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ECS how-to Guide



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I Form V

1. Annexes included in the Certificate*

ANNEX 5 FORM V
European certificate of succession <small>(Article 67 of Regulation (EU) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession)</small>
The original of this Certificate remains in the possession of the issuing authority
Certified copies of this Certificate are valid until the date indicated in the appropriate box at the end of this form

These are Annexes I to VI provided for by the Regulation and which must be attached to the ECS, unless none of the annexes are mandatory

Annex I (see formulaire_cse_5_annexI.pdf) : Details concerning the applicant(s)

Annex II (see formulaire_cse_5_annexII.pdf) : Details concerning the representative of the applicant(s)

Annex III (see formulaire_cse_5_annexIII.pdf) : Information on the matrimonial property regime or other equivalent regime of the deceased

Annex IV (see formulaire_cse_5_annexIV.pdf) : Status and rights of the heir(s)

Annex V (see formulaire_cse_5_annexV.pdf) : Status and rights of the legatees having direct rights in the succession

Annex VI (see formulaire_cse_5_annexVI.pdf) : Powers to execute a will or administer an estate

Warning

No Annex is included

This box must only be checked when none of the annexes is mandatory: the notary must therefore check that this is the case.

Although the Regulation does not so require, the notary is advised to indicate the information resulting in this conclusion.

2. 1 Member State of the issuing authority

1. Member State of the issuing authority *

Belgium Bulgaria Czech Republic Germany Estonia Greece Spain France Croatia
 Italy Cyprus Latvia Lithuania Luxembourg Hungary Malta Netherlands Austria
 Poland Portugal Romania Slovenia Slovakia Finland Sweden

The notion of Member State should be understood within the meaning of the Regulation. (See *States bound by the Regulation - p.12*)

The United Kingdom, Denmark and Ireland are therefore excluded as they are not bound by the Regulation.

3. 2 Issuing authority

2. Issuing authority

2.1 Name and designation of the authority*:

2.2 Address

2.2.1 Street and number/PO box*:

.....

2.2.2 Place and postcode*:

.....

2.3 Telephone:

2.4 Fax:

2.5 E-mail:

Competence to issue the certificate is explained in Article 64 and Article 78 of the Regulation

The CSE may be established and issued by:

- a court as defined in Article 3(2),
- another authority which, under national law, has competence to deal with matters of succession.

Not all issuing authorities of the European Union(see Pays autorités compétentes-1.ods) have competence to issue an ECS for a given succession. Only the following will have competence:

- the issuing authority of the State of the habitual residence of the deceased,
- in the case of a choice of law, the issuing authority of the chosen national law,
- exceptionally:
 - We should note the subsidiary jurisdiction of the State bound by the Regulation and in which any immovable property is located (Article 10)
 - Forum necessitatis: if a succession which should in principle be within the jurisdiction of a third State cannot be settled in that third State (because of a civil war, for example), then the authorities of a State bound by the Regulation may become competent to settle that succession if they have the closest connection with the case in question (article 11)

Complement

Competent authorities for the issue of the European Certificate of Succession(see autorites_cse.ods)

4. 3 Information on the file

Warning

This information is **mandatory**.

3.1 Reference number

3. Information on the file	
3.1	Reference number*:.....
3.2	Date (dd/mm/yyyy) of issue of the Certificate*:.....

The ECS must be numbered. This numbering must be as follows:

- number of the office / year / ECS issue number

3.2 Date of issue of the certificate

The date of issue of the certificate should also be specified.

5. 4 Competence of the issuing authority

5.1. 4.1 Competence of the issuing authority

4. Competence of the issuing authority (Article 64 of Regulation (EU) No 650/2012)	
4.1. The issuing authority is located in the Member State whose courts have jurisdiction to rule on the succession pursuant to*	
<input type="checkbox"/> Article 4 of Regulation (EU) No 650/2012 (General jurisdiction)	
<input type="checkbox"/> Article 7(a) of Regulation (EU) No 650/2012 (Jurisdiction in the event of a choice of law)	
<input type="checkbox"/> Article 7(b) of Regulation (EU) No 650/2012 (Jurisdiction in the event of a choice of law)	
<input type="checkbox"/> Article 7(c) of Regulation (EU) No 650/2012 (Jurisdiction in the event of a choice of law)	
<input type="checkbox"/> Article 10 of Regulation (EU) No 650/2012 (Subsidiary jurisdiction)	
<input type="checkbox"/> Article 11 of Regulation (EU) No 650/2012 (<i>Forum necessitatis</i>)	
4.2. Additional elements on the basis of which the issuing authority considers itself competent to issue the Certificate?:.....	
.....	
.....	
.....	

The grounds of jurisdiction are aligned on the jurisdiction rules set out in Articles 4 - p.13, 7 - p.15 , 10 - p.15 and 11 - p.16 of the Regulation

Advice

When it is seised to issue an ECS, the issuing authority must, of its own motion, check its jurisdiction to issue the instrument.

It is advised to indicate in the succession file or in point 4.2 of the form the objective elements on the basis of which it considers itself competent.

It should be remembered that the competent authority is not bound by the claims of the applicants if it considers that other criteria contradict the said claims.

Fundamental

The issuing authority is located in the Member State whose courts have jurisdiction to settle the successions in accordance with Articles 4, 7, 10 and 11 of the Regulation

5.2. 4.2 Competence of the issuing authority Additional elements

Additional elements on the basis of which the issuing authority considers itself competent to issue the ECS.

4.2 Additional elements on the basis of which the issuing authority considers itself competent to issue the Certificate⁵:

.....

.....

.....

The issuing authority indicates the relevant, factual elements that led it to determine a given competence criterion, for example the elements on the basis of which it determined the habitual residence of the deceased (duration, location of the family, location of the assets, etc.) or the existence of a choice-of-court agreement.

These elements may also be kept in the succession file.

6. 5 Details concerning the applicant (natural person)

5.1 Address
5.1.1 Street and number/PO box⁵:

.....

5.1.2 Place and postcode⁵:

.....

5.1.3 Country⁵
 Belgium Bulgaria Czech Republic Germany Estonia Greece Spain France
 Canada
 Italy Cyprus Latvia Lithuania Luxembourg Hungary Malta Netherlands Austria
 Poland Portugal Romania Slovenia Slovakia Finland Sweden
 Other (please specify, ISO code):

5.1.4 Telephone:

5.1.5 Fax:

5.1.6 E-mail:

5.1.7 Relationship to the decedent
 Son Daughter Father Mother Grandson Granddaughter Grandfather
 Grandmother Spouse Registered Partner De Facto Partner Brother Sister
 Nephew Niece Uncle Aunt Cousin Other (please specify):

Access to the certificate is reserved (see Article 63 of the Regulation):

- to heirs, legatees having direct rights in the succession (on the notion of heirs and others, see Form V, Annex IV (see formulaire_cse_5_annexeIV.pdf) and Annex V (see formulaire_cse_5_annexeV.pdf)).
- and executors of wills or administrators of the estate

who need to invoke their status in another Member State.

⁵ The concept of de facto partner includes legal instruments of cohabitation which exist in some Member States such as "sambo" (Sweden) or "avopuoliso" (Finland).

How to fill out sections 5.1 to 5.11

No particular difficulties

Advice: How to fill our section 5.12

The notion of "De Facto Partner" encompasses the legal forms of cohabitation which exist in certain Member States, such as "sambo" (Sweden) or "avopuoliso" (Finland).

Complement

For further information, see the *status of the applicant* - p.16

7. 6 Details concerning the deceased

From 6.1 to 6.5.6

6. Details concerning the deceased	
6.1	Surname and given name(s)*:
6.2	Surname at birth (if different from point 6.1):
6.3	Sex*
6.3.1	<input type="checkbox"/> M
6.3.2	<input type="checkbox"/> F
6.4	Date (dd/mm/yyyy) and place of birth (town/country (ISO-code))*:
6.5	Civil status at the time of death*
6.5.1	<input type="checkbox"/> Single
6.5.2	<input type="checkbox"/> Married
6.5.3	<input type="checkbox"/> Registered Partner
6.5.4	<input type="checkbox"/> Divorced
6.5.5	<input type="checkbox"/> Widowed
6.5.6	<input type="checkbox"/> Other (please specify):

No particular difficulties

6.6 Nationality

6.6	Nationality*
<input type="checkbox"/> Belgium <input type="checkbox"/> Bulgaria <input type="checkbox"/> Czech Republic <input type="checkbox"/> Germany <input type="checkbox"/> Estonia <input type="checkbox"/> Greece <input type="checkbox"/> Spain <input type="checkbox"/> France <input type="checkbox"/> Croatia <input type="checkbox"/> Italy <input type="checkbox"/> Cyprus <input type="checkbox"/> Latvia <input type="checkbox"/> Lithuania <input type="checkbox"/> Luxembourg <input type="checkbox"/> Hungary <input type="checkbox"/> Malta <input type="checkbox"/> Netherlands <input type="checkbox"/> Austria <input type="checkbox"/> Poland <input type="checkbox"/> Portugal <input type="checkbox"/> Romania <input type="checkbox"/> Slovenia <input type="checkbox"/> Slovakia <input type="checkbox"/> Finland <input type="checkbox"/> Sweden <input type="checkbox"/> Other (please specify ISO-code):	

Reference should be made to
recital 41 of Regulation n° 650/2012.

The question of the nationality of the deceased arises only in the case of a choice of law: the choice of law is valid only if the chosen law is the national law of the deceased at the moment the choice of law was made or at the moment of death, as stated in Article 22 of the Regulation.

Fundamental

If the deceased had several nationalities, they must be treated on an equal footing in principle, meaning that there is no reason to give preference to one of those nationalities, notably the nationality of the jurisdiction.

From 6.7 to 6.9.1

6.7	Identification number*
6.7.1	National identity number:
6.7.2	Social security number:
6.7.3	Tax number:

No particular difficulties

8. 7 Testate / intestate succession

7.1

7. Testate/intestate succession	
7.1	The succession is*
7.1.1	- testate
7.1.2	- intestate
7.1.3	- partially testate and partially intestate

No particular difficulties

7.2

All the dispositions of property upon death should be indicated. If there are several dispositions of property upon death, an additional sheet should be attached.

7.2 If the succession is testate or partially testate, the certificate is based on the following valid disposition(s) of property upon death

7.2.1 Type: -I Will -II Joint will -III Agreement as to succession

7.2.2 Date (dd/mm/yyyy) on which it was drawn up:

7.2.3 Place where it was drawn up (town/country (ISO code)):

7.2.4 Name and designation of the authority before which it was established:

7.2.5 Date (dd/mm/yyyy) on which it was registered or deposited:

7.2.6 Designation of the register or the depository:

7.2.7 Reference number of the disposition in the register or in the depository:

7.2.8 Other reference number:

The other points do not pose any particular difficulties.

You are reminded that the Regulation provides a definition of the notion of dispositions of property upon death.

To enlighten this notion, reference should be made to the law applicable to the succession.

The other points do not pose any particular difficulties.

? Example

So if French law is applicable to the succession, the dispositions of property upon death include, among others, agreements as to succession, in particular donations between spouses of future assets, inter-vivos distributions or anticipated waivers of proceedings. These should therefore be mentioned.

7.3

7.3 To the knowledge of the issuing authority, other dispositions of property upon death made by the deceased, and which have been revoked or declared null and void, are the following*

7.3.1 Type: -I Will -II Joint will -III Agreement as to succession

7.3.2 Date (dd/mm/yyyy) on which it was drawn up:

7.3.3 Place where it was drawn up (town/country (ISO code)):

7.3.4 Name and designation of the authority before which it was established:

7.3.5 Date (dd/mm/yyyy) on which it was registered or deposited:

7.3.6 Designation of the register or the depository:

7.3.7 Reference number of the disposition in the register or in the depository:

7.3.8 Other reference number:

No particular difficulties

7.4 Other information

7.4 Other relevant information in relation to Article 68(j) of Regulation (EU) No 605/2012 (please specify):

This point refers to Article 68(j) of the Regulation which states notably that information as to whether the succession is testate or intestate, including information concerning the elements giving rise to the rights and/or powers of the heirs, legatees, executors of wills or administrators of the estate.

📖 Advice

The issuing authority must indicate the investigations it has conducted (notably checks of registers, etc.).

In particular, it may query the Central File of Last Wills and Testaments or consult the *ENRWA*, the European Network of Registers of Wills Association.

This information should be kept in the succession file.

9. 8 Law applicable to the succession

8.1

8. Law applicable to the succession
<p>8.1 The law applicable to the succession is the law of*</p> <input type="checkbox"/> Belgium <input type="checkbox"/> Bulgaria <input type="checkbox"/> Czech Republic <input type="checkbox"/> Germany <input type="checkbox"/> Estonia <input type="checkbox"/> Greece <input type="checkbox"/> Spain <input type="checkbox"/> France <input type="checkbox"/> Croatia <input type="checkbox"/> Italy <input type="checkbox"/> Cyprus <input type="checkbox"/> Latvia <input type="checkbox"/> Lithuania <input type="checkbox"/> Luxembourg <input type="checkbox"/> Hungary <input type="checkbox"/> Malta <input type="checkbox"/> Netherlands <input type="checkbox"/> Austria <input type="checkbox"/> Poland <input type="checkbox"/> Portugal <input type="checkbox"/> Romania <input type="checkbox"/> Slovenia <input type="checkbox"/> Slovakia <input type="checkbox"/> Finland <input type="checkbox"/> Sweden <input type="checkbox"/> Other (please specify ISO-code):

No particular difficulties

8.2 The law applicable was determined on the basis of the following elements:

<p>8.2 The law applicable was determined on the basis of the following elements*</p> <p>8.2.1 -# The deceased had his habitual residence in that State at the time of death (Article 21(1) of Regulation (EU) No 650/2012).</p> <p>8.2.2 -# The deceased chose the law of that State of which he was a national (Article 22(1) of Regulation</p>

8.2.1. The deceased had his habitual residence in that State at the time of his death (Article 21(1) of the Regulation). On the notion of habitual residence, reference should be made above to the explanations provided for Point 4.1 of this document.

8.2.2 The deceased chose the law of that State of which he was a national (see Article 22(1) of the Regulation) (see also the explanation for Point 7.2)

Complement

The authority issuing the ECS must check whether the choice of law that has been made seems to comply with Article 22 of the

Regulation and notably whether the choice was made expressly in a declaration in the form of a disposition of property upon death or is the result of such a disposition.

More specifically, pursuant to Article 27 of the Regulation, a check should be conducted of whether the conditions of validity of the form are fulfilled, meaning that the declaration in the form of a disposition of property upon death satisfies the law:

- a) of the State in which the disposition was made or the agreement as to succession concluded;
- b) of a State whose nationality the testator or at least one of the persons whose succession is concerned by an agreement as to succession possessed, either at the time when the disposition was made or the agreement concluded, or at the time of death;
- c) of a State in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had his domicile, either at the time when the disposition was made or the agreement concluded, or at the time of death;

<p>The authority certifies that it has taken all necessary steps to inform the beneficiaries of the application for a certificate and that, at the time of establishing the certificate, none of the elements contained in it were contested by the beneficiaries.</p> <p>The following points have not been filled in because they were not deemed to be relevant for the purpose for which the Certificate was issued*:</p> <p>If additional sheets have been added, state the total number of pages*: </p> <p>Done at* On*(dd/mm/yyyy)</p> <p>Signature and/or stamp of the issuing authority*: </p>

Article 66 of the Regulation states: *"the issuing authority shall verify the information and declarations and the documents and other evidence provided by the applicant. It shall carry out the enquiries necessary for that verification of its own motion where this is provided for or authorised by its own law, or shall invite the applicant to provide any further evidence which it deems necessary".*

According to Article 66,(3) *"Where this is provided for by its own law and subject to the conditions laid down therein, the issuing authority may require that declarations be made on oath or by a statutory declaration in lieu of an oath".*

 **Advice**

In other words, with regard to the effects of an ECS, the authority issuing the ECS should conduct a certain number of investigations to check the qualifications of the heirs and the absence of any challenges that might be pending, among other things.

It would seem useful that the authority issuing the ECS should indicate here the measures it has taken, *the documents on which it is basing itself - p. 17* and/or any declarations that might have been made.

Appendices

> States bound by the Regulation

The Member States of the European Union

The Regulation is binding upon the European Union Member States that participated in its adoption. In 2016, there were 25 of them.

States that become members of the European Union in the future will be bound by the text which is part of the Community acquis.

The three exceptions

Three European Union Member States are not bound by the Regulation.

- **Denmark**
- **United Kingdom and Ireland**

In these three States, the Regulation and the solutions it contains do not apply unless they should serve notice at some time in the future of their intention to be bound by the Regulation.

Therefore, if the authorities of these States are seised with a succession that is connected with another Member State, they will apply their national rules of conflict.

On the other hand, if the authorities of one of the 25 Member States that are bound by the Regulation must settle a succession that is connected with one of these three States, they will apply the Regulation. The same remark applies to relationships with non-European Union third countries.

Warning

Several of the provisions of the Regulation, notably on the matter of renvois, use the notion of Member State.

The United Kingdom, Denmark and Ireland might be considered as being included in this notion.

This interpretation should be ruled out, however, as the Member States within the meaning of the Regulation are the Member States bound by the Regulation and not the European Union Member States.

> Details and application of Article 4

Definition: Article 4 of Regulation n° 650/2012

The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole

The Regulation provides several distinct grounds of competence and the notary must indicate on what basis he considers himself to be competent by checking the corresponding box.

These grounds of competence are set out below.

The Regulation establishes the “habitual residence” at the time of death as the main competence criterion.

Although the articles of the Regulation do not define this notion, recitals 23 and 24 do provide some indications.

Note:First indication

The notion of habitual residence within the meaning of the Regulation does not necessarily mean the tax residence (or tax domicile) and / or matrimonial residence (or matrimonial domicile).

Note:Second indication

The notary must determine in which State the deceased had “the centre of interests of his family and his social life”, and take into consideration, among other things, the length of time he has been in that State, the circumstances of and reasons for his presence there and the location of his movable and immovable assets, etc.

Note:Third indication

It is always recommended that the notary should indicate in Point 4.2 on the form the grounds on which he considers that the deceased has his habitual residence in a given State. The evidence leading to him determining the habitual residence as being in a given State may also be compiled in the succession file.

Example:First example

François, who is of French nationality and has lived his whole life in Versailles where he owns a building and returns regularly, has lived in Geneva for professional reasons for three years. He dies in a traffic accident in Spain.

He will be considered as having his habitual residence in France if he has only been living abroad for professional reasons and for a limited period of time (eg. defined by his employment contract).

? Example: Second example

Jacques is accommodated in a retirement home in Belgium purely for financial and healthcare quality reasons. All his property and family remained in France where he continued to exercise his voting rights.

His habitual residence will be considered as being in France in light of the criteria set out in recitals 23 and 24.

> Details and application of Article 7

Definition: Article 7 of Regulation n° 650/2012

The courts of a Member State whose law had been chosen by the deceased pursuant to Article 22 shall have jurisdiction to rule on the succession if:

- (a) a court previously seised has declined jurisdiction in the same case pursuant to Article 6;
- (b) the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of that Member State; or
- (c) the parties to the proceedings have expressly accepted the jurisdiction of the court seised.

This ground of competence will only be of marginal concern to notaries: a French notary will therefore be competent when French law had been chosen by the deceased as the law applicable to his succession and the heirs have agreed that the French courts had sole competence by a choice-of-court agreement

Warning

A choice-of-court agreement (cf. Article 5 of the Regulation) must be expressed in writing, dated and signed by the parties.

The choice-of-court agreement requires the approval of all the heirs: if one of the heirs does not give their consent, competence cannot be determined on such grounds.

A choice-of-court agreement may only be made to the benefit of courts in Member States in which the Regulation is applicable. This is not the case of Denmark, the United Kingdom or Ireland. In those cases, a choice of court is not admissible and Article 7 may not apply. In that case, only the notary in the State of the last habitual residence of the deceased is competent to establish the ECS.

A choice-of-court agreement does not exclude the possibility of competence being disputed or challenged.

> Details and application of Article 10

Definition: Article 10 of Regulation n° 650/2012

1. Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as:
 - (a) the deceased had the nationality of that Member State at the time of death; or, failing that,
 - (b) the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.
2. Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on those assets.

These grounds of jurisdiction will also concern notaries only marginally. A French notary may have jurisdiction in the following cases:

- A French national living in Switzerland at the time of his death and who has a property in France ("*Article 10(1) of the Regulation*").
- An Italian who had his habitual residence in France less than five years prior to his death, who is living in Switzerland at the time of his death and owns immovable property in France ("*Article 10 (1) b.*").

Advice

When the French notary has jurisdiction by the terms of Article 10, he may demonstrate to the applicant that he has no interest in applying for an ECS (if it is not to be circulated in other Member States).

> Details and application of Article 11

Definition: Article 11 of Regulation n° 650/2012

Where no court of a Member State has jurisdiction pursuant to other provisions of this Regulation, the courts of a Member State may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected.

The case must have a sufficient connection with the Member State of the court seised.

Even supposing that a French court does have jurisdiction pursuant to Article 11, in principle a French notary should not need to issue an ECS on such grounds.

> Status of the applicant

Not just anybody can apply for the issue of an ECS. Only certain persons are entitled to apply for issue. They are the following:

- Heirs or legatees having direct rights in the succession (Article 63(1) and Article 65(1)),
- Executors of wills or administrators of the estate who need to invoke their status in another Member State.

Creditors of the succession or the creditors of an heir may not apply for the issue of an ECS.

The status of the applicant must be examined in light of the law applicable to the succession.

The applicant must provide evidence (originals or certified copies) of their status and of the rights they claim to have in the assets of the estate as beneficiary, administrator or executor (Article 66).

🔍 Note

We should point out that it is not necessary for the heirs to have accepted the succession in order to apply for an ECS, and that the application for an ECS does not constitute acceptance of the succession.

> Annexes included in the Certificate*

Annexes incluses dans le certificat ()
<input type="checkbox"/> Annexe I — Renseignements concernant le ou les demandeurs (OBLIGATOIRE si le ou les demandeurs sont des personnes morales)
<input type="checkbox"/> Annexe II — Renseignements concernant le représentant du ou des demandeurs (OBLIGATOIRE si le ou les demandeurs sont représentés)
<input type="checkbox"/> Annexe III — Informations sur le régime matrimonial ou le régime patrimonial équivalent du défunt (OBLIGATOIRE si le défunt était soumis à un tel régime au moment du décès)
<input type="checkbox"/> Annexe IV — Statut et droits du ou des héritiers (OBLIGATOIRE si la finalité du certificat est de certifier ces éléments)
<input type="checkbox"/> Annexe V — Statut et droits du ou des légataires ayant des droits directs à la succession (OBLIGATOIRE si la finalité du certificat est de certifier ces éléments)
<input type="checkbox"/> Annexe VI — Pouvoirs d'exécuter un testament ou d'administrer la succession (OBLIGATOIRE si la finalité du certificat est de certifier ces éléments)
<input type="checkbox"/> Aucune annexe n'est incluse