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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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Public Order and Applicable Law in the Succession Regulation

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This Project is implemented by Coordinator



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Applicable law

The Succession Regulation has an universal application – any law specified in the SR shall be applied, even if it is a law of a third state.

Denmark, Ireland and UK shall be considered as third states. SR is also applicable to the succession of citizens of Denmark, Ireland and UK.

General rule – in art.21 par.1 – the law of the state in which the deceased has his habitual residence at the time of the death.

Example: Mrs Larson is a Swedish citizen but lived in Italy for 15 years and died there on a date after 17 August 2015. She has movable and immovable property in Italy and in Sweden. She has one daughter. Which law is applicable to the succession?

According to the general rule of art.21.1 – it is the Italian law as the law of the state in which the deceased has her last habitual residence.



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Exception of the general rule – art.21 par.2 and recite 25

Example 1: a German posted worker who lived in Strasburg and died there.
What is the applicable law?

Example 2: a German moved to Slovakia in a nursing home, where he died 5 years later in 2018. He has only a bank account in Slovakia, while all his movable and immovable property is in Germany. His only child with whom he keeps close connections lives in Germany.
What is the applicable law?



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SR provides for autonomy of parties – in art.22, art.24 and art.25 – to provide for legal certainty and predictability.

Art.22 – choice of law

A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses

at the time of making the choice or
at the time of his death;

A person with multiple nationalities may choose the law of any of the States whose nationality he possesses

at the time of making the choice or
at the time of death.



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The choice shall be made expressly

- in a declaration in the form of a disposition of property upon death or
- shall be demonstrated by the terms of such a disposition- art.22 par.2

Where the deceased had chosen the law applicable to his succession prior to 17 August 2015, that choice shall be valid

- if it meets the conditions of Chapter III of the SR or
- if it is valid in application of the rules of private international law which were in force, at the time the choice was made, in the state in which the deceased had his habitual residence or in any of the States whose nationality he possessed – art.83 par.2



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The choice of law -example

Mrs Gomez was born in Portugal and lived there all her life. She had a Portuguese as well as a German citizenship. She wrote her will in 2013 and chose the German law applicable to her succession. She died in 2016 and left movable and immovable property in Portugal and in Germany.

Which law applies to her succession?



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Material validity of the act of the choice of law shall be governed by the chosen law – art.22 par.3

One law must govern the succession as a whole. Exception is in art.31 – adaptation of rights in rem

The scope of the applicable law is developed in art.23 par.2

- The applicable law to dispositions of property upon death other than agreements as to the succession, including in case of a choice of law is provided in art.24
- The applicable law to the agreements as to the succession is in art.25



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Example: German couple lives in France. They choose regarding their succession the German law and make an agreement in Germany before the German Notary. The husband dies in France and a French Notary has to arrange the succession. Is the agreement as to the succession a valid one?

- If the couple is French and they live in France, may they choose the German law?
- If the couple has different citizenships – she is Austrian and he is German, and they live in France – which law they may choose and what is the applicable law in case they do not make a choice of law?



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The formal validity of the dispositions of property upon death is regulated in art.27.

Different scenario

- if the disposition of property upon death is made prior to 17 August 2015 its validity is considered according to the Hague Convention of 5 October 1961 on the Conflict of Laws Relating to the Form of Testamentary Dispositions.
- If the MS is not party to this Convention – the national private international rules are applied.
- If the disposition of property upon death is made after 17 August 2015 – the 1961 Hague Convention continues to apply if the MS are contracting parties.
- For non-contracting parties- the rule of art.27 applies.



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The Renvoi rule – art.34

- Example 1: Ms Smith is an English citizen who lives in London. She dies in 2016 and leaves movable and immovable property in UK, Germany and Italy. What law is applicable as to her succession?
- Example 2: Ms Strauss is an Austrian citizen who lives in Senegal. She dies in 2016 and leaves movable and immovable property in Senegal, Italy and Bulgaria. Which law will apply as to her succession?



No Renvoi shall apply with respect to the laws referred to in art.21(2), art.22. art.27 , art.28 (b) and art.30

Example: An American lady lives in New York. She dies and leaves movable and immovable property in the USA and in Greece. She has chosen the applicable law as to her succession in her will the law of the New York state.

Which law will apply?



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Public order-art.35

The application of 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 of the forum.

There is no definition about European public order and each MS applies its own rules of public order. The assessment shall be made by the judge or the notary according to circumstances in every particular case.

Example: Algerian citizen who lived in Algeria died there in 2016. He left bank accounts in France and immovable property in Algeria. He had two children – a boy and a girl. Which law is applicable to the succession?

According to Bulgarian Supreme Court of Cassation, public order means fundamental for the legal order of the state imperative norms or principles in justice which have universal meaning.



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Sources of information on foreign law:

- e-Justice Portal
- European Judicial network
- Council of Notaries (CNUE)



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Council Regulations (EU) 2016/1103 and 2016/1104

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The two Regulations are known as the twins Regulations because they are almost identical.

- Before the two Regulations the property regimes of international couples was outside the EU Regulations. A solution was needed because there are approximately 60 million international couples in the EU. These two Regulations complete the area of family law.
- 18 MS participate, but the Regulations are open to the other MS to indicate wish to participate. Nevertheless, these 18 MS represent 70% of the EU population.
- MS that do not participate in the enhanced cooperation shall apply their rules of private international law.



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The Regulations entered into force on 29 January 2019.

Procedural rules are regulated in the two Regulations. Substantive law remains the law of the MS – it is not covered by the Regulations.

Scope of application

- R 1103 applies to matrimonial property regimes;
- R 1104 applies to matters of the property consequences of registered partnerships
- Civil law aspects are excluded by the Regulations – they are regulated by the national law

Definitions are in art.3 of the two Regulations – only for the purposes of the Regulations.

The main rules on jurisdiction are developed in Chapter II.

We can see concentration of jurisdiction in art.4 and in art.5 – the latter – only if the parties agree.

The parties may choose court in art.7, for that they have to agree in writing.



Art.10 ensures access to justice.

Applicable law is regulated in Chapter III of each of the two Regulations.

- The rule of art.20 envisage the universal application of the Regulations –the applicable law may be the law of a third State. Here third state may be a MS that does not participate in the Regulations or third states like UK, Ireland, Denmark.
- The rule is that the law covered by the Regulations is one law that regulates the matrimonial property or the matters of the property consequences of registered partnerships –art.21 and recital 43/45. The purpose is to allow the EU citizens to have legal certainty.



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The spouses and the partners have the right to choose the applicable law – art.22. They are also allowed to change the applicable law in any moment. The change is valid for the future. Rights of the third parties are respected and are not affected by the retrospective change of the applicable law. The choice of law can be designated also before the marriage/partnership.

There are requirements for formal validity of the agreement on the choice of applicable law. If in the MS there are additional requirements – those additional requirements are applied.

There are possible situations when we can have two applicable laws – one between the spouses/partners and one between the spouses/partners and third parties- see art.28.



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Art.31 provides the rule for public policy – 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 of the forum. Unlike SR, in the two Regulations reference is made to the Charter of fundamental rights and in particular art.21 on the principle of non-discrimination.

The two Regulations exclude renvoi. This means that the rules of private international law of the State will not apply.



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Thank you for your attention!



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