

Regulation on succession and European certificate of succession EU 2012/ 650

Additional research and discussions about the regulation
25-26 June 2020



David Fridh

Previous work about European certificate of Succession (ECS)

1. Introduction

The Regulation EU No 650/2012 envisages that the Certificate of Inheritance should constitute a valid document for the recording of succession property in a register of a Member State (recital 18). Following previous approaches, ELRN has found diversity in the LR systems. It was found that this Certificate may be enough itself for registration, or may be enough together with additional requirements or deeds, or not enable it at all.

Considering this information, the following fact sheet includes the legal answers of the impact of the Certificate for the purposes of registration in different LR systems.

This fact sheet is divided into 2 chapters:

- Registration of certificate of inheritance
- Closest equivalent rights and adaptation

Edited 2014
Updated 2017

Facts Sheets

- ✓ Land Registry Publicity
- ✓ Description of land registration systems
- ✓ Land Registry Proceeding
- ✓ Hidden Charges
- ✓ Condominium
- ^ European Certificate of Succession (ECS)
- 1. Introduction

CROSS-BORDER SUCCESSIONS - A CITIZEN'S GUIDE

How EU rules simplify international inheritances

EU publications: [Practice Guide on Successions](#)

Cross-border successions

A citizen's guide : how EU rules simplify international inheritances

This guide is intended for anyone involved in or affected by a cross-border succession, particularly those planning their own succession and heirs. It is a practical guide that aims to answer the most commonly asked

Previous fact sheets (some of the questions)

Registration of ECS

To what extent could the Certificate be registered in your Land Registry?

Which eventual other additional documents or complementary requirements would be needed?

Do you request official translations of European Certificates of Succession?

Will sharing out or distribution of estate deeds be also necessary?

May the Certificate be rejected by your registration authorities in the event of inadequate completion, mistakes or inaccuracies?

Do you control whether the issuing authority is competent to do so?

For the certificate to be effective for the distribution of the estate and its registration, should this document be issued by national notaries or other practitioners or could it be issued by foreign notaries?

Previous fact sheets (some of the questions)

Closest equivalent rights and adaptations

What are the main rights in rem arising from successions in your system?

What would the role of your Land Register or registrars be in order to put in practice the principle of adaptation?

What contributions could the Land Register make?

Imagine you receive a request for the registration of a foreign European Certificate of Succession. It follows from this Certificate that one of the heirs is entitled to a right that is not part of your national *numerus clausus*. How do you approach this problem?

Need for more a wider approach

The board of ELRA considers the regulation on Successions as one of the main instruments issued by the EU regarding private law

We propose a more thorough investigation about the regulation and it's implications on the land register and work of land registrars

During 2020 and 2021

Contribution to the Commissions report in 2025 (article 82)

1. Aim, Content and effects of ECS

Exclusion of land registers and contradictions

- Article 1.2.k (rights in rem) and 1.2.l (recordings in a register)
- The regulation excludes from its scope the procedure to make an entry in the LR that is ruled by national law
- Recital 18 also states:

the European Certificate of Succession issued under this regulation should constitute a valid document for the recording of succession of property in a register of a Member State.

- Aim, Content and effects of ECS
- Article 63. Recital 63 and Articles 68 -69. Recital 68.
- Previous research by ELRA resulted in the fact that a number of MS did not approve entries in the LR on the basis of a ECS despite art 69.5.
- Are there still conflicts between the regulation and national law in any of the member states?
- Should ELRA deepen the study on ECS. For example about how to proceed if the ECS does not meet the requirements of the LR law?
- Does article 69.4 have any possible effects on your national law?

- 2. **Applicable law**
- Article 20. The regulation establishes that all succession shall be ruled by a single law
- Articles 21 and 22 states which law
- Problems could arise if the LR official rules that the inheritance has been done according to a law different from the one established by the regulation
- Would this be investigated in any of the countries?
- Should we study if this situation could result in a rejection of entry in the LR?

- 3. **Compulsory law for immovable property**
- Article 30. Recital 54.
- The regulation establishes a qualified exception to the principle of universality in the applicable law.
- Should ELRA identify and study these exceptions and provide a catalogue of them?
- Do such exceptions exist in your member state?

- 4. **Adaptation principle**
- Article 31. Recitals 15 and 16
- ELRA's previous study of this principle give us reason to suggest that we investigate the matter further
- Some jurisdictions seem to not consider adaptation at all
- Is there a general strategy in the "adapting" countries of how the registering procedure applies in these cases?
- The aims and the interests pursued by the specific right in rem and the effects attached to it, shall be considered (article 31)
- According to recital 16 LR, when in doubt, may contact the foreign national authorities of the state whose law is applicable
- Has this opportunity been used?
- This possibility may be limited in practice, especially if the LR authority is not judicial or the applicable law is of a non EU member state

- 5. **Recognition of decisions**
- Article 39 and 40
- The regulation foresees automatic recognition of decisions given in another member state to immediately rule what happens when there is opposition
- The regulation only contemplates the case when this opposition is enforced by the party and in a judiciary procedure
- Should ELRA study if LR is competent to propose opposition according to article 40 and the consequences of it?
- Has any jurisdiction considered or already applied the provision?

- 6. **Acceptance of documents apart from ECS**
- Article 3.1.e, g, h, i.
- The regulation rules a number of different documents that may be considered fit to contain inheritance rights and thus, produce an entry
- But the regulation does not explain what could happen if a specific document is not accepted in the national law to produce an entry
- Should we perform a more elaborate study on the acceptance of foreign documents delivered from other countries or jurisdictions than the one where the land register is located?

- 7. **Authentic instruments**
- Article 59. Recitals 22, 61, 62 and 63. The regulation provides that any authentic instrument issued in a MS should be accepted in any other MS
- This may issue three kind of questions:
 - A. What if the LR, MS does not apply the concept of authentic instruments?
 - B. What if it the LR jurisdiction only accepts authentic instruments?
 - C. The regulation determines the competence to confront the authenticity of the authentic instrument but does not envisage any solution if the LR authority has doubts about it
- The regulation does not provide any tool similar to the one established in regulation (UE) 2016/1191, 6th of July, about free movement of documents
- Is this an issue that should be studied by ELRA?
- No legalization of documents. Article 74.

The next step!

- Selection of topics and prioritization
- Which topics do you find most important?
- Should any of the suggested topics be excluded from ELRA's additional research?
- Should any topic be added?

Questions to be sent before the workshop!

Previous research by ELRA showed that a number of member states did not approve entries in the LR on the basis of a ECS despite art 69.5.

Are there still conflicts between the regulation and national law in any of the member states?

According to ELRA's previous study on the principle of adaptation (article 31), some jurisdictions seem to not consider adaptation at all. Is this still the case?

In the "adapting" countries, is there a general strategy of how the registering procedure applies in these cases?

Summary

- 1 European certificate of succession (conflicts and problems)**
- 2 Applicable law**
- 3 Compulsory law (exceptions from the regulation)**
- 4 Adaptation principle (If and how)**
- 5 Recognition of decisions**
- 6 Acceptance of foreign documents**
- 7 Authentic documents**