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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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Regulation (EU) n. 650/2012

Instrument of judicial cooperation in civil matters

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Presentation

- Introduction to EU law on judicial cooperation in civil matters;
- Regulation (EU) n. 650/2012: scope of the Regulation;
- Regulation (EU) n. 650/2012: jurisdiction;
- Regulation (EU) n. 650/2012: recognition, enforceability and enforcement of decisions



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Judicial cooperation in civil matters

Legal basis: art. 81 of the TFEU

- the EU shall develop judicial cooperation in civil matters having cross-border implications;
- such cooperation is based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases;
- such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.



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Judicial cooperation in civil matters

Judicial cooperation in civil matters is aimed to:

- ensure a high degree of legal certainty for citizens in cross-border relations governed by civil law
- guarantee citizens easy and effective access to civil justice in order to settle cross-border disputes
- simplify cross-border cooperation instruments between national civil courts
- support the training of the judiciary and judicial staff



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Judicial cooperation in civil matters

Measures aimed at ensuring the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases. **(art. 81, §2a TFEU)**

Measures aimed at ensuring the cross-border service of judicial and extrajudicial documents. **(art. 81, §2b TFEU)**

Measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction. **(art. 81, §2c TFEU)**



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Judicial cooperation in civil matters

Measures aimed at ensuring cooperation in the taking of evidence (**art. 81, §2d TFEU**)

Measures aimed at ensuring effective access to justice (**art. 81, §2e TFEU**)

Measures aimed at ensuring the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States (**art. 81, §2f TFEU**)



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Judicial cooperation in civil matters

Measures aimed at ensuring the development of alternative methods of dispute settlement.

(art. 81, §2g TFEU)

Measures aimed at ensuring support for the training of the judiciary and judicial staff.

(art. 81, §2h TFEU)



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Judicial cooperation in civil matters

- **Regulation n. 1206/2001** on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.
- **Directive 2002/8/CE** to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (legal aid directive).
- **Regulation n. 2201/2003** concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (**Brussels II-bis**).
- **Regulation n. 805/2004** creating a European Enforcement Order for uncontested claims.



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Judicial cooperation in civil matters

- **Regulation n. 1896/2006** creating a European order of payment procedure (amended by Regulation n. 2015/2421).
- **Regulation n. 861/2007** establishing a European Small Claims Procedure (amended by Regulation n. 2015/2421).
- **Regulation n. 864/2007** on the law applicable to non-contractual obligations (**Rome II**).
- **Regulation n. 1393/2007** on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).
- **Directive 2008/52/CE** on certain aspects of mediation in civil and commercial matters.



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Judicial cooperation in civil matters

- **Regulation n. 593/2008** on the law applicable to contractual obligations (**Rome I**).
- **Regulation n. 4/2009** on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.
- **Regulation n. 1259/2010** implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (**Rome III**).
- **Regulation n. 650/2012** on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of successions and on a creation of a European Certificate of Succession.



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Judicial cooperation in civil matters

- **Regulation n. 1215/2012** on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (**Brussels I – recast**).
- **Directive n. 2013/11/UE** on alternative dispute resolution for consumer disputes
- **Regulation n. 524/2013** on online dispute resolution for consumer disputes
- **Regulation n. 655/2014** establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters



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Judicial cooperation in civil matters

- **Regulation n. 2015/848** on insolvency law (sets out uniform rules on jurisdiction, recognition and applicable law in this area).
- **Regulation n. 2016/1103** implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes.
- **Regulation n. 2016/1104** implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnership.



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Regulation (EU) n. 650/2012

scope of the regulation

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

Exclusion from the scope of the Regulation (Article 1, § 2).

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) n. 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) n. 650/2012 rules on jurisdiction

Article 3, § 2 (definition of court)

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) n. 650/2012 rules on 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) n. 650/2012 rules on 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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Regulation (EU) n. 650/2012 rules on jurisdiction

Article 4 (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 «*habitual residence*» as a connecting factor

The aim of the Regulation is to ensure as far as possible the coincidence between forum and ius.

Habitual residence is the main connecting factor for determining both which courts have jurisdiction and which is the law applicable to a transnational succession.

The choice of the habitual residence was made, due to the increasing mobility of citizens in the European Union, to ensure a genuine connecting factor between the deceased person and the Member State whose courts have jurisdiction to rule on the succession and to facilitate the administration of justice in the matter of successions (see the general rule on jurisdiction and the applicable law).



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Rules on jurisdiction

Article 10

(subsidiary jurisdiction)

Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on the succession as a whole in so far as:

- (a) the deceased had the nationality of that Member State at the time of death, or
- (b) the deceased had his previous habitual residence in that Member State, provided that, at the time the court is seised, a period of not more than five years has elapsed since that habitual residence changed.



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Rules on jurisdiction

Article 10, § 2 (subsidiary jurisdiction)

Where no court in a Member State has jurisdiction pursuant to paragraph 1, the courts of the Member State in which assets of the estate are located shall nevertheless have jurisdiction to rule on those assets.



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Rules on jurisdiction

Article 5

(choice-of-court agreement)

1. Where the law chosen by the deceased to govern his 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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Rules on jurisdiction

Article 6

(declining jurisdiction in the event of a choice of law)

Where the law chosen by the deceased to govern his succession pursuant to Article 22 is the law of a Member State, the court seised pursuant to Article 4 or Article 10:

1) shall decline jurisdiction if the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of the Member State of the chosen law.



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Rules on jurisdiction

Article 6

(declining jurisdiction in the event of a choice of law)

Forum non conveniens

2) may, at the request of one of the parties to the proceedings, decline jurisdiction if it considers that the courts of the Member State of the chosen law are better placed to rule on the succession, taking into account the practical circumstances of the succession, such as the habitual residence of the parties and the location of the assets.

In this case the deceased had chosen the law applicable to his succession, but the parties concerned did not enter into any choice-of-court agreement.



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Rules on jurisdiction

Article 7

(jurisdiction in the event of a choice of law)

Jurisdiction of the Member State whose law had been chosen by the deceased

The courts of a Member State whose law had been chosen by the deceased pursuant to Article 22 shall have jurisdiction to rule on the succession if:

- (a) a court previously seised has declined jurisdiction in the same case pursuant to Article 6;
- (b) the parties to the proceedings have agreed, in accordance with Article 5, to confer jurisdiction on a court or the courts of that Member State or have accepted the jurisdiction of the court seised, expressly or de facto (jurisdiction based on appearance: Article 9)



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Rules on jurisdiction

Article 11 (forum necessitatis)

Where no court of a Member State has jurisdiction pursuant to other provisions of this 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.



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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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Regulation (EU) n. 650/2012

Recognition and enforceability of decisions

Article 39 (recognition)

A decision given in a Member State shall be recognised in the other Member States without any special procedure being required (**Article 39, § 1**).

Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedure provided for in Articles 45 to 58, apply for that decision to be recognised (**Article 39, § 2**).



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Recognition and enforceability of decisions

Article 40

(grounds of non-recognition)

A decision shall not be recognised:

(a) if such recognition is **manifestly contrary to public policy** (ordre public) in the Member State in which recognition is sought;

(b) where it was given in **default of appearance**, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;



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Recognition and enforceability of decisions

Article 40 (grounds of non-recognition)

A decision shall not be recognised:

(c) if it is **irreconcilable with another decision given in the Member State in which recognition is sought**, in proceedings between the same parties ;

(d) if it is **irreconcilable with an earlier decision given in another Member State or in a third State** in proceedings involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.



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Recognition and enforceability of decisions

General principles

Article 41

Under no circumstances may a decision given in a Member State be reviewed as to its substance

Article 42

A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged in the Member State of origin.



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Regulation (EU) n. 650/2012

Recognition and enforceability of decisions

Article 43 (enforceability)

Decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 45 to 58.

An applicant may request a declaration of enforceability limited to parts of a decision (**Article 55, § 2**).



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Regulation (EU) n. 650/2012

Recognition and enforceability of decisions

Articles 43 - 58 (procedure)

The recognition of a decision and the declaration of enforceability are regulated in accordance with the procedure provided for in Articles 45 to 58.

The procedure shall be governed by the law of the Member State of enforcement (**Article 46, § 1**), without prejudice to some special provisions of the Regulation.

Formal assessment: the decision shall be declared enforceable immediately on completion of the formalities in Article 46 without any review under Article 40: the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.



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Recognition and enforceability of decisions

The decision on the application for the recognition of a decision and for a declaration of enforceability may be appealed against by either party (**Article 50**).

The decision given on the appeal may be contested (**Article 51**).

The court seised under Article 50 or Article 51 shall refuse or revoke the recognition of a decision or a declaration of enforceability only on one of the grounds specified in Article 40 (**Article 52**).



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Thank you for your attention



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