

THE COOPERATION MECHANISM OF ARTICLE 66(5) OF THE SUCCESSIONS' REGULATION

Regulation (EU) N° 650/2012 of 4.7.2012

Brief analysis of Article 66(5)

“(…) 5. For the purposes of this Article [the examination of the application for a European Certificate of Successions – ECS], the **competent authority** of a Member State shall, upon **request**, provide the **issuing authority** of another Member State with **information** held, in particular, in the land registers, the civil status registers and registers recording documents and facts of relevance for the **succession** or for the **matrimonial** property regime or an equivalent property regime of the deceased, where that competent authority would be **authorized**, under national law, to provide another national authority with such information.”

Article 66(5) establishes a cooperation mechanism and points out five notions on which cooperation should focus:

- (i) Requesting authorities
- (ii) Requested authorities
- (iii) Scope of the information
- (iv) Request
- (v) Authorization under national law, to provide information.

(i) Requesting authorities

The authorities competent to issue the ECS pursuant to Article 64

(ii) Requested authorities

Any competent authorities in another Member State

In this regard it seems that Article 66(5) is not exhaustive

It exemplifies:

- The land registers

- The civil status registers

- The registers recording documents and facts

It allows:

- Other authorities (e.g. Courts, Notaries), to be requested.

(iii) Scope of the information

- Information of relevance for the succession
- Information of relevance for:
 - the matrimonial property regime of the deceased or
 - an equivalent property regime of the deceased.

(iv) Request

The information shall be provided upon request addressed by the issuing authority of the ECS to a competent authority in another Member State.

(v) Authorization, under national law, to provide information

The competent authority (requested) in the other Member State has to be authorized, under national law, to provide another national authority with such information

Examples of practical cases that require cooperation

- The ability to **search for information based on the name:** restrictions seem to remain in some MSs (Member States) where the purpose of the registry is to publicize the legal status of the assets and not the assets of a person.
- The ability to **search at national level:** it may be useful to gather information about the existence, in some MSs, of **regional land register systems** which are not (or not totally) interconnected among them.
- The existence of **separate cadastres and land registries organizations** may lead to divergences between the information provided by each organization regarding ownership.
 - This originates uncertainty about the information that shall be included in the ECS according to Article 68, within the scope of **Annex IV to Form V**.
 - One possible solution would be to rely on the **authority which is competent, at national level, for issuing the information that proves the ownership**.

- **Encumbrances** may or may not be included in the scope of the information: this can be relevant for interested heirs or immediate buyers of inheritance assets.
- May land registers disclose **sensitive data as**:
 - Data relating to a court **decision in criminal proceedings ordering the provisional seizure of the assets** – although sensitive it may be relevant for interested heirs or immediate buyers of the inheritance assets
 - Data relating to a court **decision declaring the interdiction of the exercise of parental responsibilities by one parent** – if the son/daughter dies before the concerned parent this information, although sensitive, may be relevant to determine the rights of the heirs
 - Data concerning the **address of the person who sold** the asset to the deceased.
- In some Member States, **mandatory forms** for applications are required.
- Land registry information and its requirements are usually in **national languages and mainly intended for national users**.
- Issues like the **need of certified information** or the need to **pay a fee** for it should be clarified.

The role of the national contact point of EJC Civil

The national contact point of EJC Civil shall be at the disposal of:

- ✓ Other contact points
- ✓ Central authorities
- ✓ Liaison magistrates
- ✓ Local judicial authorities
- ✓ Other appropriate judicial and administrative authorities with responsibilities for judicial cooperation in civil matters
- ✓ Professional associations representing, at national level, legal practitioners directly involved in the application of the EU legal instruments

To facilitate:

- ✓ Judicial cooperation
- ✓ The practical and effective application of the EU legal instruments
- ✓ The smooth operation of cross-border procedures.

Articles 2, 3, 4, 5 and 15 of the Decision N° 2001/470/EC amended by Decision N° 568/2009/EC, establishing EJC Civil.

In particular, Recital 75 and Article 77 of Regulation N° 650/2012 set forth some tasks to be performed within EJC Civil, by the national contact points, to facilitate the application of this Regulation.

Taks that can be performed by the contact point of EJM Civil to facilitate the application of Article 66(5)

- ✓ Facilitating the appropriate contacts between requesting and requested authorities in the MSs
- ✓ Assisting the authorities involved to prepare operable requests for information
- ✓ Providing legal assistance and information regarding the national system of his/her MS as set forth in Article 77
- ✓ Assisting the authorities concerned in the preparation of standard documents to facilitate the exchange of information
- ✓ Fostering synergies to identify the cases where the tools that have been developed by the European associations of practitioners would be the most appropriate:
 - European Land Register Document/Standard template for the presentation of land registry information (ELRA – IMOLA project)
 - Standard means of access to land registry information (ELRA – IMOLA project)
 - Interconnection of registers of wills (CNUE - ARERT/ENRWA)

THANK YOU SO MUCH FOR YOUR ATENTION



Paula Pott
Portuguese Contact Point of EJP Civil
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