



**EULawInEN**

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

# Jurisdiction: Regulations (EU) 1103/2016 and 1104/2016

**Sara Maffei**

Judge at the First Instance Court of Livorno, Italy

This Project is implemented by Coordinator



Fondazione  
Italiana  
del Notariato

Partners



CASSA NAZIONALE DEL NOTARIATO



Magyar Országos  
Közjegyzői Kamara



Notary Chamber of Bulgaria



International  
Association of  
Judges

*promoting an independent judiciary worldwide*

# The presentation

- Introduction to EU law on judicial cooperation on civil matters (-> family law problems);
- Regulations (EU) n. 1103 & 1104/2016: the scope of Regulations;
- Rules on jurisdiction;
- Rules on recognition, enforceability and enforcement;
- Practical case.



**EULawInEN**



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

# 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.**



**EULawInEN**



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

# Judicial cooperation and family law

It is hard to overpass 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. is consulted.



**EULawInEN**



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

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

- The matter of 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 Netherland.
- At a 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 the **29th of January 2019**.



**EULawInEN**



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

# Regulations (EU) 1103 & 1104/2016

Any Member State can join enhanced cooperation (both Regulations) at any time.



**EULawInEN**



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

# 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 other member;
  - Rights and obligations of couple's member regarding property;
  - Distribution of property;
  - Property relation between a couple's member and third parties.



**EULawInEN**



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

# 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**.



**EULawInEN**



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



# 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 pendence (**art. 17**);
- Related actions (**art. 18**);
- Provisional measures (**art. 19**).



**EULawInEN**



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

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

- Reg. 1103 and 1104/2016 concerning jurisdiction offer standards of competent court in **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.



**EULawInEN**



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

# «*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 the stability** because a couple can move.



**EULawInEN**



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

# Interpreting the concept: CJEU

The concept of habitual residence was already used in previous Regulation: 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 to physical presence many other factors can be taken in account).



**EULawInEN**



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

# 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 nationality? We consider the nationality at the moment of marriage. No retroactivity changes.
- RP: where RP was created



**EULawInEN**



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

# Recognition

- **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**.



**EULawInEN**



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

# 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 **irreconcilability with a decision given** between the same parties in the Member State in which recognition is sought.

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



**EULawInEN**



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

# 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.



**EULawInEN**



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



# Practical case

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 the court of their habitual residence.



**EULawInEN**



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

# Practical case

- Mario is an Italian citizen that marries Julie a Luxemburgish citizen; the wedding is celebrated in Italy in 2020;
- Mario and Julie lives 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.

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



**EULawInEN**



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

# Practical case

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

Which is the applicable law?

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

Which is the court that has jurisdiction?

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



**EULawInEN**



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

# Questions?!?



**EULawInEN**



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

# Thank you for your attention!!!



**EULawInEN**



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