



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

23 May 2019*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 650/2012 — Article 3(1)(g) and (i) — Definition of a ‘decision’ in a matter of succession — Definition of an ‘authentic instrument’ in a matter of succession — Legal classification of the national deed of certification of succession — Article 3(2) — Definition of a ‘court’ — Failure by the Member State to notify the European Commission of notaries as non-judicial authorities exercising judicial functions like courts)

In Case C-658/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Gorzowie Wielkopolskim (Regional Court, Gorzów Wielkopolski, Poland), made by decision of 10 October 2017, received at the Court on 24 November 2017, in the proceedings brought by

WB

intervener:

Przemysława Bac, acting in her capacity as notary,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader (Rapporteur), A. Rosas, L. Bay Larsen and M. Safjan, Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 29 November 2018,

after considering the observations submitted on behalf of:

- WB, by M. Krzymuski, radca prawny,
- Ms Bac, acting in her capacity as notary, by M. Margoński, zastępca notarialny,
- the Polish Government, by B. Majczyna, S. Żyrek and E. Borawska-Kędzierska, acting as Agents,
- the German Government, by T. Henze and M. Hellmann, acting as Agents,
- the Spanish Government, by S. Jiménez García, acting as Agent,

* Language of the case: Polish.

– the Hungarian Government, by M.Z. Fehér, G. Koós, and M.M. Tátrai, acting as Agents,
– the European Commission, by M. Wilderspin and S.L. Kalèda, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 28 February 2019,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(1)(g) and (i), Article 3(2), Article 39(2), Article 46(3)(b) and Article 79 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 (OJ 2012 L 201, p. 107) and the interpretation of Annexes 1 and 2 to Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation No 650/2012 (OJ 2014 L 359, p. 30).
- 2 The request has been made in proceedings initiated by WB against Ms Przemysława Bac, in her capacity as notary, established in Słubice (Poland), for the purpose of the issuing, inter alia, of a copy of a deed of certification of succession issued by that notary.

Legal context

European Union law

Regulation No 650/2012

- 3 Recitals 20 to 22 and 62 of Regulation No 650/2012 state:
 - ‘(20) This Regulation should respect the different systems for dealing with matters of succession applied in the Member States. For the purposes of this Regulation, the term “court” should therefore be given a broad meaning so as to cover not only courts in the true sense of the word, exercising judicial functions, but also the notaries or registry offices in some Member States who or which, in certain matters of succession, exercise judicial functions like courts, and the notaries and legal professionals who, in some Member States, exercise judicial functions in a given succession by delegation of power by a court. All courts as defined in this Regulation should be bound by the rules of jurisdiction set out in this Regulation. Conversely, the term “court” should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of succession, such as the notaries in most Member States where, as is usually the case, they are not exercising judicial functions.
 - (21) This Regulation should allow all notaries who have competence in matters of succession in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term “court” for the purposes of this Regulation.
 - (22) Acts issued by notaries in matters of succession in the Member States should circulate under this Regulation. When notaries exercise judicial functions they are bound by the rules of jurisdiction, and the decisions they give should circulate in accordance with the provisions on recognition,

enforceability and enforcement of decisions. When notaries do not exercise judicial functions they are not bound by the rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.

...

- (62) The “authenticity” of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated. A party wishing to challenge the authenticity of an authentic instrument should do so before the competent court in the Member State of origin of the authentic instrument under the law of that Member State.’

4 Under Article 3 of that regulation:

‘1. For the purposes of this Regulation:

...

- (g) “decision” means any decision in a matter of succession given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court;

...

- (i) “authentic instrument” means a document in a matter of succession which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:
- (i) relates to the signature and the content of the authentic instrument; and
 - (ii) has been established by a public authority or other authority empowered for that purpose by the Member State of origin.

2. For the purposes of this Regulation, the term “court” means any judicial authority and all other authorities and legal professionals with competence in matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate:

- (a) may be made the subject of an appeal to or review by a judicial authority; and
- (b) have a similar force and effect as a decision of a judicial authority on the same matter.

The Member States shall notify the [European] Commission of the other authorities and legal professionals referred to in the first subparagraph in accordance with Article 79.’

5 The second subparagraph of Article 59(1) of that regulation provides:

‘A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form established in accordance with the advisory procedure referred to in Article 81(2) describing the evidentiary effects which the authentic instrument produces in the Member State of origin.’

6 Article 79(1) and (2) of Regulation No 650/2012 provides:

‘1. The Commission shall, on the basis of the notifications by the Member States, establish the list of the other authorities and legal professionals referred to in Article 3(2).

2. The Member States shall notify the Commission of any subsequent changes to the information contained in that list. The Commission shall amend the list accordingly.’

Implementing Regulation No 1329/2014

7 Article 1(1) and (2) of Implementing Regulation No 1329/2014 provides:

‘1. The form to be used for the attestation concerning a decision in a matter of succession referred to in Article 46(3)(b) of Regulation [No 650/2012] shall be as set out in Annex 1 as Form I.

2. The form to be used for the attestation concerning an authentic instrument in a matter of succession referred to in Articles 59(1) and 60(2) of Regulation [No 650/2012] shall be as set out in Annex 2 as Form II.’

Polish law

The Notarial Code

8 The ustawa z dnia 14 lutego 1991 r. — Prawo o notariacie (Dziennik Ustaw nr. 22, poz. 91) (Law of 14 February 1991 establishing the Notarial Code) (Journal of Laws No 22, item 91), as amended by the Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 13 grudnia 2013 r. w sprawie ogłoszenia jednolitego tekstu ustawy — Prawo o notariacie (Dziennik Ustaw z 2014 r., poz. 164) (Notice of the Marshal of the Sejm of the Republic of Poland of 13 December 2013 concerning the publication of the consolidated text of the Notarial Code) (Journal of Laws of 2014, item 164) (‘the Notarial Code’), provides, in Article 4 thereof, that a notary is to manage a single office.

9 According to Article 5(1) of the Notarial Code, notaries are to receive remuneration for their activities on the basis of an agreement with the parties, within the limits of a scale determined, pursuant to Article 5(3) of that code, by the Minister for Justice, as agreed with the Minister for Finance after consulting the National Chamber of Notaries.

10 The drawing up of deeds of certification in matters of succession by Polish notaries is governed by Articles 95a to 95p of the Notarial Code.

11 Under Article 95b of the Notarial Code:

‘Before drawing up a deed of certification of succession the notary shall make a record of succession with the involvement of all interested parties, having regard to Article 95ca.’

12 Article 95c(1) and (2) of the Notarial Code provides:

‘1. When making a record of succession, the notary shall inform the parties taking part in the making of the record of their obligation to disclose all facts covered by the content of the record and of their criminal liability in the event of making false statements.

2. The record of succession shall contain in particular:

(1) a unanimous request that a deed of certification of succession be drawn up, submitted by the parties taking part in the drafting of the record;

...’

13 Article 95ca(1) and (3) of the Notarial Code provides:

‘1. At the request of an interested party and with his involvement, the notary shall draw up a draft record of succession.

...

3. An interested party may, in a declaration made before the notary who drew up the draft record of succession or another notary, confirm the information contained in the draft record of succession and indicate his agreement to the making of a record of succession in accordance with the draft thereof.’

14 Article 95e of the Notarial Code is worded as follows:

‘1. After drawing up the record of succession, the notary shall draw up a deed of certification of succession where he has no doubts as to the jurisdiction of the national courts, the content of applicable foreign law, the identity of the heir, the amount of the shares in the inheritance, and, where the testator has made a legacy by vindication, also as to the person to whom the testator made the bequest by vindication and the subject matter thereof.

2. A notary shall refuse to draw up a deed of certification of succession where:

(1) a deed of certification of succession has already been drawn up previously or an order establishing succession has already been made previously in relation to the inheritance concerned;

(2) during the drafting of the record of succession circumstances emerge which indicate that not all the parties who may be regarded as intestate or testate heirs or to whom legacies by vindication have been made were present when it was being drawn up, or wills which have not been opened or disclosed exist or have existed;

...

(4) there is no national jurisdiction in the case.

3. Where the estate is to pass to a municipality or the [Skarb państwa (State Treasury, Poland)] as an intestate heir, and the evidence furnished by an interested party is not sufficient for the drawing up of a deed of certification of succession, the notary may draw up a deed of certification of succession only after having summoned the heirs by an announcement made at the expense of the interested party. Articles 673 and 674 of the [kodeks postępowania cywilnego (Code of Civil Procedure)] shall apply *mutatis mutandis*.’

15 Under Article 95j of the Notarial Code:

‘A registered deed of certification of succession shall have the effects of a final order establishing succession.’

16 Article 95p of the Notarial Code provides:

‘Wherever reference is made to an order establishing succession in separate provisions, it must be understood as also meaning a registered deed of certification of succession. ...’

The Civil Code

17 Article 1025(2) of the kodeks cywilny (Civil Code) provides that ‘a person who has obtained an order establishing succession or a deed of certification of succession shall be presumed to be an heir’.

18 Under Article 1027 of the Civil Code, ‘an heir may prove his rights of succession in regard to third parties who do not claim rights to the estate by virtue of succession only by an order establishing succession or a registered deed of certification of succession’.

19 Article 1028 of the Civil Code provides that ‘if the person who has obtained an order establishing succession or a deed of certification of succession, but is not an heir, transfers a right forming part of the inheritance to a third party, the person to whom the transfer is made shall acquire the right or be relieved of the obligation, save where he acts in bad faith’.

The Code of Civil Procedure

20 Article 669 of the Code of Civil Procedure provides:

‘1. The court having jurisdiction to rule on the succession shall annul a registered deed of certification of succession where an order establishing succession already exists in respect of the same succession.

2. Where two or more deeds of certification of succession have been registered in respect of the same succession, the court having jurisdiction to rule on the succession shall annul, at the request of an interested party, all the deeds of certification of succession and shall make an order establishing succession.

3. Except in the cases referred to in paragraphs 1 and 2, a registered deed of certification of succession may not be annulled except in the cases provided for by law.’

21 Under Article 679 of that code:

‘1. Evidence that the person who has obtained an order establishing succession is not an heir or that his share in the inheritance is other than that declared may be taken only in proceedings to annul or vary the order establishing succession, in accordance with the provisions of this chapter. However, a person who is a party to proceedings for an order establishing succession may request variation of the order establishing succession only if the request is based on a ground on which he was unable to rely in those proceedings and if he submits the request for variation 1 year from the date on which the possibility of doing so became available to him at the latest.

2. An application for the institution of such proceedings may be submitted by any interested party.

3. Where evidence is taken showing that the inheritance has been acquired in part or in full by a person other than the person stated in a final order establishing succession, the court having jurisdiction to rule on the succession shall, by varying that order, give a decision on the succession in accordance with the actual legal situation.

4. The provisions of paragraphs 1 to 3 shall apply *mutatis mutandis* to a registered deed of certification of succession and a declaration of legacy by vindication.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 22 WB's father, who died on 6 August 2016, was a Polish national with his habitual residence in Poland. WB was one of the parties to the procedure relating to her father's succession, instituted before Ms Bac, in her capacity as a notary established in Poland, to obtain a deed of certification of succession. That document was drawn up by that notary on 21 October 2016 in accordance with Polish law.
- 23 The deceased was a trader who carried on economic activity near the German-Polish border. WB wished to ascertain whether any capital had been placed in one or more German banks and to be made aware, if so, of the amount of that capital likely to be included in the estate. To that end, on 7 June 2017 WB asked to be issued with a copy of the deed of certification of succession drawn up by that notary and the attestation confirming that that deed constitutes a decision in a matter of succession within the meaning of Article 3(1)(g) of Regulation No 650/2012, submitted using the form set out in Annex 1 to Implementing Regulation No 1329/2014. In the alternative, in the event of a refusal to grant that request, the applicant in the main proceedings asked to be issued with a copy of the deed of certification of succession and the attestation confirming that that deed constitutes an authentic instrument in a matter of succession for the purposes of Article 3(1)(i) of Regulation No 650/2012, submitted using the form set out in Annex 2 to Implementing Regulation No 1329/2014.
- 24 By record of 7 June 2017, a notarial assistant performing his duties within the office managed by Ms Bac refused to grant those requests. He stated, in essence, that the deed of certification of succession was a 'decision' as defined in Article 3(1)(g) of Regulation No 650/2012 and that, since the Republic of Poland had not given the Commission notification, as required under Article 3(2) of that regulation, it was not possible for him to provide the certification using the form set out in Annex 1 to Implementing Regulation No 1329/2014. With regard to WB's request in the alternative, the notarial assistant indicated that the classification of the deed of certification of succession as a 'decision' prevented it from being an 'authentic instrument', so that, although it satisfied the conditions set out in Article 3(1)(i) of Regulation No 650/2012, it was not possible to issue the corresponding attestation using the form set out in Annex 2 to Implementing Regulation No 1329/2014.
- 25 On 7 June 2017 WB brought an action before the referring court, claiming that the deed of certification of succession met all the requirements for classification as a 'decision' within the meaning of Article 3(1)(g) of Regulation No 650/2012 and that the Republic of Poland's failure to notify the Commission of notaries drawing up deeds of certification of succession in accordance with the last subparagraph of Article 3(2) and Article 79 of that regulation did not alter the legal nature of the deed of certification of succession.
- 26 The referring court considers that, in order to rule on WB's action, it is necessary for it to ascertain whether the attestation referred to in Annex 1 to Implementing Regulation No 1329/2014 may also be issued in respect of procedural instruments that are not enforceable. In that regard, the referring court considers that a combined reading of Article 46(3)(b) and Article 39(2) of Regulation No 650/2012 argues in favour of using that attestation for any decision, including those that are not enforceable.

- 27 That court also considers that the concepts of ‘decision’ and ‘court’ as used in Regulation No 650/2012 must be given a more precise definition. It considers that Polish notaries who issue deeds of certification of succession exercise, so far as concerns establishing succession, ‘judicial functions like courts’, as stated in recital 20 of Regulation No 650/2012. It also notes that the deed of certification of succession produces the same effects as the final order establishing succession adopted by a court, so that it must be classified as a ‘decision’, as defined in Article 3(1)(g) of Regulation No 650/2012. However, that court is uncertain whether the concept of ‘decision’ means that such a decision is to be made by an authority having jurisdiction to rule on points of contention between the parties concerned.
- 28 As regards failure by Member States to notify the Commission, in breach of Article 79 of Regulation No 650/2012, the referring court considers that the content of that provision does not enable it to give a clear answer to the question whether that notification requirement gives rise to any rights or is purely indicative.
- 29 Lastly, the referring court indicates that, if it were to be held that the deed of certification of succession drawn up by a Polish notary cannot be regarded as a ‘decision’ for the purposes of Regulation No 650/2012, it is nonetheless indisputable that it meets the requirements to be classified as an ‘authentic instrument’ within the meaning of Article 3(1)(i) of that regulation.
- 30 In those circumstances, the Sąd Okręgowy w Gorzowie Wielkopolskim (Regional Court, Gorzów Wielkopolski, Poland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 46(3)(b) of Regulation [No 650/2012], in conjunction with Article 39(2) thereof, be interpreted as meaning that the issuing of an attestation concerning a decision in a matter of succession, the model for which is set out in Annex 1 to [Implementing Regulation No 1329/2014], is permissible also in relation to decisions which declare the status of heir but are not enforceable (even in part)?
 - (2) Must Article 3(1)(g) of Regulation [No 650/2012] be interpreted as meaning that a deed of certification of succession drawn up by a notary in accordance with a non-contentious application by all the parties to the certification procedure, which produces the legal effects of a final court order establishing succession — such as a deed of certification of succession drawn up by a Polish notary — constitutes a decision within the meaning of that provision ... and consequently: must the first sentence of Article 3(2) of Regulation [No 650/2012] be interpreted as meaning that the notary drawing up that kind of deed of certification of succession must be regarded as a court within the meaning of that provision?
 - (3) Must the second sentence of Article 3(2) of Regulation [No 650/2012] be interpreted as meaning that notification effected by a Member State pursuant to Article 79 of the regulation has informational value and is not a condition for regarding a legal professional with competence in matters of succession who exercises judicial functions as a court within the meaning of the first sentence of Article 3(2) of the regulation, where he satisfies the conditions laid down in that provision?
 - (4) In the event that the answer to Question 1, 2 or 3 is in the negative: Must Article 3(1)(i) of Regulation [No 650/2012] be interpreted as meaning that if a national procedural instrument certifying the status of heir, such as the Polish deed of certification of inheritance, is regarded as a decision within the meaning of Article 3(1)(g) of Regulation [No 650/2012], it cannot be regarded as an authentic instrument?

- (5) In the event that the answer to Question 4 is in the affirmative: Must Article 3(1)(i) of Regulation [No 650/2012] be interpreted as meaning that a deed of certification of succession drawn up by a notary in accordance with a non-contentious application by all the parties to the certification proceedings — such as a deed of certification of succession drawn up by a Polish notary — constitutes an authentic instrument within the meaning of that provision?

Consideration of the questions referred

Consideration of the second and third questions

- 31 By its second and third questions, which it is appropriate to examine together and first of all, the referring court asks, in essence, (i) whether failure by a Member State to notify the Commission of the exercise of judicial functions by notaries, as required under the second subparagraph of Article 3(2) of Regulation No 650/2012, is decisive for their classification as a ‘court’, and, if not, whether the first subparagraph of Article 3(2) of that regulation is to be interpreted as meaning that a notary who draws up a deed of certificate of succession, such as the deed at issue in the main proceedings, at the unanimous request of all the parties to the procedure conducted by the notary, in accordance with national legislation, such as that at issue in the main proceedings, constitutes a ‘court’ within the meaning of that provision and (ii) whether Article 3(1)(g) of Regulation No 650/2012 is to be interpreted as meaning that a deed of certification of succession, such as that at issue in the main proceedings, drawn up by a notary at the unanimous request of all the parties to the procedure conducted by the notary, constitutes a ‘decision’ within the meaning of that provision.
- 32 Under Article 3(1)(g) of Regulation No 650/2012, the term ‘decision’ covers any decision in a matter of succession given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court.
- 33 Thus, for the purposes of that provision, a decision is characterised by the fact that it was made by a ‘court’, so that, in order to answer the question whether a national deed of certification of succession, such as that at issue in the main proceedings, is to be classified as a ‘decision’, it is necessary to determine at the outset whether the authority which issued that deed is to be regarded as a ‘court’ within the meaning of Article 3(2) of that regulation.
- 34 Regarding the definition of the term ‘court’, according to the first subparagraph of Article 3(2) of Regulation No 650/2012, that term means any judicial authority and all other authorities and legal professionals with competence in matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that such other authorities and legal professionals offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State in which they operate may be made the subject of an appeal to or review by a judicial authority and have a similar force and effect as a decision of a judicial authority on the same matter.
- 35 The second subparagraph of Article 3(2) of that regulation provides that the Member States are to notify the Commission of, inter alia, the other non-judicial authorities which exercise judicial functions.
- 36 In that regard, Article 79 of Regulation No 650/2012 specifies that, on the basis of the notifications by the Member States, the Commission is to establish the list of the other authorities and legal professionals referred to in Article 3(2) of that regulation. The Member States are to notify the Commission of any subsequent changes to the information contained in that list, and the Commission is to amend the list accordingly.

37 In the present case, it should be pointed out that Polish notaries are not included in that list as the Republic of Poland has not designated them as non-judicial authorities exercising judicial functions like courts.

38 Thus, before determining whether a notary who draws up a deed of certification of succession at the unanimous request of all the parties to the procedure conducted by the notary in accordance with national legislation, such as that at issue in the main proceedings, fulfils the criteria set out in the first subparagraph of Article 3(2) of Regulation No 650/2012, it is necessary to give a ruling on the consequences of failure to notify the Commission, as required under the second subparagraph of Article 3(2) of that regulation.

The consequences of failure to notify the Commission pursuant to the second paragraph of Article 3(2) of Regulation No 650/2012

39 It should be noted that Article 3(2) of Regulation No 650/2012 does not list the authorities and legal professionals that are to be regarded as courts for the purposes of that regulation, but sets out the specific conditions which those authorities and legal professionals must satisfy to that end.

40 Indeed, as can be seen from the case-law of the Court, unlike, for example, 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), or 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), which do not include any general provision establishing the requirements that must be met in order for an authority to be classified as a court, Regulation No 650/2012 specifies, in Article 3(2) thereof, that the term ‘court’, within the meaning of that regulation, encompasses not only the judicial authorities but also all other authorities and legal professionals with competence in matters of succession which exercise judicial functions and which satisfy the conditions laid down by that provision (see, to that effect, judgments of 9 March 2017, *Zulfikarpašić*, C-484/15, EU:C:2017:199, paragraph 35, and of 9 March 2017, *Pula Parking*, C-551/15, EU:C:2017:193, paragraph 48).

41 Accordingly, authorities and legal professionals, other than judicial authorities, with competence in matters of succession must, in order to qualify as a ‘court’ within the meaning of the first subparagraph of Article 3(2) of Regulation No 650/2012, fulfil the criteria set out in that provision.

42 In that regard, under Regulation No 650/2012, for the purpose of drawing up the list referred to in Article 79 of that regulation, every Member State must verify whether the authorities with competence in matters of succession satisfy the conditions set out in the first subparagraph of Article 3(2) thereof for classification as ‘courts’ and notify the Commission of those authorities, in accordance with the second subparagraph of Article 3(2) of that regulation.

43 Although, where the Commission is so notified, that creates a presumption that the national authorities declared under Article 79 of Regulation No 650/2012 constitute ‘courts’ within the meaning of Article 3(2) of that regulation, the fact that a national authority has not been mentioned in such a notification cannot, per se, be sufficient for it to be concluded that that authority does not satisfy the conditions set out in Article 3(2) thereof (see, by analogy, judgment of 30 May 2018, *Czerwiński*, C-517/16, EU:C:2018:350, paragraph 31 and the case-law cited).

44 Indeed, as is apparent from recital 21 of Regulation No 650/2012, the question whether notaries in a given Member State are bound by the rules of jurisdiction set out in that regulation should depend on whether or not they are covered by the term ‘court’ for the purposes of that regulation and not on whether they are included in the list referred to in Article 79 of the regulation, drawn up on the basis of the notification referred to in the second subparagraph of Article 3(2) thereof.

- 45 A national court hearing a dispute concerning whether an authority or a legal professional with competence in matters of succession qualifies as a ‘court’ within the meaning of the first subparagraph of Article 3(2) of Regulation No 650/2012, or which has doubts as to the accuracy of the declarations made by a Member State, may query whether the conditions listed in that provision are satisfied in the case before it and, if so, submit a request to the Court of Justice for a preliminary ruling in that regard.
- 46 In that connection, it should be noted that the objective of Regulation No 650/2012, which is to ensure the proper administration of justice within the European Union, would be seriously undermined were it open to each Member State to determine, by refraining from including or, on the contrary, including, authorities and legal professionals who exercise judicial functions like courts in the communication to the Commission referred to in Article 79 of Regulation No 650/2012, whether those authorities and professionals are to be classified as a ‘court’, within the meaning of the first subparagraph of Article 3(2) of that regulation, without complying with the requirements expressly listed in that provision.
- 47 Thus, it cannot be inferred from the Republic of Poland’s failure to notify the Commission of Polish notaries pursuant to Article 79 of Regulation No 650/2012 that those notaries may not be classified as ‘courts’ where they satisfy the conditions laid down in that regulation.
- 48 Accordingly, the Republic of Poland’s failure to notify the Commission of notaries who exercise judicial functions, as provided for in the second subparagraph of Article 3(2) of Regulation No 650/2012, is of merely indicative value.
- 49 Consequently, it must be independently determined whether a notary who draws up a deed of certification of succession at the unanimous request of all the parties to the procedure conducted by the notary satisfies the conditions set out in the first subparagraph of Article 3(2) of Regulation No 650/2012 for classification as a ‘court’ within the meaning of that provision.

The concept of ‘court’ within the meaning of the first subparagraph of Article 3(2) of Regulation No 650/2012

- 50 As a preliminary point, it should be borne in mind that, according to settled case-law, it follows from the requirements of both the uniform application of EU law and the principle of equality that the terms of a provision of EU law which does not contain any explicit reference to the law of the Member States for the purpose of determining its meaning and scope must be given an autonomous and uniform interpretation throughout the European Union; that interpretation must take into account not only the wording of that provision but also its context and the objective pursued by the legislation in question (see, to that effect, judgment of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:485, paragraph 33).
- 51 Under the first subparagraph of Article 3(2) of Regulation No 650/2012, as noted in paragraph 34 above, non-judicial authorities or legal professionals with competence in matters of succession are included in the concept of ‘court’, within the meaning of that provision, where they exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority, provided that they satisfy the conditions listed in that provision.
- 52 The conditions listed in the first subparagraph of Article 3(2) of Regulation No 650/2012, as observed by the Advocate General in points 76 and 77 of his Opinion, ensure compliance with the principle of mutual trust in the administration of justice in the Member States, which underlies the application of the provisions of that regulation relating to the recognition and enforcement of decisions, in accordance with Chapter IV thereof, and which justifies the different rules applicable to the circulation of decisions and instruments in the Member States.

- 53 Although judicial functions and notarial functions are separate functions, it is nonetheless apparent from recital 20 of Regulation No 650/2012 that, in the context of that regulation, the term ‘court’ should be given a broad meaning, which also encompasses notaries where they exercise judicial functions in relation to certain matters of succession. Conversely, that same recital specifies that the term ‘court’ should not cover non-judicial authorities of a Member State empowered under national law to deal with matters of succession, such as the notaries in most Member States, where, as is usually the case, they do not exercise judicial functions.
- 54 Thus, it is necessary to determine whether, in the context of Regulation No 650/2012, a notary who draws up a deed of certification of succession exercises judicial functions within the meaning of Article 3(2) of that regulation.
- 55 In that regard, it should be borne in mind that the Court has ruled that the exercise of judicial functions means that the person concerned has the power to rule of his own motion on possible points of contention between the parties concerned (see, to that effect, judgment of 2 June 1994, *Solo Kleinmotoren*, C-414/92, EU:C:1994:221, paragraphs 17 and 18). In order for an authority to be regarded, in the light of the specific nature of its activities, as exercising a judicial function, it must be given the power to decide a legal dispute (see, to that effect, order of 24 March 2011, *Bengtsson*, C-344/09, EU:C:2011:174, paragraph 19 and the case-law cited). This is not the case where the powers of the professional concerned are entirely dependent on the will of the parties.
- 56 Therefore, an authority must be regarded as exercising judicial functions where it may have jurisdiction to hear and determine disputes in matters of succession. That criterion applies irrespective of whether the proceedings for issuing a deed of certification of succession are contentious or non-contentious (see, to that effect, judgment of 21 June 2018, *Oberle*, C-20/17, EU:C:2018:845, paragraph 44).
- 57 In the present case, it should be pointed out that, under Article 1027 of the Civil Code, a notary may attest that heirs have rights of succession in regard to third parties who are not successors by a registered deed of certification of succession in cases involving non-contentious successions.
- 58 Such a deed of certification of succession may be issued by the notary only at the unanimous request of the heirs, pursuant to Article 95c(2)(1) of the Notarial Code. The notary is to verify the facts of his own motion and, under Article 95e(1) of that code, is not to issue that certificate unless he has no doubts as to the jurisdiction of the national courts, the content of applicable foreign law, the identity of the heir, the amount of the shares in the inheritance, and, where the testator has made a legacy ‘by vindication’, as to the person to whom the testator made the bequest ‘by vindication’ and the subject matter thereof. In addition, under Article 95e(2)(2) of the Notarial Code, the notary must refuse to draw up the deed of certification of succession, inter alia, if not all the parties were present when the record of succession was made.
- 59 It follows from those provisions that those notarial activities relating to the issuing of a deed of certification of succession may be exercised at the unanimous request of the interested parties, without affecting the prerogatives of the court in the absence of agreement between the parties, even though notaries have an obligation, under Polish law, to verify that the legal requirements for issuing a deed of certification of succession are complied with, since they have no decision-making powers.
- 60 In addition, it should be pointed out that, under Articles 4 and 5 of the Notarial Code, notaries are self-employed professionals, which entails, as their main activity, the provision of various different services for remuneration, fixed on the basis of an agreement with the parties, within the limits of a scale.
- 61 Therefore, those activities cannot be regarded as forming part, as such, of the exercise of judicial functions.

- 62 As the conditions listed in Article 3(2) of Regulation No 650/2012 are cumulative, there is no need to determine whether the other conditions laid down in that provision are satisfied, given that the condition relating to the exercise of judicial functions is not satisfied in the present case.
- 63 Consequently, since a deed of certification of succession, such as that at issue in the main proceedings, is not issued by a court within the meaning of Article 3(2) of Regulation No 650/2012, such a deed does not constitute, as indicated in paragraph 32 above, a ‘decision’ in a matter of succession for the purposes of Article 3(1)(g) of that regulation.
- 64 In the light of the foregoing considerations, the answer to the second and third questions is that:
- the second subparagraph of Article 3(2) of Regulation No 650/2012 must be interpreted as meaning that failure by a Member State to notify the Commission of the exercise of judicial functions by notaries, as required under that provision, is not decisive for their classification as a ‘court’;
 - the first subparagraph of Article 3(2) of Regulation No 650/2012 must be interpreted as meaning that a notary who draws up a deed of certificate of succession at the unanimous request of all the parties to the procedure conducted by the notary, such as the deed at issue in the main proceedings, does not constitute a ‘court’ within the meaning of that provision and, consequently, Article 3(1)(g) of that regulation must be interpreted as meaning that such a deed does not constitute a ‘decision’ within the meaning of that provision.

Consideration of the first and fourth questions

- 65 Having regard to the answer given to the second and third questions, there is no need to answer the first and fourth questions.

Consideration of the fifth question

- 66 By its fifth question, the referring court asks, in essence, whether Article 3(1)(i) of Regulation No 650/2012 is to be interpreted as meaning that a deed of certification of succession, such as the Polish deed of certification of succession, drawn up by a notary at the unanimous request of all the parties to the procedure conducted by the notary, constitutes an ‘authentic instrument’ within the meaning of that provision, which may be issued at the same time as the form referred to in the second subparagraph of Article 59(1) of that regulation, which corresponds to the form set out in Annex 2 to Implementing Regulation No 1329/2014.
- 67 Under Article 3(1)(i) of Regulation No 650/2012, ‘authentic instrument’ means a document in a matter of succession which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which relates to the signature and the content of the authentic instrument and has been established by a public authority or other authority empowered for that purpose by the Member State of origin.
- 68 In addition, it is apparent from recital 62 of that regulation that it is necessary to adopt an autonomous interpretation of the concept of ‘authenticity’ which satisfies a number of criteria, including the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. Authenticity should also cover the factual elements recorded by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated.

- 69 In the present case, as pointed out by the Polish Government, notaries have the power, under Polish law, to draw up instruments relating to a succession, and the deed of certification of succession is formally registered as an authentic instrument. In addition, pursuant to Article 95j of the Notarial Code, such a deed is to have the same effects as a final order establishing succession.
- 70 It should also be pointed out that, pursuant to Article 95e of the Notarial Code, as noted in paragraph 58 above, a notary is required to carry out checks, which may lead to him refusing to draw up the deed of certification of succession, so that the authenticity of that instrument relates to both its signature and its content.
- 71 Therefore, a deed of certification of succession, such as that at issue in the main proceedings, satisfies the conditions laid down in Article 3(1)(i) of Regulation No 650/2012. Accordingly, it constitutes an authentic instrument, a copy of which may be issued together with the form referred to in the second subparagraph of Article 59(1) of that regulation, which corresponds to the form set out in Annex 2 to Implementing Regulation No 1329/2014.
- 72 In the light of the foregoing, the answer to the fifth question is that Article 3(1)(i) of Regulation No 650/2012 is to be interpreted as meaning that a deed of certification of succession, such as that at issue in the main proceedings, drawn up by a notary at the unanimous request of all the parties to the procedure conducted by the notary, constitutes an ‘authentic instrument’ within the meaning of that provision, which may be may be issued at the same time as the form referred to in the second subparagraph of Article 59(1) of that regulation, which corresponds to the form set out in Annex 2 to Implementing Regulation No 1329/2014.

Costs

- 73 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **The second subparagraph of Article 3(2) 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 must be interpreted as meaning that failure by a Member State to notify the Commission of the exercise of judicial functions by notaries, as required under that provision, is not decisive for their classification as a ‘court’.**

The first subparagraph of Article 3(2) of Regulation No 650/2012 must be interpreted as meaning that a notary who draws up a deed of certificate of succession at the unanimous request of all the parties to the procedure conducted by the notary, such as the deed at issue in the main proceedings, does not constitute a ‘court’ within the meaning of that provision and, consequently, Article 3(1)(g) of that regulation must be interpreted as meaning that such a deed does not constitute a ‘decision’ within the meaning of that provision.

2. **Article 3(1)(i) of Regulation No 650/2012 is to be interpreted as meaning that a deed of certification of succession, such as that at issue in the main proceedings, drawn up by a notary at the unanimous request of all the parties to the procedure conducted by the notary, constitutes an ‘authentic instrument’ within the meaning of that provision, which may be**

issued at the same time as the form referred to in the second subparagraph of Article 59(1) of that regulation, which corresponds to the form set out in Annex 2 to Implementing Regulation No 1329/2014.

[Signatures]