

# **The EJN Factsheet to facilitate the operation of Article 66(5) of the Succession Regulation**

Regulation (EU) N° 650/2012 of 4.7.2012

# The Working Group



The Succession Regulation – Regulation N° 650/2012 – assigns some tasks to EJC Civil to facilitate the application of the Regulation, namely in recital 75 and in Article 77.



In this context EJC Civil decided to establish **a working group composed by 18 Members** among which many experts – Notaries and Registry Officers as well as their respective professional associations at European level – acting either as requesting or requested authorities in the MSs, according to Article 66(5).



A large range of professionals coming from different legal systems had actively contributed to the final draft.

**Participating  
in the group:**

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**The European Commission**

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**Austria**

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**Belgium**

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**Bulgaria**

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**Czech Republic**

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**Estonia**

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**Finland**

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**France**

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**Germany**

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**Holland**

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**Hungary**

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**Luxemburg**

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**Malta**

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**Poland**

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**Portugal (chairing)**

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**Slovenia**

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**CNUE**

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**ELRA**

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## Brief analysis of Article 66(5)

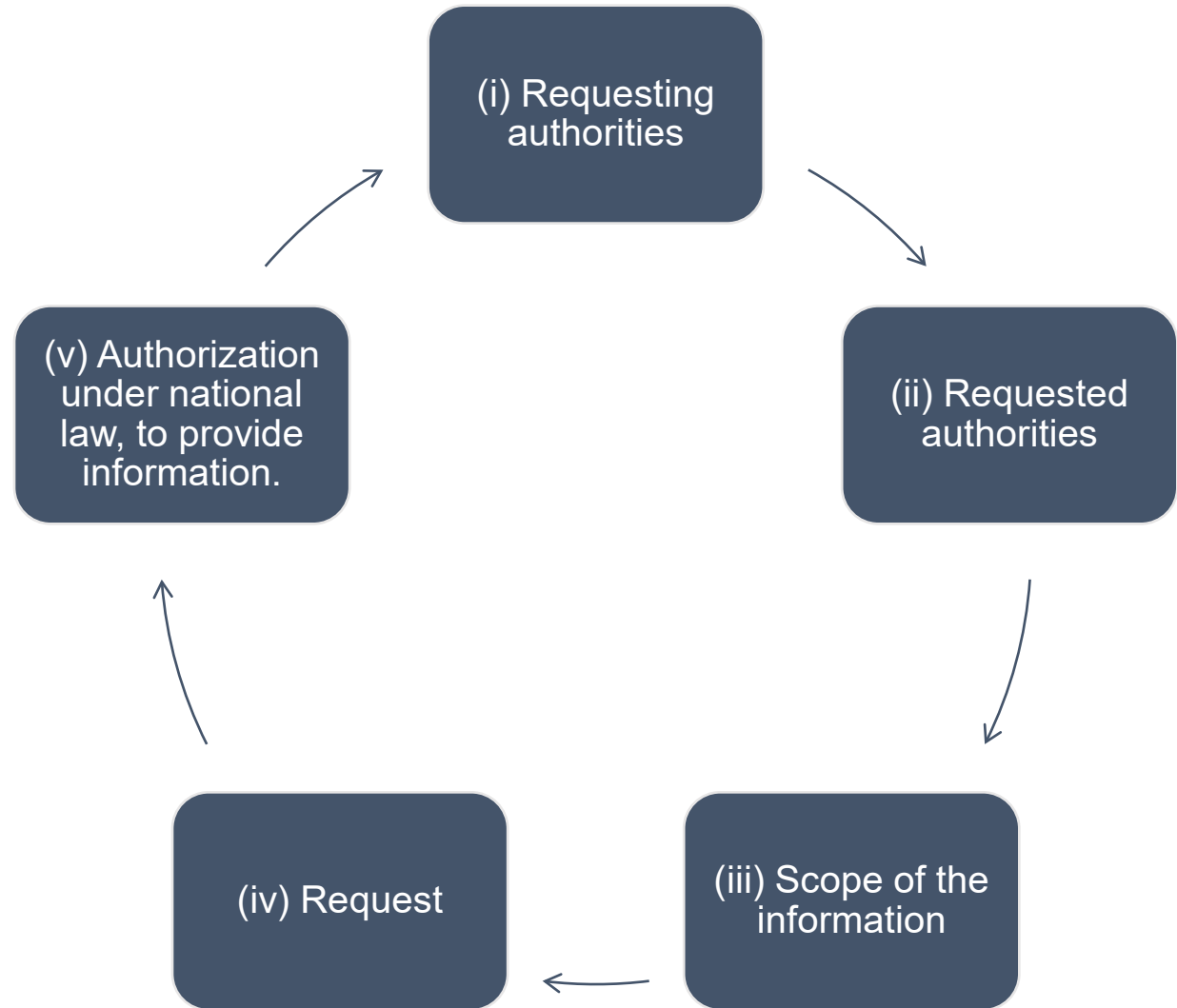
### The aim of the factsheet



For the purposes of the examination of the application for a 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**  
based on five  
notions:





# The Aim of The Factsheet

The factsheet is aimed at helping  
**practitioners** to obtain  
information on  
**Three Main Issues:**



Identifying the requested authorities in the other MSs and the kind of information they keep



How to make the request (e.g. language, form, fees)



If there is authorization under national law to disclose the information needed to issue the ECS.

# Regarding the three key issues mentioned before Article 66(5) establishes the following:



## Requested authorities

Any competent authorities in another MS:

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.



## Request

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



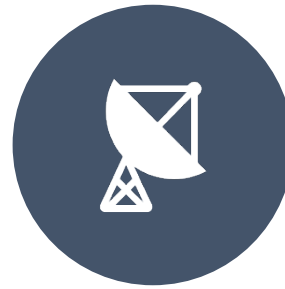
## Authorization, under national law, to provide information

The competent authority – requested authority – in the other MS has to be authorized, under national law, to provide another national authority with such information.





The requesting authorities are the authorities competent to issue the ECS pursuant to Article 64, according to the information provided by MSs to the Commission.



The scope of the information, according to Article 66 (5), is limited to information of relevance for the succession or information of relevance for the matrimonial property regime of the deceased or an equivalent property regime of the deceased. This notion will be subject to the interpretation of practitioners, national Courts and in case of doubt, of the EU Court of Justice.

To address the key issues identified before, the factsheet turns around  
**six main questions**

followed by sub-questions to allow for clarification of practical aspects that will facilitate the request for cooperation.



*1 - Please list the kinds of registers that exist in your Member State for the purposes of Article 66(5) of the Succession Regulation, including the following: (...)*



*2 - For each of the above-mentioned registers in your Member State, please provide the following information: (...)*



*3 - Bank accounts*



*4 - Register of Intellectual Property Rights*



*5 - Other registers*



*6 - Closed wills and wills not subject to registration*



## Examples of Practical Cases that may require Cooperation under Article 66(5)



The ability to search for information based on the name: restrictions seem to remain in some MSs 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 register systems which are not (or not totally) interconnected among them.



The existence of separate cadastres and land registry 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.**

**Each MS may have different requirements (formal and substantial) to register a change of ownership of registered property resulting from succession.**



**Are land registers authorized under national law to 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.



**In some Member States, mandatory forms for applications are required.**

**The information required by the register authority to identify the assets vary from one MS to another.**



**Registry information and its requirements are usually in national languages and mainly intended for national users.**

**Hopefully the factsheet will gather the relevant information of each MS that will be available in the e-Justice Portal.**



### **Issues like**

- The existence of an authority allowed to provide information on the bank accounts of the deceased
- The language of the request
- The possibility that some registers have of issuing certified information in another official language
- The need to pay a fee for the required information

**may be clarified in the factsheet.**

# Thank you so much for your attention

**Paula Pott**

Portuguese Contact Point of EJM Civil 2018

[www.redecivil.csm.org.pt](http://www.redecivil.csm.org.pt)

<https://e-justice.europa.eu>

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