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EU LAW TRAINING IN ENGLISH LANGUAGE:
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING
FOR EUROPEAN NOTARIES AND JUDGES



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Family Law in Practice with a special focus on Council Regulations (EU) 1103/2016 and 1104/2016

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Notary Chamber of Bulgaria



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Introduction I.

- What is Family Law? (e-justice.europa.eu)
- All the legal rules applying to relations between persons connected with on another by descent or by marriage. (or registered partnership)
- These rules vary from country to country as they are closely linked to the history, culture and social (political/ideological) development of each nation.



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Introduction II.

- EU legislation in Family Law matters
- Art. 5 of Treaty on the European Union – the principles of subsidiarity and proportionality
- Art. 81. of the Treaty on the Functioning of the European Union – judicial cooperation in civil matters
- measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a **special legislative procedure**. The Council shall act **unanimously** after consulting the European Parliament.



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Introduction III.

- EU instruments in Family Law matters
- Divorce – R 2201/2003 (Brussels IIA) and R 1259/2010 (Rome III)
- Parental child abduction (Brussels IIA and Hague Convention of 23 October 1980)
- Maintenance Claims (R 4/2009)
- Parental responsibility (Brussels IIA)
- Property effects of marriage and registered partnership (R 1103/2016 and R 1104/2016)



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The Road to R 1103/2016 and R1104/2016

- 2011: two proposals of the Commission to provide legal certainty to international couples with regard to the management and the sharing of their property in case of divorce/separation or death of one of its members.
- 2015: the Council concludes that no unanimity can be reached for the adoption of the proposals within a reasonable period of time.
- Dec 2015-March 2016: 18 EU countries addressed request to the Commission to establish enhanced cooperation in the area of the property regimes of international couples.
- 9 June 2016: Decision (EU) 2016/954 authorising enhanced cooperation.



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Member States participating in enhanced cooperation

- Binding and directly applicable in the following Member States: SE, BE, EL, HR, SI, ES, FR, PT, IT, MT, LU, DE, CZ, NL, AT, BG, FI, CY – almost 70% of EU population, the majority of international couples
- Open to all the other Member States
- Hungary: Act XXVIII of 2017 on Private International Law (Chapters V and VI)



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Scope of application of R1103/2016 and R 1104/2016

- **I. Temporal scope** (Art 69 of both Regulations): „This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 29 January 2019 subject to paragraphs 2 and 3)”
- **II. Territorial scope:** Member States participating in enhanced cooperation by virtue of Decision (EU) 2016/954
- **III. Substantive scope:** matrimonial property regimes (R 1103/2016), matters of the property consequences of registered partnerships (R 1104/2016)



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Matrimonial property regimes

- Definition: systems of property ownership between spouses/future spouses
- Civil law jurisdictions: „default” (statutory) matrimonial regimes or regimes contracted by agreements (eg. Hungarian Civil Code, Chapter VI and VII)
- Common law jurisdictions: separation of property



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Substantive scope - exclusions

- a) revenue, customs and administrative issues
- b) legal capacity of spouses/partners (internal rules)
- c) existence, validity or recognition of marriage/registered partnership (internal rules)
- d) maintenance obligations
- e) succession to the estate of the deceased spouse/partner
- f) social security
- g) the entitlement to transfer or adjustment between spouses, in the case of divorce, legal separation or marriage annulment, of rights to retirement or disability pension during marriage and which have not generated pension income during the marriage
- **h) the nature of rights *in rem* relating to property**
- i) any recording in a register of rights (movable and immovable property)



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Rights in rem - ECJ

- **ECJ C-218/16** Kubicka
- Interpretation of rights *in rem* in connection with R 650/2012



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Jurisdiction I. R 1103/2016

- Art.4: Jurisdiction in the event of the death of one of the partners
- Art.5: Jurisdiction in cases of dissolution or annulment
- Art.6: Jurisdiction in other cases
- habitual residence, last habitual residence, respondent's habitual residence, **spouses' common nationality**
- **C-168/08 Case Hadadi (Hadady)**



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Jurisdiction II. R 1103/2016

- Other dispositions on jurisdiction:
 - choice of court (Art. 7)
 - jurisdiction based on the appearance of the defendant (Art. 8)
 - alternative jurisdiction (Art. 9)
 - subsidiary jurisdiction (Art. 10)
 - forum necessitatis (Art. 11)



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Applicable Law I.

- Universality and unity of the applicable law
- Choice of applicable law
- protection of third parties
- formal validity of the agreement on choice of law
 - minimum requirements (possibility of communication by e-mail?, decision of Tribunale di Pordenone 14 Oct 2014)
 - additional requirements



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Applicable Law II.

- Applicable law in the absence of choice:
 - first common habitual residence/creation of registered partnership
 - common nationality of spouses (only 1103/16)
 - closest connection (only 1103/16)
 - other dispositions



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Applicable Law III.

- Scope of applicable law
- eg. classification, transfer of property, responsibility for debts and liabilities, powers, rights and obligations with regard to property etc.
- Effects in respect of third parties
- Adaptation fo rights *in rem*
- Overriding mandatory provisions
- Public policy
- Exclusion of renvoi
- Territorial and inter-personal conflicts of laws



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Recognition, enforceability and enforcement

- General rule: no special procedure is required
- Grounds of non-recognition
- Prohibition of review of jurisdiction of the court of origin
- Prohibition of review as to substance
- Procedure – by the law of the Member State of enforcement



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Case 1

- Yvette, a French woman and Marco, an Italian man marry and live in Rome. After 6 years, they decide to move to Amsterdam. They live there for another 6 years before applying to the Dutch court for divorce. They have not made an agreement on the law to be applied to their divorce (Rome III) or matrimonial property regime.
- Which law is applicable?



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Case 2

- Inez, a Spanish woman and Hans, a German man marry and live in Berlin. After a number of years they move to Vienna where they live for several years. Their marriage breaks up, Hans leaves his wife and moves to Brussels to work. After a year he files for divorce in Belgium.
- Which law(s) will be applicable?



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