



**EULawInEN**

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



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# Practical cases on habitual residence with reference to the three EU Regulations (650/2012, 1103/2016, 1104/2016)

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This Project is implemented by Coordinator



Fondazione  
Italiana  
del Notariato

Partners



CASSA NAZIONALE DEL NOTARIATO



Magyar Országos  
Közjegyzői Kamara



Notary Chamber of Bulgaria



International  
Association of  
Judges  
*promoting an independent judiciary worldwide*

# Personal Introduction

- Hungarian language licence issued by the Hungarian Chamber of Civil law Notaries (MOKK)
- Allows to create public instruments, notarial deeds in foreign language
- Bilingual notarial deeds are not allowed, the certified translation must be attached
- English and German permission
- Clients may turn to the notary with language licence without a translator
- Indicates more international cases by these notaries



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# Habitual Residence in the Succession Regulation 650/2012

- No definition of Habitual Residence just Preamble (23)
- The Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the habitual residence of the deceased at the time of death.
- 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 the Regulation.



# British Italian Partners

- British national man divorced, Italian national woman, living in Milan, man want to draft a will
- Man 3 children in the UK, woman 2 children in IT, no children in common
- The man has business in IT and in the UK, mostly spend the year in IT except 40 days because of British tax issues, has registered residence in both countries
- He has assets in both countries, movable and immovable assets, the more of his income is coming from the UK
- Habitual residence of the British man?
- 650/2012 EU Regulation



# Problems of determining the Habitual Residence Preamble (24)

- Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin. In such a case, the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the **centre of interests** of his family and his social life was located.
- Other complex cases may arise where the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them. If the deceased was a national of one of those States or had all his main assets in one of those States, his **nationality** or the **location of those assets** could be a special factor in the overall assessment of all the factual circumstances.



# Principle of unity law on the succession of the estate

## Main Principle:

- All assets in the estate of whatever kind they may be, movable or immovable, and whichever the country in which they are situated. Horizontally extension
- The same law applies to the whole succession process, from its opening until its final distribution. Vertically extension

## Exceptions: Article 30

- The law of the place where the assets are situated



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# Problems of changing the Habitual Residence

- Habitual Residence has the advantage of being flexible, since it allows a wide margin of discretion for law interpretation by the courts/authorities.
- There is an increased **risk of parallel proceedings** being opened in two or more Member States with respect to the estate of the same deceased if the law enforcement authorities differently consider the whereabouts of the habitual residence.
- For the applicants it is hard to ascertain the Habitual Residence of the deceased.
- They submit their petition → pending case
- (My case. Succession case: founded bankcards)



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# «Hungarian Romeo and Julia in South-Tirol»

- Hu language deed – Ger language translation

PoA in notarial deed to sell a real estate in Naturns + Apostille

- Agreement between absentees
- Notarial custody, EUR „custody” bank account, deduction of costs
- Hu lawyer, It – At lawyer, It notary, Hu notary

I'm not signing  
anything until  
I get the  
money!!

You won't get  
a Cent until  
you sign the  
notarial deed!



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# Why Habitual Residence?

- That court/notary/authority should conduct the succession procedure to which jurisdiction the deceased mostly connected.
- This court has jurisdiction, may and able to apply his own substantive law
- Faster and cheaper as if the court has to interpret foreign law



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# Hungarian prospective spouses marrying in Hungary and in Malta

- Signature certification on a marriage form
- Taking oath about no marriage barrier
- Couple conclude marriage in both countries



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# European Certificate of Succession (ECS) Article 62

- The use of the Certificate shall not be mandatory.
- The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with Article 62.
- Valid for 6 months after it is issued



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# Italian German married couple joint will

- Living partly (half-half of the year) in Hungary (at lake Tisza, Tiszafüred) and in Germany (FaM)
- Registered residence in both countries
- Have also real estates in Hunnia and Germania
- Italian man was born & grew up in Germania, Frankfurt am Main
- Will under German substantive law
- 650/2012 EU Regulation



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# Who may request the issue of a ECS?

- A. ☒ Those who hold shares in the estate. The Heir, the Legate whose claim is based on right in rem.
- B. ☒ Those who have certain duties and powers in connection with the administration of the estate. Executor of the will, Trustee of the estate
- C. ☒ Those not who have claims against the estate just based on obligations. The legate whose claim is based on right in rem, creditor of the estate, forced share entitled.



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# Legal effects of the ECS Article 69

- I. Effects shall be ipso jure in all the Member States!
- II. Legitimacy Paragraph 2
- III. Public faith effect
- IV. Valid legal title
- V. No Direct Enforceability!





# European Certificate of Succession in Hungary

- Legal status of Hungarian Civil Law Notaries
- Hungarian Notary has competence in succession (probate) proceedings.
- Firstly, Notary decides about the succession case by a decree.
- Secondly, Notary can issue the ECS.



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# Taking fingerprints of a Hungarian man for moral certificate

- Man living in partnership in the US
- Taking fingerprints in the presence of the notary for moral certificate issued in South-Africa
- Possessing the moral certificate
- Application for Green Card in the US in Colorado



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# Signature certification for Fbook

- Sole entrepreneur
- Closed out of his profiles
- Notarial signature certification
- Notary connecting factor between the digital and real world



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# Conclusions

- Important to have a colleague abroad to communicate with in case of interpreting foreign law
- Notarial document will be sent into an unknown law system, about which the issuer does not have enough information
- Near the support of the international offices of the local notarial chambers, it is useful to have direct connection to a colleague abroad



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# Thank You for Your attention!



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