

SUCCESSION WITH CROSS-BORDER IMPLICATIONS

Information for citizens of EU Member States in the cases of cross-border succession

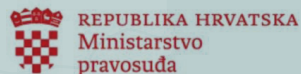
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Are you an heir to
some assets abroad?

SUCCESSION WITH CROSS-BORDER IMPLICATIONS*

Information for citizens of EU Member States
in the cases of cross-border succession

1. What is cross-border succession

At the time of a person's (testator's) death, succession takes place, i.e. a transfer of the deceased's property (immovables, movables, rights), and obligations to his or her heirs. When a person dies, all his or her assets constitute the estate of the deceased which, as well as the determination of heirs, are established in succession proceedings.

It very often happens that the deceased had some assets abroad, for example, a person who used to live in Croatia, owned immovables in other EU Member States, or vice versa. There are even more complicated succession cases of persons who, in the course of their lives, used to live in several EU Member States and/or at the time of death, they owned assets located in the territory of different Member States or were citizens of an EU Member State, but at the time of death, they had lived/worked in another Member State (cases of the so-called cross-border succession).

2. When do we speak of cross-border successions

A cross-border succession case may be the following: Suzana from Croatia and her husband Ivan, who also has Croatian citizenship, live in Germany. Suzana owns a car and a bank ac-

* Note: The terms used in this document are used neutrally and refer to both masculine and female.

count in Germany and a house in Croatia. Their three children live in Germany, as well.

What happens if Suzana dies? Her estate will consist of parts of assets located in different Member States and in her case, it is going to be, what is called, a succession having cross-border implications.

There are numerous questions arising in the cases of cross-border succession.

They are usually the following:

- › *the authority of which State is competent to act in succession proceedings;*
- › *the law of which State is applicable to the succession;*
- › *will the competent authority in succession proceedings be able to deal with the entire estate regardless of where it is located;*
- › *was Suzana able to organise her succession in advance and, among other things, choose the law applicable to her succession;*
- › *how will the competent authority proceed if the house in Croatia had been acquired as the result of Suzana and her husband Ivan's work (matrimonial property), etc.*

All the answers to these questions in connection with succession in the cases where the deceased and his or her assets are located in the territory of the European Union are provided by **Regulation (EU) no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (hereinafter: the EU Succession Regulation).***

* SL EU, L 201, 27/07/2012.

What important questions arise when a deceased, owing assets abroad, dies?

Have you heard of the EU Succession Regulation?

Which EU Member State is competent to conduct succession proceedings and the law of which State applies?

3. What is the purpose of the EU Succession Regulation and what does it provide for

The EU Succession Regulation gives an answer to the question which authority of which Member State is competent to conduct the succession proceedings and the law of which State will be applicable to govern succession as a whole. In this connection, the term 'Member State' refers to all EU Member States with the exception of Denmark, the United Kingdom and Ireland because the EU Succession Regulation does not apply to them.

This Regulation makes it possible for decisions on succession rendered in one Member State to become effective in another Member State. The value of the EU Succession Regulation also lies in the fact that it provides for the legal effects of authentic instruments (such as wills, agreements on sharing-out of the estate, etc.) drawn up in succession matters in one Member State and their equation with the authentic instruments of another Member State where they are wished to be used.

The EU Succession Regulation provides for the creation of the so-called European administrators of the estate to demonstrate their status or exercise their rights in another Member State as heirs or legatees and/or demonstrate their powers as executors of a will or administrators of the estate.

4. When does the EU Succession Regulation apply

This Regulation applies to all civil-law aspects of succession to the estate of a deceased person regardless of whether it is a voluntary transfer of rights and obligations under a disposition of property upon death (a will) or a transfer through intestate succession. For example, **the EU Succession Regulation deals with** the

Does the Regulation apply to any issues arising during the succession proceedings?

determination of heirs, their respective shares in the estate and obligations imposed on them by the deceased, the capacity to inherit, disinheritance for unworthiness; the transfer of property, rights and obligations constituting the estate to the heirs and, as the case may be, to the legatees, including the conditions and effects of the acceptance or waiver of the succession or of a legacy, 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, the liability for the debts under the succession, any obligation to restore or account for gifts, advancements or legacies when determining the shares of the different beneficiaries, as well as the sharing-out of the estate.

However, **the EU Succession Regulation does not apply** to matters relating to the payment of taxes on inheritance, the existence of marriage, common-law marriages or other family relationships being the basis for the succession, as well as matters relating to matrimonial property regimes and relationships of common-law nature. The authorities conducting succession proceedings must take into account the winding-up of the matrimonial property or similar property regimes of the deceased when determining his or her estate and the corresponding shares in the estate.

5. Since when does the EU Succession Regulation apply

This Regulation applies to the succession of persons who die on or after 17 August 2015. However, the Regulation specifically provides for the choice of law applicable to succession and the disposition of property upon death (a will) prior to 17 August 2015.

Whether the Regulation applies also depends on the date of a person's death.

EMPHASIS: what is also important to know

› The competent authority and the applicable law

The EU Succession Regulation provides for the courts of a Member State having general jurisdiction to decide on the succession as a whole (or other authorities in Member States having competence in succession matters such as registry offices or notaries in Croatia) where the deceased's habitual residence had been at the time of death. The courts exercising full jurisdiction decide in succession proceedings regarding both movable and immovable property of the deceased, regardless of their location (in another Member State or in a third State). The competent court then applies its own law, i.e. the law of the habitual residence of the deceased at the time of death as applicable for the succession as a whole.

› The choice of law applicable to succession as a whole and possible choice-of-law agreements

A person may choose the law of the Member State whose national he or she was at the time of death being the law governing the succession as a whole. The autonomy of the choice is thus limited to **the law of the Member State whose nationality the person had had at the time of making the choice or at the time of death**, and the choice can be made in the form of a disposition of property in the case of death (a will). In the case of the choice of law, the principle of a universal application of the EU Succession Regulation applies, according to which the deceased, as a national of a third country (which is not an EU Member State or a Member State to which this Regulation does not apply) may choose the law of a third country.

The EU Succession Regulation is intended to ensure that the authority dealing with the succession, in most situations, applies its own law.

In which State was the habitual residence of the deceased at the time of death?

May the deceased, prior to his or her death, choose the law applicable to succession?

It therefore provides for a series of mechanisms which would come into play where the deceased had chosen, as the law to govern his succession, the law of a Member State of which he or she was a national. The connection between the law and the competence of the authority can be re-established – under the condition that the deceased had chosen the law of a Member State. In that case, the parties (heirs) may agree that the court of the Member State, whose law the deceased had chosen (in a choice-of-court agreement), is exclusively competent to decide on all matters connected with the succession. In addition, this Regulation also lays down a possibility that in the proceedings, the parties (heirs) expressly or tacitly accept the jurisdiction of the court of the Member State whose law the deceased had chosen. Conversely, if the deceased had chosen the law of a third State, the establishment of the connection between the chosen law and the jurisdiction of the authority would not be possible because the Regulation cannot have any impact on the rules governing the international jurisdiction of third countries.

】 **The recognition and enforcement of decisions on succession or on the acceptance and enforcement of authentic instruments and court settlements**

A decision on succession rendered in one Member State will be recognised in another Member State without the institution of any particular proceedings. However, any interested party raising the recognition of a decision as the principal issue in a dispute, may apply, in simplified proceedings and in accordance with the EU Succession Regulation, for the recognition of the decision.

The term “decision” as used in the EU Succession Regulation means any decision in matters of succession, irrespective of what it is called and whether it has been given in contentious or non-contentious proceedings, including a deci-

Will the State, where the estate is located, recognise the decision on succession rendered in another State?

sion on the determination of costs or expenses by an officer of the court.

In order to take into account different systems for dealing with matters of succession in the Member States, the EU Succession Regulation should guarantee the acceptance of public/authentic instruments such as agreements between the parties on the distribution of the estate, wills, declarations of acceptance or waivers of the succession.

The EU Succession Regulation is particularly important when it comes to equalisation of authentic instruments drawn up in another Member State with those of a Member State where their acceptance is sought.

“Authentic instrument” means a document in a matter of succession which has been formally drawn up or registered as an authentic instrument in a Member State and whose authenticity relates to the signature and the content of the authentic instrument and which has been established by a public authority or other authority empowered for that purpose by the Member State of origin (Member State which has drawn up an authentic instrument).

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 public policy in the Member State where the acceptance is sought.

› The European Certificates of Succession

A special value of the EU Succession Regulation is the creation of the European Certificate of Succession (hereinafter: the Certificate). Thus, for example, the heirs may request the issuance of the Certificate by a competent authority in the Member State before which succession proceedings are ongoing or have been completed and which the Certificate is used to prove their status as the heirs to the assets lo-

Will the State recognise and enforce an authentic instrument or a court settlement regarding the inherited assets drawn up in another Member State?

Do you know that your status of an heir can be proven by the European Certificate of Succession?

cated in another EU Member State. This Regulation lays down the data which an application must contain, the actions taken by the issuing authority upon the receipt of the application and the powers of the issuing authority. The Certificates are issued by courts or other authorities, or persons competent to deal with matters of succession (such as notaries) in the Member State of issuance and chosen by that Member State. In Croatia, the municipal courts are competent, i.e. the notaries as the commissioners of the court. In Slovenia, the inheritance (municipal) courts exercise such jurisdiction.

The Certificate produces its effects in all Member States, without any special procedure being necessary. No legalisation or other similar formality is required in respect of the acceptance of the effects of the Certificate in other Member States.

The Certificate is a valid document for the recording of the transfer of property in a matter of succession in the register of a Member State such as land registers. Since the recording procedure is prescribed by the national law of the Member State where the relevant register is kept, the Member State issuing a Certificate must take account of the formal requirements for the recording in accordance with the law of that Member State. The authorities competent for the recording of the assets in the relevant register may require that the applicant provides additional information or documents that are necessary under the law of the Member State where the relevant register is kept (e.g. a tax certificate). In addition, the authorities of the Member State to which the Certificate is submitted always require a translation of the Certificate into the official language of that Member State.

