

European Certificate of Succession and the Land Registry

Obstacles and recommendations

Fernando de la Puente
ELRA President

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EVALUATION SOURCE:

- European Certificate of Succession (ECS) Fact Sheet 2014, updated 2017
- E-Conveyancing Questionnaire by Maastrich University 2018

I.- THE NEW EUROPEAN CERTIFICATE OF SUCCESSION

Recital 18 of Regulation 650/2'12:

“In order to avoid duplication of documents, the registration authorities should accept such documents drawn up in another Member State by the competent authorities whose circulation is provided for by this Regulation. In particular, the European Certificate of Succession issued under this Regulation should constitute a valid document for the recording of succession property in a register of a Member State. “

Art. 69.5: “The Certificate shall constitute a valid document for the recording of succession property in the relevant register of a Member State, without prejudice to points (k) and (l) of Article 1(2).”



FINDINGS:

- A. Jurisdictions in which the regulation does not apply and ECS is not accepted even as a foreign deed
- B. Jurisdictions in which national law does not envisage ECS as a document to register or does require that a national authority (notary, judge) endorse it.
- C. Jurisdictions in which ECS is fully accepted:
 - C1. With no further requirement (translation)
 - C2. If it comes with additional deed (distribution, description of the land)
 - C3. If it is previously approved by national court



CONCLUSIONS:

- A. Some jurisdictions do not contemplate the entry of a ECS as a valid deed to produce an enter in the LR despite the content of Regulation 650/2012
- B. Some jurisdictions do give the ECS the treatment of a foreign deed allowing the entry if it is duly complemented by: Court recognition, notarial deposit, evidence about applied foreign law, evidence about expedition authority competence or even a consent deed.

RECOMENDATIONS

The Regulation should contemplate provisions about the obligation of the ME to rule about the procedure to register an ECS and possible additional requirements in order to avoid uncertainty.

II.- THE ADAPTATION PRINCIPLE

Art 31: Where a person invokes a right in rem to which he is entitled under the law applicable to the succession and the law of the Member State in which the right is invoked does not know the right in rem in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right in rem under the law of that State, taking into account the aims and the interests pursued by the specific right in rem and the effects attached to it.

FINDINGS:

- A. Jurisdictions that do not contemplate the enforcement of the principle because its opposition to their legal or registration system.
- B. Jurisdictions in which a court decision is required
- C. Jurisdictions in which the principle is enforceable with or without a specific procedure within the Land Registry

CONCLUSIONS:

- A. There is some contradiction between the adaptation principle and the principle of competence of the *lex rei sitae*
- B. There are no provisions about the application of the adaptation principle and the competence to decide the equivalent right to enter in the LR

RECOMENDATION:

The regulation should contemplate provisions about the obligation of the ME to rule about the enforcement of the principle of adaptation in their national systems (procedure and competence).

Thank you for your attention!