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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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Choice of Law in the three Regulations

Ágnes Bucsi

Judge in the District Court of Dunaújváros, Hungary

This Project is implemented by Coordinator



Fondazione
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del Notariato

Partners



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Magyar Országos
Közjegyzői Kamara



Notary Chamber of Bulgaria



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Introduction

- Freedom of movement in EU.
- EU and non-EU Citizens having assets in different States.
- 16 million international couples in EU but absence of a uniform legal regime in succession and family matters.
- EU legislation aiming to unify the rules concerning the applicable law, jurisdiction, recognition and enforcement in succession and family law



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Party Autonomy in EU Instruments

- Brussels IIA Regulation (Regulation 2201/2003)
- Rome III Regulation (Regulation 1259/2010)
- Maintenance Regulation (Regulation 4/2009)
- Maintenance Protocol (Hague Protocol 2007)
- Succession Regulation (Regulation 650/2012)
- MPR Regulation (Regulation 1103/2016)
- PRP Regulation (Regulation 1104/2016)



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Choice of Law in the three Regulations I

- Succession Regulation: Recitals (38), (39), (40) Article 22
- MPR Regulation and PRP Regulation: Recitals (45) – (47) and (44) – (46) Article 22.
- Difference: in the Succession Regulation choice of law is only a possibility while the main connecting factor is the last habitual residence, in the MPR and PRP Regulations the choice of law is the main connecting factor (only subsidiarily a series of hierarchical criteria is relied upon in the absence of choice by the parties in Article 26).



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Choice of law in the three Regulations II

Formal requirements: expressly in a declaration in the form of a disposition of property upon death or demonstrated by the terms of such a disposition (SR); in writing, dated and signed by both spouses/ partners (MPR, PRP).



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Choice of law in the three Regulations III

Substantive validity:

- Succession Regulation – the substantive validity is governed by the chosen law.
- MPR/PRP Regulations - the existence and validity of an agreement on choice of law or of any term thereof is determined by the law which would govern it pursuant to Article 22 if the agreement or term were valid.



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Choice of law in the three Regulations IV

- Principle of universal application: the law designated by the Regulations applies even if this law is not the law of a Member State.
- Principle of the unity of the applicable law: one law will be applied to all the succession/ all the couple's assets regardless of where the assets are allocated.
- Exceptions and nuances of the applicable law (eg. public policy, mandatory law, renvoi).



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Case 1

- Michel is a US citizen. He is a company director and has been living in Hungary since 2011. He owns a luxury apartment in the Buda hills and house in Texas. His second wife is Hungarian, they have two children together. Michael also has a 17-year-old son from his first marriage, whom he regularly visits in New York. Michael's company headquarters are in Iowa so he often goes there on business. He has bank accounts in both Hungary and the USA and a life insurance in Hungary. In 2016 Michael's best friend dies suddenly of a heart attack so he decides to have a will drawn up. The will is in the US format and contains an appointment of an executor of the will. According to the will the house in Texas and the US bank account shall be inherited by his 17-year-old son, while the rest of the assets shall go to his Hungarian spouse. A couple of weeks later his wife also makes a will in which she leaves all her property to her husband.
- Question 1: Is Michael considered to have made a choice of law in favour of the US law? If yes, which State's law is applicable given that the USA is a country with multiple legal systems?
- Question 2: What happens if Michael and his wife die in a plane crash in January 2019?
- Question 3: What about Michael's life insurance?



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Case 2

- Mr and Mrs Leew, who are Dutch nationals, establish their common habitual residence immediately after their marriage in Germany. Two years later, they move to Amsterdam, where they live for 15 years, considering that their matrimonial property regime is that of full community of property provided by Dutch law. When they retire, they decide to buy a house in Tuscany. They are surprised when the Italian notary informs them that the applicable law to their matrimonial regime is not Dutch law but German law, which has a default property regime of community of accrued gains (Zugewinnngemeinschaft).
- Question 1: What can the couple do to modify their property regime?
- Question 2: What happens if Mr Leew buys a cottage in Hungary where purchase documents are usually drawn up by solicitors and is not informed of the applicable law so he thinks the cottage is common property with her wife and Ms Leew realizes only after the death of her husband that German law has to be applied to their matrimonial property regime? (Art. 26, p. 3)



Case 3

In the context of a matrimonial property agreement, Mr and Mrs Schulze, Austrians living in Brussels, established a separation of property regime in accordance with Austrian law. Mrs Schulze takes out a loan with a Belgian bank without specifying her matrimonial property regime. In the event of a non-repayment, what happens?



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Sources

Francois Trémosa: The state of implementations of the EU Succession Regulation's provisions on its scope, applicable law, freedom of choice, and parallelism between the law and the courts.

Patrick Wautelet: Drafting choice of law and choice of court provisions under the EU Succession Regulation. Fifteen questions and answers.

Cristina Grieco: The role of party autonomy under the regulations on matrimonial property regimes and property consequences of registered partnerships. Some remarks on the coordination between the legal regime established by the new regulations and other relevant instruments of European private international law.

Matrimonial Property Regimes. Explanatory Handbook on Council Regulation (EU) 1103/2016 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and enforcement of decisions in matters of matrimonial property regimes (www.cnue.eu)



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Thank you for your attention!



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