



# EULawInEN

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



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# EU legal language

## Professor Elena Ioriatti

Professor of Comparative Law  
Trento University Faculty of Law

This Project is implemented by Coordinator



Fondazione  
Italiana  
del Notariato

Partners



Magyar Országos  
Közjegyzői Kamara



Notary Chamber of Bulgaria



International  
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promoting an independent judiciary worldwide

# EULawInEN

The aim of the **EULawInEN** project is the improvement of the effective and coherent interpretation and application of EU law by the national jurists in Europe.



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Training will focus on: (a) legal knowledge of the specific and recent EU legal instruments, (b) linguistic skills and (c) legal terminology.

in other words..... on (a) the legal content of the EU regulations, (b) on English, and (c) the EU legal language.



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# National legal language

Italian legal language:

«possession»: *de facto* power over a thing, with *animus domini*



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# National legal language

Italian legal language of ITALY:

«possession»: *de facto* power over a thing, with *animus domini*

Italian legal language of SWITZERLAND

«possession»: *de facto* power over a thing *in general*



# National legal language

## The legal language of AUSTRIA

“Besitz”: *de facto* power over a thing with *animus domini*

## The legal language of GERMANY and SWITZERLAND

“Besitz”: *de facto* power over a thing, also including those situations (with no *animus domini*) which are usually refer to as “detention” (detenzione).



# The national legal languages

*Simple contract and contratto*

*Gift and donazione*



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# The EU legal system

A) Multilingualism.....multiplies the problems of legal translation.

B) Specific characters of the EU:

- The EU legal system: still under construction and not a State.
- The origin of the Primary EU law legal language: French language and the French models.



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# Specific characters of EU law

Rome Treaties: French.

Maastricht Treaty: French.

Amsterdam Treaty: French and English. Multilingualism.

*Droit civil*

*Civil law*

*Civil matters*



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# Multilingualism

Art. 342 of the Treaty on the Functioning of the European Union (TFEU).

The rules governing the languages of the institutions of the Union shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously by means of regulations.



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# Multilingualism

Regulation n. 1 dated 15 April 1958 establishing the European Economic Community's linguistic system, O.J. n. 17 6 October 1958.

## *Article 1*

The official languages and the working languages of the institutions of the Union shall be Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.



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# Multilingualism

Regulation n. 1 dated 15 April 1958 establishing the European Economic Community's linguistic system, O.J. n. 17 6 October 1958.

## *Article 4*

Regulations and other documents of general application shall be drafted in the official languages.



# Neologisms

Globalizzazione

Globalization

Globalisierung

Globalización

Globalização

Globalizatsiy

Globalisering

.....Mondialisation....



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# Neologisms

Possesso

Besitz

Possession

Bezit

Possession



# Eu legal language

Habitual residence, résidence habituelle, residenza abituale, szokásos tartózkodási, обичайното местопребиваване.....



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# A new legal language!



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# Case 283/81, Judgment of the Court of 6 October 1982. - Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health



....THE DIFFERENT LANGUAGE VERSIONS ARE **ALL EQUALLY AUTHENTIC**.

.....AN INTERPRETATION OF A PROVISION OF COMMUNITY LAW THUS INVOLVES A **COMPARISON OF THE DIFFERENT LANGUAGE VERSIONS** .



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# Reg. 650/12: language discrepancies

*Article 69, 5. Effects of the Certificate.* The Certificate shall constitute a valid document for the recording of succession property in the relevant register of a Member State....

*Article 69, 5. Effets du certificat.* Le certificat constitue un document valable pour l'inscription d'un bien successoral dans le registre pertinent d'un État membre....

*Artículo 69, 5. Efectos del certificado* El certificado será un título válido para la inscripción de la adquisición hereditaria en el registro competente de un Estado miembro....

*Artikel 69, 5.* Onverminderd artikel 1, lid 2, onder k) en l), is de erfrechtverklaring een geldig document voor de inschrijving van goederen uit de nalatenschap in het desbetreffende register in een lidstaat.



# Language discrepancies

Italian

Articolo 69

## Effetti del certificato

Il certificato costituisce **titolo idoneo** per l'iscrizione di beni ereditari nel pertinente registro di uno Stato membro,



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# Language discrepancies

Il certificato costituisce **titolo idoneo** per l'iscrizione di beni ereditari nel pertinente registro di uno Stato membro, fatto salvo l'articolo 1, paragrafo 2, lettere k) e l).

The Certificate shall constitute a **valid document** for the recording of succession property in the relevant register of a Member State, without prejudice to points (k) and (l) of Article 1(2).



# Language discrepancies

## CHAPTER I, SCOPE AND DEFINITIONS

### *Article 1*

#### **Scope**

1. This Regulation shall apply to succession to the estates of deceased persons. It shall not apply to revenue, customs or administrative matters.
2. The following shall be excluded from the scope of this Regulation:
  - k) the nature of rights *in rem*; and
  - l) any recording in a register of rights in immovable or movable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.



# Reg. 650/12: language discrepancies

*Article 35.*

## **Public policy (*ordre public*)**

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.

*Article 35*

## **Ordre public**

L'application d'une disposition de la loi d'un État désignée par le présent règlement ne peut être écartée que si cette application est manifestement incompatible avec l'ordre public du for.

*Artículo 35*

## **Orden público**

Solo podrá excluirse la aplicación de una disposición de la ley de cualquier Estado designada por el presente Reglamento si esa aplicación es manifiestamente incompatible con el orden público del Estado miembro del foro.



# Language discrepancies

*Articolo 35*

## Ordine pubblico

L'applicazione di una disposizione della legge di uno Stato designata dal presente regolamento può essere esclusa solo qualora tale applicazione risulti manifestamente incompatibile con l'ordine pubblico del foro *dell'autorità giurisdizionale o di altra autorità competente che si occupa della successione.*



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# Language discrepancies

Reg. 650/ 12 Proposal: “forum”: court having jurisdiction to hear a case or actually hearing it.



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Case C-467/08 Judgment of the Court (Third Chamber) of 21 October 2010. Padawan  
SL v Sociedad General de Autores y Editores de España (SGAE).

terms..... must be regarded as **autonomous concepts** of European  
Union law.....



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# Autonomous concepts and harmonization (substantial law)

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste

«**possession**»

Art. 3 (definitions) “waste holder” means the waste producer or the natural or legal person who is in *possession* of the waste



# Autonomous concepts and harmonization (substantial law)

Italy

Decision of the *Tribunale Amministrativo Regionale* (29/01/2018)

“The Italian notion of “**possesso**” and “**animus possidendi**”

is not applicable

as the cost of waste provided in the EU directive is not grounded on the intention of the holder/possessor to behave as an owner (with animus possidendi) but on the duty of care owed by him”.



# Autonomous concepts and harmonization



**possession** in EU law (Directive 2008/98/EC) : material control on the good **without animus domini**

↑ ↑

National law and case law (formants)



# Autonomous concepts and IPL

Habitual residence, résidence habituelle, residenza abituale,  
szokásos tartózkodási, обичайното местопребиваване



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# Autonomous concepts and IPL

**Habitual residence**, differently from the concepts of substantive harmonization, is not a concept that has to be defined on a abstract, juridical basis, but on a more factual level.

Important is not the word, the definition, but the reality that is expressed through this concept.

This concept has the task of forming the boundaries of a forum of juridical international competence.

In this framework the interpreter should decide case by case.

Janvier Carrascosa González, *El concepto de residencia habitual del causante en el reglamento sucesorio europeo*, Revista Castellano- Manchega de Ciencias Sociales, n. 19, 2015, p. 15 – 35.



# National concepts and IPL

## SCOPE AND DEFINITIONS

## AMBITO DI APPLICAZIONE E DEFINIZIONI

### Article 1

The following shall be excluded from the scope of this Regulation:

g) .....gift

g) .....donazioni



# National concepts and IPL

Obligations for *gifts* on condition of the death of the donor in the sense of section 2301 German BGB

*Schenkungen von Todes wegen*

In Germany are governed under German substantive law by succession law.

Likewise, German conflicts law so far characterised such a *gift* as a matter of **succession law**.



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# Translation errors

Annexes III and IV of the Brussels Regulations II bis (RBII bis)20 (certificate concerning judgments on rights of access (art. 41(1)) (certificate concerning the return of the child (art. 42(1))).

English version: ‘Is the judgment **enforceable** in the Member State of origin?’

Spanish version: ‘¿Es **recurrible** la resolución conforme al Derecho del Estado miembro de origen?’

Amended Spanish version: ‘¿Es **ejecutoria** la resolución en el Estado miembro de origen?’



# IPL and comparative law methodology

Art. 16 Reg. 650/12; Re. 25 Reg. 1103/16 and 1104/16

For the purposes of determining the closest equivalent national right *in rem*, the authorities or competent persons of the State whose law applied to the *succession/matrimonial property regime/property consequences of a registered partnership* may be contacted for further information on the nature and the effects of the right.

To that end, the existing networks in the area of judicial cooperation in civil and commercial matters could be used, as well as any other available means facilitating the understanding of foreign law.



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# Art. 31 Reg. 650/12; art. 29 Reg. 1103/16 and 1104/16

## Adaptation of Rights *in rem*

Where a person invokes a right *in rem* to which he is entitled under the law applicable to the succession/matrimonial property regime and the law of the Member State in which the right is invoked does not know the right *in rem* in question, that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right *in rem* under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* and the effects attached to it.



# The homologation

USUFRUCT IN ITALY (Usufrutto)	USUFRUCT IN THE NETHERLANDS (Vruchtgebruik)
<p>The usufructuary has the right to <b>enjoy</b> an object, <b>but must preserve its economic destination</b>.</p> <p>Art. 981 c.c.</p>	<p>The right of usufruct provides the right to <b>use</b> things that belong to another person and <b>enjoy</b> the fruits thereof.</p> <p>Art 3:201 BW</p> <p>A usufructuary can use and <b>use up (consume)</b> the things under the usufruct in accordance with the rules made upon the creation of the usufruct, or where such rules are lacking, in accordance with the nature of the things and the local practice in respect to the use and using up.</p> <p>art 3:207(1) BW</p>



# The homologation

## The Netherlands

Use up (to consume): Yes

“Vruchtgebruik” (Usufruct)

real right: YES

## Italy

Use up (to consume)

“Quasi usufrutto”

real right: NO

**Measure:** comparing the legal effects (operational rules).

**Standard:** the most relevant legal effect (operational rules) related to the “aims and the interests pursued by the specific right *in rem*” in the specific, factual situation.



# IPL legal language interpretation

Learning the IPL legal language;  
Comparison of the language versions;  
Proposal;  
Green papers;  
Recitals;  
CJEU Case law;  
Instrument of comparative law.



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