

Summary of the meeting with *Dr. Ádám Tóth* (President of the *Hungarian Chamber of Civil Law Notaries*) and with *Dr. Tibor Szócs* (Director of the *Hungarian Notaries' Academic Research Institute*) – on 5<sup>th</sup> January 2018, Budapest

*The content of this document represents the views of the authors only and it is their sole responsibility.  
The European Commission does not accept any responsibility for use that may be made of the information it contains*

*Some country-specific issues on the application of the Succession Regulation (Hungary)*

**I. New ideas for the (Budapest) workshop**

It is suggested to invite foreign speakers from those specific countries too (Slovakia, Austria, Romania and Germany), wherefrom the most cross-border cases are expected to come (in Hungary):

- Romania:** there was an „in kind compensation” after the communist era in Romania (i.e. there was a compensation in kind for the assets confiscated during communist times) and several Hungarian citizens have regained (real) property there;
- Austria:** many Hungarians had settled in Austria as refugees after the revolution against communism in 1956 - and then they moved home again after 1990 (i.e. after the political changes whereby Hungary became a democratic state again), but they still have significant amount of property (real estate) and/or other assets (a.o. bank accounts) in Austria;
- Germany:** German citizens bought (real) property in Hungary in a significant number after the political changes in and after 1990, and they “start to die” these days... / moreover, one of the aims of the Succession Regulation is to handle the legal issues of guest workers, and Germany is the main destination for Hungarian guest workers (cf. the construction industry, doctors, nurses, etc.).

**II. Experienced or predicted cases, questions, difficulties regarding the Succession Regulation in the Hungarian notarial practice**

**1. Non-application of the Regulation**

An overall problem (with special regard to Romania) is that the Regulation is simply not applied, though it should be (i.e. it gets ignored).

**2. Problems regarding the registration of ownership into the Hungarian land register**  
(Though this problem has been solved recently.)

- The European Certificate of Succession (ECS) issued by the German courts contained (and still contains) only abstract proportions of the estate, but not the list of the concrete assets in the estate, and even less the particular and precise identification data of each piece of property/asset;
- Therefore the Hungarian land (real estate) registration authorities could not register the ownership upon succession on the basis of an ECS issued in Germany, due to the lack of that specification and of the necessary identification data (local No. of the premises, etc.);
- The Hungarian Act on Land Registration has therefore been amended recently: now the registration of the change of ownership (upon succession) must be carried out even if the ECS (issued in Germany for example) does not, but the “request for registration” filed by the successor(s) contains



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

the necessary identification data (e.g. the real estate identification number).

### 3. Lack of access to information needed to proceed the probate

- The Hungarian succession law is based on the “*ipso iure*” system (i.e. the succession gets completed immediately by and upon the death of the bequeather), but the probate follows the so called

This Project is implemented  
by Coordinator



UNIVERSITÀ  
DEGLI STUDI  
FIRENZE  
DSG  
DIPARTIMENTO DI  
SCIENZE GIURIDICHE



ELTE LAW  
EÖTVÖS LORÁND UNIVERSITY



UNIVERSITAT  
DE VALÈNCIA



Partners

“*additional model*”, therefore it comes to a decree in the end of the probate, whereby the Notary “releases” the estate to the heir(s) – it means that though the relevant legal fact triggering the succession is the death itself; but there is a “decree of release” issued by the notary specifying all assets, and that decree testifies authentically the facts/assets/subjects of the succession, until the proof of the contrary within the framework of a court proceeding:

- a) Therefore the notary must know, which assets belong to the estate at all;
  - b) Moreover, if this is not known to him/her, then the so called reserved or compulsory share cannot be calculated either;
  - c) And the heirs cannot enter into a settlement (within the probate) either, if they do not know, which assets are part to the estate at all.
- However it happens quite frequently, that the Hungarian notary cannot find out / does not get access to the information on the existence/value of some specific assets, for example on the balance of foreign bank accounts and/or on the content of the safe deposit boxes abroad (stored and kept in banks), it means, that:
- a) Foreign banks generally do not provide information to the Hungarian notary (if the Hungarian notary files a direct request to the bank), since they refer to bank secrets. The notaries try to solve this problem in the following way, which seems to work regarding Austria (Austrian banks): the notary submits an (indirect) request, i.e. requests the needed information from the Austrian Probate Court (Nachlassgericht), based on the *Council Regulation (EC) No 1206/2001 (of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters*, and the Austrian Probate Court acquires the information from the bank and forwards to the Hungarian notary. However, this recipe does not work in Germany, because according to the applicable German laws, the banks do not have to give this kind of information to the court either, so in fact they comply with their own laws if they reject giving any information.
  - b) In connection with the safe deposit boxes the banks argue that according to their General Terms and Conditions they cannot see the content of the safe box, either; with other words: not even the bank is allowed to open the safe deposit box without the client. The Hungarian Chamber of Civil Law Notaries (HCCLN) is now trying to break through with the following solution: The notary – if all heirs agree – designates one of the heirs as an “*executor of the wills*”, because if this happens, the notary can issue an ESC referred to in *Article 63 (2) c) of the Regulation* [“*The Certificate may be used, in particular, to demonstrate one or more of the following: c) the powers of the person mentioned in the Certificate to execute the will or administer the estate*”]. The HCCLN hopes that the notaries can get information on the content of the safe deposit boxes this way too. (According to some leading members of the HCCLN, the reassuring long term solution would be, if the Hungarian lawmaker created a kind of “*general estate conservator/curator*” – that does not exist in Hungarian law at the moment – by the amendment of the act on probates, since the above described solution works only if the heirs can agree upon who (which of them) shall be the “*executor of the wills*” named in the ESC based on Art 63 (2) c).

#### 4. Adaptation proceedings

- According to the *Act LXXI of 2015 on adaption proceedings of Article 31 of Regulation (EU) No 650/2012 of the European Parliament and of the Council*, “The Central District Court of Buda” (i.e. one of the district courts in Budapest) has the exclusive competence to decide on the adaption/substitution of that particular foreign legal institutions that do not exist in Hungarian law.

- This means that a right/rule/legal term/institution, which is not known in the Hungarian law, shall, if necessary and to the extent possible, be adapted to the closest equivalent right/rule/term/institution under the laws of Hungary.
- The notaries are convinced that the adaptation of several foreign rights/rules/terms/institutions is going to be very difficult if not impossible... See the examples specified by the President of the HCCLN in the meeting:
  - a) "*fideicommissarische Substitution*" under Austrian law;
  - b) "*Dauertestamentsvollstreckung*" (long term will-executorship) under German law (this means for example, that if the only heir of the deceased is his six-year-old child, then the testator can designate someone as a long-term executor of the wills - similar to a trustee; this possibility does not exist under Hungarian law);
  - c) The notaries' right to act as estate-trustees in Austria (the Hungarian notaries are not allowed to do so).
- It is very questionable whether these rights or legal institutions could be registered for example into the Hungarian land register, and if yes, under which legal title... the notaries consider to "convert" them as "*restraint on alienation and encumbrance*" which exists in Hungarian law.

## 5. Deficiencies of the Succession-Regulation, non-harmonized issues

- *Taxation* issues are not harmonized at all, since the EU has no such competence. Asset planning is very difficult without an (inheritance) tax harmonization;
- There is *no uniform cross-border notification system or register of probates* (registration book) within the EU, therefore there is no reliable method/way to handle parallel procedures, and to make matters worse: the (Hungarian) notary has frequently no chance to be informed on a probate already running in another member state. Thus, in *lis pendens* cases ("*any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established*") the competent authorities, courts or notaries in one member state should be informed on the probate already started in another member state, but in reality this is frequently not the case, since no such information is disseminated anywhere. Cf. the examples specified by the President of the HCCLN:
  - a) A French citizen, who has lived in Budapest for 15 years and had a Hungarian girlfriend, dies in Budapest. His sister (herself a French citizen, having her habitual residence in France) makes a statement after the death of his brother on some aspects of the succession before a French court. The Hungarian notary will not be informed on that statement at all (or even if the Hungarian notary gets notified, the notice will probably arrive too late: i.e. only after the release of the estate or after the issuance of the ECS).
  - b) A dual-citizen of Hungary and Austria has a bank account in both countries.
- The term "*habitual residence*" is not defined in the regulation and it is fearful that it will be interpreted in many different ways in the member states. The regulation does not even enumerate the aspects upon which the habitual residence should be considered, there is no such a list. The president of the HCCLN reported an interesting case: an Austrian citizen has lived for a long time in Hungary, but the Austrian authorities found that her habitual residence was (in) Austria (and not in Hungary) because her closest relative lived in Austria.

(Á. Fuglinszky – O. Szeibert – B. Tókey)