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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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Habitual Residence

European Certificate of Succession

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This Project is implemented by Coordinator



Fondazione
Italiana
del Notariato

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CASSA NAZIONALE DEL NOTARIATO



Magyar Országos
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Notary Chamber of Bulgaria



International
Association of
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promoting an independent judiciary worldwide

Introduction

- **European Succession Regulation 2015.08.17.
650/2012/EU (2012.07.04.)**
- **Backgrounds**
 - strong „legal isolation” between the Member States in civil, succession matters
- **Problems**
 - free circulation of decisions and authentic instruments issued in another state was absent
 - In Member States so many different national substantive and procedural laws governing inheritance



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Habitual Residence

- No definition of Habitual Residence just Preamble (23)
- The Regulation should provide that the general connecting factor for the purposes of determining both jurisdiction and the applicable law should be the **habitual residence** of the deceased **at the time of death**.
- In order to determine the habitual residence, the authority dealing with the succession should make an overall assessment of the circumstances of the life of the deceased during the years preceding his death and at the time of his death, taking account of all *relevant factual elements*, in particular the duration and regularity of the deceased's presence in the State concerned and the conditions and reasons for that presence. The habitual residence thus determined should reveal a close and stable connection with the State concerned taking into account the specific aims of the Regulation.



Problems of determining the Habitual Residence

Preamble (24)

- Such a case may arise, in particular, where the deceased for professional or economic reasons had gone to live abroad to work there, sometimes for a long time, but had maintained a close and stable connection with his State of origin. In such a case, the deceased could, depending on the circumstances of the case, be considered still to have his habitual residence in his State of origin in which the centre of interests of his family and his social life was located.
- Other complex cases may arise where the deceased lived in several States alternately or travelled from one State to another without settling permanently in any of them. If the deceased was a national of one of those States or had all his main assets in one of those States, his nationality or the location of those assets could be a special factor in the overall assessment of all the factual circumstances.



Problems of changing the Habitual Residence

- Habitual Residence has the advantage of being flexible, since it allows a wide margin of discretion for law interpretation by the courts/authorities.
- There is an increased **risk of parallel proceedings** being opened in two or more Member States with respect to the estate of the same deceased if the law enforcement authorities differently consider the whereabouts of the habitual residence.
- For the applicants it is hard to ascertain the Habitual Residence of the deceased.
- They submit their petition → pending case
- (My case. Succession case: founded bankcards)



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Why Habitual Residence?

- That court/notary/authority should conduct the succession procedure to which jurisdiction the deceased mostly connected.
- This court has jurisdiction, may and able to apply his own substantive law
- Faster and cheaper as if the court has to interpret foreign law



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Principle of unity law on the succession of the estate

Main Principle:

- All assets in the estate of whatever kind they may be, movable or immovable, and whichever the country in which they are situated. Horizontally extension
- The same law applies to the whole succession process, from it opening to its final distribution. Vertically extension

Exceptions: Article 30

- The law of the place where the assets are situated



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Case Kubicka

- Ms Kubicka, a Polish national resident in Frankfurt an der Oder (Germany), is married to a German national. In order to make her will, she approached a notary practising in Slubice (Poland). She wishes to include in her will a legacy 'by vindication', which is allowed by Polish law, in favour of her husband, concerning her share of ownership of the jointly-owned immovable property in Frankfurt. She expressly ruled out recourse to an ordinary legacy (legacy 'by damnation'), as provided for by the Civil Code (Polish), since such a legacy would entail difficulties in relation to the representation of her minor children, who will inherit, as well as additional costs. Notary's assistant refused to draw up a will.
- CEJU: The Regulation must be interpreted as precluding refusal, by an authority of a Member State, to recognise the material effects of a legacy 'by vindication' as provided for by succession law, if that legacy concerns the right of ownership of immovable property located in a Member State the law of which does not provide for legacies having direct material effect.



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Italian German married couple joint will

- Living partly (half-half of the year) in Bulgaria and in Germany
- Registered residence in both countries
- Have also real estates in Bulgaria and Germany
- Italian man was born & grew up in Germany
- 650/2012 EU Regulation



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British Bulgarian Partners

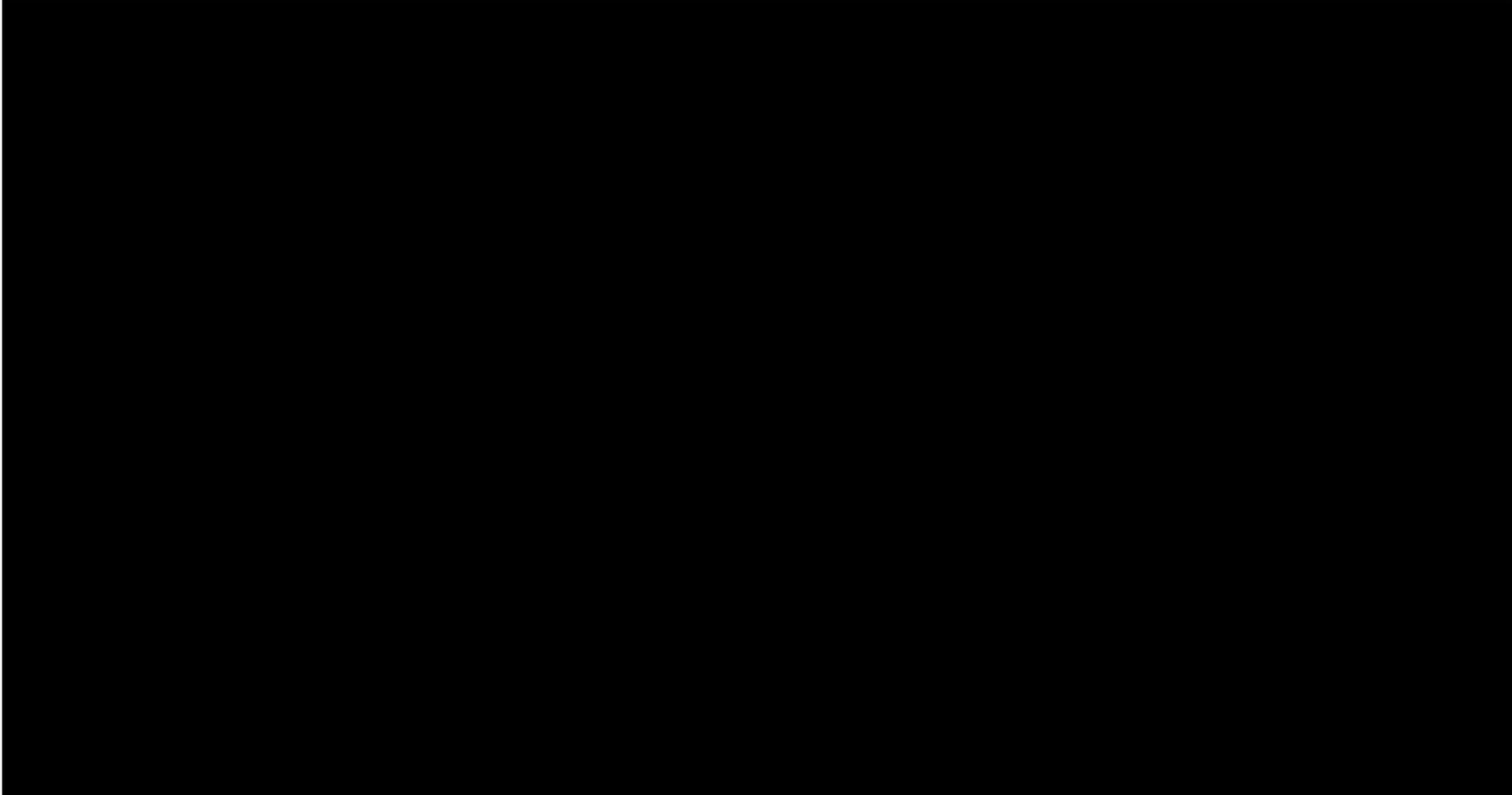
- British national man divorced, Bulgarian national woman living in Bulgaria, man want to draft a will
- The man has business in BG and in the UK, mostly spend the year in BG except 40 days because of british tax issues, has registered residence in both countries
- He has assets in both countries, movable and immovable assets, the more of his income is coming from the UK
- Man 3 children in the UK, woman 2 children in BG, no children in common
- Habitual residence of the british man?
- 650/2012 EU Regulation



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European Certificate of Succession (ECS)

Article 62

- The use of the Certificate shall not be mandatory.
- The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with Article 62.
- Valid for 6 months after it is issued



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Who may request the issue of a ECS?

- A. Those who hold shares in the estate. The Heir, the Legate whose claim is based on right in rem.
- B. Those who have certain duties and powers in connection with the administration of the estate. Executor of the will, Trustee of the estate
- C. Those not who have claims against the estate just based on obligations. The legate whose claim is based on right in rem, creditor of the estate, forced share entitled.



Legal effects of the ECS Article 69.

- I. Effects shall be ipso jure in all the Member States!
- II. Legitimacy Paragraph 2
- III. Public faith effect
- IV. Valid legal title
- V. No Direct Enforceability!



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European Certificate of Succession in Hungary

- Legal status of Hungarian Civil Law Notaries
- Notary has competence in succession (probate) proceedings.
- Firstly, Notary decides by a decree.
- Secondly, Notary can issue the ECS.



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Certificate of an ongoing Succession Case

- At the request of the beneficiary of the estate, the notary shall adopt a ruling, upon receipt of a request for an estate inventory or a certificate of inheritance, to verify that a procedure before the notary public for the issue of an estate inventory or a certificate of inheritance is pending relating to the testator's estate, including the date of the opening of such procedure.
- ESR Art. 18. 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.



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Conclusions

- Important to have a colleague abroad to communicate with in case of interpreting foreign law
- Notarial document will be sent into an unknown law system, about which the issuer does not have enough information
- Near the support of the international offices of the local notarial chambers, it is useful to have direct connection to a colleague abroad



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Thank You for Your attention!



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