



GOINEU
GOVERNING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION



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

First Experiences on the Application of the EU Succession Regulation in Hungary / Results of the Project

Ádám Fuglinszky

Full Professor of Civil Law
Eötvös Loránd University, Budapest

The content of this document represents the views of the Author only and it is his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains

This Project is implemented by Coordinator



UNIVERSITÀ
DEGLI STUDI
FIRENZE
DIPARTIMENTO DI
SCIENZE GIURIDICHE
DSG

Partners



ELTE
LAW
FACULTY OF LAW



UNIVERSITAT
DE VALÈNCIA



CERSA
di
Famiglia



CNRS



Fondazione
Italiana
del Notariato



Associazione Avvocati
Matrimonialisti Italiani
Sezione Distrettuale di Firenze

Relevance

- **Cross-border succession cases:** not more than 2-4% (esteem by the Hungarian Chamber of Civil Law Notaries)
- **Case groups:**
 - Hungarian citizens as beneficiaries of in-kind compensation in Romania;
 - '56-refugees having moved home after 1989 with significant assets abroad (and double citizenship);
 - Retired senior couples from the Netherland and Germany having settled in Hungary;
 - Wealthy Hungarians having a bank account in Austria / an apartment in Spain, etc.



GOVING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION

GolnEU



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

Issues

1. Interpretation of the Regulation

- A) General: Ambiguities and Lacunae
- B) Country-related: the Outlines of Public Policy

2. Compatibility of the Regulation with National Law

- A) Substantive Matters
- B) Procedural/PIL Issues

3. Feasibility – Accessibility of Information Needed



GOVING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION

GolnEU



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

1) Interpretation of the Regulation

A) Ambiguities and Lacunae (highlighted by T. Szöcs)

A1) The Applicable Law to the Admissibility of Joint Wills

- Prohibited: RO/IT/FR
 - Permitted: DE (Berliner Testament, relevant also in HU) / Scandinavian countries
- **Notion in Art. 3.1. c) – nowhere referred to**

‘joint will’ means a will drawn up in one instrument by two or more persons;

• **Example of the Finnish-Hungarian brothers by T. Szöcs**

• **Applicable law? Art. 24 v. 25.**

- **24: “Dispositions of property upon death other than agreements as to succession”**

Hypothetical *lex successoris* on the day the will was drafted... (cumulatively or separately? --- limping/zoppo joint wills...)

- **25: “Agreements as to succession” --- see Art. 3.1.b): “including an agreement resulting from mutual wills”** Art. 25 Para 3: Choice of law (of nationality of any of them) regarding the admissibility, substantive validity and binding effects...



GOVERNING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION

GolInEU



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

1) Interpretation of the Regulation

A) Ambiguities and Lacunae (highlighted by T. Szöcs)

A2) Substantive validity of dispositions of property upon death: *lex successiois* v. “*Errichtungsstatut*” (subsequent change of the habitual residence has no effect on the substantive validity)

• **Art. 26: exhaustive or illustrative list?**

- (a) the capacity...
- (b) the particular causes which bar the person making the disposition...
- c) the admissibility of representation...
- (d) the interpretation of the disposition;
- (e) fraud, duress, mistake and any other questions relating to the consent or intention of the person making the disposition.

• **Grammatical v. Teleological Interpretation**

- “Expression “in particular” is missing...
- But see. Whereas (7): “organise their succession in advance” / (37): “to know in advance which law will apply to their succession”



GOVERNING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION

GolInEU



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

1) Interpretation of the Regulation

A) Ambiguities and Lacunae

A3) Habitual residence – selected illustrations based on the Budapest workshop

• Austrian-Hungarian double citizen has a family and a family house in Hungary; but he works in Vienna from Monday to Thursday; and owns 3 flats in Vienna too; he's got also a girlfriend in Vienna and a common child with her; he dies in a fatal car accident in Hungary.

• Hungarian citizen shares his time between Budapest and Barcelona; has assets in both cities and is married in both (sic!) countries... / Is citizenship crucial? / And if he is a double citizen? Does it matter that the 2nd marriage is invalid? What is the relationship to fundamental values and human rights? Do the values of the assets matter?



GOVERNING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION

GolInEU



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

1) Interpretation of the Regulation

B) Country-related: the Outlines of Public Policy

- **Public policy is touched upon** 💣: marriages not freely entered into; underage marriages; restrictions due to interreligious marriages; the male child's share is bigger...; discrimination of extramarital children;
- **Public policy is not touched upon** 😊: traditional marriages (cf. *lex loci celebrationis* BUT: Disagreements / Dissents:

Issue	Notaries	Judges	Acad.
Polygamous marriages and their succession effects	😊	💣	😊
Repudiation / talaq	😊	💣	💣
Reserved share - disinheritance	😊	💣	💣
Diff. rules on the inheritance of same-sex spouses/registered partners (i.p. none/less...)	😊	💣	💣
Diff. rules on the inheritance of de facto cohabitants (i.p. more/any...)	😊	💣	😊



GOVING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION

GolInEU



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

2) Compatibility of the Regulation with National Law

A) Substantive Matters

- **Art. 31: Adaptation of rights in rem (HU: numerus clausus)**
 - *fideicommissarische Substitution (AT)*;
 - *Dauertestamentsvollstreckung (long term will-executorship, DE, if the child is minor...)*

what is the closest equivalent? “restraint on alienation and encumbrance”
- **Registration of ownership into the land registry based on European Certificate of Succession**

If issued by German courts, only abstract proportions are presented, not the particular identification-data of the premises/immovables (address, land parcel or cadastral no.) --- Act on Land Register was amended

 - Missing data to be submitted by the heirs or
 - Adaptation procedure to be commenced.



GOVERNING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION

GolInEU



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

2) Compatibility of the Regulation with National Law

B) Procedural and PIL Issues – Compatibility and Intersections

• **Unity of Succession, Universal Scope:** “the twilight of conflict of laws of the Member States” – avoiding the “double track” PIL within the scope of the Regulation.

• **Risk of confusion:** European Certificate of Succession / Certificate of Succession v. Inheritance Certificate, ????but what is that??? – Cf. Probate Procedure Act (XXXVIII/2010) § 102/D:

- Deceased is Hungarian citizen and
- All the estate is in a third country and
- No member state has jurisdiction according to the ESR (neither the habitual residence nor any assets in any member state).



GOVERNING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION

GolInEU



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

2) Compatibility of the Regulation with National Law

- **B) Procedural and PIL Issues – Compatibility and Intersections**
 - **Probate procedure already commenced in a third country...**
 - *Lis pendens*, Art. 17. ESR.: „are brought in the courts of different Member States”
 - If the other country is NOT a member state, ESR does not apply in this respect --- cf. national PIL! *Lis pendens*, if. a.o.t. the recognition of the judgment is not excluded.
 - But recognition of the judgement is excluded, if Hungary has exclusive jurisdiction according to the national PIL! (For example: real estate in Hungary).
 - Thus, national rules on PIL and jurisdiction though have a significance, in relation to probate procedures in third countries, if it is about the recognition .
- To sum it up (simultaneous application of the ESR and of the national PIL):
- ESR applies: whether the Hungarian notary has jurisdiction
 - But the Hungarian PIL applies on the recognition of a judgement passed in a third country .



3) Feasibility – Accessibility of Information Needed

- Probate in Hungary:
 - *ex officio*, even if the participants are passive
 - Information on the assets (abroad) is needed (reserved share; settlement)
 - Catch 22: foreign bank accounts, safe deposits... the bank requires the ECS, but it comes in the end...
- Art. 66.5 ESR: content and details unclear...
- Solutions
 - Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (notary – court? Time consuming 😞)
 - Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
 - Bilateral treaties...
 - ECS according to Art. 63 (2) c): the powers of the person mentioned in the Certificate to execute the will or administer the estate. But if there is dissent among the “heirs”?
- Open questions:
 - Information on wills abroad? / Reaching the unknown heirs abroad?
 - Lis alibi pendens abroad?



GOVERNING INHERITANCE STATUTES
AFTER THE ENTRY INTO FORCE
OF EU SUCCESSION REGULATION

GolInEU



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