

Choice of the applicable law under Regulation 650/2012 and Regulations 1103/2016 and 1104/2016 – experiences of the notarial practice in Germany

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I. Choice of the law applicable to the matrimonial property regime

Art. 22 - 24 Regulation 1103/2016

I. Laws that can be chosen

1. Law of the State where the (future) spouses are habitually resident at the time of the agreement, Art. 22 Abs. 1 lit. a



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2. Law of a State of nationality of either (future) spouse at the time of the agreement, Art. 22 Abs. 1 lit. b

a) Determination of the nationality

b) Persons having multiple nationalities

II. Formal validity of the agreement on a choice of applicable law, Art. 23

1. Principle: Art. 23 Abs. 1

The agreement shall be expressed in writing, dated and signed by both spouses.

Alternative: communication by electronic means which provides a durable record of the agreement.

2. Exceptions

- a) Additional formal requirements for matrimonial property agreements of the law of the Member State in which both spouses have their habitual residence, Art. 23 Abs. 2

- b) Habitual residence of the spouses in different Member States, Art. 23 Abs. 3

- c) Habitual residence of only one of the spouses in a Member State, Art. 23 Abs. 4 EuGüVO
 - d) Habitual residence of both spouses in non-member States
3. No recourse to the law, where the agreement is concluded, the law of the nationality or the chosen law.

III. Content and material validity of the choice of law Art. 24

1. Explicit or implied declaration
2. Principle: application of the law chosen, Art. 24 Abs. 1
3. Exception, Art. 24 Abs.2

V. Effects of the choice of law, effective date

VI. Withdrawal and modification of the choice of law

VII. Particularities for registered partnerships, regulation 1104/2016

Choice of the law applicable to the succession, Regulation 650/2012

I. Choice of the law to govern the succession as a whole, Art. 22 Abs. 2

1. Principles

- a) Law of the State of the nationality
- b) Persons with multiple nationalities

2. Formal validity of the choice of law, Art. 22 Abs. 2
 3. Explicit or implied declaration
 4. Material validity of the choice of law
5. Modification or revocation of the choice of law

II. Choice of the law to govern a disposition of property upon death as regards its admissibility and substantive validity, Art. 24 Abs. 2

III. Choice of the law to govern an agreement as to succession as regards its admissibility, its substantive validity and its binding effects between the parties, Art. 25 Abs. 3

Experiences of the notarial practice in Germany