
**EUROPEAN SUCCESSION CERTIFICATE – ISSUES RELATED TO ITS ISSUANCE
PROCEDURE**

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Abstract: “Free movement of EU citizens within the Community, as well as strengthening the right to inheritance and ownership right have generated and generates increasingly more situations in which the ownership right transmitted by mortis causa is achieved through a procedure which relates to both the rules of national law, the rules of European Union law as well as in some treaties or treaties between an EU Member State and another state.”¹

The European Succession Certificate assumes the role of proving the capacity of a legal or testamentary heir and to describe and to determine the powers of bailiffs.

Given that this instrument is not binding and does not replace the heir certificate issued by national procedure, we should mention however that the European Succession Certificate would be recognized both in the Member State which authority issued the certificate and in EU Member States.

This paper aims to present the general principles governing the European Succession Certificate, issues regarding the jurisdiction of issuing the certificate, its content, effects and its validity, and elements belonging to the rectification, suspension or cancellation procedure.

Considering the large number of international inheritances registered in the European Union and that over 9 million European citizens live in other country than the country of origin, the inheritance procedure regarding international heritage is no longer an exception and it will be a more common procedure. In this context, the role of succession certificate becomes increasingly consolidated, therefore some procedures related to the issuance of the certificate would be checked to remove some interpretations and different solutions that might arise in practice in this area.

This paperwork seeks to identify the main elements of the procedure related to the issuance of the European Succession Certificate, as well as to analyze this procedure in the context of national and European legislation.

Keywords: *European, succession, certificate, law, procedure.*

Regarding the European Certificate of Succession and the procedure of issuance thereof, we must clarify certain aspects related to its optional characteristics, the competent authority to issue thereof, the effective procedure that must be met to obtain an European Certificate of Succession, issues related to its issuance, amendment or withdrawal and the content or effects thereof.

“The organization of the European Union and its subsequent expansion has imposed, on matters of successions, standardizing conceptual and procedural challenges.”²

¹ Liviu-Bogdan Ciucă, *Some Considerations Regarding the Inheritance Succession Procedure With Extraneity Elements*, published in the volume of the International Conference LUMEN “*Transdisciplinary and Communicative Action*”, 2014.

² Liviu-Bogdan Ciucă, *Legal Development on Inheritance, from Rules under the Primitive Community to the European Rules on Inheritance*, published in the volume “*SGEM Conference on Political Sciences, Law, Finance, Economics and Tourism*” conference proceedings, *volum 1*, International Multidisciplinary Scientific Conferences on Social Sciences & Arts, 3-9 September 2014, Bulgaria, pp. 657.

The European federalism with the imposition of rules in terms of succession had to observe also the freedom of action in matters of inheritance, the European Certificate of Succession as a new tool in finding solutions by using thereof in the European area may be possible with national inheritance certificates or “other internal documents used for similar purposes”³.

Article 62 of the Regulation establishes that the use of the European Certificate of Succession is optional, the relationship between the European Certificate of Succession and the national inheritance certificate is not entirely clear, it is expected that interventions of the European Court of Justice to clarify things and eliminate areas of confusion.

Article 64 of the Regulation establishes that the European Certificate of Succession may be issued both by judicial authorities and the authorities established by national legislation as being competent in matters of succession. It should be noted that mainly the international powers are determined by Regulation in Chapter II Article 64 para. 1 and the European Certificate of Succession must include within it a reference to the reasons based on which the respective authority issued the certificate.

The procedure related to obtaining the European Certificate of Succession, respectively the issuance thereof is determined by Article 65, Article 66, Article 67, Article 68 of the Regulation (EU) No. 650/2012 containing the provisions regarding the application submitted by the person concerned, the documents and information that must accompany this application and any other necessary evidence or statements from the applicant.

The issuance of any changes or withdrawal of the certificate are determined by the Regulation, providing in Article 67 that the competent authority, having in mind the law applicable to succession, will issue the certificate using the form drawn up by the committee. Only the authority that issued the certificate is competent to rectify, modify or withdraw thereof in accordance with Article 71 of the Regulation. All these measures related the issuance, amendment, correction or withdrawal or refusal to issue a certificate can be challenged by the person concerned before a judicial authority in the State of the European Union where the authority that issued the certificate is located.

The content of the certificate is detailed in Article 68 of the Regulation giving the possibility however that the competent authority to issue a partial certificate or to refuse to issue thereof, if there are any unclear situations until they are clarified.

Article 69 of the Regulation states that the certificate proves “exactly in compliance with the law applicable to succession or in accordance with any law applicable to specific elements”. The certificate is applicable in all Member States and recognized as such without being required to be met a special procedure for confirmation. Article 69 envisages that the European Certificate of Succession is practically a title which is valid enough to register the transfer of the assets of the deceased in the Publicity Register.

The European Certificate of Succession and the aspects related to the procedure for settlement the issue and its use, with the practical application will generate comments, different opinions and the need of unified solutions, which is why “in order to support the professionals, the European Judicial Network in the civil and commercial matter was

³ Dan Andrei Popescu, Ph.D., *Ghid de drept internațional privat în materia succesiunilor*, Ministry of Justice, 2014, pp.101.

established by Decision No. 2001/470/EC of the Council dated 28th of May 2001, to create an European Judicial Network in the civil and commercial matter amended by Decision No. 568/2009/CE of the European Parliament and of the Council dated June 18, 2009, as we can find useful information on: http://ec.europa.eu/civiljustice/index_en.htm, <https://e-justice.europa.eu>, www.successions-europe.eu, www.couples-in-europe.eu, and "European Notarial Network launched on the 1st of November 2007 following the decision of the EU Council of Notaries (CNUE), official and representative body of the notary profession in Europe. RNE is a structure of national interlocutors dealing with cross-border cases, to support the notaries from 22 Member States of the European Union. (www.enn-rne.eu, <http://www.notaries-of-europe.eu/index.php?pageID=228>)”.

Finally, we have to mention that this paper seeks only to challenge the people interested in the international procedure related to the succession, to analyze the available juridical and normative resources to identify the correct procedure applicable in such a situation, in full compliance with the constitutional right to inheritance, the right to free movement within the EU and regulations in the matter which we can find both in the domestic and European legislation and the content of treaties and conventions concluded by Romania and the content of which concerns some aspects of the case relating to the succession with foreign elements.”⁴

The concern of the European society regarding to the rules applicable in the material law of inheritance is fully justified taking into account the fact that the “The economic development, the place and importance of the ownership right, the concept of family, are just a few elements that can be analyzed in terms of relating to the right of inheritance. Each historical stage, every moment of sociopolitical development and each culture or religion, have imposed new approaches of the inheritance law and the procedure by which a person's wealth is transmitted *de mortis causa*.”⁵

This paperwork aims to indicate the importance of this instrument, as the European Certificate of Succession and challenged both theoreticians and professionals in law to draw an analysis as thorough as possible in order to standardize the practice related to the issuance and use of the inheritance certificate in the Community level.

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⁴ Liviu-Bogdan Ciucă, *Succession of Foreign Elements*, published in the volume of the International Conference “*Communication, Context, Interdisciplinarty*”, volume no.3, 2014, edited by the Alpha Institute for Multicultural Studies, published by “Petru Maior” University Press, Tîrgu Mureş, 2014, pp.135-136.

⁵ Liviu-Bogdan Ciucă, *Some Considerations Regarding the Inheritance Succession Procedure With Extranity Elements*, published in the volume of the International Conference *LUMEN “Trandisciplinarty and Communicative Action”*, 2014.

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