

Cross-border divorce and circulation of documents. Conclusions

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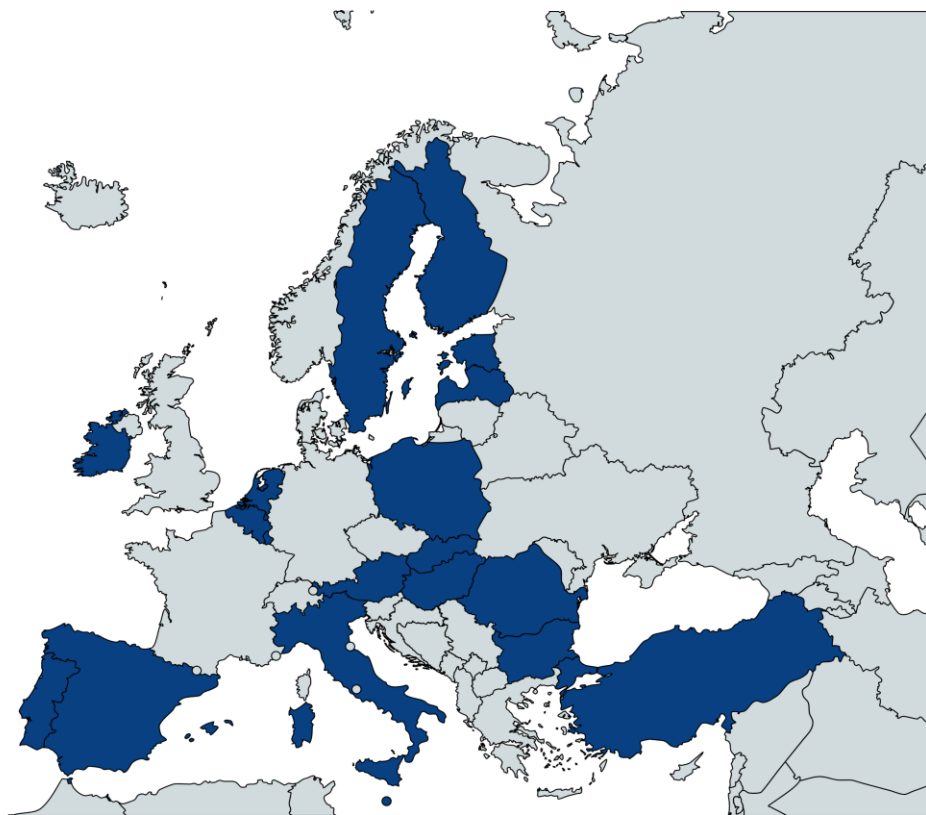
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Austria



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Netherlands



Malta



Hungary



Italy



Latvia



Estonia



Finland



Croatia



- Would the identification of the assets in the document reflecting the transfer of property following the divorce be required for registration in the Land Registry?



- Would the identification of the spouses in the document reflecting the transfer of property following the divorce be required for registration?



- What kind of document would be necessary for the registration of the transfer of property following a divorce: a public instrument, a private document or both?



- Would you require an authentic copy of the document, or the legalization of signatures in the case of private ones?

- **Would you require authentication of the issuer of the document, such as an Apostille or similar formality?**
- **Would you require the translation of the document if it were not drafted in an official language of your State?**
- **Would you require a prior registration of the divorce in the Civil/Family Register before registering the transfer of property in the Land Registry?**





- Is the registration in the Land Registry of the transfer of property following a divorce mandatory?
- Would you require any additional documents, other than the document reflecting the transfer of property, to enter the transfer in the Land Registry?
- Does the registration in the Land Registry of the transfer of property following a divorce have a constitutive effect (i.e., it only produces legal effects if registered)?
- Do you require prior tax settlement of the transfer of property following a divorce to register it in the Land Registry?

Country	Identification of assets	Identification of spouses	Kind of document	Valid copy	Validation of issuer	Legal translation	Civil Registry	Mandatory registration	Additional documents	Constitutive effect	Tax document
Austria	Yes	Yes	Both	Yes	Yes	Yes	No	No	Yes	Yes	Yes
Belgium	Yes	Yes	Both	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Bulgaria	Yes	Yes	Both	Yes	Yes	Yes	Yes	No	Yes	No	Yes
Croatia	Yes	Yes	Both	Yes	Yes	Yes	No	No	Yes	No	No
Cyprus	Yes	Yes	Both	Yes	Yes	Yes	No	No	No	Yes	Yes
Estonia	Yes	Yes	Public instrument	N/A	Yes	Yes	No	No	No	Yes	No
Finland	Yes	Yes	Both	No	Only non EU	Yes	No	Yes	Yes	No	No
Hungary	Yes	Yes	Both	Yes	No	Yes	No	Yes	No	Yes	No
Italy (AE)	Yes	Yes	Public instrument	Yes	Yes	Yes	No	N/A	No	No	N/A
Italy (SLF)	Yes	Yes	Both	Yes	Yes	Yes	No	No	No	Both	No
Latvia	Yes	Yes	Both	Yes	Only non EU	Yes	No	Yes	Yes	Yes	Yes
Luxembourg	Yes	Yes	Public instrument	Yes	Yes	Yes	No	Yes	No	No	Yes
Malta	Yes	Yes	Public instrument	Yes	Only non EU	Yes	No	Yes	No	No	No
Polish	Yes	Yes	Both	Yes	Yes	Yes	No	Yes	No	No	No
Portugal	Yes	Yes	Both	Yes	N/A	Yes	No	Yes	Yes	No	Yes
Portugal	Yes	Yes	Both	Yes	N/A	Yes	No	Yes	Yes	No	Yes
Romania	Yes	Yes	Public instrument	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes
Slovak Republic	Yes	Yes	Both	Yes	Yes	Yes	N/A	No	Yes	Yes	No
Spain	Yes	Yes	Public instrument	Yes	Yes	Yes	Yes	No	Yes	No	Yes
Sweden	Yes	Yes	Private	No	No	No	No	Yes	Yes	No	No
The Netherlands	Yes	Yes	Both	Yes	Yes	Yes	No	Yes	No	Yes	No

Country	Name of your organisation	Identification of assets	Identification of spouses	Kind of document	Valid copy	Validation of issuer	Legal translation	Civil Registry	Mandatory registration	Additional documents	Constitutive effect	Tax document
Austria	Austria - Ministry of Justice	Yes	Yes	Both	Yes	Yes	Yes	No	No	Yes	Yes	Yes
Belgium	Patrimonial Documentation of Belgium	Yes	Yes	Both	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Bulgaria	Registry Agency of the Republic of Bulgaria	Yes	Yes	Both	Yes	Yes	Yes	Yes	No	Yes	No	Yes
Croatia	Croatia - Ministry of Justice, Public Administration and Digital Transformation	Yes	Yes	Both	Yes	Yes	Yes	No	No	Yes	No	No
Cyprus	Department of Lands and Surveys of Cyprus	Yes	Yes	Both	Yes	Yes	Yes	No	No	No	Yes	Yes
Estonia	Estonia - Ministry of Justice and Digital Affairs	Yes	Yes	Public instrument	N/A	Yes	Yes	No	No	No	Yes	No
Finland	National Land Survey of Finland	Yes	Yes	Both	No	Only non EU	Yes	No	Yes	Yes	No	No
Hungary	Hungary - General Department of Land Register and Cartography	Yes	Yes	Both	Yes	No	Yes	No	Yes	No	Yes	No
Italy	Italy - Agenzia delle Entrate	Yes	Yes	Public instrument	Yes	Yes	Yes	No	N/A	No	No	N/A
Italy (Servizio)	Italy - Servizio Libro Fondiario e Catasto - Provincia Autonoma di Trento	Yes	Yes	Both	Yes	Yes	Yes	No	No	No	Both	No
Latvia	Latvia - Court Administration, Department Of Courts And Land Registers	Yes	Yes	Both	Yes	Only non EU	Yes	No	Yes	Yes	Yes	Yes
Luxembourg	Luxembourg - Administration de l'Enregistrement et des Domaines et de la TVA	Yes	Yes	Public instrument	Yes	Yes	Yes	No	Yes	No	No	Yes
Malta	Malta - Land Registration Agency	Yes	Yes	Public instrument	Yes	Only non EU	Yes	No	Yes	No	No	No
Polish	Polish Association of Registrars/Polish Association of Registrars	Yes	Yes	Both	Yes	Yes	Yes	No	Yes	No	No	No
Portugal	Portugal - Associação Sindical dos Conservadores dos Registos	Yes	Yes	Both	Yes	N/A	Yes	No	Yes	Yes	No	Yes
Portugal	Portugal - Associação Sindical dos Conservadores dos Registos	Yes	Yes	Both	Yes	N/A	Yes	No	Yes	Yes	No	Yes
Romania	Romania - National Agency for Cadastre and Land Registration	Yes	Yes	Public instrument	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes
Slovak Repub	Slovak Republic - Geodasy, Cartography and Cadastre Authority	Yes	Yes	Both	Yes	Yes	Yes	N/A	No	Yes	Yes	No
Spain	Spain - Colegio de Registradores de España	Yes	Yes	Public instrument	Yes	Yes	Yes	Yes	No	Yes	No	Yes
Sweden	Sweden - Lantmäteriet	Yes	Yes	Private	No	No	No	No	Yes	Yes	No	No
The Netherlands	The Netherlands - Cadastre, Land Registry and Mapping Agency	Yes	Yes	Both	Yes	Yes	Yes	No	Yes	No	Yes	No

IDENTIFICATION OF THE ASSET

SE Usually yes. However, a general description might be sufficient: for example, all immovable property will be divided equally or awarded to one of the spouses.

VALIDATION OF ISSUER

LU Additional formalities are only required if the foreign judgement or notaries' deed is directly presented to the Land Registry, i.e. not via a Luxembourg notarial deed. The foreign judgement would have to first undergo the exequatur procedure (in this case an Apostille may be required and a non-appeal certificate is systematically required). Foreign notarized deeds presented directly to the Land Registry must be certified by the president of the district court within whose jurisdiction the property is situated. In practice they are commonly presented through a Luxembourg notarial deed.

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Belgium	Patrimonial Documentation of Belgium	Yes	Yes	Both	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Bulgaria	Registry Agency of the Republic of Bulgaria	Yes	Yes	Both	Yes	Yes	Yes	Yes	No	Yes	No	Yes
Croatia	Croatia - Ministry of Justice, Public Administration and Digital Transformation	Yes	Yes	Both	Yes	Yes	Yes	No	No	Yes	No	No
Cyprus	Department of Lands and Surveys of Cyprus	Yes	Yes	Both	Yes	Yes	Yes	No	No	No	Yes	Yes
Estonia	Estonia - Ministry of Justice and Digital Affairs	Yes	Yes	Public instrument	N/A	Yes	Yes	No	No	No	Yes	No
Finland	National Land Survey of Finland	Yes	Yes	Both	No	Only non EU	Yes	No	Yes	Yes	No	No
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Italy (Servizio)	Italy - Servizio Libro Fondiario e Catasto - Provincia Autonoma di Trento	Yes	Yes	Both	Yes	Yes	Yes	No	No	No	Both	No
Latvia	Latvia - Court Administration, Department Of Courts And Land Registers	Yes	Yes	Both	Yes	Only non EU	Yes	No	Yes	Yes	Yes	Yes
Luxembourg	Luxembourg - Administration de l'Enregistrement et des Domaines et de la TVA	Yes	Yes	Public instrument	Yes	Yes	Yes	No	Yes	No	No	Yes
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Portugal	Portugal - Associação Sindical dos Conservadores dos Registos	Yes	Yes	Both	Yes	N/A	Yes	No	Yes	Yes	No	Yes
Portugal	Portugal - Associação Sindical dos Conservadores dos Registos	Yes	Yes	Both	Yes	N/A	Yes	No	Yes	Yes	No	Yes
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Spain	Colegio de Registradores de España	Yes	Yes	Public instrument	Yes	Yes	Yes	Yes	No	Yes	No	Yes
Sweden	Sweden - Lantmäteriet	Yes	Yes	Private	No	No	No	No	Yes	Yes	No	No
The Netherlar	The Netherlands - Cadastre, Land Registry and Mapping Agency	Yes	Yes	Both	Yes	Yes	Yes	No	Yes	No	Yes	No

LEGAL TRANSLATION

CY Except if it is in English

FI If the registrar can understand the language of the document no translation is needed, but if not, the applicant might need to provide a translation (usually documents in English, German, French are understood).

PT English, French and Spanish: no need for translation if the registrar domains the language. For other languages the translation is mandatory.

ES If the language is known for the registrar translation might not be needed.

PRIOR REGISTRATION IN CR.

EE Not necessarily, if the divorce is mentioned in the document. **SE** According to Swedish law there must be at least a filing of divorce but the divorce doesn't have to be ended and registered.

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Croatia	Croatia - Ministry of Justice, Public Administration and Digital Transformation	Yes	Yes	Both	Yes	Yes	Yes	No	No	Yes	No	No
Cyprus	Department of Lands and Surveys of Cyprus	Yes	Yes	Both	Yes	Yes	Yes	No	No	No	Yes	Yes
Estonia	Estonia - Ministry of Justice and Digital Affairs	Yes	Yes	Public instrument	N/A	Yes	Yes	No	No	No	Yes	No
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Sweden	Sweden - Lantmäteriet	Yes	Yes	Private	No	No	No	No	Yes	Yes	No	No
The Netherlar	The Netherlands - Cadastre, Land Registry and Mapping Agency	Yes	Yes	Both	Yes	Yes	Yes	No	Yes	No	Yes	No

MANDATORY REGISTRATION

IT (LF) Registration is not mandatory per se but it is a requirement for further disposition of the immovable property. **SK** If no agreement of former spouses about their property 3 years after the divorce judgement is issued, it is presumed that property is in joint ownership and that both spouses have equal shares. **NL** Only if the ownership situation changes.

ADDITIONAL DOCUMENTS

FI Population register extract or similar of the parties. If the transfer of ownership is conditional, a document that the condition is fulfilled would be required. **SK** Divorce decree (the judgement issued by court). **SE** Additional documents will required to prove the divorce.

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Portugal	Portugal - Associação Sindical dos Conservadores dos Registos	Yes	Yes	Both	Yes	N/A	Yes	No	Yes	Yes	No	Yes
Romania	Romania - National Agency for Cadastre and Land Registration	Yes	Yes	Public instrument	N/A	Yes	Yes	Yes	Yes	No	Yes	Yes
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Sweden	Sweden - Lantmäteriet	Yes	Yes	Private	No	No	No	No	Yes	Yes	No	No
The Netherlands	The Netherlands - Cadastre, Land Registry and Mapping Agency	Yes	Yes	Both	Yes	Yes	Yes	No	Yes	No	Yes	No

CONSTITUTIVE EFFECTS

IT (LF) It depends on the type of document used as a title for the registration (non-constitutive effect in case of judicial decisions, constitutive effect in case of contractual agreements between the spouses). **LU** Until registration in the Land Registry, the transfer of property cannot be invoked against third parties. (Unenforceability)

TAX DOCUMENT

FI Only if the assets outside the marital estate are used in the division, tax liability is possible.

LV No general tax settlement is required; however, real estate tax must be settled (or confirmed) for registration in the Land Registry.

CONCLUSIONS

- An identification of assets and spouses would always be required for registration.
- In many countries a private document, with legalized signatures, would be suitable for entering in the LR the transfer of property following a divorce.
- Some countries already do not apply the need of authentication of the issuer of the document to EU Member States.
- Translation of the document is a common need for registration and therefore an obstacle to the circulation of documents.
- Prior recording of the divorce in the Civil or Family Registry is not a requirement to enter the transfer of property following the divorce in the LR.

CONCLUSIONS

- Many States require additional documentation, besides the document that reflects the transfer of property, for registration in the LR: it is commonly required the judicial resolution that settles the divorce.
- Some States establish registration in the LR as mandatory: it could avoid additional future conflicts.
- In some LR registration has a constitutive effect. In any case, it is a requirement for producing effects against third parties, which fosters registration.
- Many States require the tax settlement of the transfer of property in the LR. In some of those that do not require it, the exemption of taxing of these transfers is the reason why it is not demanded.

FINAL CONCLUSIONS

Circulation of documents throughout the EU still has many **obstacles** in the field of divorce and its economic effects (regarding immovable property).

Would a **certification of divorce and transfer**, similar to ECS, be a useful tool for the circulation of documents?

In a lower level of ambition: **suppression of apostille or legalization** inside the EU or **common models in several languages** (such as those models created for certifications of civil status).

THANK YOU



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