of the attestation may be appealed against and decided by the county court (Art. 5, para. 4 of the Act on the Implementation of the Regulation).

[50] See Supplement 1 to the Implementation Regulation No 1329/2014.

According to the Slovenian IA, the issuance of the attestation referred to in point (b), para. 3 of Article 46 of the Regulation for recognition or declaration of enforceability of the decision on the succession in another Member State is within the jurisdiction of the Court of Succession (Art. 227.k of SloIA). Local jurisdiction of the SloIA is not directly established but it is provided for by Article 99 of the Courts Act[51] in accordance with the jurisdiction of municipal courts in the matters of succession (*okrajna sodišča*).

The Regulation provides in particular for the cases when the attestation of a decision on succession has not been produced (Art. 47, para. 1 of the Regulation). Therefore, the production of the attestation in a European form is optional (Aras Kramar 2018: 193). If the attestation of the decision on succession in a form which is a component part of the Implementation Regulation No 1329/2014 is not produced, the competent court or the competent authority may specify a time limit for its production or accept an equivalent document, or, if it considers that it has sufficient information before it, it may release the party from its production (Art. 47, para. 1 of the Regulation).

9. Decion of the application for the declaration of the enforceability of the decision on succession

A decision on succession is declared enforceable without delay, immediately upon the fulfilment of the formalities provided for in the Regulation (Art. 46, Art. 48 of the Regulation). The first part of the proceedings is non-contradictory. Namely, in the proceedings for a declaration of enforceability of the decision, the grounds for nonrecognition are not examined and the party against whom the enforceability of the decision is sought, is not entitled to make any objections or submissions on the application at this stage of the proceedings (Art. 48 of the Regulation).

The Regulation also contains provisions on partial enforceability of the decision on succession (Art. 55 of the Regulation). If a decision has been rendered in respect of several applications, and enforceability cannot be declared for all of them, the competent court or authority declare it for one or more applications (Art. 55, para. 1 of the Regulation). In this connection, an applicant may request a declaration of enforceability limited to only parts of a succession decision (Art. 55, para. 2 of the Regulation).

[51] *Courts Act, Official Gazette of the Republic of Slovenia, No. 94/07 – official consolidated version,* 45/08, 96/09, 86/10 – PREFSA 33/11, 75/12 – AAPASLGA-A, 63/13, 17/15, 23/17 – JCA in 22/18 – CECACIA (hereinafter: SloZS).

The applicant is fortwith notified of the decision on the application for a declaration of enforceability, in accordance with the proceedings prescribed in the law of the Member State of enforcement (Art. 49, para. 1 of the Regulation). A decision on enforceability is serviced on the party against whom enforcement is sought, accompanied by the decision on succession, if not already served on that party (Art. 49, para. 2 of the Regulation). At that stage, the proceedings for a declaration of enforceability become contradictory.

10. An appeal against the decision on the application for a declaration of enforceability of a decision on succession

An appeal is lodged with the court of the Member State of enforcement, communicated by the Member State concerned to the Commission in accordance with Article 78 of the Regulation (Art. 50, para. 2 of the Regulation).

Under the Croatian Act on the Implementation of the Regulation, a decision on dismissal or rejection of the application may be appealed by the applicant and the appeal will be dealt with by the county court (Art. 4, para. 3 of the Act on the Implementation of the Regulation). Against the decision accepting the application, objection by the counterparty is possible within 30 or 60 days in accordance with Article 50, para. 5 of the Regulation. The objection is dealth with by the municipal court which has rendered the decision (Art. 4, para. 4 of the Act on the Implementation of the Regulation). Before rendering the decision on the objection, the counterparty and the applicant must be heard. Together with a summons for the hearing, the applicant must receive the counterparty's objection (Art. 4, para. 5 of the Act on the Implementaion of the Regulation). The decision on the objection of the counterparty can be appealed and the county court decides on the appeal (Art. 4, para. 6 of the Act on the Implementaion of the Regulation).

Under the Slovenian IA, the appeal lodged against the decision on the declaration of enforceability pursuant to Article 50 of the Regulation, is brought before and decided by the court which had rendered the decision on the declaration of enforceability (the county court having local jurisdiction), by a panel of three judges (Art. 227.i, para. 1 of the SloSA). The SloIA does not expressly provide for the time limit for lodging an appeal against the decision on the declaration of enforceability but refers to Article 50 of the Regulation which, among other things, sets forth the time limit. On the other hand, the SloIA does prescribe the time limit for an answer to the appeal amounting to 30 days from the day the appeal is lodged. In

the third paragraph of Article 227i of the SloIA, it is laid down that the court will decide on the appeal after the hearing if the decision on the appeal depends on disputable facts.

The Succession Regulation prescribes a time limit of 30 days following the service of the decision for lodging an appeal. If the party against whom enforcement is sought is not domiciled in the Member State where the enforceability of the decision is declared but in another Member State, the time limit for lodging an appeal is 60 days and it starts running from the date of service either on the party in person or at his or her temporary residence. No extention of the time limit may be granted on account of distance (Art. 50, para. 5 of the Regulation). The time limit for lodging an appeal has a suspensive effect and until it expires and a decision upon the appeal is rendered, no enforcement measures other than protective measures against the property of the party against whom enforcement is sought may be taken (Art. 54, para. 3 of the Regulation).

The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters (Art. 50, para. 3 of the Regulation). If the party against whom enforcement is sought fails to appear before the appellate court concerning the appeal lodged by the applicant, the provisions of Article 16 of the Regulation apply, even where the party against whom enforcement is sought is not domiciled in any of the Member States (Art. 50, para. 4 of the Regulation). Pursuant to Article 16, para. 1 of the Regulation, where a defendant habitually resides in a State other than the Member State where the action was brought does not enter an appearance, the court having jurisdiction will stay the proceedings until it is shown that the defendant has been able to receive the document on the institution of the proceedings or an equivalent document in time to arrange for his defence, or that all the necessary steps have been taken to that end. The cited provisions will not be applied if the document on the initiation of the proceedings or any equivalent document must be sent from one Member State to the other. If that is the case, the provisions of Article 19 of the Regulation (EC) No 1393/2007 on the service of documents apply (Art. 16, para. 2 of the Regulation). If the provisions of the Regulation (EC) No 1393/2007 are not applicable and the document on the institution of the proceedings or an equivalent document must be transmitted abroad, Article 15 of the Hague Convention of 1965 on the service abroad applies (Art. 16, para. 3 of the Regulation).

As regards the lodging of a remedy, the court may reject the application or revoke a decision on enforceability only for the grounds specified in Article 40 of the Regulation (the grounds for refusal; Art. 52, sent. 1 of the Regulation). The court will render its decision on appeal without delay (Art. 52, sent. 2 of the Regulation). The decision rendered on appeal may be contested only by the procedure communicated by the Member State concerned to the Commission in accordance with Article 78 (Art. 51 of the Regulation).

The enforcement of the decision on succession is carried out in accordance with the rules of the Member State of enforcement.

11. Staying of the enforcement proceedings

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

12. Provisional and protective measures

In order to secure a claim, the applicant may always seek provisional measures, including protective measures, in accordance with the law of the Member State of enforcement even when he did not seek a declaration of enforceability of a decision on succession (Art. 54, para. 1 of the Regulation). The declaration of enforceability carries with it, *ex lege*, the power to proceed to any protective measures (Art. 54, para. 2 of the Regulation). Besides, during the time limit for appealing against the decision on the application to declare the enforceability of a decision on succession, until the decision on such an appeal is rendered (Art. 50, para. 5 of the Regulation), protective measures can be taken against the property of the party against whom enforcement is sought (Art. 54, para. 3 of the Regulation).

13. Costs of the proceedings and legal aid

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

An applicant for a declaration of enforceability of a decision on succession, who in the Member State of origin has benefited from complete or partial legal aid or exemption from any costs of the proceedings, is entitled in any proceedings for a declaration of enforceability to the most favourable scope of legal aid or exemption from costs provided for by the law of the Member State of enforcement (Art. 56 of the Regulation). The right to legal aid is one of the general principles guaranteed by Article 47 of the EU Charter on Fundamental Human Rights. According to the Succession Regulation, it is necessary to distinguish between the cases where the applicant has been granted free legal aid in the Member State of origin and where this has not been the case (*arg.ex* Art. 56 of the Regulation). In the first case, it is written in literature, that the principle of recognition regards not only a foreign decision but also free legal aid, so that the court of the Member State of enforcement is not in the position to re-examine the proprietary and other conditions for being granted free legal aid (Popescu 2014: 117). Due to the fact that the scope of free legal aid differs among the Member States, the applicant is guaranteed "the most favourable scope" of free legal aid. It is also emphasised, that in the context of the principle of efficient legal protection, the court of the Member State of enforcement is authorised to make a summary assessment of the need for free legal aid (Popescu 2014: 117). The circumstance that the applicant was not granted free legal aid in the Member State of origin is not an obstacle for him to seek it in the Member State of enforcement in accordance with its national law (*arg. ex* Art. 56 of the Regulation).

Pursuant to Article 58 of the Regulation, in the proceedings for the issuance of a declaration of enforceability of a decision on succession in the Member State of enforcement, it is not allowed to levy charges, duties or fees calculated by reference to the value of a concrete case (Art. 58 of the Regulation).

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

1. Acceptance of authentic instruments in matters of succession

To recognise the existence of various systems of dealing with succession matters in the EU Member States, the Succession Regulation No 650/2012 takes also into account public/authentic instruments[52] (like, for example, agreements between the parties on the

[52] In the official translation of the Succession Regulation No 650/2012 in the Croatian language, both the term „authentic instruments" and the the term „Authentic instruments" are used (see points 58-66 of the Preamble of the Regulation). See https://eur-lex.europa.eu/legal-content/HR/TXT/HTML/?uri=CELEX:32012R0650&from=EN (05/09/2019)

division of the estate, wills and succession agreements, declarations on acceptance or waiver of succession). Special value of the Regulation lies in the fact that it equalises authentic instruments drawn up in other Member States with those devised in the State of the forum.

2. A public discussion on succession matters

The Succession Regulation No 650/2012 contains an autonomous definition of the concept of an authentic instrument. Pursuant to Art. 3, para. 1 (i) of the Regulation, an "authentic instrument" is a document dealing with a matter of succession which is officially established or registered as an authentic instrument in the Member State and whose authenticity[53] relates to the signature and the content of an authentic instrument and which has been determined by a State body or other authority authorised for that purpose by the Member State of origin. The authenticity of authentic instruments should not be confused with the substantive validity of an act as a legal transaction.

3. Evidentiary effects of authentic instruments in succession matters

An authentic instrument established in a Member State has 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 the public policy of the Member State where the acceptance of that instrument is sought (Art. 59, para.1, sent. 1 of the Regulation). In Croatian law, an instrument issued in the prescribed form by an authority within its powers, as well as an instrument issued in such a form by a legal or natural person in the execution of public powers entrusted to it by law or based on law (an authentic instrument) proves the truthfulness of what is confirmed or speficied in it. It is also allowed to prove that facts have wrongly been established or that the instrument has been incorrectly composed (Art. 230 of the Civil Procedure Act").[54] Pursuant to Article 59, para. 1 of the Regulation, the described evidentiary effects of an authentic instrument stretch to other Member States and their content, among other things, can be described or proven by the use of prescribed forms.

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

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

When establishing the evidentiary effects in another Member State, we should take into account the nature and the scope of its evidentiary effects in the Member State of origin (t. 61 of the Preamble of the Regulation). If in the law of the Member State of origin, an evidentiary effect of an authentic instrument is prescribed which it does not have in relation to the right of the Member State of acceptance, because in Article 59, para. 1, sent. 1 there is an alternative reference to the "most comparable effects" such an instrument can have in the Member State of origin, what ensues is that an instrument cannot be recognised a stronger evidentiary effect than the one foreseen in the law of the Member State where its acceptance is sought (comp. Dutta 2013: 20).

A person wishing to use an authentic instrument in another Member State may request from the authority issuing authentic instruments in the Member State of origin to have a form filled describing the evidentiary effects an authentic instrument has in the Member State of origin that is at the same time a component part of the Implementation Regulation No 1329/2014 (Art. 59, para. 1, sent. 2 of the Regulation).[55]

In the empirical research, there was an attempt to collect some data from the experience of legal practitioners who apply the Regulation with regard to the determination of the effects of an authentic instrument and in particular the "most comparable effect" in the context of evidentiary effects of authentic instruments.

When discussing this segment of research, the practitioners in Croatia, the notaries public and the judges in the first place, mostly elaborated on the practical examples of the "most comparable effect". In their practice, the participants have never come across any concrete examples and it is clear from their responses that they do not have any knowledge about these effects. Some of the participants gave the following explanations: "*Well, I think it should be according to the law of the State of origin. If there was such an authentic instrument, the competent authority could ask for attestation, a form to be filled in. A form from the Implementation Regulation, together with the Succession Regulation, and the issuing authority will give answers to some questions from which it will be clear what the purpose and the effect is in the State of origin*." (JB2_RH);

[55] See Supplement 2 of the Implementation Regulation No 1329/2014, in particular p. 4 of Form II (Supplement 2) of the Implementation Regulation No 1329/2014.

"…..*if documents have the same legal force in all Member States of the European Union, then they also have the same legal force in Croatia. That's also a theoretical question, the most comparable effect. If I were in doubt, I would apply the Regulation of the European Union, it is above the national law. If I were in doubt*." (S2_RH).

In Slovenia, no one from the group of judges, notaries or practicing lawyers had any experience with the case where it would be necessary to establish "the most comparable effect" of authentic documents. According to the participants' opinions, such cases are not very frequent: "*The European continental systems are so close and I have never come across any authentic instruments where such a problem would exist. In the field of land register and succession nothing at all, perhaps there might have been dilemmas with regard to documents in the proceedings involving registration, the rights of companies but not with those connected with succession."* (N2_SI).

However, most participants were of the opinion that the content of such an effect had to be determined by applying the law of the State where an authentic instrument was enforced: "*A task of the Slovenian court (in relation to a foreign document) would be to examine the rights and to supplement the decision so as to find a possibility for enforcement in the Slovenian territory, e.g. in the Land Register. To find a comparable law…"* (N5_SI) And: "*Both (States) must be very careful. The State which accepts or issues this instrument must see whether it will be enforceable in the first place…. Of course, it seems to me that any enforcing State must bear the burden and try to enforce the decision…. Although there are problems, in some proceeedings this could work but in other proceedings, in our country, which are more formalised, it would not work. To be more concrete, Land Register is highly formalised."* (S4_SI)

4. Challenge of authenticity of an authentic instrument in matters of succession

Any challenge of authenticity[56] of an authentic instrument is made before the courts of the Member State of origin and decided upon under the law of that State. (Art. 59, para. 2, sent. 1 of the Regulation). The term "authenticity" is an autonomous concept covering elements such as genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn

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

up (p. 62 of the Preamble of the Regulation). The concept should also cover the factual elements recorded in the authentic document by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated (p. 62 of the Preamble of the Declaration). An authentic instrument challenged in the Member State of origin does not produce any evidentiary effect in another Member State as long as the challenge is pending before the competent court (Art. 59, para. 2, sent. 2 of the Regulation). An authentic instrument which, as a result of a challenge, has been declared invalid, should cease to produce any evidentiary effects (p. 65 of the Preamble of the Regulation).

5. Challenge of legal acts or legal relationships recorded in the authentic instrument in matters of succession

However, the challenge of the authenticity of instruments must be distinguished from the challenge of legal acts (e.g. determination of heirs, their shares and other elements established in accordance with the applicable law on succession) recorded in an authentic instrument (p. 63 of the Preamble of the Regulation, Art. 59, para. 3 of the Regulation). Legal acts or legal relationships recorded in an authentic instrument may be challenged before the competent courts or authorities specified in the Regulation and in accordance with the applicable law pursuant to Chapter III of the Regulation (Art. 59, para. 3, sent. 1 of the Regulation). If the question relating to legal acts or legal relationships in the matters of succession recorded in an authentic instrument is raised as a preliminary question in the proceedings before a court of (another) Member State, then that court has jurisdiction over that question (p. 64 of the Preamble of the Regulation, Art. 59, para. 4 of the Regulation). In terms of the matter challenged (a legal act or a legal relationship), the authentic instrument does not produce any evidentiary effect in another Member State as long as the challenge proceedings are pending before the competent court (Art. 59, para. 3, sent. 2 of the Regulation).

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

In relation to the system of enforcement or declaration of enforceability of an authentic instrument, the Succession Regulation No 650/2012 provides for the application of the same system that is established for decisions on succession (Art. 60, Arts 45 – 58 of the Regulation). There are some specificities in relation to the grounds for refusing the decision on the application for a declaration of enforceability of an authentic instrument which can mainly be summarised by saying that this is possible only if the enforcement of an authentic

instrument is manifestly contrary to public policy (*ordre public*) of the Member State of enforcement (Art. 60, para. 3 of the Regulation).

The application for a declaration of enforceability of an authentic instrument in succession matters is supplemented with a copy of an authentic instrument which meets the conditions necessary for the establishment of its authenticity and the attestation issued by a competent body of the Member State of origin drawing up the authentic instrument, on the application of any interested party and in the form that is a component part of the Implementation Regulation No 1329/2014 (Art. 60, para. 2 in connection with Art. 46, para. 3 of the Regulation).[57]

For the recognition or declaration of enforcement (enforceability) of an authentic instrument in another Member State, **under the Croatian Act on the Implementaion of the Regulation**, the authorities in the Republic of Croatia for the issuance of the attestation are the court or the notary who has issued the authentic instrument for which the attestation is proposed (Art. 5, para. 1 of the Act on the Implementation of the Regulation). If the notary finds that not all the requirements for the issuance of the attestation are met, he or she will service the application together with the authentic instrument and the case file on the municipal court in whose territory his or her seat is located. The notary is obliged to explain in writing why all the requirements for the issuance of the attestation are not met and inform the applicant that the case is serviced on the court (Art. 5, para. 3 of the Act on the Implementation of the Regulation). The decision of the municipal court dismissing or rejecting the application for the issuance of the attestation may be appealed before the county court (Art. 5, para. 4 of the Act on the Implementation of the Regulation).

According to the Slovenian SA, the court of succession has jurisdiction for the issuance of attestation referred to in p. (b), para. 3 of Article 46 of the Regulation for the purpose of acceptance or declaration of enforceability of an authentic instrument in another Member State (Art. 227 k of the SloSA).

[57] See Supplement 2 of the Implementation Regulation No 1329/2014.

7. Court settlement in matters of succession

According to the Succession Regulation No 650/2012, a "court settlement" means a settlement in a matter of succession approved by a court or concluded before a court in the course of proceedings (Art. 3, para 1(h) of the Regulation). The Regulation thus contains an autonomous establishment of a court settlement in succession matters.

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

The Succession Regulation No 650/2012 provides for the application of the system established for decisions on succession to the declaration of enforceability of courts settlements in matters of succession (Art. 61, Arts 45 – 58 of the Regulation). There are some specificities in relation to the grounds for refusing the decision on the application for a declaration of enforceability of an authentic instrument which can mainly be summarised by saying that this is possible only if the enforcement of an authentic instrument is manifestly contrary to public policy (*ordre public*) of the Member State of enforcement (Art. 61, para. 3 of the Regulation).

The application for a declaration of enforceability of a court settlement in succession matters is supplemented with a copy of a court settlement which meets the conditions necessary for the establishment of its authenticity and the attestation issued by a court of the Member State of origin which has approved of the settlement or before which the settlement was made, on the application of any interested party and in the form that is a component part of the Implementation Regulation No 1329/2014 (Art. 61, para. 2 in connection with Art. 46, para. 3 of the Regulation).[58]

Under the Croatian Act on the Implementation of the Regulation, the authority of the Republic of Croatia for the issuance of the attestation of a court settlement is the court before which the court settlement was made (Art. 5, para. 1 of the Act on the Implementation of the Regulation). The decision of the municipal court dismissing or rejecting the application for the issuance of the attestation may be appealed before the county court (Art. 5, para. 4 of the Act on the Implementation of the Regulation).

[58] See Supplement 3 of the Implementation Regulation no. 1329/2014.

9. Incompatibility of authentic instruments, court settlements and decisions on succession

An important question arises how to proceed if the competent body is presented with two authentic instruments that are incompatible, or if an authentic instrument is incompatible with the decision on succession. Should in the application of the Succession Regulation No 650/2012 two incompatible authentic instruments be presented to the competent body, the latter should assess which authentic instrument, if any, should be given priority, taken into consideration the circumstances of the particular case. Where it is not clear from those circumstances which authentic instrument, if any, should be given priority, the question should be determined by the courts having jurisdiction under this Regulation, or, where the question is raised as preliminary or incidental question in the course of the proceedings, by the court seised of those proceedings. In the event of incompatibility between an authentic instrument and a decision on succession, the grounds of non-recognition of decisions under this Regulation should be taken into account (p. 66 of the Preamble of the Regulation; *arg ex* Art. 40, para 1 (c) and (d) of the Regulation). Indeed, this should also be valid in the event of incompatibility of a court settlement and a decision on succession (*arg ex:* Art. 40, para. 1 (c) and (d) in connection with Art. 61, para. 1 of the Regulation).

In the empirical research, there was an intention to collect the data from the experience of legal practitioners who apply the Regulation in terms of the incompatibility of authentic instruments, court settlements and decisions on successtion.

The participant in the research in Croatia, when it came to the incompatibility of authentic instruments, usually discussed these matters at a hypothetical level. Here is how the group of notaries reflected on this topic: "*It may happen in practice that we have two authentic instruments which, at first sight, are contradictory: one excludes the other. Naturally, if that is the case, except for the form of these instruments, we must also pay attention to their content. What I would try to do first, I would try to grasp their content to make sure what their intensions are, what is the idea of the court settlement and how it must be carried out, or how the decision on succession must be carried out. What I would do next, I would present these documents to the heirs asking them if they had any common approach regarding these contradictory documents and if they want to define the way how to organise and regulate their relationship in the context of the proceedings while having these two contradictory documents on the table. When and if the heirs express their mutual will to abide by one of*

these documents, that document would for me be applicable. If there was a disagreement as to which document is applicable and the right one, I would not have any other option but to refer these individuals to a court action where the authenticity of these two incompatible instruments would be analysed and a decision would be rendered how to resolve the dispute." (JB4_RH).

Or in the group of judges: "*If an authentic instrument is not compatible with a decision on succession (I have never come across such a situation), I would apply the decision on succession. I would certainly give priority to the decision on succession which I would apply because it was rendered after the succession proceedings. The succession proceedings had been conducted and all the necessary facts established. This is why I would concentrate on that decision. Well, I have never had such a situation, it is again this practical part, but I would certainly apply the decision on succession."* (S2_RH)

Judges, notaries and practicing lawyers who participated in the research in Slovenia, did not have any practical experience with incompatible authentic instruments, court settlements and decisions on succession. They discussed hypothetical situations: "*The problem must be solved by the authority facing such problems. How to solve them ….I don't know, I think it is first necessary to see whether there is some obstacle preventing enforcement, if there is no such obstacle … ….to initiate a preliminary question, perhaps that would be the right avenue if there is a dilemma at the European level, the question of the application of the European law….somehow make use of that possible route."* (S4_SI)

Or: *"We would probably institute evidentiary procedure, ……. in non-contentious proceedings, we would do it and if it was a contentious (disputable) matter, we would suggest a lawsuit."* (S7_SI)

The judges also mentioned a possibility where the authority would not be presented at the same time with incompatible instruments or decisions but one of these instruments would already have been enforced: "*I'm afraid that the same will happen with enforcement, the first one will be recorded, and the other, coming later, will have to make use of available institutes. In the Land Register, it is removal. An action for removal. That would be a real assessment of incompatibility…But a question remains whether sooner or later a court action would be brought. It is difficult to imagine that both instruments would arrive at the same time, that the Land Register, where the right on an immovable is registered, would know who to (register). The first one will be (registered). The second one will have to get what belongs to him in an appellate action."* (S5_SI)

Both practicing lawyers and notaries expressed their opinions according to which it would be necessary to turn to the source of the instrument or a court decision: "*You definitely need an explanation from the issuing authority and this is where you should first obtain a certified copy of the original instrument. That should be the first step."* (O2_SI) And: "*No doubt that the best thing would be to go to where they were issued. In this situation, I also advocate what I usually say and that is, do what is good for people. For example, as a notary, ask a (foreign) notary public what you can do."* (N3_SI). They also thought that individuals must make use of the appropriate legal remedies: *"The procedure is in the hands of the heir and they have legal protection. Whoever enforces, cannot be liable. He or she can ask the clients to supplement the existing documents. I am sure they would give the clients the necessary information and refer them to legal remedies."* (N5_SI)

G. EUROPEAN CERTIFICATE OF SUCCESSION

1. Creation and purpose of a European Certificate of succession

The creation of the European Certificate of Succession is a qualitative step forward in the area of private international and procedural law. The purpose of introducing the Certificate is to ease the legal position of heirs, legatees, executors of wills or administrators of the estate. It can be used by all of them when they, in another Member State, must invoke their status or execute their rights as heir or legatees and/or their powers as executors of wills or administrators of the estate (Art. 63, para. 1 of the Regulation).

According to Article 63, para. 2 of the Regulation, a Certificate may be used to demonstrate one or more of the following:

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

The European Certificate of Succession does not replace the internal documents used for similar purposes in the Member States (p. 67 of the Preamble of the Regulation, Art. 62, para. 3, sent. 1 of the Regulation; see Ivanc, Kraljić 2016: 256-257, Max Planck Institute for

Comparative and International Private Law 2010: 118-119). Therefore, the use of a certificate is not mandatory (Art. 62, para. 2 of the Regulation). If the presented certificate is issued in another Member State, the body to which it is presented is not authorised to request that a decision, authentic instrument or court settlement be presented in matters of succession (p. 69 of the Preamble of the Regulation). Therefore, problematic may be the cases where the decision on succession and the certificate are contradictory regarding their contents because the Regulation does not prescribe to which of these two documents to give priority, particularly in such a way that (possibly) the certificate would be given priority in application (comp. Popescu 2014: 103).

Within the CISUR project, there was an intention to collect the data from the legal practitioners who apply the Regulation regarding the questions of the mandatory nature of the certificate and the relationship between the certificate and the decision on succession.

As far as the issuance of the ECS and its use are concerned, the research results show that in Croatia, the notaries discuss these issues based on much more experience than judges. Various types of experiences were heard, from the notaries with no experience with the Certificate, to those who elaborated on their existing experience: "*In principle, in all the five case the application was made by an heir or one of the heirs who was at the same time also a holder of some rights."* (JB1_RH); "……*so far, I have had only one example that an heir has asked for the issuance of a European Certificate of Succession because he had inherited a flat in Austria; I helped the client and instructed him to make an application for a European Certificate in the prescribed form referred to in the Implementation Regulation. It is important to mention here that the European Court rendered a decision stating that the form referred to in the Implementation Regulation was not mandatory. What is important is what an Article from the Regulation lays down regarding the application for the issuance of a European Certificate… but the form may make things easier because it is structured and easier to grasp*." (JB2:RH); "*In all our cases of issuing a European Certificate of Succession only heirs were involved and they needed a certificate to exercise their succession rights in another Member State of the European Union. So, we have not had a situation where creditors or other persons would want to apply*." (JB4_RH).

It must be emphasised that judges in Croatia mostly have very little experience with the application of the Certificate and it is particularly interesting to note their confusion in

practice: "*I had a case file, apart from the decision, the heir asked for a European Certificate of Succession. Experience – and when such an application arrived at the court, we referred it further, to be issued by a notary*." (S2_RH) "*So far, I have had only one issuance of a European Certificate of Succession. To be honest, when this party came to us to ask for it, we were at a loss not knowing what to do. What now? Who must he ask? Us? Or a notary? How to make a file? Who will enter it in the register? Will it be the list of issued certificates? What about the validity? Six months? This is where we left the party waiting for two or three days until we finally decided what to do and how to issue this Certificate. And that was the only certificate issued by the Court. It was an heir, of course*." (S1_RH)

All the participants in the discussion on the issuance and use of a European Certificate of Succession had some experience with it. Judges had the most experience because under the Succession Act, they are authorised to issue the ECS. As expected, judges of larger courts had more experience.They all agreed that an ECS was not mandatory for the registration in the corresponding registers: "*We also clearly tell (the parties) that according to the Regulation, our final decision on inheritance is sufficient but it must be translated by a certified court interpreter… only one person so far, because of being in a hurry, said 'all right, I don't want it, we prefer to go into it and cover the costs, then, please issue a European Certificate of Succession and we did."* (S2_SI) And: "*Basically, we tell them already at the hearing, if foreign property is analysed, that they have a possibility to exercise their rights, on the basis of our decision, in two ways; either by recognition of a foreign decision abroad – that our decision is not enforceable – or by a European Certificate of Succession. As a rule, the parties, already at the hearing, make a recorded motion where they mention the issuance of a European Certificate. Yes, they mostly decide to have the ECS. Very few of them opt for the procedure of recognition."* (S5_SI)
These transcripts also show the way in which the court informs the parties about the possibility of issuance of a ECS and how it impacts their decision on how to proceed in order to exercise their rights in other Member States.

Despite the fact that a ECS is not mandatory under the Regulation and judges know it, some of them get feedback from the parties that the authorities of other Member States ask for a ECS and do not take into consideration decisions on succession issued by national courts:"*One example, I think he was either from Austria or Germany,….. when a party asked for a European Certificate of Succession, but … we always issue it, ever since we started*

conducting succession proceedings, so that …. Of course, at their request but for immovables, I think this is already a regular procedure in our practice and I also think that they understand that a decision on succession is not enough." (S6_SI) And:"*In order to avoid possible complications, the parties must first make enquiry with the authority where they are told, up to now smoothly in all cases, despite the fact that things should be clear, that if they do not submit a European Certificate of Succession, they will not even take their application and let alone consider it. This is what I heard from the parties, I did not check their (credibility)."* (S2_SI)

The practicing lawyers were more inclined to favour the mandatory nature of a ECS which was obviously the result of the experience in other Member States where it is mandatory: "*This is what it is meant for. With only the decision, I don't know…. If you come to a German court or go to a bank with a Slovenian decision on succession, they will tell you to get a European Certificate of Succession, this is what we need because this is now the form prescribed by the Regulation. A regulation is a regulation and everybody must apply it. It is our goal to have one form for all and to undertand it and to know what it is meant for and that it must be issued."* (O1_SI) And: *"No, no (if a party brings a decision on succession). I was told in the Land Register in Croatia that this is what the Regulation prescribes, that it must be a Certificate, a form but naturally translated and certified, originally in the Croatian language."* (O2_SI).

The notaries thought that the ECS was not mandatory and they also confirmed that it was not necessary for the registration in the Land Register in Slovenia: "*The certificate certainly isn't mandatory, a national decision is enough. I think they know it in the Land Register and there is no problem with it."* (FSN_SI) Or: "*I think I had one or two cases where the decisions on succession contained sufficient identification data for a direct implementation and everything was recorded successfully*." (N2_SI) During a discussion in a focus group, the notaries mentioned one possible circumstance which may have impact on the decision of the authority to which instrument to give priority when deciding on the matters of succession, to the national decision on succession or to a ECS: "*(If) for the national decision on succession the fee is connected with the value of the assets, for a European Certificate of Succession, there is a small permanent value …the fee should be the same for both instruments because in one case it is connected with the (value) of the assets and in the other it is permanent, those who implement them will, intentionally or unintentionally, a priori start applying the one that is*

more expensive. Therefore, the legislator should have the same system of fees for both (instruments). Then this would not happen."(FSN_SI).

A European Certificate of Succession may be issued while the succession proceedings are pending or upon its completion.

2. Competent authority

A certificate is issued by the courts under the Succession Regulation No 650/2012 (Art. 3, para. 2 of the Regulation) or other authorities or persons competent in matters of succession (like the notaries) in the Member State of issuance, whose competence is established according to the provisions of Chapter II of the Regulation (Art. 64 of the Regulation). It is left to a Member State to lay down in its national legislation which authorities are competent to issue a Certificate. However, these do not have to be the courts as defined in the provisions of Article 3, paragraph 2 of the Regulation.

Under the Croatian Act on the Implementation of the Regulation, the competent bodies for the issuance of a European Certificate of Succession are the municipal court or a notary as the court's commissioner (Art. 6, para. 1 of the Act on the Implementation of the Regulation). The court entrusts the proceedings and the decision on the application for the issuance of a European Certificate of Succession to a notary before whom succession proceedings are pending or have been completed by a final decision. Exceptionally, the court will conduct the proceedings an decide on the issuance of a certificate if succession proceedings are pending before it or are completed by a final decision (Art. 6, para 3 of the Act on the Implementation of the Regulation).

Under the Slovenian SA, an application for the issuance of a European Certificate of Succession referred to in Article 65 of the Regulation is filed with the Court of Succession (which is, according to the SloIA, the municipal court having local jurisdiction) and this court also decides on the application for the issuance of a certificate (Art. 227, paras 1 and 2 of the SloIA).

Since in the Succession Regulation there is no reference to the application of Article 17 of the Regulation on Litispenence, a question arises how to proceed when the application for the issuance of a European Certificate of Succession is filed with the competent authorities of

different Member States (comp. Popescu 2014: 103; comp. Max Planck Institute for Comparative and International Private Law 2010; 139-140).

Within the CISUR project, there was an intention to collect the data from legal practitioners who apply the Regulation in terms of how to proceed if the application for the issuance of the Regulation has been filed in several Member States.

Croatian notaries and judges deliberated on these issues differently. Since there were different opinions and interpretations expressed within the same groups of participants, we bring here a few of them that are quite different: "*If the application for the issuance of a certificate is filed in several Member States, for example in Germany and Croatia, I am not sure how it functions in practice but we must stay and wait until the State, or the authority, which had first received the application, decides on its jurisdiction. If it, this first authority, decides it has jurisdiction, I shall declare lack of jurisdiction. I don't know how I would do it, by what kind of decisions, but this is more or less how it should be done.*" (JB1_RH); "*In principle, a European Certificate of Succession will be issued after the succession proceedings have been completed and it should not happen that the proceedings in the same case are conducted in several Member States. However, the authority which started the proceedings first should have priority in the issuance of a European Certificate of Succession. Of course, the situation becomes more complicated if the authority which had conducted the proceedings decided only on the assets in the territory of the State where it is located because then, I don't see how this can be corrected."* (JB2_RH); "……*we must see who started first, who was the first to institute…."* (JB3_RH); "*Well, I have to say that I cannot believe that it is possible that a European Certificate is sought at the same time in several Member States. Let us start from the beginning. We must first define which authority is competent for the implementation of the European proceedings. The usual criterion here is the habitual residence and it defines, after all the necessary facts have been established, the authority of the Member State where the deceased had his habitual residence, which authority will conduct the succession proceedings and it will then also be competent to issue a European Certificate of Succession. Indeed, if we have precisely and definitively established the habitual residence of the deceased, we also know who is issuing authority for a European Certificate and therefore, it cannot happen that an application for its issuance is filed in more Member States. It could happen, hypothetically, and only in some unusual circumstances, where it was not clear where was the person's habitual residence, that hypothetically, the succession proceedings are intituted in more than one Member State. In my opinion, this is only a hypothetical situation. In practice, it is*

difficult to imagine that it can happen. After all, we must know… take into account the provision of the Regulation which lays down that even if the authority, which by the criterion of habitual residence would not have jurisdiction to conduct the proceedings and thus also to issue a European certificate, would institute the proceedings and issue a European Certificate, here the jurisdiction is established questio facti, by the very fact. Therefore, I do not think that in practice, applications for a European Certificate will be filed in more than one Member State." (JB4_RH).

Similar were also the opinions and viewpoints given by Croatina judges: some of them proposed possible solutions – "*I would issue him a certificate on what we have decided."* (S1_RH); "*I would ask the party to give me some proof, a document from which I could see that an application has been made in another country, as well as the date when it was made. The first past date, that is when the party's application had to be solved. So, whoever received the application first, must decide on it."* (S2_RH); "*I think that this application for the issuance of a certificate can be submitted only in the Member State where the decision had been made, nowhere else. A certificate of enforcement. It means that if the decision on succession or some other decision connected with the Regulation was rendered in the Republic of Croatia, by our court, then an application for a certificate can only be filed here."* (S3_RH) There were also those who question such a possibility in practice: "*How can it be, a certificate on succession is issued in the State where a decision on succession had been made, and this decision on succession could have been made in only one State. I mean, how is it possible at all that it is filed in more (States)? For example, if someone comes to us to seek a certificate of succession and the decision was rendered in Austria, I think that such an application must be dismissed."* (S5_RH).

In the research in Slovenia, this question was mostly discussed by the judges. Their thinking was mainly directed to the provisions of the Regulation dealing with the jurisdiction for the decisions on succession and how only the court which decided on the succession, was allowed to issue a ECS: "*I think that a certificate is the result of the proceedings. So, if someone only files an application for the issuance of a certificate, I shall send them to where the proceedings were. I cannot certify if I do not know what was going on…. I cannot possibly think how someone could carry out the issuance of certificate somewhere else other than where the proceedings were conducted. Unless it is something special in connection with something else."* (S5_SI) It was also emphasised that it would be difficult to have such a

situation in practice: "*But it actually cannot (happen)….because, for the issuance of a European Certificate of Succession, the competent court is the one which previously ruled on the matter….well, unless it is a situation where some state bodies would not be aware of the decisions of another court and they would each issue their own decision on succession …. the problem lies in the fact that there is no integral portal where the courts would check whether any other court has already rendered a decision."*

(S2_SI) And: "*It cannot happen that both proceedings are conducted without it being known because the heirs are the same, perhaps they do not know of each other's existence. It is necessary to establish with certainty who had jurisdiction and then inform the parties accordingly that the document, not being issued, according to us, by a competent authority, must be eliminated."* (S7_SI)

Some of the participants were of the opinion that the rule of Article 17 of the Regulation on litispendence applied to the entire proceedings and thus also to a ECS: "*This Article is expressly related to succession proceedings while a European Certificate of Succession is only the implementation in terms of its issuance in particular proceedings that have already been completed. Of course, when talking about its meaning, it would (apply). If the court then finds out that the decision has been rendered, it would probably be necessary to institute some other proceedings in connection with the already rendered decision on succession."* (S2_SI) And: "*I think that (the Article) applies to the entire proceedings… It is necessary to follow, although at the beginning (the jurisdiction) may have been wrong but it has somehow been accepted and I think it does not make much sense to change jurisdiction in the final phase."* (S4_SI).

3. Application for a certificate

A Certificate is issued upon the application by an authorised person (Art. 63, para. 1, Art. 65, para. 1 of the Regulation), and the form used to apply and the form of the certificate are the component parts of the Implementation Regulation No 1329/2014 (Art. 65, para. 2, Art. 67, para. 1 of the Regulation).[59]

The persons authorised to seek the issuance of a European Certificate of Succession referred to in the Regulation are: heirs, legatees, executors of wills or admninistrators of the estate who, in another Member State, need to invoke their status or to exercise their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate (Art. 63, para.

[59] See Supplements 4 and 5 of the Implementation Regulation No 1329/2014.

1, Art. 65, para. 1 of the Regulation. A question arises whether estate creditors could belong to the circle of persons authorised to seek the issuance of a certificate for the purpose of proving their position and exercising their rights (Ivanc, Kraljić 2016: 259; Aras Kramar 2018: 196).

Within the CISUR Project, the data from legal practitioners who apply the Regulation were collected and they were asked whether in practice, they had cases where an estate creditor sought the issuance of the Certificate.

The research results show that the participants in Croatia agree on the issues connected with the application for a certificate and that they apply the relevant provision of the Regulation. They mostly mentioned heirs, legatees, executors of wills or administrators of the estate as the persons authorised to apply for a certificate. Only one of the participants, a practicing lawyer, mentioned an example involving a creditor. He said: "*In my opinion, there is not a practical solution here, those who participated and who asked for it, will get it. With regard to creditors, I think they should be able to apply but here we should look not at the Regulation because this is not within its scope as such, but we should look into the law according to which the creditor is entitled to a claim and how he can exercise it in other Member States. This would involve other regulations or national laws, not only the Succession Regulation; those who participated will get it but creditors, who can be from third States, if they are involved enough to find out that something like that exists, that they can realise it base on the legal interest, if nothing else then at least through legal aid, or through a court they can get it."* (O2_RH).

The participants who took part in the research did not have any cases where a creditor of the deceased would request the issuance of a Certificate of Succession: "*It is the heirs who usually request that. Creditors are very, very careful when it comes to assets abroad. The situation would really have to be extreme and involve obvious hiding of the assets in order for us to institute enforcement proceedings abroad. We all prefer to stick to domestic enforcement proceedings. There are cases where the European Certificates exist and where creditors inquire about the assets but we can see that they are focused on Slovenian proceedings."* (S5_SI) There were different opinions among judges about whether a creditor is entitled to the issuance of a ECS.

Some of them thought that creditors are entitled to it:"*Yes, of course, I would issue it. But they must show legitimate interest and they always do, at least so far. They apply, they even attach*

a decision on enforcement, sometimes even the contract proving a matured claim. We examine it and if everything is correct….." (S4_SI) Others had a different opinion:" *I don't think they are entitled to it because they should solve their issues in a different way…. At this point I don't see any situation where this would be of use for a creditor because if a decision on succession is issued and the debtor is specified in it, then things can be done differently and not only with the help of a European Certificate of Succession."* (S2_SI).

Practicing lawyers also lacked experience with creditors who would ask for a ECS. They were of the opinion that they were not entitled to it: "*A: According to literature that I have read, no. It is said there that based on the interpretation of the Regulation, a creditor would not be entitled to request it. If we put it hypothetically…what can he do with a certificate? Will he be referred to the land register to block the immovable? B: He cannot, because it is meant for an heir, to prove. A creditor does not have anything to do with it. However, if he knows that an immovable exists, he should have it enforced after it has already been registered."* (FSO_SI)

The notaries had similar opinions: "*The European Certificates of Succession are not primarily meant for creditors but for persons referred to in Article 63 of the Regulation: heirs, those who make the entries, executors of wills, administrators of the estate. Creditors probably have to take some steps under national laws of the States concerned to be able to exercise their rights off the estate*." (FSN_SI)

The Succession Regulation No 650/2012 provides for the content of the application for the issuance of the Regulation (Art. 65, para. 3 of the Regulation. When applying for the Certificate, a form can be used that is a component part of the Implementation Regulation No 1329/2014 (Art. 65, para. 2 of the Regulation; See Supplement 4 of the Implementation Regulation No 1329/2014. This is also prescribed by the Croatian Act on the Implementation of the Regulation (Art. 7, para. 1 of the Act on the Implementation of the Regulation). However, the application form provided in the Implementation Regulation is not mandatory.

According to Article 65, para. 3 of the Succession Regulation No 650/2012 (official translation of the Regulation in the Croatian language):

"The application must contain the information listed below, to the extent that such information is within the applicant's knowledge and is necessary in order to enable the issuing

authority to certify the elements which the applicant wants to have certified, and will be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity, without prejudice to Article 66 (2):

a) details concerning the deceased: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;
b) details concerning the applicant: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;
c) details concerning the representative of the applicant, if any: surname (if applicable, surname at birth), given name(s), address and representative capacity;
d) details of the spouse or partner of the deceased and, if applicable, ex-spouse(s) or ex-partner(s): surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable) and address;
e) details of other possible beneficiaries under a disposition of property upon death and/or by operation of law: surname and given name(s) or organisation name, identification numbers (if applicable) and address;
f) the intended purpose of the Certificate in accordance with Article 63;
g) the contact details of the court or other competent authority which is dealing with or has dealt with the succession as such, if applicable;
h) the elements on which the applicant founds, as appropriate, his claimed right to succession property as a beneficiary and/or his right to execute the will of the deceased and/or to administer the estate of the deceased;
i) an indication of whether the deceased had made a disposition of property upon death; if neither the original nor a copy is appended, an indication regarding the location of the original;
j) an indication of whether the deceased had entered into a marriage contract or into a contract regarding a relationship which may have comparable effects to marriage; if neither the original nor a copy of the contract is appended, an indication regarding the location of the original;
k) an indication of whether any of the beneficiaries has made a declaration concerning acceptance or waiver of the succession;

l) a declaration stating that, to the applicant's best knowledge, no dispute is pending relating to the elements to be certified;
m) any other information which the applicant deems useful for the purposes of the issue of the Certificate."

Given that the prescribed content of the application for the issuance of the Certificate, as well as the form itself, is complex, its filling in by the user could in practice be a problem. This is also evident from the data collected during the empirical research.

The results of the research confirm this theoretical assumption whereby the notaries in Croatia have mostly emphasised the challenges of their clients when filling in the application form for the issuance of a certificate, while the judges highlighted the need to help some specific categories of persons (older people, less educated people and the like) to fill in the form. However, they all agree on the problems connected with filling in this form. There are also examples from the group of notaries who said they filled the forms in for their clients: "*I prepared and filled in those unified forms"* (JB1_RH).

Besides, the results of the research indicate various ways of filling in the form of the certificate: some courts in Croatia require that the full form be completed, as well as the translation, while some courts insist on only some specific and essential items.

In the Slovenian research, judges also emphasised the complexity of the forms and consequently also the difficulties for the parties applying for a ECS: "*Namely, we must be aware of the fact that it is not easy to fill in this form. There is a lot of data, including personal information that must be filled in by the heir or the party requesting these forms. It does not work in the way that a client comes and tells you:'I would like to get a European Certificate of Succession, although we did have such cases….. there are many formalities that must be fulfilled. They are not simple for an average client. I don't think that in most cases they would be able to fill in the form by themselves. It is a very demanding thing."* (S2_SI).

4. The procedure of issuing the Certificate

The Succession Regulation No 650/2012 lays down the procedure of the authority competent for the issuance of a European Certificate of Succession after receiving an application for its issuance as well as the competence of that authority. Upon the receipt of the application, the

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

The issuing authority takes all the necessary steps to inform the beneficiaries of the application for a certificate. If it is necessary for the establishment of the elements to be certified, it will hear any person involved or any executor or administrator and will make public announcements aimed at giving other possible beneficiaries the opportunity to invoke their rights (Art. 66, para. 4 of the Regulation). In the Croatian Act on the Implementation of the Regulation it is set forth that information and public announcements of the parties are provided for by the provisions of the Succession Act regarding invitation by public announcements[60] and the time limit for approaching the court or a notary is two months from the publication of the announcement in the Official Gazette (Art. 7, para. 2 of the Act on the Implementation of the Regulation). Such invitation and information of the parties by a public announcement in the Official Gazette could be a problem in practice.

The data collected within the empirical research also point to some open questions as to whether it is necessary to hold a hearing upon the application for the issuance of the Certificate and regarding servicing the summons for the hearing.

In the research conducted in Croatia, the participants have highlighted the following: "*I have only had a case, well, I don't have any problem with the delivery of a certificate because this is mainly initiated by one of the heirs who is interested and it is serviced on him, and this is where we have had problems with the service on the heirs who took part in the hearing regarding the issuance of the European Certificate of Succession. I then postponed it because*

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

the man was on holiday and I knew that he would receive the summons sooner or later. Then I scheduled a new hearing, when I was sure that the summons had been serviced on the party. This was somewhat dubious if, well, the service of the summons for the hearing must be orderly, so we could issue a certificate, because, I think, we had already issued the decision on succession and it is not possible that in the certificate, the division is different. As I said, I did not have such a case in my practice." (FGJB_RH).

"The decision was final, the heir filed an application for the issuance of a European Certificate of Succession and then after that, one of the heirs called and said that she did not intend to accept the summons for the hearing and she did not want to have anything with it. This is where a problem arose for her because the service then had to be made by putting the summons on the notice-board where it had to remain for a certain period of time, so that all the time limits were observed. We had no other choice, we even had the contact data for that lady and we sent her the summons by regular mail and we also said we would send it by registered mail. However, as the time was passing by, we decided to put it on the notice-board to make it possible for the lady to see it. That heir, we had to summon her, although she did not inherit anything connected with the money claimed by a foreign bank. This is also the moment where it would be good for heirs to shorten ....., I don't know how this could be done." (FGJB_RH); "*It would be ideal if, at the hearing when… (the decision on succession – added by the authors) is made that a certificate is also given"* (FGJB_RH) *"When you tell people that they have to come again only to satisfy the form, then there are comments…. We then try to make an agreement with people that …. We explain to them that they will be summoned, that it is not necessary for all of them to come and bear additional costs if they do not have anything against…. We developed a model summons where we included all the articles, so that they know, and then usually the beneficiary who is an heir, we hand it to him. We then write in the minutes that those who are absent do not object…. if the service was orderly, and it was."*

FGJB_RH).

In the Slovenian research, no experience was mentioned regarding this issue.

The Succession Regulation No 650/2012 generally provides for the communication between the authorities competent for the issuance of a European Certificate of Succession and the authorities of other Member States without regulating in detail the conditions of their cooperation. The competent authority of a Member State provides the issuing authority of

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

Croatian legal practitioners, who have taken part in the empirical research, assess this cooperation regarding the exchange of information needed for the issuance of the Certificate as being extremely important and necessary for a case to be brought to an end. Here is what they said: *"I would like to draw your attention to point 68 which provides that the issuing authority must take into account the formalities necessary for the registration of immovable in a Member State where the register is kept. To fulfil this purpose, the Regulation should provide for the exchange of data. Then I would draw the notary's attention to the fact that the European Certificate must be registered in Croatia and that the procedure and the formalities must be taken into account in the State of the registration because it is absolutely normal that we want everything to be described. If our court refuses the registration because the immovables are not properly specified, or the personal identification number is missing, this would, in my opinion, be a legitimate ground for denying the registration. What is not legitimate, well, down there, in Dalmatia, I've been waiting for a registration based on a European Certificate of Succession for almost two years, it is still not resolved but I don't think it has anything to do with a European Certificate of Succession itself."* (O1_RH); "*The problem is that this document must have all the elements that our Land Register requires for registration. Speaking of Slovenia….. between us and Slovenia….. They also have decisions on succession and a land register system. In my opinion, mutual flexibility must exist and the exchange of data that I mentioned before. For me, there is no obstacle that with the translation of the final decision on succession, if the immovables are properly specified, and plots, all other elements – there is a direct registration on the basis of the Slovenian decisions here and vice versa, the Croatian ones there."* (FGMJ_RH).

The judges who participated in the research in Slovenia emphasised the importance of an efficient cooperation and exchange of information with the authorities of other Member States. They said that, particularly at the beginning, when the Regulation only started to be applied, there were many difficulties in the cooperation with the authorities of other Member States. In the meantime, some problems have been solved and but some have not: "*The initial*

problem was also the collection of information on the assets abroad. The problem still exists. Because the legal systems are quite different. In Croatia, the first obstacle was the fact that they charged us for the excerpts from the Land Register but later they stopped that practice. We now get all the information. A much bigger problem is the fact that the States have very diverse data bases and different ways of obtaining them. In our country, to establish the assets is an essential component of inheritance proceedings. We must establish what is inherited. The existence of assets is one of the conditions of succession and this is not the case abroad." (S5_SI) Or: "*In Croatia, things were more complex at the beginning …. and we had problems with the acquisition of data on immovables ….To solve that problem, we need the data on immovables that are usually not known by the parties. Croatia, just like Slovenia, has an electronic land register base but there, as well as here, its search is possible only if you know the number of the cadastral unit. Therefore, we turned to the competent courts in the Republic of Croatia and asked, in accordance with the regulation on collecting evidence in civil and commercial matters, to supply the data on the immovable owned by the deceased. The time limits, provided for in this Regulation, were not respected at the beginning. Now, when we cooperate, things are moving, have become more stable and everything is functioning better."* (S2_SI) And: *"Getting the data from abroad is very difficult and sometimes it takes a lot of time, it is much faster from Germany. Austria is a problem, things are lagging behind…. (we turn) directly to the banks, to the land register where the deceased had lived for a while, if we find that piece of data in Slovenia. Well, there are problems, we are trying hard and we do whatever we can, when things are blocked, we also engage the parties because they know much better where the deceased had assets. Basically, this is unsettled. We simply have to engage and find the way. We must be very resourceful, let me put it that way."* (S4_SI)

As it is said in the previous citation, the courts largely rely on the data obtained from the parties: "*In that case we depend on the information given by the parties because there are no uniform records at the European level."* (S4_SI) And: "*The parties alone gave us the data on immovables."* (S2_SI)

They lack well-established ways of communication because it obviously takes place differently: "*It may be appropriate that there is a particular person in Croatia or a body to deal with succession matters only because there are many of them. With Croatia in particular. Many Slovenians owe immovables in Croatia. If there was a contact point for keeping a*

register or .....to record all succession cases that are pending upon the death of the deceased." (S4_SI)

The issuing authority issues a European Certificate of Succession without delay and to do that, it uses the form of the certificate that is a component part of the Implementation Regulation No 1329/2014 (Art. 67, para. 1, sent. 1 and 2 of the Regulation; Supplement 5 of the Implementation Regulation No 1329/2014. The cases where the issuing authority will not issue the Certificate are in particular the following:

a) the elements to be certified are being challenged; or
b) the Certificate would not be in conformity with a decision covering the same elements (Art. 67, para. 1, sent. 3 of the Regulation).

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

According to the Act on the Implementation of the Regulation, municipal courts or notaries are authorised to issue a certificate in a prescribed form and service its certified copy on the parties (Art. 7, para. 3 of the Act on the Implementation of the Regulation). Taking into account the determination of persons who may apply for the issuance of a certificate, as parties to the proceedings (Art. 63, para. 1 of the Regulation, Art. 7, para. 2 of the Act of the Implementation of the Regulation), it is questionable who are the persons who must receive a certified copy of a certificate, particularly taking into consideration that the Act lays down the period of validity of a certificate of six months which, pursuant to Article 70, para. 3 of the Regulation, starts running from the moment of the issuance of the Certificate (Art. 7, para. 3 of the Act on the Implementation of the Regulation). Namely, the period of validity of a certificate may expire while its service on "all" parties is being attempted.

The data collected within the empirical research show that legal practitioners in Croatia, who apply the Regulation, service it mostly on the heirs, the executors of wills or administrators of the estate. As for the period of validity, there was a lot of discussion in the focus groups where the participants emphasised the following: *"I had a case that I shall tell you about, it was a man from Munich, whose certificate based on which he wanted to exercise his right, had expired. He then turned to me with his enquiry and I asked him to bring me a certified copy of the certificate. Namely, the Court in Munich articulated that that document was a copy created before. Why? If the certificate had expired, it was to be expected that the*

Registry would dismiss the application having realised that it had expired." (FGJB_RH); "*We treat the ECS in the same way as our domestic decision and there is no difference. With its validity, of course. Whatever is important for us for its implementation. We do not treat decisions differently, our approach is the same."* (FGS_RH); "*I had a case where the German European Certificate of Succession had expired. A German court had issued it because of the circumstance that the procedure of registration on that invalid certificate was pending before a Croatian court. Croatian courts were rejecting the request made by the attorney who invoked that European Certificate of Succession and that was how its validity expired. When the client turned to me to resolve for him that Gordian knot because he was not able to register his right on the basis of that invalid certificate, I asked him to bring me a new certificate from the court. I was not sure if they would issue a new one or if they would only extend the old one but he came back to me with the extended validity of the previously issued certificate. A conclusion can be made that German courts extend the validity of an already issued certificate. However, that Certificate was also invalid, the extended validity did not improve the deficiency and it was a real professional challenge."* (FGMJ_RH).

Slovenian judges primarily service a ECS on the heirs. In the interviews, different opinions were given about the cases with more heirs, and only one of them requested a ECS: "*There are three heirs. One of them proposes the issuance of a ECS and the other two must be informed. However, in practice, only the person who porposes it is interested in obtaining it. I do not know why everybody should get it because at the end of the day, it concerns only the person specified in the decision, i.e. the person who needs it."* (S1_SI)

"*It is first necessary to obtain all the data, court fees must be paid, to fill in a certificate you need data generally contained in the file, and if they are not, a party must supplement them. The decision is issued together with a certificate and a form to fill in. As a set. There are two acts. Yes, (they both must be serviced on all parties)."* (S4_SI)

"*We service it only to the person who asks for it. However, we actually issue the certificate together with the decision. A decision that a certificate is issued is sent to all parties. To acquaint them with the fact that somebody has received a certificate. There is no dilemma here because it is agreed at the hearing who needs a certificate and why. Indeed, there are no elements of surprise. Sometimes they all request it, but they shouldn't. Sometimes only one*

persons wants it and they all agree on that. Many certificates have been issued only as a reserve because that is not a big expense. I believe the fee is about thirty Euros." (S5_SI)

The Slovenian IA, lays down only the authority competent for the issuance of a European Sertificate of Succession (the municipal court as the court of inheritance). It also contains the provisions on legal remedies against the decision by which the court decides on the application for the issuance of a certificate and a temporary delay of its effects. As for other questions, the provisions of the Regulation apply directly.

5. Contents of the Certificate

The form of a European Certificate of Succession is a component part of Supplement 5 of the Implementation Regulation No 1329/2014 (Art. 67, para. 1, sent. 1 and 2 of the Regulation).

Pursuant to Article 68 of the Regulation (in accordance with the official translation of the Regulation in the Croatian language):

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

a) the name and address of the issuing authority;
b) the reference number of the file;
c) the elements on the basis of which the issuing authority considers itself competent to issue a certificate;
d) the date of issue;
e) details concerning the applicant: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address and relationship to the deceased, if any;
f) details concerning the deceased: surname (if applicable, surname at birth), given name(s), sex, date and place of birth, civil status, nationality, identification number (if applicable), address at the time of death, date and place of death;
g) details concerning the beneficiaries: surname (if applicable, surname at birth), given name(s) and identification number (if applicable);
h) information concerning a marriage contract entered into by the deceased or, if applicable, a contract entered into by the deceased in the context of a relationship deemed by the law applicable to such a relationship to have comparable effects to

marriage, and information concerning the matrimonial property regime or equivalent property regime;

i) the law applicable to the succession and the elements on the basis of which that law has been determined;
j) information as to whether the succession is testate or intestate, including information concerning the elements giving rise to the rights and/or powers of the heirs, legatees, executors of wills or administrators of the estate;
k) if applicable, information in respect of each beneficiary concerning the nature of the acceptance or waiver of the succession;
l) the share for each heir and, if applicable, the list of rights and/or assets for any given heir;
m) the list of rights and/or assets for any given legatee;
n) the restrictions on the rights of the heir(s) and, as appropriate, legatee(s) under the law applicable to the succession and/or under the disposition of property upon death;
o) the powers of the executor of the will and/or the administrator of the estate and the restrictions on those powers under the law applicable to the succession and/or under the disposition of property upon death."

Croatian legal practitioners who participated in the research assess the form of a European Certificate of Succession in the following way: *"There is not much criticism by me of the ECS but I think that it is not necessary to have such a huge form consisting of twenty, twenty-two pages. To translate it into our language, the parties also complained, costs a lot of money, almost two thousand HRK, and I also said in that interview, that this should somehow be done in individual States, or some kind of an excerpt from the certificate should be given. They should change this because, in my opinion, it is really inapropriate that the parties have to pay so much. Perhaps they had an idea that our court would accept only the Certificate, without the translation and that it would function directly. And we cannot file it as a proposal for registration, then a certificate, then our records on the confirmation of facts ..... Then we somehow describe everything to the court, what the court should do…."* (FGMJ_RH).

The participants in the Slovenian part of the research were also critical about the length and complexity of the form, particularly with regard to the translation of the form into the language of a Member State where it is to be used and the costs which are incurred for the party: "*My personal opinion, and it is also the opinion of the court, that it is more*

complicated for the party and I dare to say that is it also more expensive." (S2_SI) Or: "*Well, first of all, the form of a European Certificate of Succession is extremely awkward, badly laid out and…. inconvenient."* (S5_SI). There were also other opinions regarding the form of the ECS:"*Nowhere, not even formally, was it precisely determined what form it should have. Must we bind it, stamp it, page by page, or how to provide a more formal shape that would suggest the seriousness of what we submit, to be honest. Well, this is still an open issue."* (S5_SI)

Many participants said that the requirements for the translation of the ECS are unfounded and they are burdensome for the parties: "*In the beginning, when immovables in Croatia were involved, the heirs would come and we would issue them a European Certificate, they said it had to be translated, which didn't seem logical ….we issue a European Certificate of Succession which is made uniformly, in Croatia they also have the same form and I don't see why they had to do it… it is better to translate the decision on succession, if it has to be done, because there are only two pages, and not 16 pages of a ECS."* (S3_SI) And: "*This is, after all, a form and the court should read it. But they refused it and the court did not allow registration on the basis of a European Certificate of Succession in a foreign language. We asked the party whether it will appeal, I would, but the party said no. Therefore, we translated only the part of the form which contains the information about the deceased, who is the heir and what is inherited. Everything else we didn't translate. We now have a translation of three pages, it is not too expensive and it should be enough for the court."* (FSMJ_SI)

The interviews with judges show that the approach to solving the problem of the language in which a ECS is issued, is very diverse, for example:
-"*It is because we fill it in by hand. In both languages because the States again require a translation. I think that it is not justified to request a translation of a European Certificate of Succession, although it is drawn up in another language… and as a final remark, the form is standardised and it is easy to establish the content, but they still require a translation."* (S4_SI)

- "*The form is immediately transferred into Croatian but what is written must be in the Croatian language and if not, than it remains in the Slovenian language. Yes, (we write it in the Croatian language). It is our practice that it must be filled in by professional associates*

and then the form is given to be filled in. Last time it was written in Slovenian, for 'nepremičnina' it was written 'nekretnina', we'll see…" (S6_SI) Or:

-"*Let's say, a big dilemma existed at the beginning in which language it is processed. Particularly because the judges along the border said: 'Yes, because you need it to exercise the rights in Italy, Austria, Croatia and they need it in that particular language'. We in Ljubljana have moved away a little from it and it does not seem reasonable that a judge must speak German, Italian or Croatian, Hungarian, being immediate neighbours – we are no longer in the area of bilingual communities and we take a position that the prevailing language is Slovenian and, therefore, a translation is necessary and the client must take care of it. Well, that is not a problem because the forms are the same and they exist in all languages. We could fill in a form whose basis is German, English, Portuguese, the problem is that some content must be written in it. As a judge, I confirm the Slovenian content."* (S5_SI)

The practicing lawyers participating in the interview were also of the opinion that the translation of a ECS is a financial burden for the parties: "After the Regulation, everybody said that everything would be easier and better for the parties, but…. I discovered that it was not easier for the parties but only more expensive…. It is in Slovenian, our authority, the issuing authority is a Slovenian court and it operates in Slovenian. It cannot issue us a certificate in Croatian." (O2_SI).

With the notaries, on the other hand, an opinion prevailed that the length of a ECS should not have a negative impact on the parties and should not discourage them from using the form, because: "*Any translator takes, as the basis, the form in the national language and translates only the textual parts that are important. That is minimal, I think it is less than half a page. You translate that, the object of succession is this or that immovable…. All in all, there are no difficult texts in this certificate and the translation is accessible on web pages. I don't think there are translators who would request the price of a translation for a form which already exists. The prices are not high. At the moment I work with a practicing lawyer (who is also a court interpreter) on a German certificate….She said it is clear to court interpreters that you translate only that and not the actual text of the form."* (FSN_SI)

6. Effects of the Certificate

A European Certificate of Succession has its effects in all Member States and no separate proceedings for its acceptance are necessary (Art. 69, para. 1 of the Regulation). In particular, no legalisation or any similar formality is required in respect of the acceptance of its effects in other Member States (Art. 74 of the Regulation). Besides, no control of a European Certificate of Succession is allowed from the aspect of public policy (*order public*), or competencies of the issuing authority, or its conformity with the provisions of the Regulation on its content (Art. 68 of the Regulation) in the Member State where certificates are used (the Member State of its "acceptance") (*arg ex*; Art. 69, para. 1, Art. 71 of the Regulation).

A certificate is not an authentic instrument in the sense of how it is specified in the Regulation but it does have its evidentiary force and it is assumed that it truly proves the elements established in accordance with the law applicable to succession or any other applicable law for its particular elements (Art.69, para. 2, sent. 1 of the Regulation). It is also assumed that the person specified in a certificate as an heir, legatee, executor of the will or administrator of the estate has the status given in it, and/or the rights or powers specified in it, without any limitations as to the rights and powers, apart from those given in it (Art. 69, para. 2, sent. 2 of the Regulation). However, the evidentiary force of a certificate should not extend to the elements not governed by the Regulation, such as the questions of affiliation or the question whether or not a particular asset belonged to the deceased (p. 71 of the Preamble of the Regulation).

The Succession Regulation No 650/2012 provides for the position and protection of third persons in good faith. 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 it as being authorised to accept payment or property, will be considered to have transacted with a person with authority to accept payment, unless he knows that the contents of the certificate are not accurate or is unaware of such inaccuracy due to gross negligence (Art. 69, para. 3 of the Regulation).

Where a person specified in a certificate as being authorised to dispose of the succession property disposes of such property in favour of another person, that other person, if acting on the basis of the information certified in the certificate, will 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 (Art.69, para. 4 of the Regulation).

The protection should be ensured if certified copies which are still valid are presented (p. 71 of the Preamble of the Regulation, Art. 70 of the Regulation). At the same time, the Succession Regulation 650/2012 does not determine the effects of such an acquisition of property by a third person (p. 71 of the Preamble of the Regulation).

It is particularly important to emphasise that a certificate is a valid document for the recording of the transfer of property based on succession in the register of a Member State, such as land register. However, since the procedure of recording is governed by the national law of the Member State keeping the register, the Member State issuing a certificate should pay attention to formal requirements for the recording governed by the law of that Member State (Art. 69, para. 5, Art. 1, para.2 (k) and (l); p. 68 of the Preamble of the Regulation). The authorities involved in the registration in the relevant register may ask the person applying for registration to provide additional data or additional documents as are required under the law of the Member State in which the register is kept (for example, documents relating to the payment of revenue) (p. 18 of the Preamble of the Regulation).

The applications for the registration in the register of rights to movable and immovable property are excluded from the substantive scope of application of the Regulation (Art.1, para. 2 (1) of the Regulation). The law of the Member State in which the register is kept (such as land registers for immovables) is applicable to determine the authorities, the conditions and the procedure of registration (p. 18 of the Preamble of the Regulation). The effects of the recording of a right in a register – like its declaratory or constitutive nature – are also excluded from the scope of application of the Registration (p. 19 of the Preamble of the Regulation).

The legal practitioners who participated in the empirical research pointed to a diverse practice of the courts when carrying out the recording in the land register based on a certificate (particularly those issued in Germany). They do not contain accurate descriptions of immovables but only indicate that a person inherits “the entire testator’s assets”.

The participants, in their examples, describe in detail such cases from their rich experience. Here are some of their narratives from the interviews and focus groups:

"*Although we have now said that we have direct jurisdiction under the Regulation, a question arises how this will be done by the courts and what their case law will be. The Regulation must be directly applied but the registration in the land register is left to be done in accordance with the rules of the national legislation and this is where some problems may occur. Namely, the Land Register Act provides that the documents on the basis of which registration is made are public or private instruments and the European Certificate of Succession is neither of these two, it is a new concept of international law, some kind of a sui generis."* (JB1_RH);

"This is good experience, they implement it. Yes, I'm telling you, I have a European Certificate, it is not enough for us, this is the position of our courts. To make things easier for them, we write the minutes on the confirmation of facts and then, in the context of our law, we record our order for registration – that the land register is ordered to enter the estate. It is then easier for them: they have a European certificate, the translation and our document. They did not act on the basis of a certificate only. We did not know how that would work, we sent them the certificate and its translation but they did not want to enter the registration. We then agreed that this could be an institute that we have under the Notaries Act and they were happy with it. The court, I mean." (JB3_RH);

"*I shall first say that in my practice, I have exclusively dealth with the implementation of the European Certificates of Succession created in other Member States, mostly Slovenia, Italy and less often Austria and Germany. The practice here is not uniform. I shall begin with our Land Register. Well, the Croatian Land Register of Immovables insists that in cross-border cases a European Certificate of Succession is presented as the titulus for the registration of the rights of heirs in the Croatian Register of Immovables. A conclusion can be made that in our practice, the courts have started to interpret the Regulation by requiring the presentation of a European Certificate of Succession as a condition for registering the right of ownership on the heirs. I had a concrete example with some heirs from Austria who invoked Austrian practice by saying that it is not necessary to have a European Certificate of Succession but that it is enough to have a decision by an Austrian notary translated into Croatian. I intended to register the rights of these heirs, specified in the decision on succession drawn up by an*

Austrian notary, in the Croatian register but I was expressly told by the land register people that beside this decision on succession, they also had to have a European Certificate of Succession. So, in this concrete case I asked the heirs to provide also a European Certificate of Succession. When they got it, we were very elegantly able to register their ownership rights in the Croatian Land Register. As far as the Slovenian court practice is concerned, there are no problems because they issue a European Certificate. The heirs always come with a decision of the competent court and a European Certificate and everything runs smoothly. What might be important to mention here as a problem in practice is the situation with German certificates, the European Certificates of Succession issued in Germany. This is a problem because German courts simply do not want to describe the immovable in a certificate in the way it is prescribed under Croatian law. They simply do not enter the data on the cadastral unit and the cadastral municipality and these are the essential elements under our national law. German courts insist on their formulation that the entire assets are inherited. Indeed, they even do not enter the property in Germany, not even the property outside Germany, like in Croatia, for example. They leave it to an heir to register his rights in the Croatian Land Register using such an incomplete and incompatible European Certificate of Succession. It is impossible." (JB4_RH)

"*This is an example from the Federal Republic of Germany where they have, well, they determine the heirs and the ratios, so that this is an issue for our land registers when they get something like that. I think they should do it regardless of the fact that there is no description because the land register undoubtedly has tools to find the overall assets and if they do not find something , the heir will do it alone, later. But I think they cannot say that it is not in accordance with the Croatian land register law: a plot, a description of the immovable, a land register folio. I do not communicate much with courts but they are already preparing for these questions and they expect that such a document may even come already translated. But a notary does not know, it is more a question for the land register."* (JB6_RH);

"I can tell you a lot about it because I mostly do land register cases and all other questions you asked, I do not know much about. In land register proceedings, the applications are very orderly as far as certificates are concerned. It may happen, because documents must be filed in the Croatian language, that the decision is not translated and then the clients are asked to have it translated. But I have already said that these decision do not contain the cadastral unit and the cadastral municipality and that is a requirement under our Land Register Act

and it is necessary for the registration. However, if the applicant solves the problem and the immovable is accurately described in a European Certificate, it is, as a rule, entered in the Land Register. There are situations where the application is rejected because the client has only the decision on succession issued by another Member State and a European Certificate of Succession is missing or the cadastral units are not specified. The application is then rejected but in all other cases it is mostly and orderly carried out." (S3_RH)

"Regarding entries in the Land Register, I must say that the land register court always assesses two things: whether the decision on succession was rendered by a competent authority and whether the registration is feasible. We do not examine the decision as such, in terms of the application of substantive law because it would mean that we act as a court of appeal in relation to the body which rendered the decision on succession. We are not authorised to act in that capacity. What we want to make sure is whether the decision was rendered by an authorised body and whether the registration is possible under our provisions in relation to the deceased. For example, it is not possible to register someone who was not entered in the Land Register as the owner. These are some of the basic things that I try to establish, so that a final decision on succession can be recorded in the Land Register."
FGS_RH)
"I had examples where there was a European Certificate of Succession but without a description of the immovable. Every time the registration was denied." (FGO_RH).

The participants in the research in Slovenia said that in the past, there were problems with the registration of German ECS's in the land register: "*I had a case where the client was quite upset because she had also seen other notaries. The case involved an immovable in Germany. In the Certificate of Succession that the client had insisted on, they did not want to write a concrete number of the cadastral unit."* (N4_SI) The notaries, who participated in the research, said that that problem was to a large extent solved thanks to case law because the Higher Court in Koper (decision CDn 196/2018 of 23 April 2019) accepted the appeal against the first instance decision refusing registration in the Land Register based on the German ECS: "*When we presented the ECS to the Land Register, we additionally specified the cadastral units and ID denotations. Well, in our Land Register we found what the client had inherited and we applied for registration. But the Court denied the registration because in the European Certificate of Succession, the immovables were not specified. The Higher Court then said that that was not the meaning of the European Certificate and that the client did*

everything she could and had to do to be able to register. It was clear from the Land Register that the deceased was the owner of those three immovables. It was obvious that the situation in the Land Register corresponded to the European Certificate of Succession." (FSMJ_SI)
And:"*There were many problems in the initial phase because of insufficiently precise certificates that failed to identify the immovables but our court solved that problem. We no longer have any problems with the regulation. I have a feeling that clients come to us relatively well informed about these issues."* (N2_SI) The participants also emphasised the possibility that the client could additionally ask the isuuing authority to complement the Certificate: "*We tell them to ask the issuing authority to complement the Certificate if something is not clear. For example, German forms are very specific. They fill in a ECS very generally but the identification of the assets must be very precise. The issuing authority then complements the ECS and we did not identify any problems. In a direct communication between the notaries, everything was clarified. Such communication between notaries is much easier than if the court must communicates with a foreign notary*." (N5_SI)

The positions of judges were very diverse. Some of them mentioned national law rules that provide for registration in the Land Register and do not allow such entries:"*I don't think our Land Register would make such an entry because the document, as the basis for it, must contain all the data on the immovable, in compliance with our legislation*:"(S4_SI) All other participants were familiar with the above decision of the Higher Court but were suspicious with regard to the consequences that such interpretation could entail: "*The Court's position was, if I'm correctly informed, that it is not necessary to give every individual number (of the immovable). I think it is a very, very wide interpretation. It could happen that the heirs get more than they are entitled to….*
We invite the authority administrating such an immovable in that particular country to send us an excerpt which we then use. So far, we did it that way for Italy and Croatia, we didn't have the same situation with other countries. What I want to say is that the original records are the ones we need to apply also in the decision on succession." (S2_SI) A question, whether there is a need to seek complements and data in the source records appeared several times: "*But you must have the data (on the immovable). You must ask the German authority to supply them. Or you can ask additional documents, evidence from the heirs."* (S7_SI). However, there was also an opinion that a mere fact that a certificate does not contain sufficient denotation for an immovable must not be a reason not to register: "*This should (have been solved already). We cannot say, 'aha, the German solution is such and such but*

we don't know it and, therefore, we shall not execute it'. That is not in accordance with the Regulation." (FSS_SI)

Practicing lawyers have also encountered problems when recording German certificates in the Land Register and this is how they were solving them: "*C: We sent to the German lawyer what he was supposed to write, ID information. And they did write them. A: Yes, there is space in this form for these additional things. And we do them, although it is basically wrong because in such a way we make it easier for the courts who request things that they shouldn't….We lawyers ask foreign authorities, they are much more flexible and less rigid, to write down additional things, according to their way of thinking. We in Austria also tell the notaries to enter additional things, although they are not obliged to do so, the shares, ID information…. But because of our clients, we try to avoid getting decions from the Land Register telling us our motion is dismissed."* (FSO_SI)

7. Certified copies of certificates

The original of a certificate is kept by the issuing authority. The issuing authority issues one or more certified copies to the applicant and any other person who demonstrates a legitimate interest. They keeps a list of persons to whom certified copies have been issued (Art. 70, paras 1 and 2 of the Regulation. This does not preclude a Member State from allowing copies of a certificate to be disclosed to the public, in accordance with its national rules on public access to documents (p. 72 of the Preamble of the Regulation).

The Croatian Act on the Implementation of the Regulation lays down that the municipal court, for the area under its jurisdiction, keeps a list of issued European Certificates of Succession and of persons to whom certified copies have been issued (Art. 8, para. 1 of the Act on the Implementation of the Regulation). Immediately upon the issuance of a Certificate, the notary must service it on the municipal court in whose area of jurisdiction his seat is located in order to have the certificate entered in the list of issued certificates (Art. 8, para. 1 on the Implementation of the Regulation). A question remains whether the original of a European Certificate of Succession remains with the notary or whether the notary services also the original of the certificate, together with the case file, on the municipal court.

It must be emphasised that the certified copies of the European Certfificates of Succession are valid for a limited period of six months, which must be marked on the certified copy by

indicating the date of expiry. **The Croatian Act on the Implementation of the Regulation** expressly provides that the period of validity of six months, pursuant to Article 70, para. 3 of the Regulation starts running from the moment of issuance of the certificate (Art. 7, para. 3 of the Act on the Implementation of the Regulation). In exceptional and justified cases, the issuing authority may exceptionally decide that the period of validity of a certified copy of a certificate is to be longer. Once this period has elapsed, any person in the possession of a certified copy must, in order to be able to use the certificate for indicated purposes, apply for an extension of the period of validity of a certified copy or request a new certified copy from the issuing authority (Art. 70, para. 3 of the Regulation).

The Slovenian IA does not contain any special provisions for the application of Article 70 of the Regulation.

The legal practitioners who participated in the empirical research emphasised the problem of the limited validity of the Certificate being only six months, as well as of the question whether, upon the expiry of the period of six months, it is necessary to issue a new certificate or just extend the validity of the one already issued.

In the interviews and in their focus groups they all described their experiences in Croatia. They highlighted the following:

"*A possible objection is…. the hearing because it…..why do we have to summon all the heirs and a ECS is issued for only one heir who has exercised his rights to succession but we were told to summon again all the heirs. It is normal that all others are not interested, it is only an additional cost and a very short time limit for the application. Only six months, sometimes the heirs, for some personal reasons, cannot make use of the ECS and then there is a need for an additional one ….we once again have to issue it after six months, after the time limit has expired."* (JB5_RH);

"I had a case and I will tell you about it, it was a man from Munich, whose certificate, on the basis of which he tried to exercise his rights, had expired. He then turned to me with his enquiry and I asked him to bring me a certified copy of that same certificate. The court in Munich said that it was a copy of a previously created certificate. Why? If a certificate has

expired, the Register will probably dismiss the application for registration because they check the date and see that its validity has expired." (FGJB_RH);

"There was an additional problem, the validity of six months of a certificate had expired. After the consultations, I wrote to that man and said, we had all the grounds to apply for a new one because I didn't want to risk with an expired certificate. He did it because because I reassured him by saying that I would do what I am allowed to do by law. I said I would draw up a document connecting the invalid certificate with some indisputable facts: your wife is indisputably the owner, you are indisputably the only heir. It is a paradox that you walk along the court's corridors for a year and a half. And that was how the minutes were created confirming the facts, where I stated that the client came on a certain date, I wrote his personal data, that he presented the European Certificate and asked me to record it, he explained that he was the only owner based on the will, that he accepted the whole estate, both the one in Germany and in Croatia and by presenting the property titles, he described the immovable in Croatia, then I referred to the corresponding Article of the Regulation on Succession (one of them being the one that I read before), I referred to the one on implementation." (FGJB_RH);

"*We had to … in the same case, …….with the banks and it lasted quite long. We extended, not extended, we issued anew…"* (FGO_RH);

"*We very often discussed this time limit of six months, especially because the situation that you mentioned before, could happen if something is incomplete and you need to ask for supplements, usually other States are involved, the client must go there and so on. I think that this time limit of 6 months could be longer."* (FGS_RH).

Some judges, who participated in the research in Slovenia, already came across cases where it was necessary to estend the validity of a ECS: "*They come back to have them extended. Why, I don't know…. Perhaps they postpone things and do not promptly get things over with or they do not pay any attention to time limits and when they finally want things to be done, the validity has expired. They often come back. Our practice is different. I know that in one case ….. one other court said that they rushed to issue a new Certificate of Succession, it could have been only a decision but it is again a decision that needs to be translated. Things are neither consistent nor well defined …. It may be better to draw up a form for the extention of*

a certificate, its validity because this is somehow unknown…. The Regulation does envisage the extention of a certificate but we do not know if it will be carried out. It would be more appropriate to have a standardised form." (S4_SI)

Some notaries also said the following: "*I had a client who had assets in many countries,….. of course she was not able to accomplish it at the same time in several countries and she complained how expensive it was. What is the price of the European Certificates, or their extension depending on the respective national legislation which probably does not have any connection with the EU. I don't know, in our country it is thirty Euros and I consider it to be a very low price. The extension of validity cannot cost much more."* (FSN_SI) And: " *Clients say that the period of validity is 6 months and some of them do not have enough time to do it all, and then have to extend the validity but it seems to me that the Regulation makes everything very clear and it is better than it used to be."* (N1_SI).

The practicing lawyers participating in the research have not come across cases where their clients would need to extend the validity of their certificates. During their discussion in the focus group, they said that the Regulation also provided for a limited validity of a certified copy of a ECS and not only of the certificate itself.

8. Rectification, modification or withdrawal of the Certificate

The Succession Regulation 650/2012 contains some provisions on rectification, modification or withdrawal of the European Certificate of Succesion. The issuing authority of the European Certificate, at the request of any person demonstrating a legitimate interest or *ex officio*, will rectify a certificate in the event of an administrative mistake ("*clerical error"),* such as obvious typing errors (surnames of the parties, dates or identification numbers) (Art. 71, para. 1 of the Regulation; Popescu 2014: 105). In addition, the issuing authority, at the request of any person demonstrating a legitimate interest, or, if possible according to national law (*lex fori*), or of its own motion, modifies or withdraws a certificate where it is established that the certificate, or individual elements thereof are not accurate (e.g. if new heirs are found or a will) (Art. 71, para. 2 of the Regulation; Popescu 2014: 105).

Under the Croatian Act on the Implementation of the Regulation, rectification, modification or withdrawal of a certificate are carried out by the municipal court or a notary

who has issued the certificate, *ex officio* or at the request of any person demonstrating a legitimate interest (Art. 9, para. 1 of the Act on the Implementation of the Regulation).

Under the Slovenian SA, the Court of Succession decides on rectification, modification or withdrawal of a European Certificate of Succession referred to in Article 71 of the Regulation (Art. 227 c of the SloIA).

The empirical research shows the experience of legal practioners with rectification, modification or withdrawal of a certificate. Here are some of their experiences from practice:

"One should turn to the court, what else. As you say, both documents are incompatible. Yes, to the court, not to me, I think to the court. I think, the client can turn to me for rectification, I did not have that, but the Regulation says it's rectification: yes, rectification, modification or withdrawal of a European Certificate of Succession. But the client can turn to the court if he or she no longer trusts me. It is important to know what kind of error or inconsistency is involved." (JB1_RH);

"*Well, I would ask for rectification because such a document is not suitable ..... if you cannot ..... I cannot think of a situation where Croatian courts or the Land Register would accept such a document where it says that the entire assets are being inherited and here you come… I think for legal security it should be like that… in order to register. Yes, but then it is only a paper by which you cannot register under Croatian law because it all happens before a Croatian court, in a lawsuit and involving the content, in the Land Register, because I cannot think that a business share of a limited company is transferred on the basis of a certificate where it says all the assets. How? This would be the liability of the competent authority to take something like that into account."* (O2_RH);

"*Rectification yes, when they had to enter additional things, the bank, plots and the like. There was no problem with the bank in Luxembourg, but Germany does not want to enter anything."* (FGO_RH);

"*It means, the estate where there were 20 heirs. An account in Austria was involved and an error occurred. I don't know when. We didn't notice that we actually mixed up the dates – the date of issuance and the date of validity. They went to Austria and came back, of course. We did it anew and I made an official note stating that the clients asked for a rectification of a*

European Certificate of succession and we simply…. We printed it again with a corrected date and did not charge anything……20 heirs, so many, everybody had to receive their own copy, disaster." (FGJB_RH).

In Slovenia, both judges and practicing lawyers talked about this question in a focus group:
"A mistake was made in one case because an heir, on behalf of a co-heir applied for the issuance of a European Certificate that was addressed to her name – the applicant's name – instead the co-heir's name. We corrected our mistake by issuing a new certificate …. because there is no form for modifications or corrections." (FSS_SI)

"*It is possible to appeal to a European Certificate or a decision by which the court issues it. We already had that. A higher court rules on appeal except if it is a mistake or an error that the first instance court can solve and under the Succession Act, in some cases we may make the correction alone."* (FSS_SI)

"*Here is a very good rationale that I have read somewhere regarding issuance: 'Because it is not always possible to notify the persons whom we have issued certificates, it can happen that their incorrectly certified certificates will circulate until their validity expires'. What if there has been a lapse.. and you can dispose with the estate? What will happen if someone, based on a lapse gets the estate? It can happen sooner or later, errors can be made for sure. Somebody will dispose of the estate, what do we do when…. (a person who will then have) a correct certificate (will have) the basis for filing an action for removal, if we speak of a land register case… This will be an interesting example, when it happens."* (FSO_SI)

The Succession Regulation No 650/2012 prescribes a temporary suspension of the effects of the European Certificate of Succession at the request of any person demonstrating a legitimate interest pending a modification or withdrawal of a certificate (Art. 73, para. 1 (a) of the Regulation). A decision of the issuing authority on a temporary suspension of the effects of a certificate may be challenged by any person demonstrating a legitimate interest by lodging a legal remedy before a judicial authority in the Member State of the issuing authority in accordance with the law of that State,(Art. 72,para. 1, sent. 2 and sent. 3 of the Regulation). On the experience of the legal practitioners participating in the empirical research regarding temporary suspension of the effects of the Certificate see *infra ad* II.G.10.

Under the Croatian Act on the Implementation of the Regulation, municipal courts decide on the application for a temporary suspension of the effects of a certificate, or a notary before whom the proceedings of amendment or withdrawal of the certificate are pending (Art. 10, para. 1 of the Act on the Implementation of the Regulation). There is a possibility of filing an objection against the decision rendered by a notary on a temporary suspension of the effects of a certificate and it is decided upon by the municipal court. When deciding on the objection, the provisions of the Croatian SA, providing for the proceedings and the decision on the objection against the decision on succession, apply accordingly (Art. 10, para. 2 of the Act on the Implementation of the Regulation). If a notary finds that not all the preconditions for a temporary suspension of the effects of the Certificate have been met, the application together with the case file will be submitted to the municipal court for decision, in whose territory the notary's seat is located. The notary is obliged to explain in writing why he holds that not all the conditions for a temporary suspension of the effects of the certificate are met and notify the applicant that the case was referred to the court (Art. 10, para. 3 of the Act on the Implementation of the Regulation). The decision of the municipal court for a temporary suspension of the effects of a certificate may be appealed before the county court. The provisions of the Croatian SA providing for the proceedings and the decision on the appeal against the decision on succession apply accordingly to the proceedings and the decision on appeal against the decision of the municipal court (Art. 10, para. 5 of the Act on the Implementation of the Regulation).

Under the Slovenian IA, the Court of Inheritance decides on the request for suspension of the effects of a European Certificate of Succession referred to in Article 73 of the Regulation (Art. 227 d, para. 1 of the SloIA). The Act lays down that the procedure for applying for suspension of the effects of a European Certificate is necessary and has priority. An appeal against the decision by which the court decides on the request for suspension of the effects of a certificate to the Court of Succession may be lodged by any person entitled to it pursuant to Article 72 of the Regulation (Art. 227 d, para. 2 of the SloIA). The time limit for an appeal is 30 days from the day of the service of decision (Art. 227 d, para. 3 of the SloIA), An appeal does not postpone the enforcement of the decision (Art. 227 d, para. 4 of the SloIA).

If a certificate is rectified, amended or withdrawn, the issuing authority should notify the persons who have received certified copies to avoid unlawful use of such copies (p. 72 of the Preamble of the Regulation, Art. 71, para. 3 of the Regulation).

The Succession Regulation No 650/2012 provides for legal remedies against the decisions of the issuing authority in the proceedings of rectification, amendment or withdrawal of a European Certificate of Succession. Decisions taken by the authority issuing a certificate in the procedures of its rectification, amendment or withdrawal may be challenged by any person demonstrating legitimate interest (Art. 72, para. 1, sent. 2 of the Regulation). Legal remedies are lodged before a judicial authority in the Member State of the issuing authority in accordance with the law of that State (Art. 71, para. 1, sent. 3 of the Regulation). If, as a result of the legal remedy, it is established that the issued certificate is not accurate, the competent judicial authority will rectify, modify or withdraw the certificate or ensure that it is rectified, modified or withdrawn by the issuing authority (Art. 72, para. 2, sent.1 of the Regulation). While the challenge of the decision on rectification, modification or withdrawal of a certificate on appeal is pending, the judicial authority, at the request of any person entitled to challenge the decision rendered by the issuing authority, may temporarily suspend the effects of the certificate (Art. 73, para. 1 (b) of the Regulation).

Under the Croatian Act on the Implementation of the Regulation, a challenge is possible against the decision of a notary on rectification, modification or withdrawal of a certificate to be decided by the municipal court. When deciding on the challenge, the provisions of the Croatian SA, dealing with the procedure and the decision on the challenge against the decision on succession, apply accordingly (Art. 9, para. 2 of the Act on the Implementation of the Regulation).

If the notary finds that not all the preconditions for rectification, modification or a withdrawal of a certificate have been met, the application together with the case file will be submitted to the municipal court for decision, in whose territory the notary's seat is located. The notary is obliged to explain in writing why he holds that not all the conditions for rectification, modification or withdrawal of the certificate are met and must notify the applicant that the case was referred to the court Art. 9, para. 3 of the Act on the Implementation of the Regulation).

The decision of the municipal court on rectification, modification or withdrawal of the Certificate may be appealed and it is decided upon by the county court. The provisions of the Croatian SA on the proceedings and decisions on appeal against the decision on succession

apply accordingly to the proceedings and decisions on appeal against the decision of the municipal court (Art. 9, para. 4 of the Act on the Implementation of the Regulation).

9. Redress procedures against the decision of the issuing authority

The Succession Regulation No 650/2012 provides for redress procedures against decisions taken by the authority issuing a European Certificate of Succession, including the decisions refusing the issuance of the Certificate (p. 72 of the Preamble of the Regulation). Decision taken by the issuing authority following the application for its issuance may be challenged by any person entitled to apply for a certificate (Art. 72, para. 1, sent. 1 of the Regulation).

Appeals are lodged before a judicial authority of a Member State of the issuing authority in accordance with the law of that State (Art. 72, para. 1, sent 3 of the Regulation). If on appeal it is established that the refusal of issuing a certificate was not justified, the competent judicial authority issues a certificate or ensures that the issuing authority re-examines the case and renders a new decision (Art. 72, para. 2, sent. 2 of the Regulation).

The Croatian Act on the Implementation of the Regulation provides for a challenge against a certificate issued by a notary to be decided before the municipal court. The provisions of the Croatian SA on the procedure and decisions regarding the challenge of the decision on succession apply accordingly to the procedure and decision on the objection (Art. 7, para. 4 of the Act on the Implementation of the Regulation). If the notary finds that not all the preconditions for the issuance of a certificate have been met, the application together with the case file will be submitted to the municipal court for decision, in whose territory the notary's seat is located. The notary is obliged to explain in writing why he holds that not all the conditions for the issuance of the certificate have been met and must notify the applicant that the case was referred to the court (Art. 7, para. 5 of the Act on the Implementation of the Regulation). The decision of the municipal court on dismissal or rejection of a certificate may be appealed and it is decided before the county court. The provisions of the Croatian SA on the proceedings and decisions on appeal against the decision on succession apply accordingly to the proceedings and decisions on appeal against the decision of the municipal court (Art. 7, para. 7 of the Act on the Implementation of the Regulation).

Under the Slovenian IA, persons referred to in Article 72 of the Regulation who are entitled to it, may lodge an appeal (Art. 227 č, para. 1 of the SloIA) against the decision by which the

court decided on the application for the issuance of a European Certificate of Succession pursuant to Article 67 of the Regulation, against the decision on rectification of a European Certificate of Succession, modification of a European Certificate of Succession and on withdrawal of a European Certificate of Succession pursuant to Article 71 of the Regulation. An appeal may be lodged within 30 days from the service of the decision (Art. 227 č, para. 2 of the SloIA). An appeal does not postpone the enforcement of the decision (Art. 227 č, para. 3 of the SloIA).

10. Suspension of the effects of a certificate

While the procedure of challenging the decision on the application for the issuance of a European Certificate of Succession or its rectification, modification or withdrawal upon appeal is still pending, the judicial authority, at the request of a person entitled to challenge a decision rendered by the issuing authority, may suspend the effects of the certificate (Art. 73, para. 1 (b) of the Regulation). **Under the Croatian Act on the Implementaion of the Regulation**, the municipal court which has issued the certificate, or in whose territory is the seat of the notary who has issued the certificate to which the application applies decides (Art. 10, para. 4 of the Act on the Implementation of the Regulation). The decision of the municipal court on the application for suspension of the effects of a certificate may be appealed and it is decided upon by the county court. The provisions of the Croatian SA on the proceedings and decisions on appeal against the decision on succession apply accordingly to the proceedings and decisions on appeal against the decision of the municipal court (Art. 10, para. 5 of the Act on the Implementation of the Regulation).

Under the Slovenian IA, the Court of Inheritance decides on the application for suspension of the effects of s European Certificate of Succession referred to in Article 73 of the Regulation (Art. 227 d, para 1, of the SloIA), The Act provides that the procedure for applying for suspension of the effects of a European Certificate is necessary and has priority. An appeal against the decision by which the court decides on the request for suspension of the effects of a certificate may be lodged by any persons entitled to it pursuant to Article 72 of the Regulation (Art. 227 d, para. 2 of the SloIA). An appeal must be lodged within 30 days from the day of the service of the decision (Art. 227 d, para. 3 of the SloIA). It does not postpone the enforcement of the decision (Art. 227 d, para. 4 of the SloIA).

The issuing authority, or as may be the case, a judicial authority, must notify, without delay, all persons whom the certified copies of a certificate have been issued (Art. 73, para. 2, sent. 1 of the Regulation). During the suspension of the effects of a certificate no new certified copies of the certificate may be issued (Art. 73, para. 2, sent. 2 of the Regulation).

The conducted empirical research shows that the legal practitioners in Croatia do not have any experience with the suspension of the effects of a certificate as provided for in the Regulation.

H. COOPERATION AND EXCHANGE OF DATA

The empirical research resulted in additional research findings that we consider as very important and worth putting special emphasis on. To that end, the participants in the research particularly pointed to the importance of cooperation and exchange of data within the framework of the Regulation.

Efficient legal transactions involving decisions, authentic instruments and court settlements and the legal transactions where a European Certificate of Succession is needed presupposes an efficient exchange of data among the Member States of the EU. To make data accessible within, among other things, the European judicial network in civil and commercial matters, the Member States of the EU make and submit to the European Commission short summaries of their national lagislations and succession proceedings, including the authorities in succession matters and the data on the authorities for taking declarations on acceptance or waivers of succession, legacies or reserved shares. In addition, the Member States submit lists of all documents and/or data which are usually requested when immovables located in their territories must be registered (Art. 77, sent. 1 and 2 of the Regulation).

For information on succession law, inheritance proceedings, the authorities of Member States, including the authorities and proceedings referred to in the Succession Regulation No 650/2012 visit: https://e-justice.europa.eu/content_succession-166-hr.do and https://e-justice.europa.eu/content_succession-380-hr.do?clang=hr (12/09/2019).

I. EDUCATION OF LEGAL PRACTITIONERS AND CITIZENS IN CROATIA AND SLOVENIA

The empirical research has resulted in additional research findings that we consider as being very important and worth putting special emphasis on. The participants in the research particularly emphasise the need for additional education for legal practitioners and citizens in Croatia about the Regulation and its legal consequences. Those who took part in the research, particularly judges, especially emphasise the need for additional information and acquisition of knowledge when it comes to implementation. We must underline here their emphasis on joint education of notaries, judges and practicing lawyers as places of exchange of various experiences from their practice.

The following was emphasised in the mixed group of participants: "*I think that there is always room for education. One of the places where we have gathered for education has been this location of the attorneys' association and we thank our collegues for that. We have all been together: notaries, practicing lawyers and judges. When we speak about our current topics, perhaps it might be a good idea to include also the professionals from the Land Register who directly act in the proceedings prescribed by law and based on various preliminary procedures conducted by attorneys or notaries. There is certainly room for us ….. I would like to use this opportunity…. the President of the notaries' association, I am sure, together with her colleague, the President of the attorneys' association could organise common education programmes where our colleagues from the courts would join us, together with, why not, professors and lecturers. I think it is always worth it."* (FGMJ_RH) Or the following viewpoint: "*Both lawyers and attorneys-at-law who deal with these matters, as well as notaries, are not very well informed, let alone citizens."* (FGMJ_RH).

In the interviews, Slovenian judges said they had some training when the Regulation was first applied and they also highlighted the importance of education that would provide answers to their practical dilemmas they were encountering in their work.

"*Last year we had a seminar on how to apply this Regulation - but such training programmes usually turn out to be exchanges of our experience, we talk and exchange ideas about how to act in a particular case. It's not that…. someone must lead you, the lecturers or those who have organised such programmes, so that concrete solutions are also offered. It is always*

more an exchange of information which is also wonderful, actually a lot - we get to know each other and then we together solve important problems. I believe that afterwards, we all have to do things in the same way and not differently. Although the Regulation is an open instrument, it allows for various interpretations and ..... practice is very different.....We all want that. There are many types of education and many times we are disappointed because sometimes ... there is a training only to hear what is written in the Regulation or in an Act, or we get answers to some concrete questions in the form of: "Yes, case law will tell us..."Yes, thank you, this is us.... I do not go to an educational programme for someone to read something to me, I can do that myself, I like concrete examples." (S4_SI)

"*Education has basically been organised in that direction, on a particular topic, at a theoretical level because things are explained to us by those who do not have any direct and practical experience and do not know how things look in a concrete case..... There should be an educational model: situations like this one, where we hear solutions, why a particular solution, what someone has done and it is recognised as positive. The application of good practice in the first place and not wrong practice. That would be very useful. I know that information is collected in various countries. The most important pieces of information are those on succession, on the collection of information on assets. I know it because we have written the Slovenian part. When you come across a concrete thing, you think again. There are not very many, so that you could say you are proficient."* (S5_SI)

There was also education organised for practicing lawyers. They lack education together with other professionals who implement the Regulation: "*If you have an educational programme for practicing lawyers with a lecturer from the judiciary or a notary public ..... I think you would 'kill three birds with one stone' because it will be a seminar that will include all those who take part in the same proceedings under the Regulation – practicing lawyers, notaries and judges. If we all had our own seminar, in our concrete areas, and if there is no exchange..."* (FSO_SI)

The notaries public were of the opinion that their Association had organised high quality seminars. It is always on them to decide whether they will attend it or not.
In terms of the knowledge and implementation of the Regulation by professionals, there has also been some criticism:

"*A Slovenian national worked in Germany where he got married and died. He and his wife had written a joint will. The wife wanted to waive her inheritance – the property in Slovenia. They together went to a Slovenian notary who, without any problems, wrote their succession agreement although they should have known that it was not valid because German law would be applied and the succession would be governed in accordance with German law and before a German court. I think that the Regulation is also not very well known among the professionals."* (O1_SI)

"*On the basis of my cases so far, I know that some of my documents have been at the court for several months but I do not know if it is necessary because they have information that the succession proceedings were conducted in Slovenia and that it is just a form of several pages that you simply fill in ….but I realised that they did not know what to do. There was some resistence or something of the kind, so the file just waited there and we had to write rush notes, at least one, if not two, in all our cases in order to get the result. The succession proceedings in Slovenia are not fast and when they are completed, we would like to solve everything abroad. Let's say, a decision on succession in Slovenia is final and then you wait for almost six months for those abroad to be completed which only prolongs the agony which the heirs do not need."* (FSO_SI)

The participants also mentioned insufficient knowledge about the Regulation by the banks when dealing with a ECS, or the decision on succession: "*I remember that we also had problems with a bank…. They do not understand, everything is probably new for them. Some of their protocols do not contain European Certificates and there is always a problem how to deal with it. Is it a valid document or not…. I don't know, in such a way… Banks have very rigid rules and they interpret the Banks Act verbatim."* (FSO_SI)

The participants in the research in Slovenia assess that the level of information of their population regarding the Regulation and its concepts is very low:

"*Our clients are not always sufficiently informed about the Succession Regulation and its provisions, so that the judge himself must be well acquainted with its application and know exactly what he must look for."* (FSS_SI)

"*We have had notaries for twenty years now, actually, it will be twenty-five next year but many people still do not know what it means to be a notary, what are their functions and powers. Let alone anything about such a regulation that has been in force for only four years."* (N4_SI)

"*Some people still want to bring actions (involving immovables) in Slovenia without any foreign certificates that are not very many. They do not know that in Slovenia, succession is regulated directly on the basis of a ECS and with a help of a notary. I had two clients and I saw a note with the judge's instructions telling them that they have to go to a notary and give him or her their ECS. For an immovable in Slovenia. But I think that the people's level of being informed is rising."* (N2_SI)

"*It seems to me that a small number of people in Slovenia know of the existence of this Regulation. Even practicing lawyers…..In general, people know very little about succession because it is still a taboo topic. People rarely talk about it, especially the young generation, they are embarrassed to bring up that topic before the elderly because of their attitude: "aha, you want to take it from me and I'm still alive". They do not talk enough about these issues."* (FSO_SI).

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