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



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# Regulation (EU) n. 650/2012 Instrument of judicial cooperation in civil matters

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# Presentation

- Regulation (EU) No. 650/2012: scope of the Regulation
- Regulation (EU) No. 650/2012: jurisdiction
- Regulation (EU) No. 650/2012: practical cases



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# Regulation (EU) No. 650/2012

## scope of the regulation

The Regulation shall apply to succession to the estates of deceased persons.

The Regulation applies to cross-border (international) successions.

The Regulation does not apply only to nationals of Member States.

The Regulation does not apply to Denmark, United Kingdom and Ireland.

The Regulation applies to the succession of persons died on or after 17 August 2015.



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# Regulation (EU) No. 650/2012

## scope of the regulation

Harmonisation of private international law in the matter of succession:

- Jurisdiction
- Conflict of laws
- Circulation of decisions and authentic instruments between Member States (European judicial space)

Introduction of the European Certificate of Succession



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# Regulation (EU) No. 650/2012: jurisdiction

Which court has jurisdiction under the Regulation (EU) n. 650/2012?

The Regulation (EU) n. 650/2012 provides a set of provisions aimed to establish when a Member State has jurisdiction to rule on the succession. Such provisions are aimed to ensure the coincidence between *forum* and *ius*

The Regulation is not aimed to establish the jurisdiction of a third State.



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# Regulation (EU) No. 650/2012: jurisdiction

Which court has jurisdiction under the succession Regulation?

- 1) The deceased was habitually resident, at the time of death, in a Member State bound by the Regulation
- 2) The deceased was not habitually resident, at the time of death, in a Member State bound by the Regulation, because:
  - a) he was resident in a third State;
  - b) he was resident in a Member State which is not bound by the Regulation



# Regulation (EU) No. 650/2012: jurisdiction

- 1) The deceased was habitually resident, at the time of death, in a Member State bound by the Regulation
  - 1a) The deceased had not chosen the law applicable to his succession
  - 1b) The deceased had chosen the law applicable to his succession



# Regulation (EU) No. 650/2012: jurisdiction

1a) The deceased had not chosen the law applicable to his succession

In such a case 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 (**art. 4: general rule**)



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# Regulation (EU) No. 650/2012: jurisdiction

1b) The deceased had chosen the law applicable to his succession

In such a case:

1bx) the parties concerned may have entered a choice-of-court agreement under art. 5 of the Regulation

1by) the parties concerned may have not entered any choice-of-court agreement



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# Regulation (EU) No. 650/2012: jurisdiction

Where the parties concerned have entered a choice-of-court agreement under art. 5 of the Regulation, the courts of the Member State of the law chosen by the deceased to govern the succession shall have jurisdiction to rule on the succession.



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# Regulation (EU) No. 650/2012: jurisdiction

Where the beneficiaries of the estate have not entered any choice-of-court agreement:

- jurisdiction of the courts of the Member State in which the deceased had his habitual residence (**art. 4: *general rule***)
- jurisdiction of the courts of the Member State whose law had been chosen by the deceased, where the court competent under art. 4 declines jurisdiction (**art. 6a: *forum non conveniens***)
- jurisdiction of the courts of the Member State whose law had been chosen by the deceased, where the parties to the proceedings have accepted the jurisdiction of the court seised (**art. 9: *jurisdiction based on appearance***)



# Regulation (EU) No. 650/2012: jurisdiction

2) The deceased was not habitually resident, at the time of death, in a Member State bound by the Regulation.

2a) the deceased has left assets in a Member State;

2b) the deceased did not leave any asset in a Member State;

2c) the deceased had chosen the law applicable to his succession.



# Regulation (EU) No. 650/2012: jurisdiction

2a) Where the deceased left assets in a Member State, the courts of the Member State in which assets of the estate are located shall have jurisdiction (**art. 10: *subsidiary jurisdiction***), in so far:

- the deceased had the nationality of that Member State at the time of death or
- the deceased had his previous habitual residence in that Member State and no more than 5 years have passed since his habitual residence changed.

Out of these cases, the Member State in which assets of the estate are located shall have jurisdiction to rule (only) on those assets.



# Regulation (EU) No. 650/2012: jurisdiction

2b) Where the deceased did not leave any asset in a Member State and no court of a Member State has jurisdiction pursuant to other provisions of the Regulation, the courts of a Member State may, on an exceptional basis, rule on the succession if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected.

The case must have a sufficient connection with the Member State of the court seised (**art. 11: forum necessitatis**).



# Regulation (EU) No. 650/2012: jurisdiction

2c) Where the deceased had chosen the law applicable to his succession, the courts of the Member State of the law chosen by the deceased shall have jurisdiction to rule on the succession:

- a) where the parties concerned have entered a choice-of-court agreement under art. 5 of the Regulation;
- b) where a court previously seised pursuant to art. 10 has declined jurisdiction (**art. 6a: *forum non conveniens***)
- c) where the parties to the proceedings have accepted the jurisdiction of the court seised (**art. 9: *jurisdiction based on appearance***).



# Regulation (EU) No. 650/2012: jurisdiction

## Article 3, § 2 (definition of court)

For the purposes of the Regulation the term “court” means any judicial authority and all other authorities (e.g.: register offices) and legal professionals (e.g.: notaries) with competence in matters of succession which exercise judicial functions or act pursuant to a delegation of power by a judicial authority or act under the control of a judicial authority.



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# Regulation (EU) No. 650/2012: jurisdiction

Such authorities and legal professional shall offer guarantees with regard to impartiality and the right of all parties to be heard.

Their decisions under the law of the Member State in which they operate may be made the subject of an appeal to or review by a judicial authority.

Their decisions have a similar force and effect as a decision of a judicial authority on the same matter.



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# Regulation (EU) No. 650/2012: jurisdiction

All courts as defined in the Regulation are to be bound by the rules of jurisdiction set out in the Regulation.

When notaries exercise judicial functions they are bound by the rules of jurisdiction, and the decisions they give should circulate in accordance with the provisions on recognition, enforceability and enforcement of decisions.

When notaries do not exercise judicial functions they are not bound by the rules of jurisdiction, and the authentic instruments they issue should circulate in accordance with the provisions on authentic instruments.



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# Rules on jurisdiction

## Article 17 (lis pendens)

### Positive conflicts of jurisdiction

Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established (**Article 17, § 1**).

Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court (**Article 17, § 2**).

Negative conflicts of jurisdiction: no rule.



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# Rules on jurisdiction

## Article 18 (related actions)

Definition of related actions: actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable decisions resulting from separate proceedings (**Article 18, § 3**).

Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings (**Article 18, § 1**).

Where those actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof (**Article 18, § 2**).



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# Rules on jurisdiction

## Article 14 (seising of a court)

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;
- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service
- (c) if the proceedings are opened of 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.



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# Rules on jurisdiction

## Article 15

### (examination as to jurisdiction)

Where a court of a Member State is seised of a succession matter over which it has no jurisdiction under this Regulation, it shall declare of its own motion that it has no jurisdiction.



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# Rules on jurisdiction

## Article 19

### (provisional, including protective, measures)

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.



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# Practical cases

## Case 1

Paolo is an Italian national who is seconded by the Italian government as a legal adviser to the Italian Representation before the Council of Europe (Strasbourg), for the duration of 4 years. His secondment is renewable once.

Paolo moves with his family to Strasbourg: his wife has a leave from her job in Italy and their children go to a French school. They decide not to sell their house in Italy and to rent an apartment in Strasbourg.

After three years Paolo dies in Strasbourg without making any will.



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# Practical cases

## Case 1 - Alternatives

Paolo is seconded for the duration of 4 years and his secondment is renewable *ad libitum*.

Paolo's wife has no job in Italy (or decides to resign from her job).

Paolo's wife finds a job in Strasbourg.

Paolo and his wife do not have any immovable asset in Italy and decide to buy an apartment in Strasbourg.



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# Practical cases

## Case 2

Juline is a French national who lives in Budapest since 2000. In 2010 she makes a will, choosing the French law as the law to govern her succession.

Juline dies in 2018 and all her immovable assets are in France.

On 1 December 2019 Juline's Hungarian second husband brings a proceedings before the Hungarian competent court for the division of the assets among the heirs.

On 1 February 2020 Juline's sons, who live in France, bring the same proceedings before the French competent court.

Which court has jurisdiction to rule on the succession?



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# Practical cases

## Case 2 - Questions

When is it possible for the court first seised pursuant to art. 4 to decline jurisdiction?

Are the habitual residence of the parties and the location of the assets requirements that need to be fulfilled together?

What happens if the parties have entered a choice-of-court agreement?



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# Practical cases

## Case 3

Ferenc is an Hungarian national who is habitually resident in London since 2016.

At the time of his death (2020) his assets consist of an apartment in London, an apartment in Budapest and an apartment in Rome (where he was habitually resident before moving to London).

Which court has jurisdiction to rule on the succession?



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# Thank you for your attention



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