

Judicial and non judicial
functions within the meaning
of the EU Succession
Regulation **650/2012**

CASE C-658/17



Legal provisions in the
Succession Regulation that
help us to differentiate the
judicial function from the non
judicial function of Notaries
and Registry Officers

Definition of “authentic instrument”

Article 3 (1) (i) of the Succession Regulation

- A document in matters of succession
- Formally drawn up or registered as an authentic instrument in a MS
- Which authenticity relates to the signature and content of that document
- And which has been established by a public authority or other authority empowered for that purpose in a Member State.

The notion of “Court”

Article 3 (2) of the Succession Regulation: the term “**Court**” encompasses any judicial authority and administrative authorities or legal professionals exercising judicial powers.

To be equated to Courts, Registry Officers and Notaries have to meet the following conditions:

- Be competent in matters of succession
- Exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority
- Offer guarantees with regard to impartiality
- Ensure the right of all parties to be heard
- Issue decisions that may be appealed or reviewed before a judicial authority
- Issue decisions with a similar force and effect as a decision of a judicial authority in the same matter.

The list of authorities and legal professionals equated to Courts

Articles 3 (2) and 79 of the Succession Regulation

- **Member States shall notify to the Commission** which administrative authorities and legal professionals meet the requirements set forth in Article 3 (2).
- **The Commission establishes the list** of the administrative authorities and legal professionals equated to Courts. That list is published in the Official Journal .

The duty to apply the rules of jurisdiction

Article 4 of the Succession Regulation

- When acting like Courts, Registry Officers and Notaries shall apply the rules of jurisdiction set forth in the Succession Regulation.



Differences between
judicial functions and
notarial functions are
replicated at the
stage of recognition
and enforcement

**DECISIONS issued by
Registry Officers or
Notaries ACTING AS
COURTS:**

- Registry Officers and Notaries shall **issue the attestation concerning the decision by using form I** established by the implementing Regulation 1329/2014.
- **Recognition and enforceability** according to Articles 39 to 58 of the Succession Regulation

**AUTHENTIC
INSTRUMENTS issued by
Registry Officers or
Notaries NOT acting as
Courts:**

- Registry Officers and Notaries shall **issue the attestation concerning an authentic instrument by using form II** established by the implementing Regulation 1329/2014.
- **Acceptance and enforceability** according to Articles 59 to 60 of the Succession Regulation.

Case C – 658/17
The Court of Justice of
the European Union
interprets Article 3 (1) (i)
and (2) of the Succession
Regulation.

Case C – 658/17

To sum up, the EU Court of Justice decides that:

- It is necessary to give **an autonomous interpretation to the terms “Court” and “authentic instrument”**
- The **consequences of failure by a Member State to notify the Commission** which authorities or legal professionals exercise judicial powers **do not prevent these from issuing the certificate under form I (enforcement of judicial decisions)**
- The list drawn up by the Commission **is purely indicative** creating only a presumption
- **The exercise of judicial functions** by other authorities and legal professionals **must be determined independently of that list by checking if the requirements set forth in Article 3 (2) are fulfilled**



Failure by a Member State to notify the Commission and value of the list

Consequences of failure to notify the Commission:

- Failure by a Member State to notify the Commission of the exercise of judicial functions by a legal professional is not decisive for its classification as a "Court".
- The fact that a national authority has not been mentioned in such a notification is not, per se, sufficient to conclude that that authority does not satisfy the conditions set out in Article 3(2).

Indicative value of the list drawn up by the Commission:

- Where the Commission is notified, that creates only a presumption that the national authorities declared under Article 79 constitute "Courts" within the meaning of Article 3(2).
- A national court which has doubts as to the accuracy of the declarations made by a Member State, may query whether the conditions listed in Article 3(2) are satisfied in the case before it.

Duty to issue the appropriate attestation

- As long as a **legal professional** or national authority **not mentioned in the list drawn up by the Commission** fulfils the **requirements of Article 3(2)** to be classified as a "Court" **it may issue the attestation to the enforceability of judicial decisions by using Annex I - form I** established by the implementing Regulation 1329/2014.
- **A deed of certification of succession issued by a non judicial authority** that satisfies the conditions laid down in Article 3(1)(i) **constitutes an authentic instrument**, an attestation of which may be issued **using Annex II - form II** established by the implementing Regulation 1329/2014.

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Thank you so much for your attention!

