



Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 22 February 2018¹

Case C-20/17

Vincent Pierre Oberle

(Request for a preliminary ruling
from the Kammergericht Berlin (Higher Regional Court, Berlin, Germany))

(Request for a preliminary ruling — Judicial cooperation in civil matters — European Certificate of Succession — General jurisdiction of the court of a Member State to rule on the succession as a whole — Legislation of another Member State providing for the creation of a national certificate of succession used for similar purposes)

I. Introduction

1. 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 Succession² has been applied since 17 August 2015. The present request for a preliminary ruling is the third in a succession of requests in which a court of a Member State is asking the Court to interpret the provisions of that regulation.³

2. On this occasion the uncertainties of the referring court concern the relationship between Regulation No 650/2012 and the provisions of national law on matters of succession. To be more precise, the Kammergericht Berlin (Higher Regional Court, Berlin, Germany) seeks to ascertain whether Article 4 of Regulation No 650/2012 also determines jurisdiction over procedures for issuing national certificates of succession. This would mean that Member States could not introduce rules determining national jurisdiction in that regard in a manner different from that laid down in that regulation.

3. This issue is extremely complicated and the practical relevance of the Court's future judgment in the present case is broader than it was in *Mahnkopf*.⁴ I recall that the pending case in *Mahnkopf* concerns an individual provision of German law. This case, on the other hand, involves the resolution of an issue which could be relevant to all Member States where provision is made for judicial authorities to issue national certificates of succession.⁵

¹ Original language: Polish.

² OJ 2012 L 201, p. 107.

³ The Court has already ruled on the first request for a preliminary ruling by judgment of 12 October 2017, *Kubicka* (C-218/16, EU:C:2017:755, paragraphs 53 and 54). The Court's judgment on the second request for a preliminary ruling is still pending. I delivered my Opinion in that case on 13 December 2017. See my Opinion in *Mahnkopf* (C-558/16, EU:C:2017:965, point 90).

⁴ See footnote 3.

⁵ It should also be noted that on 24 November 2017 a request for a preliminary ruling was made to the Court in which a Polish court asks for clarification of uncertainties concerning the issuing of national certificates of succession by a non-judicial authority, in that case a notary. I am referring here to the request in *WB*, C-658/17.

II. The legal framework

A. *European Union law*

4. Under Article 3(1)(g) and (2) of Regulation No 650/2012:

‘(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;

...

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.

...’

5. Under Article 4 of Regulation No 650/2012, entitled ‘General jurisdiction’ and contained in Chapter II of that regulation, entitled ‘Jurisdiction’:

‘The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.’

6. Article 62, entitled ‘Creation of a European Certificate of Succession’, stipulates:

‘1. 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.

2. The use of the Certificate shall not be mandatory.

3. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with this Chapter.’

B. German law

7. Under Paragraph 105 of the Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (Law on proceedings in family matters and matters subject to non-contentious proceedings) ('the FamFG'), in the version of 17 December 2008, in force since 1 September 2009:

'In other proceedings under the present legislation, the German courts shall have jurisdiction if a German court has territorial jurisdiction.'

8. In German law, territorial jurisdiction in matters of succession is governed by Paragraph 343 of the FamFG. That provision states, in the version resulting from the Gesetz zum Internationalen Erbrecht und zur Änderung von Vorschriften zum Erbschein sowie zur Änderung sonstiger Vorschriften (Law on international succession law and amending the provisions governing the certificate of succession and other provisions) of 29 June 2015, which came into force on 17 August 2015:

'(1) The court in the district of which the deceased had his habitual residence at the time of death shall have territorial jurisdiction.

(2) If, at the time of death, the deceased had no habitual residence in Germany, the court in the district of which the deceased had his last habitual residence in Germany shall have jurisdiction.

(3) If jurisdiction does not arise under paragraphs (1) and (2), the Amtsgericht Schöneberg [(Local Court, Schöneberg)] in Berlin shall have jurisdiction if the deceased is a German national or if part of the estate is in Germany. ...'

III. The facts of the dispute in the main proceedings and the question referred for a preliminary ruling

9. Adrien Théodore (A.T.) Oberle, a French national, who had his last habitual residence in France, died on 28 November 2015. A.T. Oberle left behind two sons, one of whom is Vincent Pierre (V.P.) Oberle, the appellant in the proceedings before the referring court. The assets of the estate are located in France and Germany.

10. A French court issued a national certificate of succession stating that V.P. Oberle and his brother each inherit half of the deceased's estate.

11. V.P. Oberle subsequently applied to the Amtsgericht Schöneberg (Local Court, Schöneberg, Berlin, Germany) — as the court having jurisdiction under Paragraph 105 and the first sentence of Paragraph 343(3) of the FamFG for matters relating to the succession of A.T. Oberle — for the issuing of a national certificate of succession limited to the estate located in Germany. That certificate was to state that the estate is inherited by V.P. Oberle and his brother under French law.

12. However, the Amtsgericht Schöneberg (Local Court, Schöneberg) declared that it lacked jurisdiction to issue a national certificate of succession under Articles 4 and 15 of Regulation No 650/2012. That court considered that the provisions of German law cannot determine international jurisdiction over the proceedings concerning V.P. Oberle's application. This is because the provisions of national law must yield to the provisions of Regulation No 650/2012. This means that the French courts, as the courts of the Member State where the deceased had his habitual residence at the time of death, and not the German courts, have jurisdiction to rule on the succession as a whole, including on V.P. Oberle's application.

13. V.P. Oberle contested the decision of the Amtsgericht Schöneberg (Local Court, Schöneberg) before the referring court.

IV. The question referred for a preliminary ruling and the proceedings before the Court of Justice

14. In those circumstances, the Kammergericht Berlin (Higher Regional Court, Berlin) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 4 of Regulation [No 650/2012] to be interpreted as meaning that it also determines exclusive international jurisdiction in respect of the granting, in the Member States, of national certificates of succession which have not been replaced by the European certificate of succession (see Article 62(3) of Regulation No 650/2012), with the result that divergent provisions adopted by national legislatures with regard to international jurisdiction in respect of the granting of national certificates of succession — such as Paragraph 105 of the [FamFG] in Germany — are ineffective on the ground that they infringe higher-ranking European law?’

15. The request for a preliminary ruling was lodged at the Registry of the Court on 18 January 2017.

16. Written observations have been submitted by the German, Polish and Portuguese Governments and by the European Commission. The German, French and Polish Governments and the Commission attended the hearing, which was held on 23 November 2017.

V. Analysis

A. Introductory remarks

17. The question referred has been worded in a manner which may suggest that the referring court was seeking clarification as to whether Article 4 of Regulation No 650/2012 defines ‘exclusive jurisdiction’ over procedures for issuing national certificates of succession.

18. However, it should be borne in mind that the term ‘exclusive jurisdiction’ has a specific meaning in the context of the provisions governing international civil procedure.

19. In the context of the Brussels regime the Court has clarified that the rules establishing exclusive jurisdiction constitute an exception to the general rule governing the attribution of jurisdiction⁶ and are specifically binding on both litigants and courts.⁷ For example, litigants cannot, in principle, exclude the application of those provisions by agreement or by entering an appearance.

20. However, I consider that, for the purposes of answering the question referred for a preliminary ruling, it is irrelevant whether or not Article 4 of Regulation No 650/2012 establishes ‘exclusive jurisdiction’ as defined above. This is because the Member States cannot use provisions of national law to modify the rules of jurisdiction laid down in EU law if they do not provide otherwise, even where those rules concern non-exclusive jurisdiction.

21. Therefore, by its question the referring court seeks to establish, in essence, whether Article 4 of Regulation No 650/2012 determines jurisdiction over procedures for issuing national certificates of succession.

⁶ See judgment of 12 May 2011, *BVG* (C-144/10, EU:C:2011:300, paragraph 30).

⁷ See judgment of 13 July 2006, *GAT* (C-4/03, EU:C:2006:457, paragraph 24).

22. In order to answer that question, it is first necessary to assess whether or not national certificates of succession and the procedures associated therewith fall within the scope of Regulation No 650/2012.

B. Do national certificates of succession fall within the scope of Regulation No 650/2012?

1. National certificates of succession in the law of the Member States

23. The results of comparative studies show that the national certificates of succession which are used in various Member States are profoundly different.

24. Taking as a criterion which authority takes part in issuing the national certificate of succession, it is possible to distinguish three categories of such certificates: judicial certificates, certificates issued by notaries, and private affirmations.⁸ However, that criterion is unreliable when it comes to characterising national certificates of succession, since even within those categories there are profound differences between the approaches adopted in the individual Member States. Those differences concern the nature of the national certificates of succession, the range of determinations forming the basis of the information contained in the certificates and the manner in which they are made, and also the effects of those certificates.⁹

25. In any event, it can be concluded, in essence, that national certificates of succession reveal information concerning the estate of a specific person, including information on the persons who have specific rights as a result of the death of the deceased. Those certificates normally enable those facts to be demonstrated to public authorities and third parties.¹⁰

2. National certificates of succession in the context of Regulation No 650/2012

26. Regulation No 650/2012 does not use the term ‘national certificate of succession’ at all. However, what is found in the regulation is the expression ‘internal documents used for similar purposes [to those for which the European Certificate of Succession is used] in the Member States’, of which — under Article 62(3) of Regulation No 650/2012 and the first sentence of recital 67 thereof — the European Certificate of Succession ‘shall not take the place’.

27. According to the clarifications contained in the second sentence of recital 67 of Regulation No 650/2012, a European Certificate of Succession is to be used to demonstrate the status and/or the rights and powers of, inter alia, heirs in Member States other than the Member State where the certificate was issued. National certificates of succession are internal documents which serve similar purposes.¹¹

⁸ J. Basedow, A. Dutta, C. Bauer et al., Max Planck Institute for Comparative and International Private Law, ‘Comments on the European Commission’s 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’, *Rabels Zeitschrift für ausländisches und internationales Privatrecht*, vol. 74, 2010, No 266.

⁹ B. Laukemann, ‘The European Certificate of Succession: Portrait of a New Instrument in European Private International Law’, in: B. Hess, M. Bergström, E. Storskrubb (editors), *EU Civil Justice: Current Issues and Future Outlook*, Hart Publishing, Oxford, 2016, p. 164.

¹⁰ See Deutsches Notarinstitut (in collaboration with H. Dörner and P. Lagarde), *Étude de droit comparé sur les règles de conflits de juridictions et de conflits de lois relatives aux testaments et successions dans les Etats membres de l’Union Européenne. Rapport Final: Synthèse et Conclusions*, http://ec.europa.eu/justice/civil/document/index_en.htm, pp. 76-86; P. Wautelet, in: A. Bonomi, P. Wautelet, *Le droit européen des successions, Commentaire du règlement (UE) n° 650/2012, du 4 juillet 2012*, 2nd edition, Bruylant, Brussels, 2016, pp. 772-775.

¹¹ See point 25 of this Opinion.

28. The referring court also views the national certificate of succession at issue in the main proceedings as an ‘internal document’ for the purposes of Article 62(3) of Regulation No 650/2012. This is apparent from the fact that the question referred mentions ‘national certificates of succession which have not been replaced by the European certificate of succession’. Moreover, the question refers directly to Article 62(3) of Regulation No 650/2012.

3. National certificates of succession and the scope of Regulation No 650/2012

29. The point of departure for further considerations is clarifying whether or not national certificates of succession fall within the scope of Regulation No 650/2012.

(a) Positions of the parties

30. Only the Polish Government, in its written observations, and the Commission, in the position which it set out at the hearing, refer directly to this matter. That government and the Commission consider that national certificates of succession and the procedures for issuing them fall within the scope of Regulation No 650/2012.

31. The German Government also refers indirectly to this matter. In that government’s view, it follows from Article 62(3) of Regulation No 650/2012 that the provisions of national law governing the issuing of such certificates are to be applied in parallel with the provisions of Regulation No 650/2012. A similar position is taken by the Portuguese Government.

(b) Article 1 of Regulation No 650/2012 as a provision determining the scope of that regulation

32. Regulation No 650/2012 contains rules of substantive law (conflict of laws rules) and rules on international civil procedure (rules of jurisdiction). The material scope of Regulation No 650/2012, as determined by Article 1 thereof, is essentially the same as regards both types of provision.¹²

33. Regulation No 650/2012 relates to succession to the estates of deceased persons (first sentence of Article 1(1) thereof). The matters excluded from the scope of that regulation are listed in Article 1(2) thereof. They are, however, objective and, in principle, do not concern the legal instruments and procedures relating to matters of succession.

34. A particular exception is Article 1(2)(1), which excludes from the scope of Regulation No 650/2012 any recording in a register of rights in immovable or movable property and concerning the legal requirements therefor and the effects of recording or failing to record them.¹³ Article 1(2) of Regulation No 650/2012 contains no provisions which might suggest that other legal instruments or procedures which certainly concern succession to the estates of deceased persons do not fall within the scope of that regulation.

(c) The relevance of Article 62(3) of Regulation No 650/2012 in determining the scope of that regulation

35. The question arises as to whether or not the exclusion of national certificates of succession from the scope of Regulation No 650/2012 is determined by the first sentence of Article 62(3) thereof, which provides that the European Certificate of Succession ‘shall not take the place of’ internal documents used for similar purposes in the Member States.

¹² See my Opinion in *Mahnkopf* (C-558/16, EU:C:2017:965, point 90).

¹³ In this respect, see judgment of 12 October 2017, *Kubicka* (C-218/16, EU:C:2017:755, paragraphs 53 and 54).

36. Some academic writers take the view that the first sentence of Article 62(3) of Regulation No 650/2012 outlines the relationship between the European Certificate of Succession and national certificates of succession. Its objective is not to exclude national certificates of succession falling outside the scope of the rules of jurisdiction laid down in Regulation No 650/2012.¹⁴

37. I concur with this view. It should be noted that, under Article 62(2) of Regulation No 650/2012, the use of the European Certificate of Succession is not to be mandatory. In the light of the guidance set out in the second sentence of recital 69 of Regulation No 650/2012, persons entitled to apply for a European Certificate of Succession are under no obligation to do so. Such persons are free to use the ‘other instruments available under [the] Regulation (decisions, authentic instruments and court settlements)’. Therefore, those instruments are to be used for the same purposes as those for which the European Certificate of Succession can be used. National certificates of succession must also be classified as such instruments. This is because they are intended to be used for similar purposes to the European Certificate of Succession.¹⁵ This means that national certificates of succession are therefore also ‘available’ — to use the wording contained in recital 69 of Regulation No 650/2012 — under that regulation.

38. An interpretation of Article 62(3) of Regulation No 650/2012 based on the assumption that national certificates of succession are intended for internal use in a particular Member State does not lead to a different conclusion. This might mean that the European Certificate of Succession does ‘not take the place of’ national certificates of succession because it is to be issued for use in Member States other than the State whose authorities are competent to issue such a certificate (Article 62(1) of Regulation No 650/2012).

39. I do not wish, at this juncture, to resolve the issue, about which I have doubts, relating to the possibility of distinguishing between the intended purposes of certificates of succession. Nonetheless, to date it has been possible to use national certificates of succession also in other Member States. There is nothing to support a finding that the Union legislature sought to change that state of affairs. In the light of the second sentence of recital 69 of Regulation No 650/2012, the persons concerned can use other instruments for the same purposes as that for which the European Certificate of Succession is used.

(d) Interim conclusion

40. The scope of Regulation No 650/2012 has been demarcated in such a way that, both in the context of conflict of laws rules and rules of jurisdiction, it relates to the entirety of the issues connected with succession to the estates of deceased persons, in so far as the regulation itself does not provide for the exclusion of certain matters. No exclusion can be found in Regulation No 650/2012 concerning national certificates of succession and the procedures associated therewith.

41. I therefore consider that legal instruments such as national certificates of succession and the procedures associated therewith fall within the scope of Regulation No 650/2012. That still does not determine whether a national certificate of succession such as that at issue in the main proceedings is a ‘decision’ or an ‘authentic instrument’ for the purpose of that regulation.

¹⁴ See, to that effect, M. Margoński, ‘Wyłączny charakter jurysdykcji wynikającej z art. 4 unijnego rozporządzenia spadkowego (analiza na kanwie pytania prejudycjalnego w sprawie C-20/17, Oberle)’, *Polski Proces Cywilny*, 2017, nr 3, p. 447. In interpreting this provision, academic writers have discussed some ways in which relationships may be formed between the European Certificate of Succession and national certificates of succession. See A. Fötschl, ‘The Relationship of the European Certificate of Succession to National Certificates’, in: A. Bonomi, Ch. Schmid (editors), *Successions internationales. Réflexions autour du futur règlement européen et de son impact pour la Suisse. Actes de la 22e Journée de droit international privé du 19 mars 2010 à Lausanne*, Geneva, 2010, p. 101; D. Stamatiadis, in: H. Pamboukis (editor), *EU Succession Regulation No 650/2012: A Commentary*, C.H. Beck, Hart Publishing, Oxford, 2017, p. 591.

¹⁵ See point 27 of this Opinion.

C. Does Article 4 of Regulation No 650/2012 also determine jurisdiction over procedures for issuing national certificates of succession?

42. Moving on to the main part of the analysis of the question referred, it is necessary to assess whether Article 4 of Regulation No 650/2012 determines jurisdiction over procedures for issuing national certificates of succession such as that at issue in the main proceedings.

43. In that context, the referring court points out that Regulation No 650/2012 contains no provisions which directly govern jurisdiction to issue national certificates of succession. If Article 4 of Regulation No 650/2012 were to relate to national certificates of succession, Article 64(1) thereof concerning the European Certificate of Succession would be unnecessary.

44. Even supposing that Article 4 of Regulation No 650/2012 were to determine jurisdiction over procedures for issuing national certificates of succession, that provision could not — in the view of the referring court — apply in any event in the main proceedings. That would be the case if a national certificate of succession such as that at issue in the main proceedings were to constitute a ‘decision’ for the purpose of that regulation. However, the referring court considers that this is not the case. Although the issuing of such a certificate is the result of a decision, it contains only factual findings. It contains nothing which could be considered legally binding.

1. Positions of the parties

45. The German, French and Portuguese Governments consider that Article 4 of Regulation No 650/2012 does not determine international jurisdiction over procedures for issuing national certificates of succession, while the Polish Government and the Commission take the opposite view.

46. The German Government expresses the view that Article 4 of Regulation No 650/2012 determines jurisdiction over procedures in which ‘decisions’ are given, while the national certificate of succession which is the subject of the request for a preliminary ruling is not of that nature. The EU legislature does not — in the view of the German Government — regard national certificates of succession as ‘decisions’, since in Article 62(3) of Regulation No 650/2012 it defines such certificates as ‘internal documents’. The issuing of a national certificate of succession by a court does not change the classification of that certificate under Regulation No 650/2012. It still cannot be regarded as a ‘decision’.

47. A position in that spirit is also maintained by the French Government, which shares the view that a national certificate of succession which is issued by a court exercising a judicial function may be regarded as a ‘decision’. However, activities consisting in the issuing of national certificates of succession are not of that nature where they consist in establishing specific facts without conducting an assessment thereof and without the parties concerned being able to take action of their own motion in that regard.

48. In turn, the Portuguese Government argues that the national certificate of succession at issue in the main proceedings must — like the European Certificate of Succession — be regarded as a hybrid instrument. This means that Article 4 of Regulation No 650/2012 cannot apply in the main proceedings.

49. For its part, the Commission considers that the Member States can decide for themselves to whom they will entrust the issuing of national certificates of succession. Nonetheless, if they entrust that task to the courts, the Member State concerned must accept the effects of that choice. A national certificate of succession issued by a court constitutes — as is also argued by the Polish Government — a ‘decision’ for the purpose of Article 3(1)(g) of Regulation No 650/2012, regardless of the position taken by national law in that regard.

50. In their observations, the parties refer, in essence, to the referring court's twin track argument, which to a large extent is a synthesis of the positions set out in the academic writings on the matter under discussion. Some authors maintain that the rules of jurisdiction in Regulation No 650/2012 do not apply to procedures for issuing national certificates of succession,¹⁶ while others consider that the regulation — except as regards the provisional measures referred to in Article 19 thereof — governs national jurisdiction in matters of succession universally and consequently takes the place of all provisions of national law on those matters.¹⁷

2. Introductory remark

51. I consider that there are two lines of reasoning which can provide a helpful answer to the referring court.

52. The first consists in assessing a national certificate of succession such as that at issue in the main proceedings. It must be possible for it to be classified either as a 'decision' for the purpose of Article 3(1)(g) of Regulation No 650/2012 or as an 'authentic instrument' for the purpose of Article 3(1)(i) thereof. Classifying that certificate as an 'authentic instrument' could lead to the conclusion that the judicial authorities of a Member State are not in principle bound by the rules of jurisdiction, since the regulation does not determine which authorities may draw up such instruments.

53. The second possibility consists in interpreting Article 4 of Regulation No 650/2012 so as to establish whether or not that provision determines jurisdiction over all procedures in matters relating to succession before the judicial authorities of the Member States.

54. I consider that such a possibility is indicated by the arguments put forward by the Polish Government and the Commission. This would mean that the classification of a national certificate, such as that at issue in the main proceedings, is essentially irrelevant for the purpose of providing an answer to the question referred.

55. In this Opinion I will employ the second of those lines of reasoning. The point of departure for further considerations will be establishing whether Article 4 of Regulation No 650/2012 determines jurisdiction over procedures in matters relating to succession before the judicial authorities of the Member States.

56. Only if the answer to that question is in the negative will it be necessary to determine whether or not a national certificate of succession, such as that at issue in the main proceedings, constitutes a 'decision' or an 'authentic instrument' for the purpose of that regulation.

16 Ch. Dorsel, 'Remarques sur le certificat successoral européen', in: *Europe for Notaries. Notaries For Europe. Training 2015–2017*, pp. 90-91, <http://www.notaries-of-europe.eu/index.php?pageID=15081>.

17 K. Weitz, 'Jurysdykcja krajowa w sprawach spadkowych w świetle rozporządzenia spadkowego', in: M. Pazdan (editor), *Nowe europejskie prawo spadkowe*, Wolters Kluwer, Warsaw, 2015, p. 42. In this context, certain authors appear to attach greater importance to the classification of the national certificate of succession and consider that it constitutes a decision for the purpose of Regulation No 650/2012 — see P. Wautelet, in: A. Bonomi, P. Wautelet, op.cit. (mentioned in footnote 10 above), p. 184. In the judgment of the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Court, Hamburg, Germany) of 16 November 2016 (2 W 85/16, *Praxis der Freiwilligen Gerichtsbarkeit*, 2017, Heft 3, p. 129) the view was expressed that a 'decision' for the purpose of Article 3(1)(g) of Regulation No 650/2012 means any decision in a matter of succession given by a court of a Member State, whatever the decision may be called, 'and thus also a certificate of succession' (paragraph 23). On that basis it was found that the German court does not have jurisdiction for a matter relating to the issuing of a national certificate of succession concerning a deceased person who had his last habitual residence in Spain. Under Article 4 of Regulation No 650/2012, it is the courts of the Member State in which the deceased had his habitual residence at the time of death which are to have jurisdiction to rule on the succession as a whole (paragraph 22).

3. *Literal interpretation*

57. In order to establish the scope of Article 4 of Regulation No 650/2012 by means of a literal interpretation, so as to determine whether or not it also relates to procedures for issuing national certificates of succession such as that at issue in the main proceedings, it is necessary to interpret the terms ‘court’ and ‘to rule on the succession as a whole’ in the context of that regulation.

(a) The term ‘court’ in the context of Regulation No 650/2012

58. For the purposes of Regulation No 650/2012, the term ‘court’ is defined in Article 3(2) thereof. It covers ‘any judicial authority’ and also all other authorities and legal professionals with competence in matters of succession, provided, however, that the other requirements laid down in that provision are met.

59. In the light of the guidance set out in the second sentence of recital 20 of Regulation No 650/2012, the term ‘court’ should be given a broad meaning so as to cover not only ‘courts in the true sense of the word, exercising judicial functions’, but also other persons who, in certain matters, exercise judicial functions like courts.

60. This might suggest that an authority which formally falls within the judicial structure of a particular Member State, but which does not exercise judicial functions within a specific procedure, is not in fact a ‘court’ for the purpose of Regulation No 650/2012.

61. However, the wording of Article 3(2) of Regulation No 650/2012 may also militate against a restrictive interpretation of the term ‘court’ in so far as it concerns ‘judicial authorities’. That provision stipulates that the term ‘court’ covers ‘any judicial authority’.

62. Furthermore, no excessively remote conclusions can be drawn from the guidance set out in the second sentence of recital 20 of Regulation No 650/2012 (the term ‘court’ covers ‘courts in the true sense of the word, exercising judicial functions’). The fact that the term ‘court’ must be interpreted in a certain manner in order to remove any doubt that not only a court exercising a judicial function is covered by that term cannot lead to the unequivocal conclusion that that term does not cover ‘a court in the true sense of the word’ which does not exercise such functions in specific proceedings.

63. Nor is such a conclusion supported by other recitals of Regulation No 650/2012, namely the third and fourth sentences of recital 20 and recitals 21, 22 and 36, which make it clear that ‘non-judicial authorities’ which do not exercise judicial functions are not bound by the rules of jurisdiction under that regulation. Those recitals do not relate to ‘judicial authorities’.

64. I therefore consider that a literal interpretation of the term ‘court’ mentioned in Article 3(1)(g) of Regulation No 650/2012 cannot establish that Article 4 of that regulation determines jurisdiction only over procedures in which a judicial authority exercises judicial functions.

(b) The expression ‘to rule on the succession as a whole’

65. In their observations, the German and Polish Governments and the Commission refer to a certain peculiarity of Article 4 of the German-language version of Regulation No 650/2012, which refers to the courts of the Member States having jurisdiction ‘for decisions on matters of succession’ (‘für Entscheidungen in Erbsachen’). The wording of the German version of the regulation could be an indication that that provision determines jurisdiction only over procedures in which the courts of the Member States give a ‘decision’ for the purpose of Article 3(1)(g) of that regulation.

66. However, in other language versions of Regulation No 650/2012, the term ‘deciding’ does not occur in Article 4; instead those versions refer to the concept of ‘ruling’¹⁸ on the succession. Therefore, the wording of the German-language version of that regulation cannot be regarded as decisive.

67. A broad interpretation of Article 4 of Regulation No 650/2012 might also be supported by the fact that it determines jurisdiction to rule ‘on the succession as a whole’.

68. However, it may be relatively difficult to establish what meaning should be attached to the term ‘rule’ in the context of the rules determining the jurisdiction of the courts of the Member States. Article 3(1)(g) of Regulation No 650/2012 contains only a definition of ‘decision’. It is not obvious that those provisions, which refer to ‘ruling’ by the courts, are in fact using the verb form of the term ‘decision’ in the meaning given to that term under Article 3(1)(g) of that regulation.

69. Those difficulties are all the greater when use is made of the definition set out in Article 3(1)(g) of Regulation No 650/2012. The basic difficulty regarding interpretation arises from the fact that most language versions of Regulation No 650/2012 use the same word ‘decision’ in Article 3(1)(g) of that regulation in order to define the term ‘decision’ (*idem per idem*).¹⁹

70. In advocating the need to interpret Article 4 of Regulation No 650/2012 in the light of the definition of ‘decision’ set out in Article 3(1)(g) thereof, in the sense that a ‘ruling’* consists in the exercise of judicial functions, the referring court and the German and French Governments in fact appear to be referring to the concept of ‘judgment’ which the Court has developed in its case-law in the context of the Brussels regime.

(c) The term ‘judgment’ in the context of the Brussels regime

71. In the context of the Brussels regime, which — in a manner similar to Article 3(1)(g) of Regulation No 650/2012 — defines a judgment as ‘any judgment given by a court or tribunal of a Member State’,²⁰ the Court has made it clear that a ‘judgment’ must emanate from a judicial body deciding on its own authority on the issues between the parties.²¹

72. The question arises as to whether that definition can apply to Regulation No 650/2012.

73. I do not consider that in the context of Article 3(1)(g) of Regulation No 650/2012 it is possible to require a ‘decision’ within the meaning of that provision to have concerned issues between the parties. On the basis of the guidance set out in recital 59 of that regulation it can be concluded that it is in fact irrelevant whether the ‘decision’ was given in contentious or non-contentious proceedings.

18 For example, in the English- (‘rule’) and French- (‘statuer’) language versions of Regulation No 650/2012.

19 Examples of this are the German (“‘Entscheidung” jede von einem Gericht eines Mitgliedstaats in einer Erbsache erlassene Entscheidung ...”), English (“‘decision” means any decision in a matter of succession ...”) and French (“‘décision”, toute décision en matière de successions ...”) versions. However, in a few language versions, the defined term and the defining term are not identical. For example, in the Polish version, the term defined in Article 3(1)(g) of Regulation No 650/2012 is ‘orzeczenie’, while the defining term is ‘decyzja’ (“‘orzeczenie” oznacza każdą decyzję w sprawach dotyczących dziedziczenia”). Other words act as the defined term and the defining term in Article 3(1)(g) of the Spanish and Swedish versions of Regulation No 650/2012.

* Translator’s note: The Polish-language version of Regulation No 650/2012 uses the word ‘orzeczenie’ (ruling) whereas the English-language version uses ‘decision’.

20 See Article 25 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1972 L 299, p. 32), Article 32 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), and Article 2(a) 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).

21 See judgments of 2 June 1994, *Solo Kleinmotoren* (C-414/92, EU:C:1994:221, paragraph 17), and of 14 October 2004, *Mærsk Olie & Gas* (C-39/02, EU:C:2004:615, paragraph 45).

74. In turn, the requirement of ‘deciding on its own authority’ usually relates to those features of the activities undertaken by a judicial authority which mean that the authority has a decision-making role and does not restrict itself to a more passive function consisting, for example, in validating or receiving the intentions of the parties to the proceedings.²² Thus, settlements in court do not constitute judgments, since they ‘are essentially contractual in that their terms depend first and foremost on the parties’ intention.’²³ However, it is not obvious whether any, and, if so, what activity should be required from the authority concerned in order to find that it is giving a ‘decision’ within the meaning of Article 3(1)(g) of Regulation No 650/2012.

75. It should be borne in mind that under Regulation No 650/2012 ‘decisions’ within the meaning of Article 3(1)(g) thereof are also given by non-judicial authorities which meet the requirements laid down in Article 3(2) of that regulation. Admittedly, those requirements are aimed at ensuring that decisions of those authorities ‘have a similar force and effect as a decision of a judicial authority on the same matter’ falling under Regulation No 650/2012 (Article 3(2)(b)). However, this does not mean that the threshold for the requirements placed on a ‘decision’ is as high as it is in the case of the Brussels regime, in particular in the context of the activities involved in giving a decision. Still less does it mean that a ‘ruling’ for the purpose of Article 4 of Regulation No 650/2012 necessarily leads to the giving of a ‘judgment’ within the meaning of the definition which the Court has developed in the context of the Brussels regime.

76. The objective of the Brussels regime is — according to recitals 3 and 6 of Regulation No 1215/2012 — to attain the free circulation of judgments in civil and commercial matters, while Regulation No 650/2012 sets itself objectives that go beyond that issue. It is primarily — in the light of recital 7 thereof — to eliminate difficulties in asserting rights of succession in cases having cross-border implications. Therefore, the interpretation of that regulation’s rules of jurisdiction must not be based on the assumption that the objective of its rules is only to determine the authorities competent to give decisions so as to avoid the risk of irreconcilable decisions. This may be an indication that the rules of jurisdiction are not only to apply in proceedings in which judicial authorities give a ‘decision’ within the meaning of Article 3(1)(g) of Regulation No 650/2012.

77. In the light of the foregoing, I consider that the conclusions arising from a literal interpretation of Article 4 of Regulation No 650/2012 are not unequivocal and therefore must be compared with the scheme of that regulation. This is all the more the case in the light of the fact that the referring court and the German and French Governments consider that it is possible to conclude from Article 64 of that regulation that Article 4 thereof does not determine jurisdiction over procedures for issuing national certificates of succession.

²² See the Opinion of Advocate General Bot in *Gothaer Allgemeine Versicherung and Others* (C-456/11, EU:C:2012:554, point 38). In this spirit, statements have been made on this matter in academic writings. See X. Kramer, in: U. Magnus, P. Mankowski (editors), *Brussels I bis Regulation*, Verlag Otto Schmidt 2016, Cologne, p. 987. This position is also put forward in relation to Regulation No 650/2012. See P. Wautelet, in: A. Bonomi, P. Wautelet, op. cit. (mentioned in footnote 10 above), p. 68.

²³ Judgment of 2 June 1994, *Solo Kleinmotoren* (C-414/92, EU:C:1994:221, paragraph 18).

4. Systematic interpretation

(a) Article 4 of Regulation No 650/2012 in the context of the other rules in Chapter II thereof

78. In view of the not unequivocal conclusions arising from the literal interpretation, I will interpret Article 4 of Regulation No 650/2012 in the context of the other provisions of that regulation. In particular, I will have regard to the provisions contained in Chapter II thereof, since — like those contained in Article 4 thereof — they determine jurisdiction over procedures in matters of succession. I will therefore establish whether the other rules of jurisdiction contained in that chapter determine jurisdiction over procedures in which no ‘decision’ is given within the meaning of Article 3(1)(g) of Regulation No 650/2012.

79. Note should be taken of Article 13 of Regulation No 650/2012, which determines jurisdiction to receive declarations of succession (declarations concerning the acceptance or waiver of the succession, of a legacy or of a reserved share, or a declaration designed to limit the liability in respect of the liabilities under the succession). That provision provides that ‘in addition to the court having jurisdiction to rule on the succession pursuant to [the] Regulation’, the courts of the Member State of habitual residence of any person entitled to make such a declaration are to have jurisdiction to receive such declarations.

80. The phrase ‘in addition to the court having jurisdiction to *rule* on the succession pursuant to this Regulation’ may mean that the rules of jurisdiction contained in Chapter II of Regulation No 650/2012, including Article 4, also determine jurisdiction to receive declarations of succession, even though they are not made in procedures in which a ‘decision’ is given within the meaning of Article 3(1)(g) of that regulation. This would mean that, in the context of Regulation No 650/2012, ‘ruling’ has to be understood as meaning not only the giving of a ‘decision’ within the meaning of Article 3(1)(g) thereof.

81. That interpretation is supported by the guidance set out in recital 32 of Regulation No 650/2012, from which it may be concluded that Article 13 was laid down to ‘simplify the lives of heirs and legatees’, and not to determine jurisdiction over matters not covered by that regulation’s other rules of jurisdiction.

82. Similar conclusions are suggested by an analysis of Article 13 of Regulation No 650/2012, which uses the term ‘in addition to’ in the context of the provisions surrounding it. Chapter II begins with a provision determining general jurisdiction to ‘rule on the succession as a whole’ (Article 4). The subsequent provisions of that chapter entrust — still in the same area, that is to say ‘[ruling] on the succession as a whole’ — jurisdiction to the courts of other Member States, provided that the conditions laid down in those provisions are satisfied (Articles 5, 7, 9, 10 and 11).

83. Therefore, Article 13 of that regulation is placed at the end of a cascading list of courts which have jurisdiction to rule on matters relating to the succession to a particular individual’s estate as a whole. In so far as ‘[ruling] on the succession as a whole’ consists in receiving declarations of succession, the courts in the Member State of habitual residence of any person entitled to make such a declaration also have jurisdiction ‘in addition to’ those courts.

84. Nor is it possible to rule out a situation where a Member State lays down a special conciliation procedure before courts ‘in the true sense of the word’²⁴ which may be brought to an end solely by the concluding of a court settlement and, if this does not occur, the matters relating to succession remain unresolved. I am not convinced that the rules of jurisdiction in Regulation No 650/2012 must not be applied to such procedures. Admittedly, recital 36 of Regulation No 650/2012 refers to the

²⁴ See the second sentence of recital 20 of Regulation No 650/2012. See also the remarks in points 59 to 63 of this Opinion.

possibility of the parties concerned resolving matters relating to succession by means of amicable settlements before authorities which are not bound by the rules of jurisdiction. However, this relates to proceedings before ‘non-judicial authorities, such as notaries’, not before judicial authorities. A settlement concluded before such a non-judicial authority would have to be approved by a court, while in the procedure referred to the settlement would be concluded before a judicial authority.

85. Having regard to the foregoing, I consider that — in the light of the systematic interpretation of the provisions of Regulation No 650/2012 — Article 4 of Regulation No 650/2012 determines jurisdiction over procedures before the judicial authorities of Member States where those procedures concern matters which can be regarded as forming part of the ‘succession as a whole’.

(b) The relationship between Article 64 of Regulation No 650/2012 and Article 4 thereof

86. The German and Polish Governments contend that it must be concluded from the presence of Article 64 in Regulation No 650/2012 that Article 4 thereof does not determine jurisdiction over procedures for issuing national certificates of succession. Those governments take the view that, if that were the case, Article 64 of that regulation would be unnecessary and jurisdiction over procedures for issuing a European Certificate of Succession would have to be established pursuant to Article 4 thereof. That view must therefore be based on the assumption that European and national certificates of succession are instruments of the same or at least of a similar nature.

87. A different view on this matter is taken by the Commission, which considers that Article 64 of Regulation No 650/2012 constitutes a *lex specialis* vis-à-vis Article 4 thereof. Therefore, it cannot be concluded from Article 64 of Regulation No 650/2012 that Article 4 of that regulation does not relate to procedures for issuing national certificates of succession. The position held by the Polish Government is also in that spirit.

88. Without prejudice to the issue of the similarities between the nature of European and national certificates of succession, it should be noted that the arguments of the German and Portuguese Governments appear not to recognise fully the role which Article 64 plays in the rules laid down by Regulation No 650/2012.

89. First, national certificates of succession are instruments which operate pursuant to the provisions of domestic law incorporated into the legal system of the Member State concerned, whereas the European Certificate of Succession is a new instrument of EU law.

90. Therefore, it was essential to establish an autonomous legal regime governing the European Certificate of Succession in the regulation itself. The aim was to ensure its uniform application in all Member States and to dispel doubts over interpretation which would have been caused by the classification of the European Certificate of Succession under Regulation No 650/2012. In that regard the EU legislature did not determine the legal character of the European Certificate of Succession. Therefore, it is not obvious whether that certificate constitutes a ‘decision’ (Article 3(1)(g) of Regulation No 650/2012) or an ‘authentic instrument’ (Article 3(1)(i) thereof), or whether it falls within neither of those categories. Moreover, it was not necessary expressly to resolve this issue, since the European Certificate of Succession is not recognisable under the provisions which concern decisions and authentic instruments and the issue of jurisdiction is governed by Article 64 of that regulation.

91. Second, Article 64 of Regulation No 650/2012 does not reproduce the wording of Article 4 thereof, but determines jurisdiction over procedures for issuing a European Certificate of Succession by reference to certain provisions of Chapter II. These are Articles 4, 7, 10 and 11 of that regulation.

92. Third, Article 64 of Regulation No 650/2012 extends the scope of the provisions concerning jurisdiction not only to ‘courts’ as defined in Article 3(2) thereof (Article 64(a)), but also to another authority which, under national law, has competence to deal with matters of succession (Article 64(b)). Therefore, the issuing of a European Certificate of Succession can be entrusted to: a ‘judicial authority’; ‘other authorities and legal professionals’, provided that the authority or legal professional concerned satisfies certain conditions (Article 3(2) of Regulation No 650/2012, in conjunction with Article 64(a) thereof); and also ‘another authority which, under national law, has competence to deal with matters of succession’ (Article 64(b)), even though it does not meet the requirements laid down in Article 3(2) of that regulation.

93. In the light of the foregoing, I consider that it cannot be concluded from the presence of Article 64 in Regulation No 650/2012 that Article 4 thereof does not apply to procedures for issuing national certificates of succession.

5. Teleological interpretation

94. In the following section, I will compare the conclusions arising from the systematic interpretation with the arguments concerning the objectives of Regulation No 650/2012. They are referred to expressly in the positions of the German and Polish Governments, although those governments draw different conclusions from them.

95. The German Government notes that determination of jurisdiction over procedures for issuing national certificates of succession under Article 4 of Regulation No 650/2012 would lead to a situation where the authorities of one Member State alone would be able to issue national certificates of succession. They would be the authorities of the Member State in which a European Certificate of Succession can be issued. That would have the effect in practice of requiring the parties concerned to use a European Certificate of Succession, contrary to Article 62(2) of Regulation No 650/2012.

96. However, in the view of the German Government the use of national certificates of succession issued by another Member State could in certain cases prove to be more beneficial than using a European Certificate of Succession. Depriving the parties concerned of the possibility of using national certificates of succession issued by the courts of other Member States would therefore be contrary to the objective behind Regulation No 650/2012. That objective is — in the light of recital 67 of that regulation — to ensure, in the interests of heirs, that a succession with cross-border implications can be settled speedily, smoothly and efficiently.

97. For its part, the Polish Government considers that a solution which helps enhance the role of the European Certificate of Succession should be regarded as justified and desirable.

(a) Whether the European Certificate of Succession is mandatory

98. I do not share the German Government’s view that an interpretation of Article 4 of Regulation No 650/2012 leading to its application in relation to procedures for issuing national certificates of succession means that the use of the European Certificate of Succession would sometimes be mandatory in practice.

99. First, such an interpretation of Article 4 of Regulation No 650/2012 does not deprive the parties concerned of the possibility of obtaining national certificates of succession in the Member State whose authorities are competent to issue a European Certificate of Succession.

100. Second, the German Government appears to read Article 62(2) of Regulation No 650/2012, which refers to the non-mandatory use of the European Certificate of Succession, solely as meaning that that provision determines the relationship between the European Certificate of Succession and national certificates of succession. However, Article 62(3) alone concerns that matter. Meanwhile, Article 62(2) of that regulation relates not only to national certificates of succession, but also — as is clear from the guidance set out in the second sentence of recital 69 thereof — to all ‘instruments available under [the] Regulation’ which heirs are free to use. Thus, it appears to be established in Article 62(2) of the regulation that there is no obligation to use the European Certificate of Succession.

101. Therefore, I do not consider that the determination of jurisdiction over procedures for issuing national certificates of succession under Article 4 of Regulation No 650/2012 means that the use of the European Certificate of Succession is mandatory in practice.

(b) Objectives of Regulation No 650/2012

102. I have no doubt that the possibility of settling successions speedily, smoothly and efficiently can be regarded as one of the objectives of Regulation No 650/2012. Nor can I rule out at the outset that enabling heirs to obtain instruments which allow successions to be settled in a Member State other than the Member State whose authorities are competent under Regulation No 650/2012 may, in certain situations, be in their interest.

103. Nonetheless, first, the fundamental reason why Regulation No 650/2012 was adopted was — in the light of recitals 7 and 8 thereof — a desire to harmonise the conflict of laws rules and the rules of jurisdiction which apply to the settlement of successions.²⁵

104. In that context it should also be noted that according to recital 27 of Regulation No 650/2012 the rules of that regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. The law which is in principle applicable to the succession as a whole is — according to Article 21(1) of that regulation — the law of the State in which the deceased had his habitual residence at the time of death. That specification of the applicable law corresponds to the connecting factor for jurisdiction set out in Article 4 of that regulation, which entrusts ruling on the succession as a whole to the courts of the State in which the deceased had his habitual residence at the time of death.

105. The application of national rules of jurisdiction to procedures for issuing national certificates of succession is incompatible with the desire to harmonise rules of jurisdiction and conflict of law rules within the Union. That is illustrated by the circumstances of the main proceedings, in which — pursuant to the national rules of jurisdiction — an application was made to a German court for a national certificate of succession to be issued concerning an inheritance under French law.

106. Second, in the light of the clarifications contained in recital 34 of Regulation No 650/2012, it must help to ensure the harmonious functioning of justice within the Union. It thus seeks to implement one of the objectives of Regulation No 650/2012, which is — according to recital 59 thereof — the mutual recognition of decisions given in the Member States in matters of succession.

107. Admittedly, the German Government considers that a national certificate of succession, such as that at issue in the main proceedings, is not a ‘decision’ within the meaning of Regulation No 650/2012. However, it follows from the guidance set out in recital 35 thereof that the desire to avoid incompatibility relates to any instruments of relevance to the settlement of successions, including those issued by non-judicial authorities which are not bound by the rules of jurisdiction under the regulation. The aim is also to avoid situations where a national certificate of succession and

²⁵ See my Opinion in *Mahnkopf* (C-558/16, EU:C:2017:965, point 26).

other instruments covered by the regulation, including a European Certificate of Succession, are incompatible with one another. This is confirmed by the earlier observation that the regulation must determine jurisdiction not only over procedures before judicial authorities in which a ‘decision’ is given within the meaning of Article 3(1)(g) of that regulation.²⁶

108. In that context it should be borne in mind that Regulation No 650/2012 has laid down uniform conflict of laws rules pursuant to which the law applicable to the succession as a whole is indicated (Article 23(1) of Regulation No 650/2012). However, certain matters which may be of relevance in settling successions are to be assessed on the basis of the law indicated by means of national conflict of laws rules. A reminder of this is provided by recitals 11 to 13 and the third sentence of recital 71 of that regulation. This could lead to a situation where the authorities of individual Member States would issue irreconcilable instruments settling successions.²⁷

109. In its judgment in *Kubicka*²⁸ the Court expressed the view that such an interpretation of the rules of Regulation No 650/2012, which would lead to ‘the fragmentation of the succession’, understood as being an assessment of certain issues of relevance to matters relating to the succession carried out on the basis of national conflict of laws rules, would not be compatible with the objective pursued by that regulation. This could lead to the issuing of irreconcilable instruments to settle successions. Although the position expressed in the judgment in *Kubicka*²⁹ related to issues concerning the scope of succession law, I consider that it can be regarded as a particular guiding rule helpful for interpreting the rules of Regulation No 650/2012 concerning other matters.

110. An interpretation of Regulation No 650/2012 which requires jurisdiction to be established on the basis of the rules of that regulation also over procedures for issuing a national certificate of succession promotes that objective. It limits the possibility of issuing irreconcilable national certificates of succession and other instruments, including European Certificates of Succession, decisions and authentic instruments in different Member States.

111. Third, although the interest of heirs can constitute an argument for a specific line of interpretation of the rules of jurisdiction, the interest in the sound administration of justice cannot be overlooked in that context.

112. In the context of Regulation No 650/2012, the desire to avoid situations where irreconcilable instruments to settle successions operate is not only in the interest of heirs but also reflects the wish to facilitate the sound administration of justice.³⁰ The desire to ensure the compatibility of *ius* and *forum*, as referred to in point 104 of this Opinion, must also be assessed in a similar manner.

113. Furthermore, the EU legislature laid down an express provision where, having regard to the interest of heirs, it identified the need to settle successions in a Member State other than the State whose authorities are in principle competent under Regulation No 650/2012’s rules of jurisdiction. For example, Article 13 of Regulation No 650/2012 attributes jurisdiction to receive declarations of succession to the courts of the Member State where the person able to make such a declaration has his habitual residence.

²⁶ See point 76 of this Opinion.

²⁷ It is also worth bearing in mind that Regulation No 650/2012 did not supplant — according to Article 75(1) thereof — bilateral conventions which were concluded with third countries before the date on which that regulation was adopted. Relatively often those conventions demarcate their scope on the basis of facts relating to the heir’s nationality. This means that an authority of a Member State which is bound by those conventions will apply the conflict of laws rules and the rules of jurisdiction contained therein to situations falling within their scope. The application of those rules may lead to solutions which are incompatible with those resulting from the application of the rules of Regulation No 650/2012.

²⁸ Judgment of 12 October 2017 (C-218/16, EU:C:2017:755, paragraph 57).

²⁹ Judgment of 12 October 2017 (C-218/16, EU:C:2017:755).

³⁰ See, to that effect, judgments of 3 April 2014, *Weber* (C-438/12, EU:C:2014:212, paragraph 58); of 20 April 2016, *Profit Investment SIM* (C-366/13, EU:C:2016:282); and of 4 May 2017, *HanseYachts* (C-29/16, EU:C:2017:343, paragraph 25).

114. Therefore, I do not consider that the objectives of Regulation No 650/2012 militate in favour of interpreting its provisions in a manner which is incompatible with the conclusions arising from the systematic interpretation thereof so as to enable heirs to obtain national certificates of succession which are issued by judicial authorities in a Member State other than the State whose authorities are competent under that regulation.

6. *Historical interpretation*

115. The conclusions thus far arising from the systematic and teleological interpretations appear to be confirmed also in the light of a historical interpretation of Regulation No 650/2012.

116. The Commission's original proposal provided that the European Certificate of Succession 'shall not be a substitute for internal procedures' (second sentence of Article 36(2) of the Proposal for Regulation No 650/2012).³¹ However, paragraph 4.6 of the comments on the proposal for the regulation clarifies that the European Certificate of Succession 'does not replace [national] certificates'. Moreover, that wording is used in the first sentence of Article 62(3) of Regulation No 650/2012, which took on the role of Article 36(2) of the proposal for the regulation.³² In that respect, paragraph 4.6 of the comments on the proposal for a regulation clarifies that '*in the Member State of the competent authority*, the capacity of heir and the powers of an administrator or executor of the succession must therefore be proven according to the domestic procedure'.³³

117. In the proposal for a regulation the role of national procedural provisions is thus limited to issues concerning the course of the procedure which must be conducted 'in the Member State of the competent authority'. However, in my view, it is not accepted that such jurisdiction is to be determined in accordance with national law.

118. It can therefore be argued that at an earlier stage of the legislative process it was assumed that the international jurisdiction of the authorities of the Member States over the issuing of national certificates of succession would be decided not by national law but by the uniform rules of jurisdiction contained in the regulation. There is nothing to indicate that the adopted version of the regulation makes any change in this regard, since Article 62(3) of Regulation No 650/2012 fulfils the objective which Article 36(2) of the proposal was intended to pursue.

7. *Conclusions on the question referred*

119. In the light of the arguments set out above and having regard to the unsatisfactory results of the literal interpretation and to the unequivocal conclusions arising from the systematic and teleological interpretations, supported by the historical interpretation, I consider that Article 4 of Regulation No 650/2012 determines jurisdiction over procedures before the judicial authorities of the Member States where those procedures concern issues which can be regarded as forming part of 'the succession as a whole'.

120. In the light of the foregoing arguments, I propose that the Court should give the following answer to the question referred for a preliminary ruling: Article 4 of Regulation No 650/2012 is to be interpreted as determining jurisdiction also over procedures before the judicial authorities of a Member State for issuing national certificates of succession.

³¹ 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 — COD 2009/0157).

³² The introduction of an amendment in that spirit to the wording of the proposal for the regulation has also been proposed in academic writings. See the publication cited in footnote 8, No 280.

³³ My emphasis.

VI. Conclusions

121. In the light of the foregoing considerations, I propose that the question referred for a preliminary ruling by the Kammergericht Berlin (Higher Regional Court, Berlin, Germany) be answered as follows:

Article 4 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 is to be interpreted as determining jurisdiction also over procedures before the judicial authorities of a Member State for issuing national certificates of succession.