THE EUROPEAN SUCCESSION CERTIFICATE

AN UPDATE OF THE GUIDELINES IN LIGHT OF PRACTICAL EXPERIENCE

The Italian Notarial Foundation and the National Council of Notaries, almost five years after the first guided commentary on the issuance of the European Succession Certificate (ESC), offer the profession a guide that, in light of practical application both nationally and internationally, updates some of the positions initially expressed and adds new solutions to problems that emerged during the issuance process. This contribution is the result of the work of the original authors and a new group of colleagues within the European and International Affairs Committee – CAEI – of the CNN, and remains an "open project" for future additions that the application experience will certainly determine.

The original structure of the document has been maintained, and it was deemed appropriate to add a section dedicated to the "Maxims" – also considered an "open project" – one dedicated to editorial models, and finally, one dedicated to the jurisprudence developed on the subject.

As the Coordinator of the Commission and the International Sector, I would like to extend a heartfelt thanks to all the authors for their efforts in updating the document and to the CAEI members for their critical contributions during the study and approval process.

The following pages reproduce and update the original version, which still retains its value as the first historic edition.

Happy reading.

Valentina Rubertelli

THE EUROPEAN SUCCESSION CERTIFICATE

FIRST OPERATIONAL PROPOSALS

The Italian Notarial Foundation and the National Council of Notaries, considering the interest generated by the five seminars held in Turin, Verona, Rome, Bari, and Palermo during the first half of 2015, coordinated by Roberto Barone, and recognizing the usefulness of providing notaries with an initial operational tool for approaching a new and complex field that requires direct contact with European Union regulations, have decided to prepare an initial brief document to facilitate the drafting of the European Succession Certificate (ESC), introduced by EU Regulation no. 650/2012.

The text is presented in the form of questions followed by brief answers and is the result of the work of colleagues who have dealt with various aspects of the subject during the aforementioned five seminars.

As is well known, Article 32 of Law 30 October 2014, no. 161, "Provisions for the fulfillment of obligations arising from Italy's membership in the European Union - European Law 2013-bis," established the notary as the competent authority for the issuance of the ESC in Italy, thus opening up a significant challenge in a field in which notaries are generally recognized for their profound expertise.

The innovations introduced by the European regulation are numerous and may seem unfamiliar to our legal system, but the challenge must be embraced if we want to demonstrate that the professionalism of notaries is able to keep up with the times and the ever-changing needs of citizens.

The first insights presented in this document will undoubtedly provoke further and deeper reflections, which will be certainly interesting and useful to revisit together in the near future.

INTRODUCTION

(Domenico Damascelli)

Chapter VII constitutes the most innovative part of EU Regulation no. 650/2012: it establishes the so-called European Succession Certificate, conceived as a tool that – without the need for any exequatur procedure (see Article 69, paragraph 1) – can be used by heirs, legatees, executors, or administrators of the estate (who, pursuant to Article 65, paragraph 1, are also the only individuals who can request it) to assert their status and exercise their respective rights, powers, and faculties (see Article 63, paragraph 1) in a Member State other than the State of issuance (see Article 62).

The answer to a significant number of questions raised by this guideline requires clarifying the legal nature of the new instrument, whose regulation, despite being inspired by models known to various national legal systems, presents undeniable originality.

Despite the opinion expressed by some of the first commentators, the temptation to assimilate the ESC to a "decision" (as defined in Article 1, paragraph 1, letter g) or a public deed (as defined in Article 1, paragraph 1, letter i) must be rejected.

A number of normative indices support this conclusion.

Firstly, the regulation dedicates a complete and independent legal framework for the circulation of decisions and public acts within the European judicial space (see specifically Chapter IV dedicated to the recognition, enforceability, and execution of decisions and Chapter V, which deals with the acceptance and enforceability of public acts), thus highlighting their distinct nature from the ESC.

This distinction is further confirmed by numerous detailed provisions.

For example, consider Article 67, paragraph 1, second sentence, letter a, which obliges the issuing authority of the ESC to refrain from issuing it when "the elements to be certified are disputed," ruling that the ESC is unsuitable for resolving a dispute, which must be addressed by the competent judicial body in accordance with Chapter II of the regulation.

Moreover, the difference between public deeds and ESCs is evident in the regulation of their contestation; while contesting the validity of the former only requires the mere proposition of any challenge (see Article 59, paragraphs 2 and 3), the legal presumption of truthfulness of the elements contained in the ESC, established by Article 69, paragraph 2, can only be overcome if the person against whom the ESC is presented obtains a modification or revocation as per Article 71, paragraph 2.

The regulation's identification of the requirements that the issuing authority of the certificate must meet is consistent with this distinction.

According to Article 64, the competence to issue the certificate may be attributed by Member States, either to a "judicial body" or to "another authority competent under national law in matters of succession." From this provision, two key points can be drawn. On the one hand – since, under the regulation, decisions are acts of judicial bodies (see Article 1, paragraph 1, letter g) – the possibility of assigning competence to issue the ESC to bodies other than judicial ones constitutes a sufficient indication that the ESC is not a decision; on the other hand, as the European legislator did not stipulate that the authority responsible for issuing the ESC must be a notary, it is confirmed that the ESC cannot be considered a notarial act (or, using the terminology of Article 1, paragraph 1, letter g, a public act).

Further confirmations arise from examining the procedure for issuing the ESC.

It appears similar to what our legal system defines as voluntary jurisdiction proceedings, which are characterized by the absence of an unlawful act (i.e., the breach of a legal duty leading to the violation of a corresponding subjective right) and end with a decision, which is revocable and modifiable, as a result of an activity described by doctrine as "low formal title," in which the principle of adversarial process and

dispositive principle operate in a diminished manner, and the rules on admissibility and acquisition of evidence take on a peculiar form.

Indeed, although voluntary jurisdiction matters are typically assigned to judges in our system, this attribution is not a necessary and indelible feature, as it is conceivable that the "administration" of the private rights to which these proceedings relate can be entrusted to bodies other than the judge, provided they possess the necessary qualifications (neutrality and impartiality) to assess the appropriateness of issuing the requested measures.

At this point, there is sufficient evidence to exclude that the ESC is a judicial decision or a notarial act and to conclude that it is a sui generis act (which can be classified as "public" to indicate its origin from a public authority), directly and, at least in principle, exhaustively regulated by European Union law.

This does not mean that, to fill the gaps in the EU regulatory framework (or, more accurately, in the national implementation law intended to address these gaps), the rules governing the activities of the authority responsible for issuing the ESC in the Member State under consideration, or more generally, the regulation of proceedings in that state that are comparable to those leading to the issuance of the ESC, may not apply.

This interpretative rule proves particularly significant for Italy, where the attribution of competence to issue the ESC to notaries occurred through the succinct provision in Article 32 of Law 30 October 2014, no. 161 (so-called European Law 2013-bis).

First of all, it must be considered that, in the silence of the legislator and in application of such an interpretative canon, the obligation imposed on the issuing authority by art. 70, par. 1, must be fulfilled by registering the CSE in the notary's register of inter vivos deeds and keeping it in the collection of the same deeds, pursuant to arts. 61 and 62, law 16 February 1913, n. 89 (while, on the other hand, it is to be excluded that the application of the notarial law can go beyond the provisions just cited; in particular, it is to be excluded that the formal rules dictated by art. 51, law no. 89/1913 can be applied to the CSE, in addition to the reason, now clear, that the CSE is not a notarial deed, for the further decisive reason that, pursuant to art. 67, par. 1, it must be mandatorily issued according to form V annexed to Commission Implementing Regulation (EU) no. 1329/2014 of 9 December 2014).

REFERENCE LEGISLATION

Regulation (EU) no. 650/2012

https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A32012R0650

Implementing Regulation (EU) no. 1329/2014

https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A32014R1329

Law 30 October 2014 n. 161 (European Law 2013-bis)

https://www.gazzettaufficiale.it/eli/id/2014/11/10/14G00174/s g

1. VERIFICATION OF COMPETENCE FOR ISSUING

(Dario Restuccia and Ilaria Riva)

1.1. When is the Italian notary competent to issue the European Certificate of Succession?

The Italian notary will be competent to issue the CSE when the deceased had his habitual residence in Italy (see art. 4 of the Regulation), regardless of whether he had chosen a different applicable law, or when he had

chosen Italian law (see art. 7 of the Regulation) or, again, in the cases provided for by arts. 10 and 11 of the Regulation.

1.2. In what circumstances does the competence pursuant to art. 10 of the Regulation exist?

The subsidiary competence referred to in art. 10 is based on the presence of inherited assets in a Member State. In fact, if at the time of death the deceased did not have his habitual residence in a Member State (i.e. adhering to the Regulation), a subsidiary jurisdiction is provided for the authority of the Member State in which the estate assets are located when the deceased was also a citizen of that State or, failing that, had his previous habitual residence in that State provided that, in the latter case, a period of more than five years has not elapsed since the change of such previous habitual residence.

The Italian notary is, therefore, competent if cumulatively:

1. the deceased did not have his habitual residence in any State adhering to the Regulation at the time of death,

2. there are estate assets in Italy and furthermore, alternatively:

3.a. the deceased was an Italian citizen,

3.b. the previous habitual residence (it is generally believed, the habitual residence “immediately preceding” the last one) was in Italy, and the transfer took place no more than 5 years ago.

The reference to paragraph 2 of art. 10, which provides that in any case the authorities of the Member State in which the inherited assets are located are competent (for the issuing of the CSE) if no body is competent pursuant to paragraph 1 of the same article (but limited to such assets). This provision appears difficult to apply in practice in the matter of the issuing of the CSE which, pursuant to art. 62, can only be requested for use in a Member State other than the issuing one.

1.3. In what circumstances does the jurisdiction under art. 11 of the Regulation exist?

Art. 11 provides for the case of forum necessitatis. This exceptional criterion is intended to operate when it is not possible to determine the jurisdiction of the authorities of any Member State.

The requirements that must coexist for the use of this hypothesis are two: a sufficient connection of the succession matter with a specific Member State and the circumstance that the procedure cannot reasonably be initiated or carried out or proves impossible in a third State with which the succession has a close connection (for example due to the presence of war events, as illustrated in recital 31).

The provision appears to be of rare practical application in the matter of issuing the CSE which, as already mentioned, pursuant to art. 62, can only be requested to be used in a Member State other than the issuing State. However, it could be the case, for example, for a deceased habitually resident in Syria, temporarily residing in Italy, or whose family is in Italy, or who has lived in Italy for a reasonable period, or who has inherited assets in Italy (if the heirs requesting the CSE are in Italy).

1.4. What elements must be taken into account to establish the habitual residence of the deceased?

The concept of "habitual residence" (not defined by any article of the Regulation) and frequent in conventional and European instruments of private international law, aims to identify the centre of the deceased's life, taking into account the predominant location of his or her personal, family, professional and economic interests, as well as, as specified in recital 23, carrying out "an overall assessment of the circumstances of the deceased's life in the years preceding his or her death and at the time of his or her death, taking into account all the relevant factual elements, in particular the duration and regularity of the deceased's stay in the State concerned and the conditions and reasons for it".

Habitual residence is a completely autonomous concept, different from that of registered residence. The notary, in other words, will have to verify not only where the deceased was resident (from a registry point of view), but also, for example, where he worked, where the family lived, where his salary was paid, where his obligatory debt/credit relationships were located, etc.

1.5. In the event that the notary is asked to issue a CSE, how can he ascertain that the deceased was habitually resident in Italy?

The Regulation provides that the notary must verify the information, declarations and documents provided by the applicant. If he does not consider them sufficient, he invites the applicant to provide the additional evidence he deems necessary and/or carries out the investigations necessary for such verification ex officio (art. 66).

1.6. If, at a later time, it is ascertained that the deceased was not habitually resident in Italy, can the notary who issued the CSE be held liable?

No, in no case can the notary be held liable if he demonstrates that he carried out his investigation activity with diligence (see also question 9.6).

1.7. Is it possible, when the competence of the Italian notary exists by virtue of the habitual residence of the deceased in Italy, to relinquish his competence in favor of the authority of the Member State of the chosen law?

By modifying the opinion expressed in the first edition of this Vademecum, it is

considered possible that the Italian notary, considered competent by virtue of the combined provisions of articles 64 and 4 Reg., may subsequently declare his incompetence in application of art. 7, letter a), Reg. (which recalls the previous art. 6).

See also the “Maxims” section of this Vademecum, Maxim n. 1.

1.8. Can anyone choose Italian law?

No, Italian law can only be chosen by those who are Italian citizens or in any case possess, among multiple citizenships, also Italian (art. 22).

1.9. How can the choice of applicable law be made?

The choice of applicable law must be expressly contained in a disposition of property upon death, but may also be inferred from the clauses of the disposition (Article 22, paragraph 2). If the disposition of property upon death was made before 17 August 2015 and in accordance with the law that the interested party could have chosen following the rules laid down in the Regulation, it is presumed that that law has been chosen as the law applicable to the entire succession (Article 83, paragraph 4).

The rules for establishing the validity and effectiveness of dispositions of property upon death are those laid down in Articles 23, paragraph 2, 26 and 27.

1.10. If the deceased has chosen Italian law as the applicable law, are special formalities required to establish the competence of the Italian notary?

Obviously, the deed of death containing the testamentary provisions from which the choice of applicable law is deduced must be valid and effective and therefore, for example, a will must have complied with all the formalities required by the law applicable to it for its actual use (for example its publication, in cases where Italian law is applicable).

2. VERIFICATION OF THE REQUIREMENTS OF THE APPLICANTS

(Valentina Crescimanno, Dario Restuccia, and Ilaria Riva)

2.1. Who are the persons entitled to apply for the European Certificate of Succession (ECS)?

The heirs, legatees who have direct rights on the estate, the executors of the will, or the administrators of the estate, who need to assert their status or exercise, respectively, their rights as heirs or legatees and/or their powers as executors of the will or estate administrators in another Member State (Article 63, paragraph 1, and Article 65, paragraph 1).

2.2. Can the ECS be requested by other parties?

No, the ECS can only be requested by the parties indicated in point 2.1.

2.3. Does the applicant need to hold one of the aforementioned qualities based on the applicable law of succession? Must the applicants prove their status according to the applicable law?

Yes, the reference is certainly to the applicable law of succession, but the applicant must indicate in the request the elements on which they base their claim to assert, in each case, the alleged right to the estate's assets as a beneficiary, the right to execute the deceased's will, or the right to administer the estate.

Along with the application, all relevant documents must be provided, in original or authenticated copy (Article 66, paragraph 1, first sentence), with the notary having the discretion to accept other forms of proof if the applicant cannot provide authenticated copies of documents (Article 66, paragraph 2). The notary may also request that the statements be made under oath or in the form of substitute declarations of notoriety (Article 66, paragraph 3).

Moreover, the notary has the power/obligation to conduct official investigations to verify the information, statements, documents, and other materials provided by the applicant (Article 66, paragraph 1, second sentence).

2.4. If Italian law applies, is explicit acceptance of the inheritance necessary?

Not necessarily; it is possible for the certificate to be requested by the person entitled to inherit who has not yet accepted the inheritance, without the request implying acceptance. However, if the applicant requests the ECS as an heir, they must have accepted the inheritance either expressly or tacitly (acceptance, pursuant to Article 475 of the Civil Code, can be done in a public deed or a simple private writing, including in or with the application itself).

2.5. Who is the estate administrator?

The term "estate administrator" refers to the administrator of an unclaimed estate, the executor of the will, the administrator in the case of inheritance under a condition or for an unborn child, or finally, the person entitled to the inheritance who does not yet wish to accept it but wants to exercise the powers under Article 460 of the Civil Code, or simply request the ECS to ascertain the deceased's estate. The applicant must prove the existence of such circumstances with objective elements (e.g., a bank statement of the deceased).

In cases where the Italian notary has jurisdiction despite foreign law applying (for example, for "professio iuris"), the group of administrators may expand to include the "Administrator of Estate" in Common Law.

If the ECS is requested by the administrator of an unclaimed estate, the notary will verify their legitimacy by:

- Requesting a copy of the appointment decree issued by the court in the jurisdiction where the succession was opened;
- Verifying that the decree has been published in the Official Gazette and subsequently registered in the succession register.

In this case, the certificate is requested to assert the status of administrator and specifically to demonstrate and exercise, in another Member State, the powers to administer the estate. The notary must be able, based on the aforementioned elements, not only to ascertain the status but also to certify and specify the powers associated with it.

For the verification of the legitimacy of the executor, the notary must verify:

- That the applicant has been appointed as the executor and that the appointment is made in a will;
- That the executor has accepted the appointment in the prescribed form (acceptance must be declared at the court registry where the succession is opened and subsequently noted in the succession register).

In this case, the ECS is requested to demonstrate that the person identified as the executor has the powers to execute the will and to what extent. The notary must verify whether there are provisions in the will to execute, checking whether the executor's powers concern the entire estate, portions of it, or individual assets; what those powers are; their scope; and any obligations, duties, and restrictions.

2.6. Can any legatee request the ECS?

Although Article 63 refers only to legatees with "direct rights" on the succession, the ECS can also be requested by the so-called "damnationem" legatee (a mandatory legacy).

In both cases, the notary must verify that the applicant is a beneficiary of a specific provision in a will and that the will has been published (or has undergone the necessary formalities for its validity under the applicable law).

2.7. Can creditors request the ECS?

No, neither the creditors of the estate nor the creditors of the heir can request the ECS.

2.8. Can disinherited forced heirs request the ECS?

No, if Italian law applies, the completely disinherited forced heir must first file a reduction action, and once the action is accepted with a final judgment, they may request the ECS as an heir.

Similarly, those who may have indirect rights to the inheritance, such as heirs under a suspensive condition or in a subordinate position, etc., cannot request the certificate.

See also the "Maxims" section of this handbook, Maxim No. 4.

2.9. If the will shows the total disinheritance of a forced heir, can the notary still issue the ECS?

Yes, but the notary must refuse to issue the ECS if the elements to be certified are contested (Article 67, paragraph 1, second part, letter a). These may include challenges already raised in contentious proceedings or directly addressed to the issuing authority, which must take all necessary measures to inform the beneficiaries of the inheritance about the request for the certificate: such information is the basis for any observations or objections from other parties besides the applicant.

See also question 5.3.

2.10. What happens if the heir is a minor or legally incapacitated person?

The request must be made by the parent or guardian, after the benefit of the inheritance is accepted, and is considered an act of ordinary administration.

2.11. If the applicant is an incapacitated person or an emancipated minor?

In such cases, the request may be made directly by the person themselves.

2.12. If the applicant is a beneficiary under a guardianship administrator?

The request may be made directly by the beneficiary, unless the appointment decree of the guardian administrator specifies otherwise.

2.13. If the applicant is a company?

In this case, the legal representative of the company will request the certificate as part of their powers of ordinary administration.

2.14. Is it possible to request and issue a partial European Certificate of Succession?

According to Article 63, paragraph 2, of the Regulation, a partial request and subsequent issuance of the certificate are considered legitimate if the certificate only attests to specific elements (e.g., a legacy). The ECS does not necessarily have to list all heirs or all beneficiaries of individual specific provisions of the will, but can focus on certifying the position of just one party.

However, the ECS must include the following elements:

- Identification of the issuing authority;
- Personal details of the deceased and the applicant;
- Purpose for which the certificate is intended;
- Source of the succession (law or will);
- Applicable law (and elements based on which it was determined).

3. VERIFICATION OF THE PURPOSE

(Valentina Crescimanno, Dario Restuccia, and Ilaria Riva)

3.1. What does the notary do when receiving an ECS application?

Upon receiving the application, the issuing authority first verifies its competence according to the general criteria of Articles 4 et seq.; at the same time, it verifies the legitimacy of the applicant (supra, point 2) and the purpose, as outlined in Article 62, i.e., that the ECS is requested "to be used in another Member State".

Additionally, the notary checks the applicable law of the succession, paying attention to matters excluded from the Regulation, such as the status of individuals, the ability to accept an inheritance, marital property regimes, succession clauses in companies, the substantial validity of the declaration of choice, the creation and operation of a trust: for these matters and others indicated in the Regulation (Article 1, paragraph 2), the applicable law is determined based on the criterion provided by the relevant private international law (Law 218/95, EU Regulation, and relevant international conventions). The notary also checks the existence of any ongoing disputes based on available Public Registers and standard notarial practice in this area.

3.2. How do you document that the ECS is requested to be used in another Member State?

The notary must verify the purpose indicated by the applicant in requesting the ECS and then conduct an investigation on the legitimacy of the applicant and the necessity of asserting in another Member State the elements outlined in Article 63, paragraph 2.

Although the notary is not required to directly verify the international elements of the succession, they should not consider the applicant's statement as sufficient but must, as far as possible, check the accuracy of the information provided, in light of the available deeds and other evidence.

It does not require much more than the need to assert a hereditary right abroad, such as ownership of an estate property located abroad, the need to collect estate debts in other Member States, access to bank accounts abroad, for the executor to identify heirs and legatees, or to demand the performance of a contract or initiate legal proceedings as an heir before foreign judicial authorities.

If the documents presented show that the ECS is not applicable in another Member State, the certificate will not be issued.

4. APPLICATION FOR ISSUANCE

(Valentina Crescimanno)

4.1. Does the application for ECS need to include all the information listed in Article 65, paragraph 3 of the Regulation?

The application will include only the information necessary for the issuing authority to certify the elements being requested, to the extent the applicant is aware of them and they are necessary for the issuance.

The request for ECS and the ECS itself may not necessarily concern the entire succession but only certain aspects or specific positions. From the wording of the provision, it is clear that requesting a partial certificate to attest only certain elements of the succession is legitimate (see supra, point 2.14.).

By using the official application form, it is also easy to identify the mandatory elements, as they are marked with an asterisk, and those required only in certain cases (see the information marked with two or three asterisks in the explanatory notes of the form approved by Regulation 1329/2014).

4.2. Is it mandatory to use the application form provided by Regulation 1329/2014 for the request?

No, using the form is optional (see European Court of Justice, January 17, 2019, case C-102/18, Brisch, in Jurisprudence). However, it is advisable for the notary to suggest that the applicant submit the request using the official form to facilitate the collection of necessary information and the subsequent verification the notary must carry out.

4.3. Can the application be supplemented with additional elements beyond those in the standard form?

Yes. The addition of further elements, considered useful for the issuance of the ECS, is provided for in the same application form in section 6.10, when they differ from the elements listed in section 4, the attachments, and section 6, dedicated to additional information.

Similar considerations apply if the applicant does not use the official application form.

4.4. Should the applications for issuance be kept?

Yes. Although not mandatory, it is advisable for the notary to keep the application as it sets the scope of verification. The notary only exercises their verification duties based on the elements present in this form.

Keeping the application can be useful if the notary is asked to issue a new authentic copy of the ECS or extend the validity period of the previously issued one, to verify and confirm the existence of any new elements or discrepancies that may prevent the issuance of a new copy, compared to the original declaration made by the interested party.

Additionally, the application may be helpful to the notary to demonstrate, if needed, that they have carried out the preliminary investigation with the due diligence required by their specific competence to ensure they are not held liable.

4.5. What documents should be attached to the application?

There are five official attachments to be included with the application form (Form IV) approved by Regulation 1329/2014, and a list of documents, in original or authenticated copy, which the applicant may attach to prove their declarations (e.g., death certificate, declaration regarding the choice of law, will).

Attachments I, II, III, IV, and V to the application form are mandatory if and to the extent that any of the situations identified in section III of the application form occur. Therefore, if the applicant does not use the form (which is optional), the notary must verify that such situations are still adequately documented (e.g., Attachment II in the case of requests made by legal entities).

5. INSTRUCTIONAL ACTIVITIES

(Valentina Crescimanno)

5.1. What are the powers of investigation of the issuing authority according to the regulation, and what can the notary as the issuing authority do if the applicant has not produced original documents or certified copies?

The notary's powers of investigation are outlined in Article 66: they verify the information and declarations, as well as the documents and other evidence provided by the applicant; they conduct the necessary investigations ex officio for this verification, within the limits of national law. The notary may invite the applicant to provide further evidence they deem necessary.

As the issuing authority, the notary can also decide to accept other forms of evidence besides original documents or certified copies and may request that the declarations be made under oath or in the form of substitute declarations (e.g., the notary might decide to use substitute declarations about the absence of disputes under Article 65, paragraph 3, letter l).

If necessary for verifying the certified elements, the notary can also conduct hearings with the interested parties and any executors or administrators.

5.2. Does the Italian notary have all the powers indicated in the regulation?

Article 66 of the Regulation grants the issuing authority of the European Succession Certificate (CSE) the exercise of certain official powers provided they are foreseen by national law.

These include the power to:

a) conduct necessary investigations to verify the information and declarations, as well as the documents and other evidence provided by the applicant (paragraph 1, second sentence);

b) request that the applicant's declarations be made under oath or in the form of substitute declarations (paragraph 3).

In this regard, the first paragraph of Article 32 of Law 161/2014 of October 30 specifies that the issuance of the CSE by an Italian notary happens "in accordance with the provisions of Articles 62 to 73" of the Regulation.

This expression may be interpreted to mean that the Italian legislator has complemented those norms which, among the aforementioned articles, seem not self-executing by granting the issuing authority the maximum possible scope of powers.

As a result, not only can the Italian issuing authority ex officio exercise the investigation powers outlined in letter a) above, but it will also be able to accept substitute declarations beyond the limits set by Article 3, paragraph 2, of Presidential Decree 445/2000.

In particular, when necessary for the issuance of a CSE, these declarations can also be made:

a) by non-EU citizens not residing in Italy;

b) with reference to states, personal qualities, and facts that can be certified or attested by foreign public authorities.

5.3. Does the notary have the duty to inform the beneficiaries of the succession about the submission of a CSE request?

Yes. The notary has the duty to inform the beneficiaries of the succession. Although the law refers only to the beneficiaries, it should be understood that the issuing authority must also inform the executors and administrators of the estate about the request, taking all necessary measures. They may also make public announcements to give other potential beneficiaries the opportunity to assert their rights.

Where possible, based on the information available to them, the notary will inform any omitted legitimate heirs to verify the absence of disputes, which would preclude the issuance of the certificate.

5.4. How should the notification required by Article 66, paragraph 4, first sentence, of the Regulation be handled?

The notary must inform the interested parties about the request for the issuance of a CSE with a formal communication, made via means that can prove receipt (such as certified email or registered mail with return receipt).

5.5. How should the hearing mentioned in Article 66, paragraph 4, second sentence, of the Regulation be conducted? How is the hearing carried out?

If necessary for verifying the certified elements, the notary will proceed with the hearing of the interested parties by inviting them to appear in front of them, using any means that can prove receipt (e.g., certified email or registered mail). The notice must specify the day, time, and place of the hearing.

The hearing may also be informal, held in person or via audio/video conference, and may take place at different times for each interested party. A written record of the hearing should be made and kept in the file.

5.6. Are the requested parties required to appear? What happens if they do not?

The regulation does not impose any obligations to appear, nor does it specify penalties for non-appearance.

It is at the notary's discretion to reiterate the invitation. If the requested parties do not appear, the notary should draft a written note, to be kept in the file, stating the failure to appear. This circumstance may be an element of evaluation for the notary when reviewing all the elements to be certified.

5.7. How should public announcements under Article 66, paragraph 4, of the Regulation be made?

The notary may make public announcements if deemed necessary for verifying the certified elements, in order to give other potential beneficiaries the opportunity to assert their rights.

The notary may make the request for a CSE known by any appropriate means, such as posting in the online public notice board of the municipality where the succession is opened (in municipalities that allow optional online publication). Alternatively, announcements can be made via publication in the Official Gazette. In this regard, the creation of a voluntary subsidiary Register managed by the National Notary Council is desirable.

5.8. Is the notary required to verify information other than that indicated in the request?

No. The notary is required only to verify the information provided and/or invite the applicant to supply additional evidence necessary to verify the elements for which certification is requested. The issuing authority must also conduct its own investigations to verify the information provided by the applicant, meaning that it can go beyond the information contained in the request and expand the scope of its investigation, acquiring and verifying additional information.

5.9. How does the notary acquire information from property registers, civil status registers, or other registers in other member states that contain relevant documents and facts?

The notary may request information from the competent authority of another member state regarding information contained in property registers, civil status registers, and other registers that contain documents and facts relevant to the succession or marital property relations of the deceased, provided that such an authority is authorized under national law to provide such information to another national authority (Article 66, paragraph 5).

5.10. When can the issuance of the certificate be refused?

The certificate can be refused if, following the investigation, it is not possible to verify the elements for which certification was requested; if the elements to be certified are contested (e.g., if there is a pending case regarding the validity of a will or if these elements have been contested by the beneficiaries of the estate or other interested parties before the notary following their summons under Article 66, paragraph 5, of the Regulation) or when the certificate contradicts a decision regarding the same elements (Article 67). The refusal must be justified and made in writing. According to Article 72, paragraph 1, an appeal can be made to the judicial authority (in Italy, an appeal to the Court under Article 32, paragraph 2, of Law 161/2014).

6. ISSUANCE AND CONTENT OF THE CERTIFICATE

(Paolo Pasqualis, Giovanni Liotta, and Carlo Alberto Marcoz)

6.1. How is the CSE drafted?

The CSE must be drafted promptly, using only the form provided in Article 67 and established as Annex 5 to the Implementing Regulation (EU) No. 1329/2014. Using the form allows for quick circulation and understanding of the document in all countries.

The rules regarding the drafting of the CSE are entirely contained in the Regulation, so the articles of the Notary Law regarding the drafting of deeds do not apply.

The form itself indicates which information is mandatory and which is optional, and allows for the use of attachments when necessary.

It is possible to issue a CSE that includes only some of the optional information, in line with the request made by the applicant.

See also the "Summary" section of this Handbook, Summaries No. 2, 3, and 4.

6.2. Does the CSE need to be registered? Is it subject to control during the ordinary biennial inspection?

In the absence of specific regulations, using the existing notarial preservation system (either analog or digital – see point 7), the CSE must be registered and archived with the appropriate numbering, which can be considered as a substitute for the "file reference number" specified in Article 68, letter b) of the regulation.

The preservation in the notary's collection allows for the transfer of the CSE to the competent Notary Archive in case of relocation or cessation of the notary’s activity, to enable the issuance of further copies.

On a voluntary basis, it is also possible to maintain a dedicated register for the CSEs, where they will be recorded in progressive order. Additionally, relevant information regarding the status of the CSE can be noted in this register (see answers to questions 8.3, 8.4, and 8.7).

The notarial fee for registration is set by Article 6, paragraph 1, letter d), number 14 of Ministerial Decree No. 265/2012 (46 euros). Following the exemption from registration tax (see point 6.4), the CSE is also exempt from the archive tax.

It can be reasonably assumed (and will also be discussed below in the section on the Internal Succession Certificate) that the CSE is not subject to the controls (and the imposition of sanctions) carried out by the Notary Archive during the ordinary biennial inspection. However, it should not be forgotten that in drafting the CSE, the notary performs their public function and fulfills their professional duties as established by the Notarial Code of Ethics. This means that the President of the Notarial Council can and should, even during the mentioned inspection, verify any violations of ethical rules and activate the Notarial Council for the initiation of disciplinary proceedings. For example, the repeated issuance of CSEs without filling in the date of death or other minimal indications required by the Successions Regulation could fall under the category of hasty and complacent conduct that is prohibited ethically.

6.3. Once the CSE is issued, is it necessary to inform the beneficiaries?

Yes, Article 67 stipulates that the notary must take all necessary measures to inform the beneficiaries (identified at the time of the application) of the issuance of the certificate. The notification must be made in a manner that guarantees proof of receipt.

6.4. Is the CSE subject to taxation?

There are no specific rules on this matter. Pending clarification from the Revenue Agency and the relevant offices, considering the varied practice and modifying what was indicated in the first edition of this Handbook, it can be considered that the certificate is not subject to registration as it does not fall under the acts mentioned in Article 2 of Presidential Decree 131/1988, and Articles 11, Tariff, Part I of the same Presidential Decree or Presidential Decree 115/2002.

6.5. Must the CSE be drafted in Italian?

There are no specific rules in the Regulation (nor in Implementing Regulation 1329/2014, which published the models in various EU languages). It can be considered normal for the CSE to be issued in Italian, but it is also legitimate to issue it in another official EU language, in accordance with the general principles governing the use of different languages in the European Union.

See also the "Summary" section of this Handbook, Summary No. 5.

7. CONSERVATION OF THE CERTIFICATE

(Giovanni Liotta and Carlo Alberto Marcoz)

7. Must the CSE be conserved by the notary? If yes, how?

The Regulation provides that the authority issuing the CSE must number and preserve it. In the absence of specific regulations – including internal ones – regarding the method of preservation, archiving (and registering) it using the notarial preservation system (whether analog or digital) currently seems to be the only viable solution to manage all subsequent developments, particularly the issuance of copies and conservation even after the notary has ceased their activity, as well as modifications, corrections, or revocations.

On the preserved original, any changes or cancellations to the certificate can be noted.

8. ISSUANCE OF COPIES AND THEIR RENEWAL

(Caterina Valia)

8.1. Who is entitled to request a copy of the certificate?

Copies of the certificate can be requested by the person who requested the certificate's issuance (one of the individuals specified in Article 63, paragraph 1) as well as by those who can demonstrate a legitimate interest (Article 70, paragraph 1), such as a co-heir, legatee, creditor of the deceased, or creditor of the heir. If a copy is requested by someone other than the person for whom the certificate was issued, the authority should assess if and what interest that person has in obtaining the copy.

8.2. Is a formal request for a copy required?

It is not required, but a written request is certainly useful, even to demonstrate interest in obtaining the copy.

8.3. Is it necessary to keep track of copies issued?

The Regulation only requires a list of the subjects to whom copies are issued, mainly to ensure the information on any subsequent events that may concern the certificate. However, it seems appropriate to keep track of the number and date of each copy issued, including the corresponding expiration date.

8.4. How is the list of people to whom authentic copies have been issued kept?

There are no particular rules or prescriptions to follow, but it is enough to include the subjects' details in the list. It can be kept either on paper or electronically, depending on the notary's preference.

8.5. How is the expiration date that must be indicated in the CSE calculated?

The six-month expiration date is calculated based on the date the copy is issued. The expiration date is indicated on the copy itself.

8.6. In which cases can the issuing authority extend the validity period of the copy?

The validity period can be extended in exceptional and specific cases that must be justified (Article 70, paragraph 3). If the notary believes that the reasons provided justify extending the certificate's copy validity beyond the usual six months, they proceed with issuing the extension.

8.7. Should the justification for an "extension" be documented? Where?

Yes, the justification should be documented. It is recommended to include the reason in the certificate copy request to be filled out by the applicant and mention it in the copy to justify the extended duration.

8.8. According to which formula should the extension referred to in Article 70, paragraph 3, last sentence, of the Regulation be applied to the CSE?

The extension should be added at the bottom of the issued copy and noted in the list of copies issued. The authority should insert a formula such as:

"The validity of this copy, issued to … upon request, is extended to … (Date and signature of the issuing authority)."

8.9. Before proceeding with an extension or issuing a new copy of the CSE, must the issuing authority perform checks?

For the issuance of a copy, no new investigative activities are required by the authority. It is advisable to ask the subject requesting the copy if there have been any changes to the situation from what is indicated in the certificate. If the party affirms that nothing has changed and the notary has no knowledge of requests for

correction, modification, or revocation, appeals, or suspensions of the certificate, a new copy may be issued or the previous one extended.

9. RECTIFICATION, MODIFICATION, REVOCATION, SUSPENSION, APPEAL

(Caterina Valia)

9.1. What are the material errors referred to in Article 71, paragraph 1, of the Regulation?

Material errors are mere writing mistakes that are easily identifiable, such as errors related to the inclusion of the applicant's or deceased person's personal details (date of birth, marital status, date of death of the deceased) or the identification data of the properties. The error is immediately detected through comparison with certificates issued by the competent public administration offices.

A material error can be corrected unilaterally and ex officio by the authority through the issuance of a corrected certificate (and withdrawal of any previously issued copies of the incorrect certificate).

9.2. Who are the interested parties referred to in the same provision?

The applicant and anyone who can demonstrate interest, as they are involved and affected by the situation described in the certificate (see, by way of example, the subjects mentioned in the answer to question 8.1).

9.3. Who can request the modification or revocation of the CSE and in which cases?

Modification and revocation can be requested by anyone who can demonstrate interest (see, by way of example, the subjects mentioned in the answer to question 8.1), if it is found that the certificate or any element in it is not accurate. These are substantial aspects, such as those related to the identification of assets and/or rights belonging to legatees or the determination of the inheritance share for each heir.

9.4. How is the "modification" of the CSE carried out?

A new CSE is prepared, dated, and duly signed by the authority. The request form will show the subject who requested the modification, the elements justifying it, and the changes made.

9.5. How is revocation carried out?

The authority prepares a document certifying the revocation, dated and duly signed. The revocation request will indicate the elements that led to the revocation of the certificate.

9.6. Can the modification and revocation of the certificate be done ex officio?

According to Article 71, paragraph 2, of the Regulation, the issuing authority can modify or revoke the CSE upon request of anyone who can demonstrate interest or ex officio, but in the latter case, only if "provided for by national law."

The conclusion reached above (see paragraph 5.1 of this Vademecum), based on Article 32, paragraph 1, of Law No. 161 of October 30, 2014, means that the Italian legislature has granted our issuing authority the broadest possible powers regarding the European Succession Certificate, including the ex officio powers discussed here.

9.7. Must modifications and revocations of the CSE be noted in the margin of the modified or revoked CSE?

Yes, although no regulation requires it, it is advisable to note the modification and revocation on the modified or revoked succession certificate.

9.8. Which authority is competent to proceed with the revocation or modification of the CSE?

The revocation and modification are carried out by the same authority that issued the CSE. If the notary is no longer in practice, the applicant may approach another notary.

9.9. How should the notification referred to in Article 71, paragraph 3, and Article 73, paragraph 2, of the Regulation be carried out?

The authority sends an appropriate communication through means that can prove receipt (such as certified email or registered mail with acknowledgment of receipt) to the specified persons, using the data collected during the issuance of copies and contained in the list that the authority must keep according to Article 70, paragraph 2. It will formally invite the same people to inform other individuals who may also be affected by such notifications (see paragraph 10).

9.10. If the judicial authority orders the notary to rectify, modify, revoke, or issue the CSE during an appeal under Article 72, paragraph 2, of the Regulation, how should the notary behave?

The notary must carry out the rectification, modification, or revocation by drafting a new certificate or a specific document stating the events that have occurred, indicating the provision under which they are proceeding.

10. EFFECTS OF THE CERTIFICATE

(Carlo Alberto Marcoz)

10.1. What are the effects of the CSE?

The elements verified and subject to certification are presumed to be correct (Art. 69, para. 2): it is therefore presumed that the person listed as the heir, legatee, executor of the will, or administrator of the estate possesses the status indicated in the certificate and/or the powers stated therein, without any further conditions or restrictions beyond those specifically mentioned.

It is reasonable to affirm a principle of self-sufficiency of the CSE, and therefore, what is certified in it exempts the need for additional supporting documentation.

For example, the CSE does not need to be accompanied by a death certificate of the deceased.

10.2. Are third parties who make payments or deliver any property of the estate based on the information certified in the CSE protected?

Yes; anyone who makes payments or delivers property to a person indicated in the certificate as entitled to receive it is presumed to have acted correctly, unless they know that the contents of the certificate are not true or that their ignorance of the matter stems from gross negligence (Art. 70, para. 3).

10.3. Are third parties who purchase from someone listed in the CSE as authorized to dispose of property protected?

Yes; if a person mentioned in the certificate as authorized proceeds to sell an estate asset, it is presumed that the buyer, if acting based on the information certified in the certificate, has properly purchased from the party legitimately authorized, unless the buyer was aware of the falsity of the certificate's contents or was ignorant of it due to gross negligence (Art. 70, para. 4).

10.4. Is any procedure for control or legalization required for the CSE to produce its effects?

No; pursuant to Art. 69, para. 1, Reg., the certificate produces its effects in all Member States without the need for any procedures; moreover, pursuant to the following Art. 74, no legalization or similar formalities (such as an Apostille) are required.

PRINCIPLES

(Domenico Damascelli, Giovanni Liotta, Carlo Alberto Marcoz, Paolo Pasqualis, Ilaria Riva, and Valentina Rubertelli)

1. Competence to issue the CSE based on the combined provisions of Articles 64 and 7 Reg.

Pursuant to the combined provisions of Articles 64 and 7 Reg., the competence to issue the CSE lies with the authority of the Member State whose law has been chosen by the deceased to govern the succession, and exists:

a) in the case of a single applicant, when the applicant has expressly declared their acceptance of this competence at the time of submitting the request (Art. 7, letter c);

b) in the case of multiple applicants, when they:

i. have expressly agreed, before submitting the request and in the manner prescribed by Art. 5, para. 2, to grant competence to this issuing authority (Art. 7, letter b), or, alternatively,

ii. have expressly declared their acceptance of this competence at the time of submitting the request (Art. 7, letter c);

c) when the authority approached on the basis of the titles referred to in Art. 4 or 10 Reg. declares itself incompetent pursuant to Art. 6, letter a, Reg., under the conditions set out therein.

Furthermore, in cases referred to in letters a and b above, if, under Art. 64, para. 4, Reg., "other potential beneficiaries" of the succession intervene in the CSE issuance procedure to "assert their rights," they must accept, even tacitly, the competence of the issuing authority under Art. 9, para. 1, Reg.; failing this, the issuing authority must declare its incompetence under Art. 9, para. 2, Reg.

Motivation

According to Art. 64 Reg., the CSE is issued by the authorities of the Member State whose judicial bodies are competent, inter alia, under the previous Art. 7.

The latter provision initially contemplates cases of competence extension based on the existence of an optio legis under Art. 22 Reg.

The requirement for agreement under letters b and c of the cited Art. 7 should be adapted, considering the special nature of voluntary jurisdiction proceedings, to which the CSE issuance procedure belongs. Thus, in the case of a single applicant, the will of the applicant itself, expressly declared at the time of the request (if the standard request form in Annex 4 to the Implementing Regulation No. 1324/2014 is used, the seventh box of frame 7 must be marked, and the relevant declaration must be attached), will suffice to establish the competence of the issuing authority.

In the case of multiple applicants, this will can also be expressed at the time of the request, but it may also result from a prior agreement between the applicants themselves (in this case, if the standard request form is used, the third box of frame 7 must be marked, and the agreement, in the form required by Art. 5, para. 2, Reg., must be attached).

Additionally, since under Art. 64, para. 4, Reg., the issuing authority must "make public announcements in order to give other potential beneficiaries the opportunity to assert their rights," if such further beneficiaries

decide to intervene in the CSE issuance procedure, they too must accept the competence of the issuing authority.

For this purpose, however, an express declaration of will is not necessary; it is sufficient that, in analogy to Art. 9, para. 1, Reg., the further beneficiaries do not contest the competence of the authority at the time of their intervention. In the event that the intervening beneficiaries contest the authority's competence, the issuing authority must declare its incompetence in accordance with the analogy to Art. 9, para. 2.

Finally, Article 7, letter (a) of the Regulation grants the competence to issue the CSE to the authorities of the Member State whose law was chosen by the deceased (de cuius) to regulate the succession, when the authority of another Member State, previously approached based on Articles 4 or 10, has declared its incompetence under Article 6.

In practice, assuming the authority of the Member State where the deceased had habitual residence at the time of death was approached, this authority may relinquish its competence in favor of colleagues from the Member State of the chosen law, provided that:

- One of the parties to the proceedings (i.e., the applicant or one of them, or any additional beneficiaries who may have joined the proceedings) requests it;
- The issuing authority deems that colleagues from the Member State of the chosen law "are better suited to decide on the succession, taking into account the practical circumstances of the case, such as the habitual residence of the parties and the location of the assets" (as prescribed in Article 6, letter (a) of the Regulation).

Upon receiving this declaration of incompetence, the applicant can resume the procedure for issuing the CSE before the issuing authority of the Member State of the chosen law (if using the standard request form set out in Annex 4 to the Implementing Regulation No. 1324/2014, ticking the second box in section 7 and attaching the relevant court decision).

According to Article 7, letter (a) of the Regulation, upon receiving the request for the CSE, the authority of the Member State of the chosen law cannot refuse competence, even if it considers, contrary to the previous authority, that the deceased's choice of law is invalid in form or substance.

2. Possibility of attaching documents to the certificate

The European Certificate of Succession (CSE) must be drawn up exclusively using the forms provided by the Implementing Regulation (EU) No. 1329/2014. However, when the CSE is intended to be used for registration in public records, it is possible to attach documents that better describe the assets to which the CSE refers.

Motivation

The European Succession Certificate (CSE) must be obligatorily drawn up using the forms provided by Implementing Regulation (EU) No. 1329/2014 (in the Official Journal of the EU on December 16, 2014, L359/30), as required by Article 67, paragraph 1, of Regulation 650/2012.

The reason for this choice by the European legislator is clear: to make the CSE a uniform document for all Member States and facilitate its circulation. This is because, regardless of the State from which it originates and the language in which it is drafted, the existence of a common (fixed and mandatory) format will simplify its reading and understanding for every recipient. Therefore, it is not allowed to draft the CSE in any other form.

In light of this, the question arose as to whether documents other than the CSE could be annexed or attached (for example, a summary table of heirs and inheritance shares, a copy of the deceased's will, etc.).

The answer is delicate, even in the absence of an express prohibition in this regard. The admissibility of attaching documents, even if relevant to the succession, must be evaluated restrictively. Otherwise, the CSE's characteristic of easy readability could be lost, and the issuing authority could "weaken" the document's certifying strength by referring to the attached documents. It might become unclear to the recipient whether what appears on the document is attributable to the verification (and responsibility) of the issuing authority or to whoever drafted the attached document.

However, there is a clear indication of the admissibility of attaching documents in notes 13 and 15 of the CSE form, as contained in Implementing Regulation No. 1329/2014, where, in relation to the need to describe the assets for which the CSE is issued, it is specified: "13. Indicate if the heir [or legatee, in note 15] has acquired ownership or other rights on the relevant assets (in which case, specify the nature of such rights and other entitled persons). For registered assets, provide the information required to identify the asset by the law of the Member State in which the register is kept (e.g., for real estate, the exact address of the property, the land register, cadastral identifiers, description of the asset) (if necessary, attach supporting documents)".

Therefore, it is admissible that documents that better describe the assets for which the CSE is requested can be attached when it is intended to be used for registration in a public register (e.g., a property register certificate showing the description of the deceased's asset and the rights attached to it).

3. Indication of the assets for which the certificate is requested

The indication, at least in summary, of the assets or rights for which the European Succession Certificate (CSE) is requested is essential to determine the competence of the issuing authority. This indication, with as much detail as possible, is mandatory in the case of a legacy and highly recommended in the case of an inheritance to facilitate the use of the CSE in the destination State(s).

Motivation

Article 68 of Regulation 650/2012, letters (l) and (m), provides that the European Succession Certificate (CSE) must include:

"(l) The share of the inheritance of each heir and, where applicable, the list of rights and/or assets allocated to each heir;

(m) The list of assets and/or rights allocated to each legatee".

An initial observation should be made regarding the difference between the two provisions: in the case of inheritance, the indication of assets is required "if applicable," while in the case of a legacy, it is always required. The reason is clear: when it comes to a legacy, since it involves specific assets, these must be identified. In the case of an inheritance, which typically involves a complex of heterogeneous assets or a share of them, identifying the individual items is not considered essential.

Despite the clarity of the legal text, there is inconsistency in the form contained in the Implementing Regulation (EU) No. 1329/2014, Annex 5, Module V, Annex V (used to indicate the quality and rights of the legatee), where item no. 5 "Asset(s) allocated to the legatee for which the certificate is requested (specify the individual assets and provide identifying data)" is not marked as mandatory. However, it should be considered mandatory, in light of the clear rule expressed in letter "m" of Article 68 of Regulation 650/2012.

Regarding the indication of assets for which the CSE is requested, another fundamental observation must be made: since the certificate can only be issued "for use in another Member State" (Article 62, Regulation, paragraph 1), it is essential for the issuing authority to at least indicate an asset or right that the applicant intends to claim or is obligated to administer in another Member State, without which the competence to issue the certificate cannot be understood.

Indicating the assets for which the certificate is issued is also very useful in practice for its use. It is evident that in the Member State where the CSE will be used, it will be much easier to request the delivery of the assets if they are expressly mentioned.

Therefore, it is always advisable to indicate the assets for which the certificate is requested, and it is beneficial to do so as precisely as possible (obviously, based on the data that the requesting party must communicate to the authority). This is also clearly expressed in notes 13 and 15 of the CSE form contained in Implementing Regulation No. 1329/2014, which state: "13. Indicate if the heir [or legatee, in note 15] has acquired ownership or other rights on the relevant assets (in which case, specify the nature of such rights and other entitled persons). For registered assets, provide the information required to identify the asset by the law of the Member State in which the register is kept (e.g., for real estate, the exact address of the property, the land register, cadastral identifiers, description of the asset) (if necessary, attach supporting documents)".

4. Judgment or act for the integration of the legitimate portion and content of the European Succession Certificate (CSE)

The outcome of a judgment that recognizes the rights of forced heirs or an act of pure (re-)integration of the legitimate portion may be the subject of a European Succession Certificate (CSE).

Motivation

The inheritance devolvement may be determined, in addition to the law and the last will provisions, also by judgments or acts aimed at recognizing or integrating the rights of forced heirs who have been omitted, in whole or in part.

In particular, consistent case law and the prevailing doctrine recognize that acts of pure or mere (re-) integration of the legitimate portion have the same nature as a judgment that accepts a claim for reduction of testamentary provisions that are injurious. The legal action has the nature of a constitutive recognition, which – once the harm is established – modifies the forced heir's legal rights, making the transfer made by the testator through the injurious provisions ineffective for that heir, while the heir acquires the property (his share of the inheritance) by legal title.

If this reconstruction is accepted, the attribution of assets and rights that occurs by virtue of a succession regulated not only by the law and/or the will but also by a judgment or act of legitimate portion integration in the strict sense falls within those that may be certified by the CSE.

However, an important clarification is required: a CSE certifying the outcome of the judgment or act recognizing the rights of forced heirs can only be issued if this is the exact outcome of the judgment or act. In other words, if, as often happens, the parties in the trial or act before the notary reach a settlement agreement, silencing the rights in question (which may also involve assets not part of the inheritance), it goes beyond the scope of the Regulation, which is limited to the subject of succession.

In the case where the preparation of the CSE is considered admissible, from a drafting point of view, it is recommended to use field no. 7 of the form Annex 5, Module V, of Implementing Regulation (EU) No. 1329/2014, checking box 7.1.2 (legitimate portion) and including in field no. 8 the reference to the judicial document or notarial act that provides the integration of the forced heir's legitimate portion, explaining the nature of the operation in the context of the rule or will.

5. Language of issuance of the CSE

It is legitimate to draft the CSE in a language other than the national language of the issuing authority, even if the issuing authority does not understand the foreign language in question, as long as one of the 23

language versions in which the standard form referred to in Annex 5 of Implementing Regulation No. 1329/2014 is available is used. It is legitimate to issue an authentic copy of the CSE written in the national language of the issuing authority, accompanied by a translation into a foreign language made by the same notary or by a person authorized to perform translations. An authentic copy issued in a language different from the one in which the original CSE was drafted does not comply with the original.

Motivation

The Regulation does not specify the language to be used by the issuing authority when drafting the original CSE and when issuing the corresponding authentic copies.

In the case where the CSE is to be used in a Member State whose official language is different from the one in which the CSE was drafted, there is no obstacle to accompanying the authentic copy of the CSE with a translation made by the same notary or "by a person authorized to perform translations" (as Article 47(2) of the Regulation expresses it) in the language of the destination Member State: this, in fact, does not contradict any provision of the Regulation and leaves the recipient (the foreigner) the choice of relying on the translation prepared in the originating Member State or requiring the interested party to produce a new translation in the destination Member State, following local formalities.

The costs that arise in both cases impose the need to verify whether the issuing authority is allowed to directly draft the CSE in a language other than the national language (which, in fact, seems already established in the practice of certain Member States).

According to Article 67(1), first paragraph, of the Regulation, the national authority must issue the CSE using the standard form referred to in Annex 5 of Implementing Regulation No. 1329/2014.

Since this regulation has been drafted in 23 languages (corresponding to all official languages of the European Union, except for Gaelic), drafting the CSE using a standard form in a foreign language does not violate the provisions of the aforementioned Article 67.

Furthermore, the use of one of these languages is consistent with the general principle of equality of official languages of the European Union (as derived from Article 55 TFEU, as well as Articles 20(d) and 24 TFEU), and in particular with one of the guiding principles of the Regulation, which aims – as stated in Recital No. 7 – to remove the difficulties that heirs and legatees encounter when exercising their rights in the context of cross-border succession (since such use simplifies the requirements for those who intend to use a CSE abroad).

The conclusion that follows – i.e., that European law does not oppose an affirmative answer to the question at hand – is not contradicted by Italian law.

Firstly, an obligation to draft the CSE in our language – or to obligatorily provide it with a translation into Italian when drafted in a foreign language – does not arise from the rules that (directly or indirectly: see the introduction to this Vademecum) regulate the notary's activity as the issuing authority.

In fact, since, as clarified above, the CSE is not a notarial act, Article 54(1) of Law No. 89 of 1913 does not apply to it.

Furthermore, drafting or translating it into Italian is not necessary even to facilitate (or at least not hinder) the biennial inspection of the Notarial Archive: this is because the CSE (even if, as suggested earlier, it is stored in the notary’s collection) is not subject to it, as it cannot be considered an act drawn up by a notary for the purposes of Article 128(1) of Law No. 89 of 1913.

Secondly, drafting the CSE in a foreign language is not prohibited by tax rules, specifically those regarding registration, not only because the CSE is not subject to it, but also because the voluntary execution of the

formality would fall under the provisions of Article 11(5) of Presidential Decree No. 131 of 1986, which only requires attaching a translation into Italian for an act drafted in a foreign language.

What has been said so far places the Italian issuing authority of the CSE in a position to choose, case by case, in which language (among the 23 available in the standard model) to draft the certificate.

The choice will be influenced by practical reasons, such as assessing the legal environment in which the CSE will be used, or the issuing authority's familiarity with the foreign language in question.

From the first perspective, issuing in a foreign language will likely be preferred if the CSE is intended to be used exclusively or predominantly abroad (in which case, a translation into our language will suffice for any residual use in Italy); from the second perspective, issuing in Italian will likely be preferred if the notary does not know or knows very little of the foreign language, and the CSE needs to be supplemented with one or more narrative sections (although this applies only for practical reasons, as there is no regulation – neither European nor Italian – requiring the issuing authority to master the language in which the CSE is issued).

In either case, however, it must be excluded that the authentic copy of the CSE can be issued in a language other than the one in which the original was drafted, as the divergence between the two languages fundamentally contradicts the very concept of the authenticity of the copy.