



EULawInEN

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



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

Practical cases on Family Law under the two EU Regulations (2016/1103 and 2016/1104)

Andrea Mohos

judge at Central District Court of Buda, Hungary

This Project is implemented by Coordinator



Fondazione
Italiana
del Notariato

Partners



Magyar Országos
Közjegyzői Kamara



Notary Chamber of Bulgaria



Content

1. INTRODUCTION
2. JURISDICTION – practical cases
3. APPLICABLE LAW – practical cases
4. RECOGNITION and ENFORCEMENT



EULawInEN



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

INTRODUCTION - General Overview of EU Family Law Instruments

- ❑ **Divorce** – Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning **jurisdiction** and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (**BRUSSELS IIA**) – **applicable to all EU MS except for Denmark**
 - Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the **law applicable to divorce and legal separation (Rome III)** – **enhanced cooperation Belgium, Bulgaria, Germany, Greece, Spain, France, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, Austria, Portugal, Romania, and Slovenia.**
- ❑ **Parental responsibility** – Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning **jurisdiction** and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (**BRUSSELS IIA**)
 - **Hague Convention** of 19 October 1996 on jurisdiction, **applicable Law**, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children
- ❑ **Maintenance Claims** - Council Regulation (EC) No 4/2009 of 18 December 2008 on **jurisdiction, applicable law**, recognition and enforcement of decisions and cooperation in matters relating to maintenance **obligations (MAINTENANCE REGULATION)** – **applicable to all EU MS**
- ❑ **Succession** – Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 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 (**SUCCESSION REGULATION**) – **applicable to all EU MS except for UK, Ireland and Denmark**
- ❑ **Property effects of marriage and registered partnership – so called TWIN REGULATIONS**
 - Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (**MATRIMONIAL PROPERTY REGULATION**)
 - Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships (**REG.PARTNERSHIP PROPERTY REGULATION**)



INTRODUCTION - Cross-border implications

The regulations apply to matrimonial property regimes/ property consequences of registered partnerships with cross-border implications (with a foreign element). (Recital 14)

1. Spouses/partners with the same nationality:

- with habitual residences in different States at the time of marriage/creation of registered partnership or drafting of the agreement that determines or amends their regime, or
- with assets of one of the spouses/partners in a State other than that of his/her nationality or residence, or
- who have concluded their marriage/have created registered partnership in a State other than that of their nationality or residence.

2. **Spouses/partners with different nationalities**, regardless of their habitual residence, the location of their assets or where their marriage was concluded/registered partnership was created.



INTRODUCTION – Scope of the Regulations

Temporal scope: applicable from 29 of January 2019

Applicable to legal proceedings instituted, to authentic instrument formally drawn up or registered, and to court settlements approved or concluded on or after 29 of January 2019.

Jurisdiction / Enforcement: Chapters II, IV and V applicable from 29 January 2019 (*However if the proceedings in the Member State of origin were instituted before 29 January 2019, decisions given after that date shall be recognised and enforced in accordance with Chapter IV as long as the rules of jurisdiction applied comply with those set out in Chapter II.*)

Applicable Law: Chapter III shall apply only to spouses who marry or who specify the law applicable to the matrimonial property regime on or after 29 January 2019

Territorial scope: applicable only in MSs who participate in the enhanced cooperation - 18 Member States - Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden. Other EU countries are free to join to the Regulations.

The 18 Member States represent the 70% of the EU population.

Member States that do not participate in the enhanced cooperation shall apply their rules of private international law.



INTRODUCTION – Scope of the Regulations

Substantive scope (Art. 1):

-‘**matrimonial property regime**’ means a set of rules concerning the property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution; (Point (a) Section 1 of Article 3)

- **marriage** is not defined by the Regulation

-‘**property consequences of a registered partnership**’ means the set of rules concerning the property relationships of the partners, between themselves and in their relations with third parties, as a result of the legal relationship created by the registration of the partnership or its dissolution; (Point (b) Section 1 of Article 3)

- ‘**registered partnership**’ means the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation; (Point (a) Section 1 of Article 3)

Excluded from the substantive scope of the Regulations (Sections 1 and 2 of Art. 1)

Revenue, customs and administrative matters

- (a) the legal capacity of spouses;
- (b) the existence, validity or recognition of a marriage/registered partnership;
- (c) maintenance obligations;
- (d) the succession to the estate of a deceased spouse/partner;
- (e) social security;
- (f) the entitlement to transfer or adjustment between spouses/partners, in the case of divorce, legal separation or marriage annulment/dissolution or annulment of registered partnership, of rights to retirement or disability pension accrued during marriage/registered partnership and which have not generated pension income during the marriage/registered partnership;
- (g) the nature of rights *in rem* relating to a property; and
- (h) any recording in a register of rights in immovable or moveable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.



Jurisdiction – Practical case 1

Thomas and Judith are spouses, they are German nationals and they lived in Italy for 4 years. But, in May 2017 Thomas moved back to Germany and in April 2019 he started a legal proceedings regarding matrimonial property regime in Germany. Judith still lives in Italy.

Do the German courts have jurisdiction to their matrimonial property?



Jurisdiction

Jurisdiction in other cases (Art. 6):

the courts of that Member States have jurisdiction to the spouses matrimonial property regime/the property consequences of registered partnership

- (a) in whose territory the spouses/partners are **habitually resident at the time the court is seised**, or failing that,
- (b) in whose territory the spouses/partners were **last habitually resident**, insofar as *one of them still resides there at the time the court is seised*, or failing that,
- (c) in whose territory **the respondent is habitually resident at the time the court is seised**, or failing that,
- (d) of the spouses/partners' **common nationality at the time the court is seised**, or failing that,
- (e) **under whose law the registered partnership was created (only in case of registered partnership)**.



Jurisdiction

Two key factors:

1. HABITUAL RESIDENCE

- The concept of habitual residence is not defined by the Regulations, it must be examined in every case
- Rec. (23) 650/2012 **Succession Regulation**: In order to determine the habitual residence, the authority dealing with the succession **should make an overall assessment of the circumstances of the life** of the deceased during the years preceding his death and at the time of his death, **taking account of all relevant factual elements**, in particular **the duration and regularity of the deceased's presence in the State** concerned and **the conditions and reasons for that presence**. The habitual residence thus **determined should reveal a close and stable connection with** the State concerned taking into account the specific aims of this Regulation.



EULawInEN



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

Jurisdiction

Two key factors:

2. TIME OF SEISING A COURT (Art. 14)

For the purpose of this Chapter, a court shall be deemed to be seised:

- (a) at the time when **the document** instituting the proceedings or an equivalent document **is lodged with the court**, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the defendant;
- (b) if **the document** has to be served before being lodged with the court, at a time when **it is received by the authority responsible for service**, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court; or
- (c) if the proceedings are opened on the court's own motion, at the time when **the decision to open the proceedings is taken by the court**, or, where such a decision is not required, at the time when **the case is registered by the court**.



EULawInEN



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

Jurisdiction – Practical case 1

Thomas and Judith are spouses, they are German nationals and they lived in Italy for 4 years. But, in May 2017 Thomas moved back to Germany and in April 2019 he started a legal proceedings regarding matrimonial property regime in Germany. Judith still lives in Italy.

Do the German courts have jurisdiction to their matrimonial property?

No, because the Italian courts have jurisdiction under Point (b) of Art. 6



EULawInEN



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

Jurisdiction – Practical case 2

Antonio, an Italian national and Márta, a Hungarian national married together in 2015, they lived in Germany until December 2017. After December 2017, Antonio moved back to Italy, Márta moved back to Hungary. Antonio wants to start a legal proceedings against Márta in October 2019.

Which Member State does have jurisdiction?

Hungary has jurisdiction under Point (c) of Art. 6.



EULawInEN



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

Jurisdiction – Practical case 3

Stefan, a French national is married to Maria a Belgian national. They got married in Belgium and live there permanently. A couple of years later they bought a holiday house in France in addition to their property in Belgium.

In case of divorce, which country has jurisdiction to the division of their property (which will include their properties in both France and Belgium)?



EULawInEN



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

Jurisdiction

Main principle: unity of court

- **Jurisdiction in the event of the death of one of the spouses/partners (Art. 4)** - a court of Member State is seised in matters of the succession of a spouse/partner pursuant to 650/2012 EU Regulation (Succession Regulation)
- **Jurisdiction in case of divorce, legal separation or marriage annulment (Art. 5)** - a court of a Member State is seised to rule on application for divorce, legal separation or marriage annulment pursuant to 2201/2003 EC Regulation (Brussels IIA)
- **Jurisdiction in case of dissolution or annulment of registered partnership (Art. 5):** - a court of a Member State is seised to rule on the dissolution or annulment of a registered partnership ***but only if the parties so agree***



Jurisdiction – Practical case 3

Stefan, a French national is married to Maria a Belgian national. They got married in Belgium and live there permanently. A couple of years later they bought a holiday house in France in addition to their property in Belgium.

In case of divorce, which country has jurisdiction to the division of their property (which will include their properties in both France and Belgium)?

Under Art. 5, the EU country court which has jurisdiction to deal with divorce, legal separation or the dissolution of registered partnership will deal with the couple's property regime matters.

Belgium pursuant to Point (a) Section 1 of Art. 3 of 2201/2003 EC Regulation (which says the court of that MS has jurisdiction in whose territory the spouses are habitually resident).



Applicable law – Practical case 1

Márk, a Hungarian national and Teresa, an Italian national lived together in Budapest, in Hungary. They purchased an apartment in Budapest. In 2018, they moved to Germany and they married in April 2019. They lived in Germany until December 2019, when Márk got a job in the Netherlands, so they moved to the Netherlands and they continuously live there since then.

Now, they want to conclude a matrimonial property agreement.

*Which laws can be chosen as applicable law by the future spouses?
What are the formal requirements of such an agreement?*



Applicable law

CHOICE OF APPLICABLE LAW BY SPOUSES/PARTNERS (Art. 22.)

The spouses or future spouses may agree to designate, or to change, the law applicable to their matrimonial property regime, provided that that **law is one of the following:**

- (a) the law of the State where the spouses or future spouses/partners, or one of them, is **habitually resident** *at the time* the agreement is concluded; or
- (b) the law of a State of **nationality of either spouse or future spouse/partner** *at the time* the agreement is concluded.
- (c) ***the law of the State under whose law the registered partnership was created. (only in case of registered partnership)***



Applicable law

FORMAL VALIDITY OF THE AGREEMENT OF CHOICE OF LAW (Art. 23)

- **Minimum requirements:** in writing, dated and signed by the spouses/partners
- **Additional requirements:**
 - If the law of the Member State in which both spouses/partners have their habitual residence at the time the agreement is concluded lays down additional formal requirements for matrimonial property agreements/property consequences of registered partnership, those requirements shall apply.
 - If the spouses/partners are habitually resident in different Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements for matrimonial property agreements/property consequences of registered partnership, the agreement shall be formally valid if it satisfies the requirements of either of those laws.
 - If only one of the spouses/partners is habitually resident in a Member State at the time the agreement is concluded and that State lays down additional formal requirements for matrimonial property agreements/property consequences of registered partnership, those requirements shall apply.



Applicable law

Main principles:

- **Universal application:** the law of *any* state can be designated as applicable law, even third countries' law
- **Public policy (ordre public) (Art. 31)**

The application of a provision of the law of any State specified by this Regulation **may be refused *only if*** such application is manifestly incompatible with the public policy (ordre public) of the forum.

- **Unity of the application:** to all aspects and all assets of a matrimonial property regime/property consequences of registered partnership



Applicable law– Practical case 1

Márk, a Hungarian national and Teresa, an Italian national lived together in Budapest, in Hungary. They purchased an apartment in Budapest. In 2018, they moved to Germany and they married in April 2019. They lived in Germany until December 2019, when Márk got a job in the Netherlands, so they moved to the Netherlands and they continuously live there since then.

Now, they want to conclude a matrimonial property agreement.

Which laws can be chosen as applicable law by the future spouses? What are the formal requirements of such an agreement?

Dutch law, Italian law and Hungarian law. Minimum requirements: the agreement must be in writing, dated and signed by the spouses/partners and must comply with the additional formal requirement of the Netherlands.



EULawInEN



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

Applicable law – Practical case 2

Márk, a Hungarian national and Teresa, an Italian national lived together in Budapest, in Hungary. They purchased an apartment in Budapest. In 2018, they moved to Germany and they married in April 2019. They lived in Germany until December 2019, when Márk got a job in the Netherlands, so they moved to the Netherlands and they continuously live there since then.

Which law will be the applicable law in absence of choice of law by the parties?



Applicable law

APPLICABLE LAW IN ABSENCE OF CHOICE BY THE SPOUSES/PARTNERS (Art. 26)

In the absence of a choice-of-law agreement pursuant to Article 22, the law applicable to the matrimonial property regime shall be the law of the State:

In case of marriage:

- (a) of the spouses' **first common habitual residence** *after the conclusion of the marriage*; or, failing that
- (b) of the spouses' **common nationality** *at the time of the conclusion of the marriage*; or, failing that
- (c) with which **the spouses jointly have the closest connection** *at the time of the conclusion of the marriage*, taking into account all the circumstances.

In case of registered partnership:

under which the relationship was created. (only one)



Applicable law

SCOPE OF APPLICABLE LAW (Art. 27)

The law applicable to the matrimonial property regime pursuant to this Regulation shall govern, inter alia:

- (a) the classification of property of either or both spouses into different categories during and after marriage;
- (b) the transfer of property from one category to the other one;
- (c) the responsibility of one spouse for liabilities and debts of the other spouse;
- (d) the powers, rights and obligations of either or both spouses with regard to property;
- (e) the dissolution of the matrimonial property regime and the partition, distribution or liquidation of the property;
- (f) the effects of the matrimonial property regime on a legal relationship between a spouse and third parties; and (g) the material validity of a matrimonial property



Applicable law – Practical case 2

Márk, a Hungarian national and Teresa, an Italian national lived together in Budapest, in Hungary. They purchased an apartment in Budapest. In 2018, they moved to Germany and they married in April 2019. They lived in Germany until December 2019, when Márk got a job in the Netherlands, so they moved to the Netherlands and they continuously live there since then.

Which law will be the applicable law in absence of choice of law by the parties?

German law.



EULawInEN



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

Applicable law

By way of exception and upon application by either spouse, the judicial authority having jurisdiction to rule on matters of the matrimonial property regime/property consequences of registered partnership

may decide

that **the law of a State** other than the State whose law is applicable pursuant *to point (a) of paragraph 1/paragraph 1* **shall govern** the matrimonial property regime/property consequences of registered partnership

if **the applicant demonstrates/if the law of that other state attaches property consequences to the institution of the registered partnership and if the applicant demonstrates that:** that:

- (a) the spouses/partners **had their last common habitual residence** in that other State **for a significantly longer period of time** than in the State designated pursuant to point (a) of paragraph 1; and
- (b) both spouses/partners **had relied on the law of that other State** in arranging or planning their property relations.

The law of that other State **shall apply as from the date of the marriage/ the creation of the registered partnership**, unless one spouse/partner disagrees. In the latter case, the law of that other State shall have effect as from the establishment of the last common habitual residence in that other State.



Recognition and enforcement

Main principle: mutual recognition – free movement of judgements

Recognition (Art. 36):

A decision given in a Member State shall be recognised in the other Member States without any special procedure being required. No legalization or other formalities are needed.

Jurisdiction of court: The court of the main proceedings.

If the outcome of the proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Grounds for non-recognition (Art. 37)

- a) Recognition is contrary to public policy
- b) The procedural rights of the defendant was violated
- c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought
- d) if it is irreconcilable with an earlier decision given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

In case of non-recognition, however, the fundamental rights and principles recognised in the Charter must be observed by the courts of MS. (Art. 38)



Recognition and enforcement

Enforceability (Art. 42)

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 44 to 57. No distinction between the decisions of different MSs

Procedural rules (Art. 44-57)

Jurisdiction of court (Art. 44) The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement communicated by that Member State to the Commission in accordance with Article 64. *see e-justice.europa.eu*



Thank you for your kind attention!



EULawInEN



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