

THE REQUIREMENTS FOR RECORDING SUCCESSION PROPERTY
IN PORTUGAL
AND THE
COOPERATION MECHANISM
OF
ARTICLE 66(5)





The European Certificate of Succession ("ECS")

Purpose of the ECS Recording succession property **Statistics**



The equivalent national documents in **Portugal**

Documents confirming the status of heirs and legatees Documents confirming the division of assets



Legal requirements to register an ECS in **Portugal**

Recording the succession property Confirming the status of heirs and legatees



The cooperation mechanism of Article 66(5)

How to obtain information on the status and rights of the heirs and legatees, on the identification of the assets, on the formalities required for registration, in another Member State?



The European Certificate of Succession ("ECS")

- I Purpose of the ECS
- II Recording of succession property
- **III Statistics**

I - THE PURPOSE OF THE ECS WITH REGARD TO HEIRS AND LEGATEES

According to Article 63 (2) points (a) and (b) of Regulation 650/2012 an ECS is a document that enables heirs and legatees

to <u>demonstrate</u> or <u>exercise</u> in another Member State the following:

Heirs/Legatees

Their STATUS

Heirs/Legatees

Their RIGHTS

Heirs/Legatees

Their respective SHARES

Heirs/Legatees

The attribution of specific ASSETS

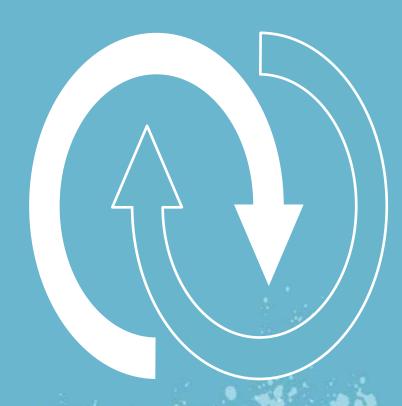
II - RECORDING SUCCESSION PROPERTY BASED ON AN ECS

The Regulation and the national legal systems are complementar:

- The ECS is a valid document for recording succession property;
- However, the legal requirements for such recording are laid down by national law.

Article 69(5) of the Regulation reads:

"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)."

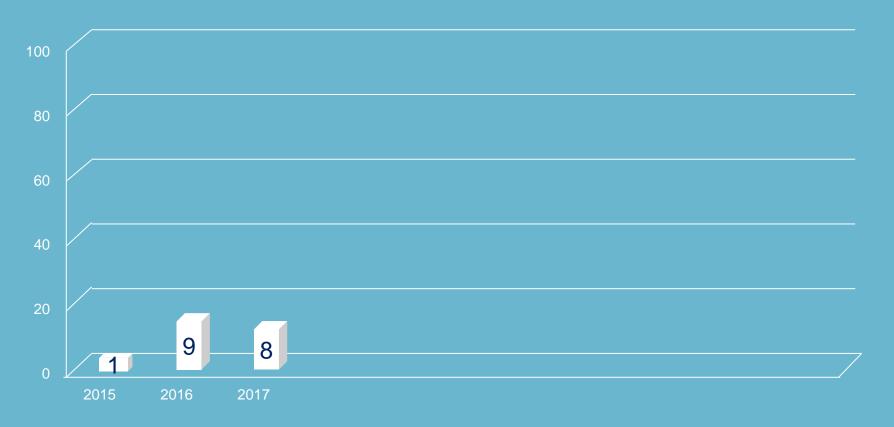


Article 1(2)(I) of the Regulation reads:

"The following shall be excluded from the scope of this Regulation: (...) (I) any recording in a register of rights in immovable or movable property, including the legal requirements for such recording and the effects of recording or failing to record such rights is a register"

III - Statistics

Number of Certificates (ECS) issued in Portugal by resgistry offices of IRN IP (Instituto dos Registos e do Notariado)



In 2017 the figures were collected until the most recent possible date (6.9.2017)



The equivalent national documents in Portugal

I - Documents confirming the status of heirs and legatees

II - Documents confirming the division of assets

I – DOCUMENTS CONFIRMING THE STATUS OF HEIRS OR LEGATEES in Portugal

- 1 Judgments.
- 2 Notarial deeds.
- 3 Simplified procedures for confirming the status of heirs issued by a registry office.
- At national level, the above are authentic instruments with full evidentiary value.
- On the basis of the documents above the status of heirs or legatees is recorded at the civil registry office by means of an endorsement on the deceased's death certificate.



(Shares and attribution of a specific asset to the heir or legatee)

In contested succession:

1 - A judgment (the division resulting from proceedings before a notary has to be ratified by a Judge)

This is an authentic instrument with full evidentiary value.

In voluntary succession:

2 - A private certified document drawn up before a lawyer or solicitor.

This is not an authentic instrument but a private certified document which in this case has evidentiary value equivalent to full evidentiary value.

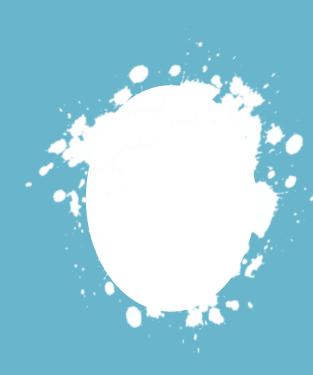
3 - A document covering the division in simplified succession proceedings before the registrar.

This is an authentic instrument with full evidentiary value.

4 - A notarial deed of division drawn up by the notary.

This is an authentic instrument with full evidentiary value.

ANY OF THE ABOVE DOCUMENTS IS VALID FOR THE RECORDING OF SUCCESSION PROPERTY IN THE RELEVANT REGISTER



Legal requirements to register an ECS in Portugal

Recording the succession property
Confirming the status of heirs and legatees

CAN AN ECS BE REGISTERED IN PORTUGAL?

ADITIONAL REQUIREMENT: TAX OBLIGATIONS

The documents that prove the fulfillment of tax obligations are always required for the registration of an ECS in the Land Register.

YES: AN ECS CAN BE REGISTERED IN THE LAND REGISTER in three situations.

But it appears that an ECS
CANNOT BE REGISTERED IN
THE CIVIL REGISTER
(endorsement on the deceased's death certificate) as a document confirming the status of heirs or legatees while the Civil Registry
Code does not establish it.

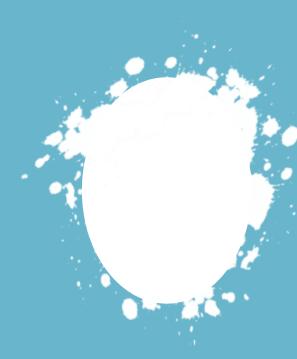
MAIN REQUIREMENT: PARTITION

As a rule the partition, by a deed or equivalent document, is required for the recording of succession property.

Insofar as the agreement of the heirs regarding the partition of the assets is not mentioned therein, the ECS cannot constitute a valid document for the recording of succession property.

However, there are three situations in which <u>an ECS</u> <u>can be registered in the Land Register</u> in Portugal:

- Inscription of the property in the Land Register in favor of the inheritance, that is, in favor of all the heirs without shares or attribution of specific assets to each of them;
- Inscription of ownership in the Land Register in favor of one heir when there is just one heir and therefore no partition is needed;
- Inscription of ownership in the Land Register in favor of each legatee, (attribution of specific assets), if there are no legal heirs, and the inheritance is entirely distributed to legatees in bequests.



The cooperation mechanism of Article 66(5)

How to obtain information on the status and rights of the heirs and legatees, on the identification of the assets, on the formalities required for registration, in another Member State?

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How to obtain information on the satus and rights of the heirs and legatees, on the identification of the assets, on the formalities required for registration, in another Member State?

The ECS shall indicate:

- If the heir or legatee acquired the ownership or other rights on the assets
- In the latter case, the nature of these rights and the other persons having also rights on the assets
- The information required in the Member State in which the register is kept to permit the identification of the asset (e.g. for immovable property exact address of the property, land register, land parcel or cadastral number, description of the property)
- if necessary append relevant documents.

FORM V - ECS Footnotes 13 and 15

Annex IV - status and rights of the heirs - points 9, 10, 11 Annex V - status and rights of legatees - points 6,7,8 Article 66(5)

- Exchange of information.
- Between the issuing authority of an ECS and the authorities or registers in other Member States.
- The information shall be of relevance for the succession or for the matrimonial property regime or an equivalent property regime of the deceased.

Recital 68 of Regulation 650/2012

The **authority which issues the ECS** should have regard to:

- The formalities required for the registration of immovable property in the Member State in which the register is kept.
- For that purpose, this Regulation should provide for an exchange of information on such formalities between the Member States.

Article 77 paragraph 2
FACTSHEETS

Member States EJN Civil

Listing all the documents and/or information required for the registration in each Member State





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High Council for Judiciary – Portugal www.redecivil.mj.pt https://e-justice.europa.eu