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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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Rules of jurisdiction within the three Regulations (EU 650/2012; EU 1103/2016; EU 1104/2016)

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Notary Chamber of Bulgaria



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Presentation

- Introduction to EU law on judicial cooperation on civil matters (focus on cooperation and Family Law).
- Regulation (EU) 650/2012, Regulation (EU) 1103/2016, Regulation (EU) 1104/2016: the scope of Regulations.
- Rules on jurisdiction within the three Regulations.
- Rules on recognition, enforceability and enforcement within the Regulations.
- Practical cases.



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Judicial cooperation on civil matters

Judicial cooperation in civil matters aims to **establish close cooperation between the authorities of the Member States** in order to eliminate any obstacles deriving from incompatibilities between the various legal and administrative systems.

This is much more **difficult** when it comes to face concepts connected with **Family Law**.



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Judicial cooperation and family law

It is hard to overcome differences between Member States but it becomes **necessary** as **citizen are increasingly mobile**.

It is important to remember that family law measures require a **special legislative procedure**: Council acts by unanimity and E.P. are consulted.



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Regulations (EU) 1103 & 1104/2016: a big step ahead!

- The matter of the matrimonial regime found a first international recognition thanks to the Hague Convention of 1978 (applicable law to matrimonial regimes) which was ratified only by France, Luxemburg and the Netherlands.
- At the EU level, after the divorce, parental responsibility, maintenance and successions Regulation, the system has been enriched with the so-called **Twins Regulations** that entered into force on the **29th of January 2019**.



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Judicial cooperation on civil matters: mutual recognition

The principle of **mutual recognition** is the cornerstone of judicial cooperation.

The goal is that judicial decisions should be recognized and enforced in another Member State without any additional intermediate step, in other words, suppression of exequatur.



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Regulation (EU) 650/2012: principles

- **Universal vocation:** it is intended to address all matters (jurisdiction, applicable law, recognition, enforcement...);
- the main principle is the **UNITY of the succession**, the succession can not be governed by different systems.



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Regulation (EU) 650/2012: the scope

- The main principle concerning **jurisdiction** and **applicable law** is **habitual residence** at the time of death, unless there is a **choice of law** (the importance of factual connection).
- It introduces the **certificate of succession**.

The certificate can be issued by the authorities described by artt. 4, 10 and 11.

In Italy and Hungary it is the notary; in Bulgaria it is the First Instance Court.

The procedure of issuing the certificate is disciplined in artt. 67-68 SR.

The effects (art. 69) of the certificate are produced in all Member States without any special procedure being required (for exemple: no exequatur required).

- The certificate is not an enforceable title *per se*. It is a valid document to exercise a right in another Member State.



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Regulation (EU) 650/2012: rules on jurisdiction

Articles 4-19 address the matter of jurisdiction

The Regulation offers a general rule (**Art. 4**) and the exceptions; it also provides rules concerning:

- Lis pendens (**art. 17**)
- Related actions (**art. 18**)
- Provisional measures (**art. 19**).



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Regulation (EU) 650/2012: rules on jurisdiction

Article 4 (the general rule)

General jurisdiction

- The courts of the Member State in which the deceased had his **habitual residence** at the time of death shall have jurisdiction to rule on the succession as a whole.



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The concept of «*habitual residence*»

- The choice of the habitual residence was made in order to face the increasing mobility of citizen to **ensure the proper administration of justice** within the Union and to **ensure a genuine connecting factor** between the person and the member state in which the jurisdiction is exercised.



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Regulation (EU) 650/2012: rules on jurisdiction

Article 5

Choice-of-court agreement

1. Where the law chosen by the deceased to govern his/her succession pursuant to Article 22 is the law of a Member State, the parties concerned may agree that a court or the courts of that Member State are to have exclusive jurisdiction to rule on any succession matter.
2. Such a choice-of-court agreement shall be expressed in writing, dated and signed by the parties concerned. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.



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Regulation (EU) 650/2012: rules on jurisdiction

- Why should one make a choice of court agreement?

Predictability: to enable citizen to organise all aspects of their succession in advance by choosing in first person.



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Regulations (EU) 1103 & 1104/2016: principles

- The principle pursued is **UNITY** -> they aim to cover all aspects of the **matrimonial** property regimes/ property consequences of **registered partnerships**.
- National applicable law will govern issues such as:
 - responsibility of one couple's member for debts of another member;
 - rights and obligations of a couple's member regarding property;
 - distribution of property;
 - property relation between a couple's member and third parties.



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Regulations (EU) 1103 & 1104: the scope

- Reg. 1103/2016 concerns **matrimonial** property regimes.
 - Reg. 1104/2016 concerns property consequences of **registered partnerships**.
- Union law had already addressed divorce, parental responsibility, maintenance and successions.
- One question outstanding: the property regime of **international couples**.



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Regulation (EU) 1103 & 1104/2016: rules on jurisdiction

Articles 4-19 address the matter of jurisdiction (as in Reg. 650/12)

The Regulation offers general rules (**Art. 4, 5 and 6**) and the exceptions; it also provides rules concerning:

- Lis pendens (**art. 17**)
- Related actions (**art. 18**)
- Provisional measures (**art. 19**)



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Regulation (EU) 1103 & 1104/2016: rules on jurisdiction

- Reg. 1103 and 1104/2016 concerning jurisdiction offer standards of competent court in a **hierarchical order**.
- It is the court of the Member State:
 - Current habitual residence of both spouses/partners;
 - Last habitual residence;
 - Habitual residence of the respondent; etc..
- **Subsidiary jurisdiction**: where no Member State court is competent, a Member State court is nevertheless competent in respect of the assets in its territory.



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«*Habitual residence*»

- The choice of the habitual residence was made, as in Reg. 650/2012, in order to face the increasing mobility of citizen to **ensure the proper administration justice** within the Union and to **ensure a genuine connecting factor** between the couple and the member state in which the jurisdiction is exercised.
- The habitual residence **does not guarantee any stability** because a couple can still move.



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Interpreting the concept: CJEU

The concept of habitual residence was already used in previous Regulations: how do we interpret it?

The **CJEU** has stated that the **interpretation of this concept** (habitual residence) **must be** interpreted **differently** in every Regulation.

The concept has been decided, for example, in children abduction cases (A, case C 523/07 – Mercredi v Chaffe -> in addition, the physical presence of many other factors can be taken into account).



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Regulation (EU) 1103 & 1104/2016: rules on jurisdiction-applicable law

- Concerning applicable law - if no law is chosen - applicable law, in hierarchical order of country of:
 - a) first common habitual residence;
 - b) spouses'/partners' common nationality;
 - c) closest connection.

If spouses/partners have more than one common nationality, b) does not apply.

-> the scope is **IMMUTABILITY of the applicable law.**

- What if one changes his/her nationality? We consider the nationality at the moment of marriage. No retroactivity changes.
- RP: where RP was created



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Recognition, enforceability, enforcement Regulation (EU) 650/2012

Articles 39-58 address the matter of recognition, enforceability and enforcement.

The Regulation expresses the **principle of mutual recognition** in the spirit of judicial cooperation. In fact, **art. 39, 1** states “*A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.*”.



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Recognition (art. 39)

It is the general rule and it is the expression of the so-called **mutual trust**.

Art. 40 describes the «grounds of non-recognition» when:

- problems of **public policy**;
- problems of respecting the **defence right** of the defendant;
- problems of **irreconciliability with a decision given** between the same parties in the Member State in which recognition is sought.



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Regulation (EU) 650/2012: enforceability

- The Regulation offers a procedure (**art. 46**) in order to enforce a decision given in a Member State.

It is necessary to make an application for a declaration of enforceability accompanied by some documents to the court or the competent authority of the Member State of enforcement.



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Recognition Regulation (EU) 1103/2016 and Regulation (EU) 1104/2016

- **Art. 36** of both Regulations offer the general rule:
«A decision given in a Member State shall be recognised in the other Member State without any special procedure being required».

It is the expression of the so-called **mutual trust**.



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Grounds of non-recognition

- **Art. 37** of both Regulations points out when «*a decision shall not be recognised*» ->
 - problems of **public policy**;
 - problems of respecting the **defence right** of the defendant;
 - problems of **irreconciliability with a decision given** between the same parties in the Member State in which recognition is sought.

It is the expression of the **difficult armonization process** in family matters.



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Enforceability

- **Artt. 42-57** of both Regulations offer a procedure in order to enforce a decision given in a Member State:

it is necessary to submit an application to the court or the competent authority of the Member State of enforcement.

The enforcement procedure will follow the law of the Member State of enforcement.



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Relationship between Regulation (EU) 650/2012 and the so called Twins Regulations

- Twins Regulations (Reg. 1103 & 1104/2016) represent the last step of Reg. 650/2012 to which they are **inspired**.
- Twins Regulations and Reg. 650/2012 have a **universal vocation** (they intend to cover all aspects – jurisdiction, applicable law, recognition..).
- Twins Regulations (art. 21) and Reg. 650/2012 express the **principle of unity** concerning the applicable law.
- Twins Regulations exclude the *renvoi* (art. 32): critics.



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Practical case n. 1

- Mark is a Belgian citizen.
- He lives in Luxembourg where he moved at the age of 20 years old.
- He worked for 10 years in France and he is married with a French woman, Julie.
- He dies in April 2019.

Which is the court who has jurisdiction?



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Practical case n. 2

Mario is an Italian citizen born in 1945. He goes to live in Germany in 1964 to study. He decides to buy a house in Germany (in Kehl) and for a period of time he lives with Suzan, a German citizen. They have a relationship and they have a daughter, Julia. When their relationship ends (in 1974) Mario decides to go to work in France, in Starsburg, but he still lives in his house in Kehl. In France he meets Letitia, a French citizen, and they got married in 1985.

Mario dies in 2010 without changing his nationality. He leaves a will where he leaves all his assets to his wife, Letitia, excluding his daughter Julia.

Which is the applicable law?

Before Reg. 650//2012 -> Italian law as it is the deceased national law.

What if Mario died in 2016?

It is French law as it is the law of his habitual residence.

How do we interpret habitual residence here?



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Practical case n. 3

Claude and Stephany are two French citizens.

They live in Sweden from 2016.

They got married in Italy in 2015.

Which is the applicable law?

Before Reg. 1103/2016 -> French law as it is the common national law.

What if they got married after January 2019?

It is Sweden law as it is the law of their habitual residence.

Which is the court that has jurisdiction?

Sweden court as it is the court of their habitual residence.



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Practical case n. 4

- Mario is an Italian citizen that marries Julie, a Luxemburgish citizen; the wedding is celebrated in Italy in 2020;
- Mario and Julie live in their house in Belgium but they both work in Luxemburg (where they go every day);
- They spend their weekends in Luxemburg with Julies' parents and friends;

Which is the applicable law?

Luxemburgish law as it is the the law of their habitual residence.

Which is the court that has jurisdiction?

Luxemburgish court as it is the the court of their habitual residence.



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Practical case n. 5

- David is a French citizen that creates a registered partnership in France with Giulia, an Italian citizen, in 2020; they live in France and they have one child, Sofia, in 2021;

Which is the applicable law?

French law as it is the law where the RP was created.

Which is the court that has jurisdiction?

French court as it is the court of their habitual residence.



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Questions?!?



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Thank you for your attention!!!



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