THE EUROPEAN CERTIFICATE OF SUCCESSION
UNIFORM DOCUMENT ISSUED IN INTERNATIONAL SUCCESSION PROCEDURES

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SEMINARIO DI FORMAZIONE

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The European Certificate of Succession – Uniform Document Issued in International Succession Procedures

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How is an international succession currently settled?

Case study:
The deceased was a Romanian citizen with his last habitual residence in Italy. He owned both movable and immovable assets, both in Italy and Romania and he had not left a will.

Solution 1: a Romanian notary will apply the Romanian law (following his own rule of conflict and renvoi) and shall issue a Certificate of Succession = property title and provides for the inheritors and for their rights on the assets

Solution 2: an Italian notary will apply the Italian law (following his own rule of conflict and renvoi)

• For the immovable assets in Romania, the Italian notary is not competent, because Art. 24 of Law no. 7/1996 concerning the land register and real-estate publicity only allows the inscription in the Land Register of documents issued by the Romanian authorities

• The circulation of documents issued in succession procedures in the member states is not regulated, because Regulation (CE) No. 44/2001 excludes successions from its scope (Art.1 paragraph 2a). For example, under the Romanian law, this is done through a court decision issued according to the provisions of the new Code of Civil Procedure.
What Is and What Isn’t the European Certificate of Succession?

• It is a uniform “document” with value of proof, meant to be used by inheritors, legatees, executors of wills or administrators of estates in order to prove more easily their status, rights or competencies in another member state than the one in which the certificate was issued

• It benefits from direct circulation, as no formality is needed for its recognition in the destination state.

• 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

• ECS is a streamlined “form” and does not reflect the definitive solution of a succession with cross-border implications

• ECS is not an authentic act, neither a court decision, nor a judicial transaction, in the sense of the definition of those terms given in Art. 3, paragraph 1 letter i, g and h of the Regulation

• It is not a mandatory document, it does not replace national documents but at the same time it can also be used on the territory of the issuing state.

• It is not an enforcement title in an international succession
The Authorities of which state have jurisdiction to issue the Certificate?

- Jurisdiction rules are more restrictive
- A notary may settle an inheritance with cross-border implications without obeying any jurisdiction rule (except for cases when the notary exercises judicial functions, as provided in Recital (22))
- When issuing an ECS, the notary shall obey the jurisdiction rules as provided by Art. 64 of the Regulation.
- It is possible to conclude a choice of forum agreement only if the deceased had chosen the applicable law and the parties recognize or accept that jurisdiction
- General rule: jurisdiction lies with the authority from the state of habitual residence of the deceased
- If the deceased had made a choice on the law applicable to his/her succession, the authorities of the chosen state do have jurisdiction with certain conditions
- In subsidiary, jurisdiction can also be granted to the courts/authorities at the location of the assets
- Jurisdiction conferred by forum necessitatis
The ECS Issuing Procedure

• **Formulating a request by the interested party.** The circle of “applicants” is strictly determined in Art. 63 paragraph 1. In order to make the request, the applicant will use a form.

• **Mandatory:** the presentation of the death certificate

• **Verification of information** provided in the application.

• **Verification of its own territorial jurisdiction** by applying Art. 4, Art. 7, Art. 10 or Art. 11 of the Regulation

• **Verification that a similar request has not been lodged** concerning the same deceased person in the Member States

• Entering the application in the registers of the competent authorities and in the **European Register**, and the creation of a file of the succession case

• **Obtaining the necessary proof** meant to clarify aspects that are requested to be certified.

• **Informing beneficiaries** or potential beneficiaries by public annunciations.

• **Obtaining the consent of the beneficiaries**, involved/interested parties with regard to the elements submitted to certification and the very fact of issuing the ECS.

• **The Issuing and Content of the ECS** – Art. 67 and Art. 68 of the Regulation
Is the ECS “valid” title for the entering of the property right into land registers? Which are the effects the ECS will produce?

• For example: Will the inheritors of an immovable asset located in Romania be able to sell it based on an ECS issued in Italy?

• ECS creates the assumption of verity of the elements it contains, therefore it has probatory value, but it lacks enforcement power.

• Art. 69 declares it to be “valid title for inscribing the succession assets in the corresponding register of a member state.”

• The person inscribed as beneficiary is presumed to have the quality of legal inheritor/legatee/administrator/executor of will. Any person entering into a contract with the inheritors is right to have faith in their quality and to acquire assets from or to transfer assets or money to those inheritors.

• In spite of that, the scope of the Regulation (Article 2 letter k and l) excludes both the nature of real rights and the notations into a register of property rights on movable or immovable assets, including the legal requirements for such a notation, as well as the effects of the notation or lack of a notation of such rights into a register.
The Need for a Single Record of International Successions and European Certificates of Succession

• Given that ECSs do not circulate in original form, but only in copies valid for only six months, it would be useful for this record to mention the number of copies issued and their expiration date.

• On the other hand, since the ECS is not a final document, it is subject to corrections, modifications or withdrawal. All those situations have impact on the probatory value of the certificate and must be notified to the persons who might believe in the data contained in the certificate. This is done according to the Regulation by the obligation of the issuing authority to inform those to whom copies have been issued of the appearance of a case of rectification, withdrawal or modification.

• In addition to holders of copies of the certificate, the interest in verifying the reality of the data contained in the ECS also lies with other beneficiaries or persons about to enter in contract relations with the persons inscribed in the ECS.
Thank you for your attention!