

AG Campos Sánchez-Bordona on a certified copy of an European Certificate of Succession and its legitimising effect, time-wise, in the case Vorarlberger Landes- und Hypotheken-Bank, C-301/20

This Thursday AG Campos Sánchez-Bordona delivered his Opinion in an Austrian case pertaining to the interpretation of the Succession Regulation and in particular to its Articles 69 (Effects of the European Certificate of Succession) and 70 (Certified copies of the Certificate), namely in the case Vorarlberger Landes- und Hypotheken-Bank, C-301/20.

As the Opinion itself clarifies it at its point 2, the Court asked its AG to elaborate only on the third preliminary question, which reads as follows:

Must Article 69 read in conjunction with Article 70(3) of the EU Succession Regulation be interpreted as meaning that the legitimising effect of the certified copy of [an ECS] must be recognised if it was still valid when it was first submitted but expired before the requested decision of the authority, or does that provision not preclude national law if the latter requires the certificate to be valid even at the time of the decision?

According to Article 70(3) of the Regulation, the certified copies issued shall be valid for a limited period of six months, to be indicated in the certified copy by way of an expiry date.

As AG clarifies, the preliminary question seeks to determine the precise moment in relation to which the authority to which the certified copy is presented must verify the validity of this copy (point 25). In principle, two solutions already hinted in the preliminary question seem to be possible for AG: the certified copy has to be valid at the time of its submission to the authority or it has to be valid at the

time of the decision (point 26).

However, as AG acknowledges, it has to be first decided whether the Succession Regulation determines itself the moment relevant for the validity of a certified copy or this issue is left for the Member States to decide (point 44).

Ultimately, he concludes that it is the Regulation itself that determines such relevant moment (point 46) and that the legitimising effect of the certified copy of an ECS must be recognized if it was still valid when it was first submitted to an authority, even where subsequently the validity of this certificate has expired (point 63).

This interpretation is accompanied by a caveat to the effect that, by way of exception, if there are reasonable grounds for considering that the ECS has been rectified, modified, withdrawn or suspended as to its effectiveness prior to the adoption of the requested decision, the authority may call for the production of a new certified copy or a certified copy with an extended period of its validity (point 76).

The Opinion can be consulted here (no English version yet).