



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

17 January 2019*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 650/2012 — Article 65(2) — European Certificate of Succession — Application for a certificate — Implementing Regulation (EU) No 1329/2014 — Mandatory or optional nature of the form established by Article 1(4) of Implementing Regulation No 1329/2014)

In Case C-102/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Köln (Higher Regional Court, Cologne, Germany), made by decision of 6 February 2018, received at the Court on 13 February 2018, in the proceedings brought by

Klaus Manuel Maria Brisch

THE COURT (Sixth Chamber),

composed of C. Toader (Rapporteur), President of the Chamber, L. Bay Larsen and M. Safjan, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Spanish Government, by S. Jiménez García, acting as Agent,
- the Hungarian Government, by M.Z. Fehér, G. Koós and A. Pokoraczki, acting as Agents,
- the Finnish Government, by S. Hartikainen, acting as Agent,
- the European Commission, by M. Wilderspin and M. Heller, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 65(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 (OJ 2012 L 201, p. 107) and of Article 1(4) of 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 brought by Mr Klaus Manuel Maria Brisch, in his capacity as the executor of the late Mrs Maria Therese Trenk, before the Amtsgericht Köln (Local Court, Cologne, Germany) for the purposes of obtaining a European Certificate of Succession.

Legal context

Regulation No 650/2012

- 3 According to recital 59 of Regulation No 650/2012, the general objective of that regulation is the mutual recognition of decisions given in the Member States in matters of succession.
- 4 Under the heading ‘Creation of a European Certificate of Succession’, Article 62(1) of the regulation provides:

‘This Regulation creates a European Certificate of Succession [“(the certificate)”] which shall be issued for use in another Member State and shall produce the effects listed in Article 69.’
- 5 Under the heading ‘Application for a certificate’, Article 65(1) and (2) of the regulation provides:

‘1. The certificate shall be issued upon application by any person referred to in Article 63(1) [“(the applicant)”].

2. For the purposes of submitting an application, the applicant may use the form established in accordance with the advisory procedure referred to in Article 81(2).’
- 6 Article 65(3) of Regulation No 650/2012 states that the application for a certificate is to contain the information listed in that provision, to the extent that it is within the applicant’s knowledge and is necessary in order to enable the issuing authority to certify the elements which the applicant wants certified, and is to be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity.
- 7 Under Article 66(1) of that regulation:

‘Upon receipt of the application the issuing authority shall verify the information and declarations and the documents and other evidence provided by the applicant. It shall carry out the enquiries necessary for that verification of its own motion where this is provided for or authorised by its own law, or shall invite the applicant to provide any further evidence which it deems necessary.’

8 Under the heading ‘Issue of the Certificate’, Article 67(1) of the regulation provides:

‘The issuing authority shall issue the Certificate without delay in accordance with the procedure laid down in this Chapter when the elements to be certified have been established under the law applicable to the succession or under any other law applicable to specific elements. It shall use the form established in accordance with the advisory procedure referred to in Article 81(2).’

9 Article 80 of the regulation is worded as follows:

‘The Commission shall adopt implementing acts establishing and subsequently amending the attestations and forms referred to in Articles 46, 59, 60, 61, 65 and 67. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 81(2).’

10 Article 81(1) of Regulation No 650/2012 provides:

‘The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of [Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ 2011 L 55, p. 13)].’

Implementing Regulation No 1329/2014

11 Article 1(4) of Implementing Regulation No 1329/2014 provides:

‘The form to be used for the application for a [certificate], referred to in Article 65(2) of [Regulation No 650/2012] shall be as set out in Annex 4 as Form IV.’

12 Under the section ‘Notice to the applicant’ of Form IV in Annex 4 to Implementing Regulation No 1329/2014:

‘This non-mandatory form may facilitate the gathering of the information needed to issue the [certificate] ...’

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

13 Mrs Trenk, a German national, whose last habitual residence was in Cologne (Germany), died on 2 June 2017. Her husband, parents and brother predeceased her. Since she had no children, her only living heirs are the descendants of her deceased brother. Mrs Trenk owned property located in Germany, Italy and Switzerland.

14 By a will drawn up before a notary on 17 December 2014 and opened on 1 August 2017, Mrs Trenk revoked her previously notarised wills, named the Congregazione Benedettina Sublacenze, established in Rome (Italy), as her sole heir and appointed Mr Brisch as her executor.

15 Pursuant to Article 65(1) of Regulation No 650/2012, Mr Brisch applied to the Amtsgericht Köln (Local Court, Cologne) on 16 October 2017 on the basis of a notarised instrument of 11 October 2017 for a certificate in respect of the deceased’s estate located in Italy, but did not use Form IV in Annex 4 to Implementing Regulation No 1329/2014 (‘Form IV’).

16 By letter of 23 October 2017, the Amtsgericht Köln (Local Court, Cologne) requested that Mr Brisch use Form IV and include that form in his application for the certificate. By letter of 7 November 2017, Mr Brisch refused to accede to that request and asserted that he was free — but not required —

to use that form. By order of 16 November 2017, that court rejected the application for the certificate on the ground that Mr Brisch did not use Form IV and that therefore the application had not been lodged in the prescribed form.

- 17 On 2 December 2017, Mr Brisch brought an appeal before the Amtsgericht Köln (Local Court, Cologne) on the ground that it follows both from Article 65(2) of Regulation No 650/2012 and from Form IV itself that the use of the latter is optional. He also stated that that interpretation is borne out by the provisions of the second sentence of Article 67(1) of that regulation, from which it follows that the use of Form V in Annex 5 to Implementing Regulation No 1329/2014 is mandatory. According to Mr Brisch, if, in Article 65(2) of Regulation No 650/2012, the EU legislature had wished for the use of Form IV to be mandatory, it could have drafted that provision using the same wording as that of the second sentence of Article 67(1) of that regulation. By order of 14 December 2017, that court dismissed the appeal and referred the case to the referring court for a ruling.
- 18 The referring court has set out the position of the Amtsgericht Köln (Local Court, Cologne) that mandatory use of Form IV follows from the wording of Article 1(4) of Implementing Regulation No 1329/2014, which is *lex specialis* in relation to Article 65(2) of Regulation No 650/2012. According to that local court, the Commission is authorised under Article 80 and Article 81(2) of Regulation No 650/2012 to adopt implementing acts, and exercised its power to render the use of Form IV mandatory.
- 19 The referring court considers, however, that the wording of Article 65(2) of Regulation No 650/2012 and the section of Form IV entitled ‘Notice to the applicant’ in fact implies that the use of that form is optional. In addition, it doubts whether the analysis of the Amtsgericht Köln (Local Court, Cologne) is correct in respect of the Commission’s power to adopt implementing acts. That court notes, in that regard, that Article 80 of Regulation No 650/2012 empowers the Commission to adopt implementing acts which affect only the establishment and subsequent amendment of the forms referred to in that regulation, but does not, however, empower it to amend Article 65(2) of Regulation No 650/2012 to the effect of rendering the use of Form IV mandatory.
- 20 In those circumstances, the Oberlandesgericht Köln (Higher Regional Court, Cologne, Germany) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is the use of the form as set out in Annex 4 as Form IV, established in accordance with the advisory procedure under Article 81(2) of [Regulation No 650/2012], mandatory or merely optional for the purposes of an application for a [certificate] under Article 65(2) of [Regulation No 650/2012], in accordance with Article 1(4) of [Implementing Regulation No 1329/2014]?’

Consideration of the question referred

- 21 By its question, the referring court wishes to know, in essence, whether Article 65(2) of Regulation No 650/2012 and Article 1(4) of Implementing Regulation No 1329/2014 must be interpreted as meaning that, for the purposes of an application for a certificate, within the meaning of Article 65(2) of Regulation No 650/2012, the use of Form IV is mandatory or optional.
- 22 According to the Court’s settled case-law, it follows from the need for a uniform application of EU law, and the principle of equality, that a provision of EU law, which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope, must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account its wording, the scheme underlying the provision 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 and the case-law cited).

- 23 According to the wording of Article 65(2) of Regulation No 650/2012, for the purposes of submitting an application for a certificate, the applicant ‘may’ use the form established in accordance with the advisory procedure referred to in Article 81(2) of that regulation.
- 24 In addition, it is clear from Article 65(3) of Regulation No 650/2012 that the application for a certificate is to contain the information listed in that provision, to the extent that such information is within the applicant’s knowledge and is necessary in order to enable the issuing authority to certify the elements which the applicant wants certified, and is to be accompanied by all relevant documents either in the original or by way of copies which satisfy the conditions necessary to establish their authenticity. It follows that, although the applicant must provide information which allows the issuing authority to certify those elements, it cannot, however, be inferred from Article 65 of Regulation No 650/2012 that the applicant is required to do so by using Form IV.
- 25 The wording of Article 65(2) of Regulation No 650/2012 is therefore not ambiguous as regards the optional nature of the use of Form IV. Indeed, the referring court’s doubts result from the wording of Article 1(4) of Implementing Regulation No 1329/2014 that ‘the form to be used for the application for a [certificate] referred to in Article 65(2) of [Regulation No 650/2012] shall be as set out in Annex 4 as Form IV’. According to that court, it could be inferred from that provision that the use of that form is mandatory.
- 26 However, Article 1(4) of Implementing Regulation No 1329/2014 must be read in conjunction with Annex 4 to that regulation, to which it refers and which includes Form IV. In the section ‘Notice to the applicant’, which heads Form IV, it is clearly specified that Form IV is optional. Thus, the wording ‘form to be used’ in Article 1(4) of Implementing Regulation No 1329/2014 does not determine whether the use of Form IV is mandatory or optional, but merely states that, if an applicant wished to lodge his application for a certificate by means of a form, the appropriate form to be used would be Form IV.
- 27 In addition, it should be made clear that, according to Article 38 of the 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), which led to the adoption of Regulation No 650/2012 and corresponds to Article 65 of that regulation, it was provided that the application for a certificate was required to be lodged via the form a model of which was provided in Annex I to that proposal. The change to the wording of Article 38 of the proposal to that in Article 65(2) of the regulation implies that, despite the intention of the Commission at an early stage in the legislative process to require the mandatory use of a form, that initial intention was not endorsed by the EU legislature. Accordingly, the legislative process in adopting Regulation No 650/2012 also confirms that it follows from the wording of Article 65(2) of that regulation that the use of Form IV, for the purposes of applying for a certificate, is optional.
- 28 Therefore, it is clear from a literal interpretation of Article 65(2) of Regulation No 650/2012, read in conjunction with Annex 4 to Implementing Regulation No 1329/2014, that, for the purposes of an application for a certificate, the use of Form IV is optional.
- 29 Furthermore, such an interpretation is supported by an analysis of the legislative scheme of which that provision forms a part.
- 30 It should be made clear that Article 67(1) of Regulation No 650/2012 lays down an obligation on the part of the issuing authority to use Form V, provided in Annex 5 to Implementing Regulation No 1329/2014, for the purposes of issuing a certificate. The difference in wording between Article 65(2) of Regulation No 650/2012, concerning the application for a certificate, and Article 67(1) of that regulation, concerning the issuing of that certificate, conveys the wish of the EU legislature not to impose the use of Form IV for the purposes of applying for a certificate.

- 31 Furthermore, it must be found that, in Annexes 1 to 3 and 5 to Implementing Regulation No 1329/2014, there is no stipulation regarding the optional use of the forms in those annexes. Only Form IV states, in the section 'Notice to the applicant', that that form is non-mandatory. That stipulation is indeed reproduced in other language versions of that annex, such as the Spanish, English, French, Italian and Romanian versions.
- 32 This confirms that the will of the EU legislature was for the use of Form IV to be optional.
- 33 That interpretation does not run contrary to the general objective pursued by Regulation No 650/2012 which, as is clear from recital 59 thereof, is the mutual recognition of decisions given in the Member States in matters of succession with cross-border implications.
- 34 Although the section 'Notice to the applicant' of Form IV states that the use of that form by the applicant may facilitate the gathering of the information needed to issue the certificate, the fact remains that, by an application for a certificate lodged under Article 65 of Regulation No 650/2012, the objective of Regulation No 650/2012 may be reached satisfactorily by the Member States, in accordance with the principle of subsidiarity, without it being necessary for the use of Form IV to be mandatory.
- 35 In that regard, it should be noted that, according to Article 66 and Article 67(1) of Regulation No 650/2012, the issuing authority is to issue the certificate, after verification of the information provided by the applicant under Article 65(3) of that regulation and, where relevant, having carried out the enquiries pursuant to Article 66 of the regulation.
- 36 It follows from all of those considerations that Article 65(2) of Regulation No 650/2012 and Article 1(4) of Implementing Regulation No 1329/2014 must be interpreted as meaning that, for the purposes of an application for a certificate, within the meaning of Article 65(2) of Regulation No 650/2012, the use of Form IV is optional.

Costs

- 37 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 (Sixth Chamber) hereby rules:

Article 65(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 and Article 1(4) of Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishing the Forms referred to in Regulation No 650/2012 must be interpreted as meaning that, for the purposes of an application for a European Certificate of Succession, within the meaning of Article 65(2) of Regulation No 650/2012, the use of Form IV in Annex 4 to Implementing Regulation No 1329/2014 is optional.

[Signatures]