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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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# Applicable law and circulation of decisions under EU Regulations 1103/2016 and 1104/2016

**Verginia Micheva-Ruseva**

Judge in Sofia City Court, Bulgaria

This Project is implemented by Coordinator



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# General remarks

The two Regulations complete the harmonization process in the area of family law together with **Brussels II bis Regulation, Rome III Regulation, Maintenance Regulation** and the **Succession regulation**.

The Regulations apply to **18 MS** that represent **70% of the EU population** - Belgium, Bulgaria, the Czech Republic, Cyprus, Germany, Greece, Spain, France, Croatia, Italy, Luxembourg, Malta, the Netherlands, Austria, Portugal, Slovenia, Finland and Sweden.

MS that do not participate in the enhanced cooperation shall apply their rules of private international law.

Regulations apply to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded **on or after 29 January 2019**.



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# General remarks

The provisions of applicable law (Chapter III) – apply to:

- marriages or agreements on the law applicable to the matrimonial property regime **after 29 January 2019**;
- partnerships or agreements on the law applicable to the property consequences of their registered partnership **after 29 January 2019**.

For marriages/partnerships concluded or registered **before 29 January** - private international law of the State applies.



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# General remarks

According to Bulgarian private international law - the matrimonial property regime of the spouses is regulated by the law of the common nationality of the spouses. Failing that – by the law of the State of their common habitual residence. Failing that – by the law of the State with which the spouses jointly have the closest connection /art.79 of the Private international law Code/.

The two Regulations do not cover substantive law. **Applicable law is the substantive law of the States.**

The two Regulations are mostly applicable in case of **death** or in case of a **divorce**.



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# General remarks

**Example:** A., a German national married to B., Bulgarian national. They bought a house in Bulgaria and lived in Bulgaria. Later they decided to separate – A. went back to Germany while B. lived in their house in Bulgaria. They did not divorce. A. died suddenly in 2017 and left no will. His children from a previous marriage filed a claim in front of a German court to decide as to the succession.

What is the competent court? What is the applicable law?



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# Applicable law

Regulated in **Chapter III** of each of the two Regulations.

The rules on applicable law are **universal** - the law of any state may be applicable. The law provided by the Regulations is applicable on all assets, irrespective of in which country the assets are situated - **one law** regulates the matrimonial property or the matters of the property consequences of registered partnerships. See also recital 43-45. The purpose is to allow the EU citizens to have **legal certainty and predictability**.

The spouses/ partners **may choose** which state's law they want to be applicable to their matrimonial property regime/ to the property consequences of their registered partnership .



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# Applicable law

If no law is chosen:

**Regulation 2016/1103** - the law applicable to the matrimonial property regime shall be the law of the State:

- of the spouses' first common habitual residence after the conclusion of the marriage . Failing that, the law of the state
- of the spouses' common nationality at the time of the conclusion of the marriage. If no common nationality - the law of the state
- with which the spouses jointly have the closest connection at the time of the conclusion of the marriage, taking into account all the circumstances.

**Regulation 2016/1104** - the law applicable to the property consequences of registered partnerships shall be the law of the State under whose law the registered partnership was created.

Exception in art.26 par.2 of Reg. 2016/1103 and in art.26 par.3 of Reg. 2016/1104



# Applicable law

## Effect in respect of third parties

The law applicable to the matrimonial property regime/ legal consequences of a registered partnership between the spouses/partners can not be invoked by a partner against a third party in a dispute between the third party and either or both of the spouses/partners unless the third party knew or, in the exercise of due diligence, should have known of that law.



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# Applicable law

## Adaptation of rights in rem

To allow the spouses/ partners to enjoy in another Member State the rights which have been created or transferred to them as a result of the matrimonial property regime/ legal consequences of a registered partnership, the Regulations provides for the **adaptation of an unknown right in rem** to the closest equivalent right under the law of that other Member State. To adapt the right in rem it is necessary to take into account:

- the **aims** of the right in rem
- the **interests** pursued by the right in rem
- the **effects** attached to the right in rem.

**Contact competent authorities** – Registry officers, Notaries, Courts – of the State whose law is applied to the matrimonial property regime/ legal consequences of a registered partnership for information on the nature and effects of the right in rem. **EJN Civil** can be also used – recital 25.

C-218/16



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# Applicable law

## State safeguards – overriding mandatory provisions and public policy rule

Nothing in the Regulations shall restrict the application of the **overriding mandatory provisions** of the law of the forum – crucial provisions for the safeguard of its public interest such as its political, social or economic organisation – like rules for protection of family home.

The application of the Regulations may be refused only if such application is **manifestly** incompatible with the **public policy** /*ordre public*/ of the forum.

“manifestly” - the Regulations restrict refusing application of law.



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# Applicable law

**No European public order** - each MS applies its own public order. The assessment is made by the judge or the notary case by case.

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.

## C-673/16

*CJEU held that MS can not refuse to grant a third-country national a right of residence in the territory of that Member State on the ground that the law of that Member State does not recognise marriage between persons of the same sex.*

The two Regulations **exclude renvoi** - the rules of private international law of the State will not apply.



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# Circulation of decisions

Circulation - recognition and enforceability of decisions.

European area of justice - based on **mutual trust**. The Regulations provide for **free movement of judgments**.

**Recognition** - a foreign decision produces effects in another member state. A decision given in a MS shall be recognized in the remaining MSs **without** any special procedure. No legalization or other similar formalities are required.

In case the recognition is needed, any interested party may apply for the decision to be recognized. Competent court - the court at the MS where the recognition is sought.



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# Circulation of decisions

**Grounds for non recognition** /same grounds to refuse the exequatur/

- a) recognition is contrary to public policy;
- b) decision violated procedural rights of defense of the defaulting defendant;
- c) decision is irreconcilable with judgment given in MS of enforcement/ other MS;
- d) decision violates the exclusive or protective jurisdiction rules.



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# Circulation of decisions

Unlike SR, in the two Rs **reference** is made to the **Charter of fundamental rights** and in particular art.21 on the **principle of non-discrimination**.

In the judgment of C-673/16 the **Court of Justice of EU** *held that the concept of public policy as justification for a derogation from a fundamental freedom must be interpreted strictly, with the result that its scope cannot be determined unilaterally by each Member State without any control by the EU institutions. It follows that public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society.*



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# Circulation of decisions

Enforceable decisions made in a Member State are likewise enforceable in other Member States when they have been **declared enforceable** in accordance with the procedure provided for in the Regulations – the application for a declaration of enforceability shall be submitted to the court or competent authority of the MS of enforcement.

Competent courts or authorities - communicated by the MS /art. 64, see **e-justice portal/**.

Documents provided:

- copy of the decision
- attestation issued by the court of origin.

Attestation forms :            COMMISSION IMPLEMENTING REGULATION (EU) **2018/1935**  
   COMMISSION IMPLEMENTING REGULATION (EU) **2018/1990**

Enforcement procedure - governed by national law.

MS - provide the most favorable legal aid, no security, bond or deposit, no charge or duty or fee calculated by reference to the value of the matter.



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Thank you for your attention



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