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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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Regulations on Matrimonial Property Regime 1103/16 Property Consequences of Registered Partnership

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Regulations (UE) nos. 1103/16 – 1104/16 on MPR - RP

Background

- Citizens are increasingly mobile. Union law had already addressed divorce, parental responsibility, maintenance and successions
- One question outstanding: the property regime of international couples
- European Council called for solutions on this matter, as reflected in 2000 Council programme on measures implementing the principle of mutual recognition
- Today, matters on property regimes concern:
 - 16 million international couples in the Union
 - over 460 million EUR when these couples separate or one of the couple's members dies



Regulations (UE) nos. 1103/16 – 1104/16 on MPR - RP

Adoption process

2011: initial COM proposals

- Family law measures require a special legislative procedure: Council acts by unanimity and EP is consulted
- December 2015: Council concluded that no EU-wide unanimity could be reached within a reasonable period of time
- Between December 2015 and March 2016, 18 MS requested enhanced cooperation: SE, BE, EL, HR, SI, ES, FR, PT, IT, MT, LU, DE, CZ, NL, AT, BG, FI, CY (9 MS is the minimum required by Treaties)
- March 2016: three COM proposals:
 - Council decision authorising enhanced cooperation
 - two Council regulations implementing enhanced cooperation: (i) marriages; (ii) registered partnerships



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Impact

- Regulations complete the area of Union family law requested by European Council
- Regulations enable the full operation of Regulations dealing with divorce and succession
- 18 MS in enhanced cooperation represent almost 70% of Union population: Regulations cover a majority of Union international couples
- Any MS can join enhanced cooperation (both Regulations) at any time



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Scope

- All civil-law aspects (i.e. excluding public law) concerning the daily management and the sharing of the couple's property as a result of separation or death of one of the couple's members
- Covers property relationships (i) between the couple's members, and (ii) the couple's relations with third parties
- Certain civil-law aspects linked to a couple's property excluded, such as:
 - general capacity of spouses/partners
 - existence and recognition of a marriage/RP
 - maintenance and succession
 - pension rights
 - nature of rights in rem and recording in registers



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Jurisdiction

- Court: judicial authority and other legal professional acting as, or on behalf of, a court
- Notaries often deal with property regime matters. If acting as, or on behalf of, a court, subject to jurisdictional rules
- Concentration of jurisdiction in two cases - the court competent to deal with property regime matters is:
 - court dealing with succession
 - court dealing with divorce/dissolution of RP:
 - divorce: in certain cases only if spouses agree (depending on ground of jurisdiction)
 - dissolution of RP: if registered partners agree



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Jurisdiction

- In cases other than succession or divorce cases, competent court is, in hierarchical order, the court of MS of:
 - current habitual residence of both spouses/partners
 - last habitual residence of both spouses/partners
 - habitual residence of respondent
 - common nationality of spouses/partners
 - in case of RP, where the RP was created
- Choice of court: other than in succession or divorce cases, spouses/partners can agree (in writing) to choose:
 - court of MS whose law is applicable, or
 - court of MS where marriage was concluded or RP created



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Jurisdiction

- Subsidiary jurisdiction: where no MS court is competent, a MS court is nevertheless competent in respect of assets located in its territory (to ensure access to justice in a MS)
- Lis pendens: Aims to avoid contradictory judgments by courts in different MS. How?
 - If proceedings concerning the same dispute and between the same parties are brought before the courts of different MS, the court first seized has priority
 - Once the court first seized has considered itself competent, the court second seized must decline jurisdiction



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Applicable law

- If no law is chosen, applicable law, in hierarchical order, of country of:
 - marriage: (a) first common habitual residence, (b) spouses' common nationality, (c) closest connection. If spouses have more than one common nationality, (b) does not apply
 - RP: where RP was created
- Scope of national applicable law: it will govern issues such as:
 - responsibility of one couple's member for debts of other member
 - rights and obligations of couple's members regarding property
 - distribution of property
 - property relationship between a couple's member and third parties



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Recognition and enforcement

- Recognition and enforcement of court decision on property matters does not entail recognition of underlying marriage/RP
- Recognition of court decision is automatic
- Declaration of enforceability under simplified rules:
 - obtained on completion of formalities
 - can be appealed: grounds for non-recognition (e.g. public policy, judgement irreconcilable with earlier judgment), can only be invoked on appeal
- Notarial acts (authentic instruments):
 - if notaries act as a, or on behalf of, a court: acts recognised and enforced as court decisions
 - if notaries act as a legal professional: acts will have the same evidentiary effects as in MS of origin, unless contrary to public policy. Enforceability procedure as court decisions



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Registered partnerships - Principles

- Enhanced cooperation: one single area covering both marriages and registered partnerships
- Why? All citizens should be treated equally, whether they are married or in a registered partnership
- Rules in Regulation for marriage and Regulation for RP are almost identical: few differences to take into account that some MS do not provide for RP
- Differences aimed at providing safeguards for registered partners
- MS which do not provide for RP: PL, SK, LT, LV, BG, RO



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Definition

- No definition of 'marriage' in Regulation for marriage
- Inclusion of definition of 'registered partnership' for the purposes of the Regulation for RP:
"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"
- Reason: de facto cohabitation not covered by Regulation for RP



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Jurisdiction

- Jurisdiction in cases other than succession / dissolution of RP:
 - Regulation for marriage: four hierarchical grounds
 - Regulation for RP: same four hierarchical grounds as in marriage plus one additional ground
- Additional ground for RP: courts of MS where RP was created



Regulations (UE) nos. 1103/16 – 1104/16 on MPR - RP

Applicable law

- Choice of applicable law:
 - Regulation for marriage: two possible laws based on habitual residence and nationality
 - Regulation for RP: same two possible laws as in marriage plus one additional law
- Additional law for RP: law of the country where RP was created



Regulations (UE) nos. 1103/16 – 1104/16 on MPR - RP

Recognition of judgments

Both Regulation for marriage and Regulation for RP:

- inclusion of article on fundamental rights
- with specific reference to Article 21 of the EU Charter on the principle of non-discrimination



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