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



This Project is funded
by the European Union's
Justice Programme 2014-2020

Regulation 1103/2016 and 1104/2016

CHOICE OF LAW

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This Project is implemented by Coordinator



Fondazione
Italiana
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CASSA NAZIONALE DEL NOTARIATO



Magyar Országos
Közjegyzői Kamara



Notary Chamber of Bulgaria



International
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Regulations (EU) 1103 and 1104/2016

- Issues about the legal capacity of spouses, the recognition or validity of the marriage, maintenance obligations and inheritance are not covered. The regulations do not change national laws on marriage or registered partnerships, and stipulate that the applicable law applies to all assets regardless of where the assets are located, and will be applied whether or not it is the law of an EU country. Issues about the legal capacity of spouses, the recognition or validity of the marriage, maintenance obligations and inheritance are not covered.
- The regulations do not change national laws on marriage or registered partnerships, and stipulate that the applicable law applies to all assets regardless of where the assets are located, and will be applied whether or not it is the law of an EU country.
- Only for some Member States –Recital 11 of the preamble -**Territorial scope**
- Chapter III - applicable law - only for spouses who have married or determined applicable law after 29.01.2019-**Temporal scope**

Regulation 1103 should include all civil-law aspects of matrimonial property regimes, both the daily management of matrimonial property and the liquidation of the regime, in particular as a result of the couple's separation or the death of one of the spouses



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It shall not apply to:

- Revenue, customs or administrative matters
- The legal capacity of spouses
- The existence, validity or recognition of a marriage
- Maintenance obligations- Regulation 4 /2009
- The Succession to the estate of a deceased spouse-Regulation 650/2012



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Matrimonial property regime

- Art.3 ,paragraph 1 (a)
- **Matrimonial property regime:** rules concerning the property relationships between spouses and in their relations with third parties, as a result of marriage or its break-up.
- It means all rules relating to the acquisition of rights, disposition of rights during marriage and after its termination



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Choice of the applicable law

Article 22

- the law of the State where the spouses or future spouses, or one of them, is habitually resident at the time the agreement is concluded; or
- the law of a State of nationality of either spouse or future spouse at the time the agreement is concluded



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Change of the applicable law

- Unless the spouses agree otherwise, a change of the law applicable to the matrimonial property regime made during the marriage shall have prospective effect only.
- Any retroactive change of the applicable law under paragraph 2, art.22 shall not adversely affect the rights of third parties.



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Form of the agreement on a choice of applicable law

- Agreement shall be in written form and shall be dated and signed by both spouses.
- Additional formal requirements shall apply –depends on the law of the Member state in which both spouses have their habitual residence.
- spouses are habitually resident in different Member States - the agreement shall be formally valid if it satisfies the requirements of either of those laws.
- If only one of the spouses is habitually resident in a Member State and there are formal requirements for matrimonial property agreements, those requirements shall apply.



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- The applicable law pursuant to Article 22 or 26 shall apply to all assets regardless of where the assets are located-art.21.
- Applicable law shall be applied whether or not it is the law of a Member State.
- The existence and validity of an agreement on choice of law -by the law which would govern it pursuant to Article 22 if the agreement or term were valid.



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Matrimonial property agreement

- Shall be expressed in writing, dated and signed by both spouses
- Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.
- Additional formal requirements shall apply –depends on the law of the Member state in which both spouses have their habitual residence
- spouses are habitually resident in different Member States - the agreement shall be formally valid if it satisfies the requirements of either of those laws.
- If only one of the spouses is habitually resident in a Member State and there are formal requirements for matrimonial property agreements, those requirements shall apply.



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Example 1

- A German citizen wants to sell a property in Bulgaria with her English husband. They live in the last year in Bulgaria and they have concluded matrimonial property agreements - additional formal requirements shall apply – regarding to Bulgarian law and they have made a choice of law - Bulgarian law.
- We should apply Bulgarian law and check if all formal requirements are met.
- Some declarations are required - and spouses have to fill all of them – for example declaration that they are not politicians.



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Bulgarian Family Code

- Spouses have a choice between two regimes of matrimonial estate
- Separate property regime
- Community property regime



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Example 2- important to know- legal qualification of legal relationships

- The Maltese case/widow's quarter - two spouses originally lived in Malta, then changed their domicile to Algeria and bought real estate there (Algeria at that time was under French jurisdiction). The husband died and the wife claimed the right to use on $\frac{1}{4}$ of the properties. The French court should have answered the reserved quarter whether it is an institute of family or inheritance law.



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Right decisions is important to be taken

- If it is qualified as a family law question - the relevant conflict rule indicates the applicable law of its original common domicile (Malta), if it is qualified as an succession law, the applicable law will be that of the last habitual residence- Algeria law, (but at that time under – French jurisdiction- so applicable law is French law). It is logical for the French court to choose French law, and the reserved part qualifies her as an succession law institute.



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Example 3

- Mr. Stavros and his wife are Greek and they are living in London at the time of their marriage (May 2019), where they sign a Greek choice-of-law agreement applicable to their matrimonial property regime in the form of a private agreement. This choice will be valid as regards the form in all the Member States applying the Regulation.
- Material requirements: the existence and validity of the choice-of-law agreement are governed by the law chosen by the spouses as being applicable to the matrimonial property regime (Art. 24).



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Regulation (EU) 1104 / 2016

- The definition of registered partnership - Art. 3, para. 1, of the Regulation defines the registered partnership as the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation.
- This definition aims at clarifying the material scope of the Regulation.
- This regulation shall apply to matters of the property of registered partnerships.



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Choice of the applicable law-art.22

- New and different criteria – par.1 (c)

Regulation 1104 adds the possibility to choose the law of the State under whose law the registered partnership was created.



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Choice of law

- Such choice of law should be limited to a law that attaches property consequences to registered partnerships.
- This choice may be made at any moment, before the registration of the partnership, at the time of the registration of the partnership or during the course of the registered partnership.



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Choice of law

- Art. 22 makes clear that the applicable law must recognize property consequences to the registered partnerships. The effects of a wrong choice are not regulated. The designation should be materially invalid and be disregarded.
- Art. 26 determines the applicable law.



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Chapter III shall apply only to partners who register their partnership or who specify the law applicable to the property consequences of their registered partnership after 29.01.2019
(Regulation 1104/2016)

Chapter III shall apply only to spouses who marry or who specify the applicable law to the matrimonial property regime after 29.01.2019
(Regulation 1103/2016)



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