Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 29 April 2021 [1]

Case C-301/20

UE,
HC
v
Vorarlberger Landes- und Hypotheken-Bank AG,
intervener:
Estate of VJ

(Request for a preliminary ruling from the Oberster Gerichtshof (Supreme Court, Austria))

(Reference for a preliminary ruling – Area of freedom, security and justice – Regulation (EU) No 650/2012 – European Certificate of Succession – Validity of a certified copy without an expiration date – Effects of the certificate in relation to persons who are designated on it who did not request for it to be issued – Point in time when the assessment of the validity of the copy is to be carried out)

1. Regulation (EU) No 650/2012 [2] creates, as regards the internal market, a European Certificate of Succession and lays down detailed provisions governing the issuing and effects of that certificate. The aim is to ensure that heirs, legatees, executors of wills and administrators of estates are able to demonstrate easily their status as such or their rights or powers in any Member State.

2. The Court has already ruled on the European Certificate of Succession in a number of judgments. [3] The Oberster Gerichtshof (Supreme Court, Austria) has now referred to it for a preliminary ruling three questions concerning aspects of that document which have not yet been addressed: the third question, to which this Opinion will be confined at the direction of the Court, concerns the temporal validity [4] of a certified copy of the certificate and the stage in the proceedings when that validity must be assessed.

1 Original language: Spanish.

2 Regulation 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 (OJ 2012 L 201, p. 107). That regulation is applicable in all the Member States except Denmark and Ireland.

3 Judgments of 1 March 2018, *Mahnkopf* (C-558/16, EU:C:2018:138), and of 17 January 2019, *Brisch* (C-102/18, EU:C:2019:34).

4 The order for reference and Regulation No 650/2012 itself refer to the 'period of validity' of the copy. It would perhaps be preferable to restrict the term 'validity' to the absence of defects which would lead to the nullity of an act, and to use the term 'effectiveness' or 'duration' to evoke the status of an act which enables it to produce effects for a specified period. Once that period has elapsed, the *effectiveness* of the act is exhausted even if there are no grounds for *invalidity*. I shall, however, use both terms as if they were synonymous in the context of this reference for a preliminary ruling.

3. National practices and legal literature [5] include divergent interpretations of Regulation No 650/2012 in that regard, which confirms the need for the question referred for a preliminary ruling. In answering that question, the Court will contribute to facilitating legal certainty in the use of copies of the European Certificate of Succession, thereby fostering its integration into the legal systems of the Member States.

I. Legal framework. Regulation No 650/2012

4. According to recital 7 of Regulation No 650/2012:

'The proper functioning of the internal market should be facilitated by removing the obstacles to the free movement of persons who currently face difficulties in asserting their rights in the context of a succession having cross-border implications. In the European area of justice, citizens must be able to organise their succession in advance. The rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession must be effectively guaranteed.'

5. Recital 67 of Regulation No 650/2012 reads:

'In order for a succession with cross-border implications within the Union to be settled speedily, smoothly and efficiently, the heirs, legatees, executors of the will or administrators of the estate should be able to demonstrate easily their status and/or rights and powers in another Member State, for instance in a Member State in which succession property is located. To enable them to do so, this Regulation should provide for the creation of a uniform certificate, the European Certificate of Succession (hereinafter referred to as "the Certificate"), to be issued for use in another Member State. In order to respect the principle of subsidiarity, the Certificate should not take the place of internal documents which may exist for similar purposes in the Member States.'

6. In accordance with recital 71 of Regulation No 650/2012:

'The Certificate should produce the same effects in all Member States. It should not be an enforceable title in its own right but should have an evidentiary effect and should be presumed to demonstrate accurately elements which have been established under the law applicable to the succession or under any other law applicable to specific elements, such as the substantive validity of dispositions of property upon death. … Any person who makes payments or passes on succession property to a person indicated in the Certificate as being entitled to accept such payment or property as an heir or legatee should be afforded appropriate protection if he acted in good faith relying on the accuracy of the information certified in the Certificate. The same protection should be afforded to any person who, relying on the accuracy of the information certified in the Certificate, buys or receives succession property from a person indicated in the Certificate as being entitled to dispose of such property. The protection should be ensured if certified copies which are still valid are presented. Whether or not such an acquisition of property by a third person is effective should not be determined by this Regulation.'

[5] Order for reference, paragraphs 7 and 8. In legal literature, with references representing the different views, see Bergquist, U., 'Muss ein Europäisches Nachlasszeugnis nicht nur im Zeitpunkt der Antragsstellung bei dem Grundbuchamt, sondern auch bei Vollendung der Grundbucheintragung gültig sein?', *IPRax*, 2020, p. 232. The discussion, particularly in Austria and Germany, concerns inter alia access to the land register.

7. Paragraph 1 of Article 62 ('Creation of a European Certificate of Succession') states:

'This Regulation creates a European Certificate of Succession (hereinafter referred to as "the Certificate") which shall be issued for use in another Member State and shall produce the effects listed in Article 69.'

8. In accordance with Article 63 of Regulation No 650/2012 ('Purpose of the Certificate'):

'1. The Certificate is for use by heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate.

2. The Certificate may be used, in particular, to demonstrate one or more of the following:

(a) the status and/or the rights of each heir or, as the case may be, each legatee mentioned in the Certificate and their respective shares of the estate;

(b) the attribution of a specific asset or specific assets forming part of the estate to the heir(s) or, as the case may be, the legatee(s) mentioned in the Certificate;

(c) the powers of the person mentioned in the Certificate to execute the will or administer the estate.'

9. Article 65 of Regulation No 650/2012 ('Application for a Certification') provides, in paragraph 1 thereof:

'The Certificate shall be issued upon application by any person referred to in Article 63(1) (hereinafter referred to as "the applicant").'

10. Article 69 of Regulation No 650/2012 ('Effects of the Certificate') provides:

'1. The Certificate shall produce its effects in all Member States, without any special procedure being required.

2. The Certificate shall be presumed to accurately demonstrate elements which have been established under the law applicable to the succession or under any other law applicable to specific elements. The person mentioned in the Certificate as the heir, legatee, executor of the will or administrator of the estate shall be presumed to have the status mentioned in the Certificate and/or to hold the rights or the powers stated in the Certificate, with no conditions and/or restrictions being attached to those rights or powers other than those stated in the Certificate.

3. Any person who, acting on the basis of the information certified in a Certificate, makes payments or passes on property to a person mentioned in the Certificate as authorised to accept payment or property shall be considered to have transacted with a person with authority to accept payment or property, unless he knows that the contents of the Certificate are not accurate or is unaware of such inaccuracy due to gross negligence.

…'

11. According to Article 70 of Regulation No 650/2012 ('Certified copies of the Certificate'):

'1. The issuing authority shall keep the original of the Certificate and shall issue one or more certified copies to the applicant and to any person demonstrating a legitimate interest.

2. The issuing authority shall, for the purposes of Articles 71(3) and 73(2), keep a list of persons to whom certified copies have been issued pursuant to paragraph 1.

3. The certified copies issued shall be valid for a limited period of six months, to be indicated in the certified copy by way of an expiry date. In exceptional, duly justified cases, the issuing authority may, by way of derogation, decide that the period of validity is to be longer. Once this period has elapsed, any person in possession of a certified copy must, in order to be able to use the Certificate for the purposes indicated in Article 63, apply for an extension of the period of validity of the certified copy or request a new certified copy from the issuing authority.'

12. Pursuant to Article 71 of Regulation No 650/2012 ('Rectification, modification or withdrawal of the Certificate'):

'1. The issuing authority shall, at the request of any person demonstrating a legitimate interest or of its own motion, rectify the Certificate in the event of a clerical error.

2. The issuing authority shall, at the request of any person demonstrating a legitimate interest or, where this is possible under national law, of its own motion, modify or withdraw the Certificate where it has been established that the Certificate or individual elements thereof are not accurate.

3. The issuing authority shall without delay inform all persons to whom certified copies of the Certificate have been issued pursuant to Article 70(1) of any rectification, modification or withdrawal thereof.'

II. Facts, dispute and questions referred for a preliminary ruling

13. The main proceedings concern the application by the creditors for the release to them of deposited assets which are in the custody of the courts. [6]

14. The first creditor, HC's and UE's father, died on 5 May 2017. His last place of habitual residence was in Spain and the administration of his estate was carried out in that country before a notary, in accordance with Spanish law.

15. In order to prove, in Austria, that they are heirs each entitled to half of their father's (the first creditor) estate, HC and UE submitted a certified copy of a European Certificate of Succession issued by the Spanish notary in accordance with Article 62 et seq. of Regulation No 650/2012.

[6] The deposit was instigated by a bank (Vorarlberger Landes- und Hypotheken-Bank AG, 6900 Bregenz (Austria)) which applied for the assets (cash and securities) to be transferred into the custody of the courts in the light of competing claims in respect of those assets and the lack of clarity regarding the creditors' entitlement. Under Austrian law, assets in the custody of the courts may be released only by way of a joint written application by the creditors or on the basis of a final judgment.

16. The certificate was issued by the Spanish notary at the request of HC, using Form V set out in Implementing Regulation (EU) No 1329/2014.[7] UE and HC are mentioned by name in Annex IV to that form, both as heirs entitled to half of the estate.

17. In the field relating to the certified copy (next to the words 'It is valid until'),[8] its duration was specified as being for an indefinite period.

18. By decision of 17 September 2018, the Bezirksgericht Bregenz (District Court, Bregenz, Austria) dismissed the application for surrender of the deposited assets.

19. By decision of 28 January 2019, the Landesgericht Feldkirch (Regional Court, Feldkirch, Austria) confirmed on appeal the first-instance decision, on the grounds that:

– only the party who applied for the issue of the European Certificate of Succession may use a copy of that certificate to demonstrate his or her entitlement;

– the issuing of a certificate of indefinite validity is contrary to the temporal limitation laid down in Article 70(3) of Regulation No 650/2012. Therefore, it must be treated as a certificate with a regular period of validity of six months from the date of issue;[9]

– in order for the copy of the certificate to be able to produce a legitimising effect, it must have been valid from a temporal perspective not only when the application was lodged but also at the time of the decision of the court of first instance.

20. HC and UE brought an appeal on a point of law (*Revision*) before the Oberster Gerichtshof (Supreme Court), which has referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 70(3) of Regulation [No 650/2012] to be interpreted as meaning that a copy of the certificate issued for an indefinite duration without indicating an expiry date, contrary to that provision:

(a) is valid and effective indefinitely, or

(b) is valid only for a period of six months from the date of issue of the certified copy, or

(c) is valid only for a period of six months from another date, or

(d) is invalid and unsuitable for use within the meaning of Article 63 of Regulation No 650/2012?

[7] Commission Implementing Regulation of 9 December 2014 establishing the Forms referred to in Regulation (EU) No 650/2012 (OJ 2014 L 359, p. 30).

[8] The masculine form of the adjective used appears on the Spanish version of the form ('Es válido hasta'), which could create confusion regarding whether it denotes the validity of the copy or of the certificate itself. That does not occur in other versions, such as the French, Italian and Portuguese ('elle est valable', 'è valida fino al', 'válida até', respectively).

[9] In fact, the temporal limitation referred to in that provision affects the copy, not the certificate (see footnote 8 to this Opinion).

(2) Is Article 65(1) of Regulation No 650/2012 read in conjunction with Article 69(3) of that regulation to be interpreted as meaning that the certificate produces effects in favour of all persons who are mentioned on the certificate by name as heirs, legatees, executors of wills or administrators of the estate, with the result that even those who have not applied for the issue of the certificate themselves can use that certificate pursuant to Article 63 of that regulation?

(3) Must Article 69 of Regulation No 650/2012 read in conjunction with Article 70(3) of that regulation be interpreted as meaning that the legitimising effect of the certified copy of a certificate of succession must be recognised if it was still valid when it was first submitted but expired before the requested decision of the authority, or does that provision not preclude national law if the latter requires the certificate to be valid even at the time of the decision?'

III. Procedure before the Court of Justice

21. The request for a preliminary ruling was received at the Court Registry on 7 July 2020.

22. Written observations were lodged by the German, Austrian, Spanish and Hungarian Governments and by the European Commission. It was not considered necessary to hold a hearing.

IV. Analysis

23. By the third question referred for a preliminary ruling, the only one on which I shall state my position, the referring court requests an interpretation of Article 69 and of Article 70(3) of Regulation No 650/2013.

24. The question, as it is currently worded, posits a choice which is not a choice as such because it places the legitimising effect associated with a certified copy of the certificate of succession on the same footing as the entitlement conferred by the certificate itself. [10]

25. It is clear from the case file that the question relates exclusively to the ability of the copy to produce legitimising effects. Since the duration of the copy is limited in time, it is important to establish the exact point in time when the authority to which the certificate is submitted must verify whether it is, or continues to be, valid from a temporal perspective.

26. For that purpose, there are, in principle, two options: (a) the examination must take into account the date on which the application supported by the copy was lodged; or (b) that examination may also be conducted by reference to the moment when the competent authority has to decide on that application.

27. Before proceeding to examine those options, I shall deal with a number of areas of Regulation No 650/2012 which may shed light on the dispute.

[10] Given that it is the copy of the certificate rather than the certificate itself which moves between Member States (see point 37 of this Opinion), there are provisions of Regulation No 650/2012 concerning the aim and the effects of the certificate which, in practice, apply to the copy as a reflection of the certificate. However, that is not the case with regard to the temporal effectiveness of each document: the copy expires six months after it was issued, whereas the certificate is unaffected.

A. European Certificate of Succession

28. As recital 7 of Regulation No 650/2012 states, the certificate is intended to facilitate the proper functioning of the internal market by removing the obstacles to the free movement of persons who are seeking to assert their rights in the context of a succession having cross-border implications.

29. In connection with that objective, particular attention is paid to the effective guarantee of the rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession.

30. That aim is directly met by the creation of a certificate which is issued in one Member State and enables 'every heir, legatee or beneficiary mentioned in the certificate to prove in another Member State his status and succession rights'. [11]

1. Rules on issue and effects

31. The certificate has features which, in a cross-border succession situation, will normally lead to advantages when compared with national documents of a similar nature.

32. The ability of the certificate to create those advantages is derived from the rules governing its issue: [12]

– the certificate is applied for, using a form, [13] from an authority vested with international jurisdiction pursuant to Regulation No 650/2012 and having objective jurisdiction to deal with the succession in the legal system of which it forms part;

– the certificate is issued on a uniform, detailed form with very little free text, which is available in the different official languages of the European Union;

– in accordance with the evidentiary procedures provided for in national legal systems, the issuing authority must verify, before issuing the certificate, the matters which the certificate will confirm and must take the necessary steps to inform all the beneficiaries of the succession, first, about the application and, then, about the issue of the certificate;

– the issuing authority keeps the certificate and has control over it. The issuing authority must rectify the certificate at the request of a party or of its own motion in the event of a clerical error, and it must withdraw or modify the certificate if it is established that the certificate or some parts of it are not legally accurate;

– appeals against decisions of the issuing authority may generally be the subject of an appeal to a court.

[11] Judgments of 12 October 2017, *Kubicka* (C-218/16, EU:C:2017:755, paragraph 59), and of 1 March 2018, *Mahnkopf* (C-558/16, EU:C:2018:138, paragraph 36).

[12] Chapter VI of Regulation No 650/2012, Articles 62 to 73.

[13] Form IV in Annex 4 to Implementing Regulation No 1329/2014. Use of that form is not mandatory (judgment of 17 January 2019, *Brisch*, C-102/18, EU:C:2019:34).

33. As a consequence of those rules and of the uniform appearance of the certificate, a certificate issued in one Member States produces effects in the other Member States automatically, that is, without the need for any procedure.

34. No review of the substance of the certificate takes place in the Member State before whose authorities it is used. In addition, the need for translation for the purposes of free movement is limited because the free text on the common form is likewise limited.

35. The certificate produces the same effects in all the Member States:

– it proves, by means of a rebuttable presumption, the matters which are recorded in it (and are governed by Regulation No 650/2012);

– it protects bona fide third parties;

– it creates access to registers.

36. It is, therefore, immaterial whether or not the documents in use in the Member State where the certified copy of the certificate is submitted have those same effects. [14]

2. Movement of the certificate

37. The certificate does not move in its original form. Unlike others created for the area of freedom, security and justice, [15] and national certificates of succession in a number of Member States, [16] the certificate created by Article 62 of Regulation No 650/2012 remains in the possession, and under the control, of the issuing State.

38. Instead, movement is effected by means of one or more certified copies issued 'to the applicant and to any person demonstrating a legitimate interest'. [17]

39. The copy translates into practice the effects of the certificate. Like the certificate, it is sufficient to prove the matters recorded in it and governed by Regulation No 650/2012.

[14] In other words, the effects of the certificate are determined by the EU legislature and, therefore, the question does not arise that is typical in the context of the movement of foreign certified decisions and documents, regarding whether the foreign 'product' should be treated in the same way as a national 'product' or whether the effects which the former has in the State of origin should be respected, irrespective of whether or not those effects are equivalent to the effects attributed to similar instruments in the receiving State.

[15] For example, the certificate created by Article 53 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), and that created by Article 9 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15). The comparison must be construed in the sense that it does not prejudge identity as regards the nature, purpose or effects of the different European documents which go by the common name 'certificate'.

[16] Like the German *Erbschein*.

[17] Article 70(1) and recital 72 of Regulation No 650/2012.

40. Use of the certificate is not mandatory.[18] However, if the certificate is used, it 'should be presumed to demonstrate accurately elements which have been established under the law applicable to the succession or under any other law applicable to specific elements, such as the substantive validity of dispositions of property upon death'.[19] Member States may not require the presentation of other evidence unless the presumption is rebutted.

41. The importance of certified copies in cross-border transactions means that their contents must correspond to the existing legal situation. For the purpose of ensuring that correspondence:

– copies have a limited life: their duration (literally, their 'period of validity') is restricted by statutory provision, usually to six months from the date of issue;[20]

– any modification, rectification or withdrawal of the certificate, or the temporary suspension of its effects, automatically applies to copies. Therefore, if one of those situations arises, the issuing authority is required to inform without delay all persons to whom it has issued certified copies in order to prevent the improper use of such copies.[21]

42. However, Regulation No 650/2012 permits the period of validity (duration) of a copy to be extended when it expires.[22] Unlike with regard to the procedure for issuing a copy, the regulation does not lay down any rules governing extension.

B. The point in time when the validity of a copy is to be examined

43. As I observed above, the referring court's third question has been answered differently in the practices of Member States and in legal literature. In that connection, the observations of the States which have intervened in this reference and of the Commission diverge from one another.

44. In fact, the first point to address is whether the relevant moment in time for assessing the temporal validity of a copy can be settled by applying Regulation No 650/2012 or whether instead there is no legislation at the European level.

45. On that point, there are (reasonable) arguments in favour of completely opposing solutions:

– according to the first position, Regulation No 650/2012's silence on the matter assigns the solution to the law of each Member State;[23]

– according to the second position, the answer can be deduced from Regulation No 650/2012. Based on a number of expressions used in the regulation, in addition to grounds linked to the objective of facilitating the management of succession, it is possible to argue that the relevant moment in time for establishing whether a copy is valid from a temporal point of view is when

[18] Recital 69 of Regulation No 650/2012. Use of the certificate is not preferred either. The decision whether to use the European certificate or the national certificate falls solely to the person seeking to use it.

[19] Recital 71 of Regulation No 650/2012.

[20] Article 70(3) of Regulation No 650/2012.

[21] Article 71(3), Article 73(2) and recital 72 *in fine* of Regulation No 650/2012. However, other persons are not informed (see point 54 of this Opinion).

[22] Article 70(3) of Regulation No 650/2012.

[23] Written observations of the Austrian Government, paragraph 41 et seq., and of the Hungarian Government, paragraph 18. For legal commentators in favour of that position, see, inter alia, Schmitz, S.D., 'Das Europäische Nachlasszeugnis', *RNotZ*, 2017, p. 269, in particular p. 286.

that copy is filed in the proceedings leading to the adoption of a decision on the basis of that copy. [24]

46. Subject to the qualifications that I shall set out below, relating to the multiple objectives of Regulation No 650/2012 (facilitating the management of succession is one of these), I am in favour of the second position.

47. I understand, nonetheless, that it is legitimate to question whether the EU legislature, after laying down in detail the rules applicable to the issue of the certificate, intended to fix the point in time for assessing the validity of a copy, thereby excluding national procedural provisions.

48. Although Regulation No 650/2012 does not expressly provide a solution to that question, I believe that it is possible to identify such a solution by interpreting it in accordance with the usual criteria (with the exception of the literal criterion, since, I repeat, Regulation No 650/2012 does not contain an express provision in that regard). A uniform response throughout the EU [25] is undoubtedly preferable for the purposes of legal certainty.

49. That single response also guarantees that the effects of a certificate are the same where copies of that certificate are submitted for consideration simultaneously in more than one Member State. If, in those circumstances, it were left to each of those States to determine the point in time for assessing the validity of the copy, a copy submitted at the same time in a number of national jurisdictions could produce different effects as a result of a different classification (consistent with an assessment at different times) in any of those jurisdictions. [26]

1. Systematic interpretation

50. Regulation No 650/2012 contains expressions which link the requirement of temporal validity of the copy to the moment when the holder of the copy first produces it before the authority required to rule on his or her application. When that moment is (the moment when the application is lodged or another later moment) will depend on the nature of the proceedings and of the rules governing it in the Member State concerned.

51. That link is discernible from the words 'use' and 'invoke' in Article 63(1) of Regulation No 650/2012 and from the reference to the person in possession of the copy who, in order 'to be able to use' the certificate once the period of validity of the copy has expired, must apply for an extension, pursuant to Article 70(3) of that regulation.

52. The terms used suggest an action which comes to an end at the time when it is carried out: 'use' describes the action of producing the copy or submitting it to the competent authority. A person who 'invokes' his or her status demonstrates that he or she possesses that status at that specific moment. The copy which is the subject of, or which accompanies, those actions has to be valid at the time when the associated action takes place.

[24] That interpretation is advocated, in relation to access to the land register, by Schmidt, J., 'Artikel 70 EuErbVO', *beck-online Grosskommentar*, 2020, marg. 17.5; Perscha, A., 'Art 70 EuErbVO. Beglaubigte Abschriften des Zeugnisses', in Deixler-Hübner, A. and Schauer, M. (eds), *Kommentar zur EU-Erbrechtsverordnung*, Manz'sche Verlags- und Universitätsbuchhandlung, 2020, marg. 19; and, in general, by Dutta, A., 'Artikel 69 EuErbVO', *MünchKomm zum BGB*, vol. 11, 2020, marg. 4. In the instant case, the Commission and the Spanish and German Governments share this view (albeit with qualifications in the case of the German Government).

[25] Except for Ireland and Denmark.

[26] Written observations of the Commission, paragraph 22, and of the German Government, paragraph 28.

53. Recital 71 of Regulation No 650/2012 states that 'the protection should be ensured if certified copies which are still valid are presented'. It can be inferred from those words that a copy which is valid when it is presented is capable of producing effects even after it has expired. [27]

54. It is true that the sentence reproduced denotes a very specific situation, and therefore its scope is limited: [28] it concerns the protection of third parties who make payments or pass on property to (or acquire property from) a person who is recorded as being entitled in the copy. Such persons [29] do not receive any notification regarding suspension of the effects of the certificate, which may occur during the procedure for rectification, modification or withdrawal of that certificate (Article 73(1)(a) of the regulation).

55. The effectiveness of the copy may be in question during that period; however, vis-à-vis the third parties I have mentioned, it will continue to be valid from a temporal perspective [30] because it was not called into question when it was presented to them and there is no provision stipulating that the authority which issued the certificate must notify them of any changes to that document.

56. In any event, I believe that the provisions to which I have referred support the argument in favour of an (implicit) uniform approach rather than multiple national approaches.

2. Purposive interpretation: the removal of obstacles resulting from the cross-border nature of the succession

57. The fact that the first occasion a copy is presented constitutes the decisive moment for the purpose of assessing its temporal validity reflects arguments related to the underlying objectives of the rules applicable to those documents.

58. If the (initial) time of submission of the copy were not the key temporal factor and its repetition were required on another, subsequent occasion, that would result in additional delays, formalities and efforts, for both the persons concerned and the authorities dealing with the succession. [31]

59. The reasoning set out directly reflects the aims underpinning the creation of the certificate. In particular, the creation of the certificate was intended to:

– 'effectively guarantee' 'the rights of heirs and legatees, of other persons close to the deceased and of creditors of the succession'; and

– ensure that 'a succession with cross-border implications within the Union [can] be settled speedily, smoothly and efficiently'. [32]

[27] Written observations of the Commission, paragraph 25, and of the Spanish Government, paragraph 45.

[28] In addition to which, the reference does not have proper legislative force because of its schematic position (in a recital).

[29] Unlike persons to whom certified copies were submitted pursuant to Article 70(1).

[30] Unless, when the payment is made or the transaction is entered into, they were already aware, through another source, of the questions concerning the certificate or were unaware of that fact due to gross negligence: see Article 69(3) and (4) *in fine*.

[31] In legal literature, see, inter alia, the works cited in footnote 24 to this Opinion; see also the written observations of the German Government, paragraphs 25, 26 and 29, and the, albeit less developed, written observations of the Commission, paragraph 26.

[32] Recitals 7 and 67 of Regulation No 650/2012.

60. It would jeopardise the attainment of those aims if the copy were required to be valid both at the time when it is presented and at the time when the authority before which it is produced adopts its final decision. If that were the case, the fear would be that, in practice, the number of occasions on which the person concerned would have to apply to the issuing authority for an extension, or a new copy, would exceed the number of occasions when it was not necessary to do so.

61. It must be borne in mind, when weighing up the advantages and drawbacks, that the authority which issues the copy is usually [33] situated in a different Member State from that in which the copy is presented, and therefore repeated applications will inevitably result in delays and additional costs. [34] The speed, smoothness and efficiency of the system would suffer to the same extent.

62. Moreover, as the German Government points out, [35] the additional period provided by the extension or renewal of the certified copy may not be enough to ensure its effectiveness on the date on which the decision is adopted. If that situation arose, there would need to be successive applications for an extension or renewal, depending on how long or short the proceedings were.

63. I believe, in summary, that it is not compatible with Regulation No 650/2012 to impose on the person concerned, as a general rule, the obligation to apply for an extension of the certified copy – or the issue of a new certified copy – when the copy presented was valid and effective at the stage of the proceedings when it was filed.

C. Legal accuracy of the certificate (and of copies thereof)

64. It may be that, after the initial occasion on which the copy was submitted, there may be some uncertainty or some evidence regarding the possible rectification, modification, withdrawal or suspension of the certificate. In those circumstances, the copy may, unexpectedly, not be an accurate reflection of the certificate itself.

65. The intention to facilitate the management of successions having cross-border implications is an essential aim of Regulation No 650/2012, but it does not constitute an absolute requirement. It coexists with the concern that the identity between that which is certified and the existing legal situation is preserved. That aim leads, in turn, to the need to guarantee concordance between the existing situation and the certificate, and between the certificate and the copies thereof.

66. In *inter partes* proceedings, it is in the interests of the party who is placed at a disadvantage by the content of the certificate to bear those points in mind and, where appropriate, that party may inform the authority seised of the dispute of any changes to the original document (the certificate) after the copy submitted was issued. [36]

[33] A certificate issued in one Member State for use in another produces in the former the effects laid down in Regulation No 650/2012, pursuant to Article 62(3) thereof.

[34] As I have already noted, Regulation No 650/2012 does not govern the extension procedure. It is logical to imagine that, in so far as the certificate has not been modified or withdrawn, if the issuing authority has no information suggesting otherwise, extension will be automatic. The matter remains, however, in the hands of the Member States, subject to the principles of equivalence and effectiveness.

[35] Paragraph 26 of its written observations.

[36] Usually, evidence of those changes will also have to be furnished. In that case, the party concerned may request a copy of the certificate in his or her capacity as a person with a 'legitimate interest' within the meaning of Article 70(1) of Regulation No 650/2012.

67. In those circumstances, there is nothing to prevent the authority required to decide on the dispute from examining the significance of assertions contesting the accuracy of the certificate or the accuracy of the copy of the certificate and from requesting a *new* document which accurately reflects the existing situation.

68. The situation is different in proceedings where there is no obligation to inform other interested parties, or persons who may potentially be placed at a disadvantage, about the proceedings so that they can enter an appearance before the decision-making authority. As I explained above, Regulation No 650/2012 lays down reservations [37] which provide the solution for such instances.

69. The issuing authority must notify persons to whom a copy has been issued of any change affecting the certificate [38] in order to prevent misuse. [39] In my opinion, a party who does not communicate (to the authority of the receiving State to which the copy has been submitted) the fact that that copy no longer matches the original certificate, because that certificate has been withdrawn, rectified or modified, would be acting improperly.

70. Lastly, where the authority before which the copy is produced is in possession of other information, from other sources, which could reasonably justify its doubts concerning the status of the original certificate, there is nothing to preclude it from requiring the person concerned to provide proof of that detail.

71. As I pointed out above, Regulation No 650/2012 allows the holder of a copy to apply for an extension of that copy of for another, new copy to be issued, [40] with no conditions attached. [41] That provision differs from the provision in the Commission's original proposal, Article 43 of which limited the effectiveness of copies to three months. [42] A copy could not be issued initially for a longer period, nor could the validity of an expired copy be extended. The only option available to the interested party was to request a new copy.

37 Point 41 of this Opinion.

38 Regulation No 650/2012 does not place any limits on that obligation. In my view, the authority is not released from the obligation at the end of the six-month period: there is no reason why the application for an extension of the validity of the copy should be consecutive to its expiry.

39 Once that fact has been communicated, the persons in whose favour the copy in force (that is, which has not yet expired) was issued should not wait until the end of the six-month period to apply for another, new copy, since the previous copy has been rendered invalid.

40 Although Regulation No 650/2012 is silent in that regard, it seems reasonable to associate an extension of the copy with the case where the certificate has not been modified and the application for a new copy with the case where the certificate has been modified. There is nothing to prevent the second option from being preferred even if the original has not been modified.

41 Unlike the situation where a certificate is issued for a period exceeding six months, which is possible but only 'in exceptional, duly justified cases', in accordance with Article 70(3) of Regulation No 650/2012. There are no indications concerning the cases covered by the derogation. In my view, the initial estimate that proceedings will last more than six months should not be such a case, because it is not unusual for the average duration of typical succession proceedings to exceed six months, particularly in some Member States.

42 Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession (COM(2009) 154 final).

72. The shortness of the period provided for provoked an unfavourable reaction from legal writers and professionals. [43] Article 43 of the proposal was amended in the European Parliament, which suggested the current wording.

73. The more flexible approach ultimately adopted enables the aims of Regulation No 650/2012 to coexist peacefully with one another:

– on the one hand, it takes account of the filing date of the copy as the point in time when its temporal validity must usually be assessed;

– on the other hand, it creates mechanisms for confirming that a certificate and a copy are identical in a situation where, when it is required to make a decision, an authority has questions regarding a copy which has expired in the meantime.

74. I believe that this results in the balanced coexistence of the aim of ensuring that, for the benefit of interested parties, 'a succession with cross-border implications within the Union [is] to be settled speedily, smoothly and efficiently' and the aim of ensuring that competent authorities can confirm that the information contained in the certificate is accurate and is reflected in the copy.

75. This complies more faithfully with the presumption that the person or persons indicated on the certificate (in this case, as heirs) are the holders of the rights or powers stated, without any further conditions or limitations than those mentioned on the certificate, the certified copy of which merely passes on that information to the competent authorities of another Member State.

V. Conclusion

76. In the light of the foregoing considerations, I propose that the third question referred for a preliminary ruling by the Oberster Gerichtshof (Supreme Court, Austria) should be answered as follows:

Article 69 of 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, read in conjunction with Article 70(3) of that regulation, must be interpreted as meaning that the effects of the certified copy of a European Certificate of Succession which was valid when it was first submitted, but which expires before the competent authority gives the requested decision, must be recognised.

By way of exception, if reasonable evidence exists that the European Certificate of Succession has been rectified, modified or withdrawn or that its effects have been suspended before the decision of that authority, the latter may request that a new copy or an extended copy be submitted.

[43] See Crône, R., 'Le certificat successoral européen', in Khairallah, G. and Revillard, M., *Perspectives du droit des successions européennes et internationales*, Defrénois, Lextenso éditions, 2010, p. 155, in particular p. 168. See also the position of the Conseil des Notariats de l'Union Européenne, of 11 December 2009, on the subject of the Commission's Proposal, available at http://www.notaries-of-europe.eu/index.php?pageID=4976, p. 6. The options considered included the creation of electronic certificates of succession and promoting the interconnection of national registers of documents relating to matters of succession: if the authorities had immediate access to the information, it would not be necessary to make the validity of copies subject to a time limit. The Commission has supported studies in that regard, the results of which can be viewed on the European e-Justice Portal (https://e-justice.europa.eu/content_general_information-166-es.do?init=true). At the present time, only a few national registers of European Certificates of Succession are interconnected.