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Ádám Fuglinszky – Orsolya Szeibert – Balázs Tőkey*

Prelude to the GoInEUPlus Papers: The Hungarian Perspective on the EU Succession Regulation – Prognoses and the Very First Experiences

I Two International Research and Training Projects on the EU Succession Regulation

This issue of the ELTE Law Journal contains four additional papers on the Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (hereinafter referred to as Regulation or Succession Regulation) from the perspective of Hungarian academics and practitioners.

These papers were drafted within the frame of two connecting international research and training projects co-funded by the EC DG Justice and Consumers, Justice Programme: 'Governing Inheritance Statutes after the Entry into Force of EU Succession Regulation' (GoInEU, 2017–2019)[1] and 'Integration, Migration, Transnational Relationships. Governing Inheritance Statutes after the Entry into Force of EU Succession Regulations' (GoInEUPlus, 2018–2020).[2] The papers published in this issue are the deliverables of the latter.

The General Objective of the projects was and is to contribute to the correct and coherent application of the Succession Regulation through analytical and capacity building activities

* All three authors are full time faculty members of Eötvös Loránd University, Budapest, Faculty of Law, Civil Law Department. Ádám Fuglinszky is professor of civil law, principal investigator of the Hungarian team of the GoInEU and GoInEUPlus research and training projects (fuglinszky@ajk.elte.hu). Orsolya Szeibert is professor of civil law (szeibert@ajk.elte.hu), Balázs Tőkey is assistant professor of civil law (tokeybalazs@ajk.elte.hu), both of them are researchers within the frame of the GoInEU and GoInEUPlus project. This paper is an output of GoinEUPlus Project Co-funded by European Union's Justice Programme 2014–2020. The European Commission's support for the production of this publication does not constitute an endorsement of the contents, which reflect the views only of the authors, and the Commission cannot be held responsible for any use, which may be made of the information contained therein.

1 See the website of the project: <https://eventi.nservizi.it/evento.asp?evID=192> accessed 10 February 2020.

2 See the website of the project: <https://eventi.nservizi.it/evento.asp?evID=225&IDm=&lng=2> accessed 10 February 2020.

targeting legal practitioners. Partners in the actions are the University of Florence (coordinator), the Italian Foundation of Notaries, the Italian Association of Family Lawyers (AMI), *le Centre national de la recherche scientifique* (CNRS, France), the Universities of ELTE Budapest, Valencia, and Coimbra (in GoInEUPlus, also the De Gasperi Foundation).

The Law Faculty of Eötvös Loránd University (ELTE) participated and participates in the projects with three researchers, Ádám Fuglinszky, Orsolya Szeibert and Balázs Tőkey. Laura de Negri joined the team when GoInEUPlus started. The Hungarian chapter organised an international conference and seminar in April 2019 having the title 'Diversity in Unity: The Succession Regulation in Hungary and Beyond'. More than 250 practitioners (notaries, judges, attorneys) and academics attended.[3] The next seminar is going to be held in 2020, with the title: 'International Succession Law and Matrimonial Property Law – Interrelations'.

When the cooperation started, the Hungarian project team contacted the Hungarian Chamber of Civil Law Notaries in order to map the status quo when the Regulation entered into force and also the forecasts regarding the application of the Regulation with special regard to the challenges and difficulties. The experiences and rough findings of these meeting (in January 2018) and of some other pieces of information acquired during the projects are the subject of this introductory essay. The project team opted for this method (interviewing the Notaries' Chamber[4]) in particular, because when the projects started, only two years had passed since the Regulation's entry into force; there were no published judgments on its application in Hungary. As such, the only chance to get access to some experience from the practice was (and mostly still is) to collect unpublished cross-border cases from the notaries who have (exclusive) authority to proceed with the probate procedure in Hungary. The goal was to set the scene and the framework (regarding Hungary) within which the actions of the projects were to be taken.

II The Succession Regulation and Its Relevance in Hungary

The Succession Regulation is an important step in the creation of the General Part of Private International Law in the European Union, by the harmonisation and unification of private international law in matters of succession.[5] The aim of the Regulation is 'to make life easier for citizens by laying down common rules enabling the competent authority and law applicable to the body of assets making up a succession, wherever they may be, to be easily identified.'[6]

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[3] See the website of the conference with the slides, cases and hypotheticals solved and with the video recordings of the presentations with English subtitles: <https://eventi.nservizi.it/evento.asp?evID=192&IDm=2285> accessed 10 February 2020.

[4] Represented by Ádám Tóth (President of the Hungarian Chamber of Civil Law Notaries) and Tibor Szőcs (Director of the Hungarian Notaries' Academic Research Institute).

[5] Andreas Köhler, 'General Private International Law Institutes in the EU Succession Regulation – Some Remarks' (2016) 18 Annals Fac. L.U. Zenica 169.

[6] Richard Frimston, 'The European Union Succession Regulation No. 650/2012' (2013) 33 Estates, Trusts & Pensions Journal 104, citing the Commission in the European Judicial Network website.

The Regulation deals with several aspects and the following matters are the most important: jurisdiction (Chapter II),[7] choice of law (Chapter III),[8] recognition, enforceability and enforcement (Chapter IV), authentic instruments and court settlements (Chapter V) and the European Certificate of Succession (Chapter VI).

The relevance of the Regulation cannot be overestimated due to the relatively high proportion of cross-border successions in Hungary,[9] which can be traced back to several – at least four – reasons. First, there was an 'in kind compensation' in Romania in return for the expropriation and exploitation of property during the communist regime, right after the fall of the communist era, and therefore several Hungarian citizens regained and have property there for historical reasons.[10] Second, many Hungarians had settled in other EU Member States – in Austria in particular – as refugees after the Revolution in 1956 and moved home again after 1990,[11] but they still have significant property (*inter alia* real estate and bank accounts) in those countries whereto they had emigrated during or immediately after the revolution. Third, numerous retired people from some Western European Member States – from Germany and from the Netherlands in particular – live now in Hungary because they can afford a higher standard of living by spending their pension in Hungary instead of their home countries. Fourth, many skilled workers moved from Hungary to Western European Member States – with Germany in first place – where they live as migrant workers.

III Experienced and Forecasted Challenges

1 Non-harmonised Issues

The Regulation harmonises and basically unifies the rules on jurisdiction (and some other matters of the international civil procedural law) and on applicable law in matters of succession. However, there are several other questions, which could come up in connection with cross-border successions.

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[7] The Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction according to Article 4.

[8] As a general rule the law applicable to the succession shall be the law of the State in which the deceased had his habitual residence at the time of death according to Article 21. However, the deceased can choose the law of the State whose nationality he or she possesses at the time of making the choice or at the time of death according to Article 22. The application of renvoi is restricted.

[9] 2-4% of the probates are cross-border succession cases (estimation by the Hungarian Chamber of Civil Law Notaries).

[10] Transylvania was part of Hungary until the Treaty of Trianon in 1920 and a significant Hungarian minority has been living in Romania since then. However, the migration of this minority to Hungary is remarkable – in particular from the '90s – and this also increases the number of cross-border successions.

[11] The reason of the return of the '56-refugees and emigrants to Hungary was the regime change and the democratization of the country at the end of the '80s and in the beginning of the '90s.

a) Lack of tax law harmonisation

The first problem is that the taxation issues are not harmonized, which makes asset planning rather difficult, since the differences between taxation rules can and do influence the choice of law. However, the European Union has no competence to harmonise taxation.

b) Lack of uniform registration (supranational register) of probate procedures

Second there is no (uniform) notification system or register of probates (registration book) covering (all Member States of) the whole European Union,[12] though it would be necessary to find an effective method or solution to avoid or at least to handle parallel (probate) procedures. In order to apply *Article 17* on *lis pendens* cases[13] the competent authorities, courts and notaries should be notified of probate procedures and other processes in connection with the same succession case already commenced in another Member State, but in fact such notification rarely – if ever – happens. Notaries and courts therefore basically do not have the chance to be informed on parallel procedures. According to a real-life example explained by the Chamber of Civil Law Notaries,[14] a French citizen, who lived in Budapest for 15 years and had a Hungarian girlfriend, passed away in Hungary. His sister, who lives in Paris, made a statement on some aspects of the succession after the death of his brother (that one died in Hungary) before a French court. It is highly likely that the competent Hungarian notary who is in charge of the probate procedure in the same succession case will not be informed on the procedure already running in France. It is also possible that the Hungarian notary does receive a notice but too late, just after the release of the estate or the European Certificate of Succession being issued.

c) Probate procedures commenced in third countries

It is even more problematic if the probate procedure has already commenced in a third country and not in a Member State. Since Article 17 applies only to 'proceedings involving the same cause of action and between the same parties in the courts of different *Member States*', it will not be the Regulation but the autonomous private international law rules of the Member State that shall apply in such cases, whether or not the judgment of the court of a third country can be recognized and enforced in the Member State and therefore whether or not a probate procedure in this third country qualifies as *lis pendens* in Hungary. Section 69 Paras 1 and 4 of Act XXVIII of 2017 on Private International Law apply in this respect, according to which if a procedure launched previously is in progress before a foreign court, concerning the same

[12] However, there is a network, the so-called 'European Network of Registers of Wills Association' and the aim of this project is 'to develop and implement effective interconnection of European registers of wills.' The majority of the member states take part in this programme. <http://www.arert.eu/?lang=en> accessed 10 February 2020.

[13] According to Article 17 (1) of the Regulation where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.

[14] Given by Ádám Tóth (President of the Hungarian Chamber of Civil Law Notaries).

right arising from the same factual basis, the Hungarian court may, either *ex officio* or upon request, suspend the procedure, provided that the recognition of the foreign court's decision is not excluded in Hungary. The Hungarian court shall terminate the procedure if the foreign court rendered a decision on the merits of the case and the decision can be recognised in Hungary. Thus, the Hungarian court has to check the preconditions of recognition of a foreign judgment. According to Section 109 Para 1 lit. *a)* 'A decision of a foreign court shall be recognised if the jurisdiction of the proceeding foreign court is well-founded in accordance with this Act.' This is not the case, for example, if Hungarian courts have exclusive jurisdiction (Section 88), but the court (or notary) in the third country takes nevertheless actions and *horribile dictu* passes a judgment.

The Hungarian legislator also recognised that the national rules on jurisdiction and applicable law can apply in cross border succession cases besides the Regulation, for example if the probate procedure commenced in a third country and the beneficiary of the estate wishes to enforce any claim regarding the inheritance in this procedure. This situation is not covered by the Regulation, though the beneficiary may need proof that he or she is entitled to claim the assets. Therefore the amendment of the Act XXXVIII of 2010 on Probate Proceedings[15] in 2018 introduced the so-called 'certificate of inheritance for the enforcement of claims in third countries' (which is not to be confused with either the domestic certificate of inheritance or with the European Certificate of Succession). According to Section 102/D of the amended Act, at the request of any beneficiary of the estate, the notary shall issue a certificate of inheritance, indicating the succession regime applicable under Hungarian law, if the deceased holds Hungarian citizenship and all his/her estate is situated in a third country and, pursuant to the Regulation, no Member State has jurisdiction. Thus, the sole function of this certificate of inheritance is the enforcement of a claim by the beneficiary of the estate in a third country.[16]

d) The undefined magic-word: habitual residence

As Recital No. 23 emphasises:

> In view of the increasing mobility of citizens and in order to ensure the proper administration of justice within the Union and to ensure that a genuine connecting factor exists between the succession and the Member State in which jurisdiction is exercised, this 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.

The content and the application of the general term 'habitual residence' is therefore crucial, since the autonomous and uniform application of the Regulation depends predominantly on how courts, notaries, etc. in the Member States interpret this term.

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[15] We used the English translation of the Act No. XXXVIII of 2010 on Probate Proceedings by CompLex DVD Jogtár.

[16] See Tibor Szőcs, 'Az európai öröklési rendelet hazai alkalmazását érintő legújabb rendelkezések' (2019) (1) Európai Jog 9–10.

The meaning and interpretation of the legal term 'habitual residence' was and is expected to be problematic from the practitioners' point of view, since the Regulation does not contain a definition for it. The scholarly writings confirm this prognosis:

> Some commentators have found the proposed connecting factor of habitual residence unsatisfactory since it is a term that is to have a uniform meaning throughout the European Union and subject to interpretation by the Court of Justice of the European Union (EUCJ), and yet it is not currently one of the terms clearly defined in Art. 3 of the draft Regulation. It may, therefore, in practice, have a different interpretation placed on it by the courts in different Member States.[17]

Furthermore, the Court of Justice of the European Union has not yet decided any case in connection with the meaning of habitual residence concerning the Regulation. Although there are other regulations containing a definition of habitual residence, it is a huge question whether the definition of habitual residence in one Regulation can be taken into consideration in the course of the application of another Regulation.[18] For example, Article 19 of the Rome I Regulation[19] and Article 23 of the Rome II Regulation[20] provide that the habitual residence of a natural person acting in the course of his business activity shall be his principal place of business.[21] These definitions however cannot be applied for the interpretation of the Regulation due to the different focuses of the respective regulations. Recitals 23[22] and 24[23]

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[17] Frimston (n 6) 110.

[18] The legal literature had already discussed it widely before the Succession Regulation. The definition of habitual residence can be analysed in connection with the Succession Regulation – see among others Lurger Brigitta, 'A szokásos tartózkodási hely' in *Tanulmányok az Európai Öröklési Rendelet témaköréből. Európa a közjegyzőkért, a közjegyzők Európáért* (az Europe for Notaries – Notaries for Europe. Training 2015–2017 fordítása) MOKK 10–12.

[19] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

[20] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

[21] Páli Fatime Lejla, 'Joghatóság, alkalmazandó jog az Európai öröklési rendelet kapcsán' (2017) (6) Közjegyzők Közlönye 49–51.

[22] '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 this Regulation.'

[23] 'In certain cases, determining the deceased's habitual residence may prove complex. 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.'

reveal some aspects to be taken into account in identifying the habitual residence. The Regulations on the field of family law, just like the Brussels IIA Regulation[24] and the Rome III Regulation[25] do not include any definition of habitual residence; however, the parents', the spouses' and the child's habitual residence have already been interpreted and applied in the CJEU's judiciary. The majority of these judgments have dealt with the habitual residence of the child, and the determination of an adult's habitual residence cannot be in all cases the a same as identifying the child's habitual residence. It has the consequence that we are no closer to the meaning of the habitual residence under the aegis of the Succession Regulation.

Let's see the following example to highlight the uncertainties referred to above: the deceased (a Hungarian citizen) worked in Vienna on four working days of the week, thus from Monday to Thursday (and he lived there with his girlfriend and their common child in a flat in Vienna) and, with the approval of his employer, he worked from his home-office in Győr (Hungary) on Fridays, where he spent the weekends with his family (wife and two children). The majority of the deceased's real properties are located in Vienna. In such cases, it seems to be unclear whether Vienna or Győr was the habitual residence of the deceased. Recitals No. 23 and 24 highlight some circumstances that should be considered (e.g. the centre of interests of family and social life or the location of the assets), but the relationship of these factors to each other is unclear, i.e. whether they have equal importance or one is more significant than another. How to weigh up those circumstances and how to evaluate the big picture if some factors (e.g. family relationship) appear in several Member States even more puzzling. As far as this hypothetical case is concerned, the habitual residence of the deceased can't be unambiguously determined. Given that the assets are mainly located in Vienna, and according to Recital No. 24, this should be taken into account as a special factor; moreover, since the deceased's family connections were 'shared' as well, *prima facie* Vienna seems to be the last habitual residence, because, besides the location of the valuable assets, a significant part of his family and social life also connected him to Vienna, where he spent more time than in Hungary. At the same time, it can be reasoned that the deceased had the main point of his family life in Hungary, notwithstanding the fact that he had a child in Austria too, because he went to Austria originally 'for professional or economic reasons', and – in line with the first variation of Recital No. 24 – had still maintained a close and stable connection with his State of origin, and therefore he is to 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'. (Another factor to be taken into account in favour of Hungary is the deceased's Hungarian citizenship.)

Another real case[26] confirms that the interpretation of habitual residence will probably not be uniform in different Member States: an Austrian citizen had lived for a long time in

[24] Regulation (EC) No 2201/2003 – jurisdiction, recognition and enforcement of matrimonial and parental judgments.

[25] Council Regulation (EU) No. 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

[26] Mentioned by Ádám Tóth (President of the Hungarian Chamber of Civil Law Notaries).

Hungary, but the Austrian authorities found that her habitual residence was (in) Austria (and not in Hungary) because her closest relative lived in Austria.

It is also a crucial issue whether the deceased could have two habitual residences at the same time (cf. in the first *Győr–Vienna* case mentioned above). It has continuously been a problem in connection with the application of the majority of the Regulations as people are much more mobile and have special living circumstances. The original idea of the concept of habitual residence was simple and had the aim that one person can have only one habitual residence, as this corresponds to the structure and aim of determining jurisdiction and the applicable law. Although the CJEU has already faced challenges in the course of the application of the different Regulations, especially when applying the Brussels IIA Regulation in the issues of parental responsibilities for the habitual residence of the child, it has insisted so far on the original goal and determined only one habitual residence for one person.[27]

2 Lack of Access to Information Needed to Proceed with the Probate Procedure

According to the representatives of the Hungarian Chamber of Civil Law Notaries, the most serious practical problem that the Hungarian notaries face (related to cross-border succession cases) is that they cannot get access to the substantive information needed to proceed with the probate procedure, first and foremost which assets (located abroad) belong to the estate. The two typical examples are bank accounts and the content of safe deposit boxes. The Regulation does not seem to offer them any useful and effective tools for this purpose either.

The Hungarian (substantive) succession law is based on the principle of *ipso iure* succession. It means that the estate devolves upon an heir in its entirety immediately by and after the death of the deceased without any action by the heir.[28] However, the probate procedure follows the so-called additional model:[29] the notary issues a 'decree of release' which lists all the assets and debts of the deceased and testifies authentically the facts of and rights related to the particular succession (what is the content of the estate, which assets does it consist of, who are the heirs, etc.). For example, the heir can register his or her ownership of real estate into the land register only by presenting the decree of release, which proves that the particular asset was devolved upon him or her after (and with) the death of the deceased. Therefore, in order to issue the decree of release, the notary must know exactly which particular assets belong to the estate. If the notary cannot identify the assets, several difficulties arise. For example, the heirs cannot enter into a settlement within the probate

[27] See primarily Case C-435/06, C, ECLI:EU:C:2007:714, Case C-523/07, A, ECLI:EU:C:2009:225; Case C-497/10 PPU, *Mercredi,* ECLI:EU:C:2010:829, Case C-111/17 PPU, OL, ECLI:EU:C:2017:436, Case C-512/17, HR, ECLI:EU:C:2018:513, Case C-393/18 PPU, UD, ECLI:EU:C:2018:835.

[28] Vékás Lajos, *Öröklési jog* (8th edn, Eötvös József Könyvkiadó 2014, Budapest) 14, 147–149.

[29] Ibid.

procedure on the distribution of the particular assets among themselves; moreover, the basis of the compulsory share[30] cannot be calculated, either.

Foreign banks generally do not provide information to Hungarian (or any foreign) notaries if they receive a direct request with reference to bank secrecy (frequently provided for in their general terms and conditions). The Hungarian notaries therefore try to get access to the information needed by addressing an indirect request, i.e. they do not contact the financial institutions directly, but the court (competent for probate procedures in the respective country; in Austria for example the Probate Court – *Nachlassgericht*) and this court requests the necessary information from the bank and then forwards the data to the Hungarian notary. This legal aid is based on the 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. Though this *modus vivendi* seems to work on both sides, for example with Austria, but less so with some other Member States. According to the Notaries Chamber's experience, the foreign banks argue – if they receive a request from a Hungarian notary – that they cannot open the safe deposit box and look inside without the client's permission, again due to their general terms and conditions.

Some Hungarian notaries follow the innovative solution proposed by the Notaries Chamber based on Article 63 (2) c) of the Regulation, according to which it is possible to issue the European Certificate of Succession to demonstrate 'the powers of the person mentioned in the Certificate to execute the will or administer the estate'. Thus, if the notary designates one of the heirs as the executor of the will and issues this type of certificate then the designated heir, in his or her capacity as the administer of the estate, can request the information needed, since he or she can prove his or her authorisation. However – as Section 43/B Paras 1–2 of Act No. XXXVIII of 2010 on Probate Proceedings provides for – the issue of this kind of European certificate of succession must be preceded by a specific decree issued by the notary, in which he entitles one or more parties involved in the probate procedure to gather information, data, documents and deeds on the assets located abroad. If more parties are authorised in this decree to do so, they can only act jointly (together). Though it is not required that all parties involved in the probate procedure agree upon which of them is entitled to gather information on the assets abroad, it is much easier if there is a consensus on that point and the parties involved notify the notary on which of them is willing and ready to discover and locate the assets abroad and to report on the result. If there is no such agreement among the parties, the notary can still make use of the opportunity of simultaneous authorisation of several parties, but in this case – as seen above – they can act only jointly (together). Moreover, the European Certificate of Succession based on Article 63 (2) *c)* of the

[30] See Section 7:75 of Act No. V of 2013 on the Civil Code. In the legal literature cf. Hella Molnár, 'The Position of the Surviving Spouse in the Hungarian Law of Succession' in (2014) (2) ELTE Law Journal 103. 'The deceased's descendants, spouse, registered partner and the deceased's parents are entitled to a compulsory share if, at the time of the opening of succession, they are an intestate heir of the deceased or they would be an heir in the absence of testamentary disposition.'

Regulation must also be issued accordingly, i.e. it must be specified that the authorised parties can only act jointly. This can be difficult if there are hostilities between the parties.

The Hungarian legislator was made aware of the problem that Hungarian notaries cannot obtain all the information they need on the assets located abroad. Act No. XXXVIII of 2010 on Probate Proceedings was therefore amended twice in this respect, first in 2015 and then in 2018. After the first amendment, Sections 43/A and 43/B prescribed that assets located abroad shall be included in the estate inventory if the beneficiary of the estate has verified their existence and the fact that they form part of the estate. The notary could issue a special probate procedural certificate upon the reasoned request of the beneficiary of the estate and enable him or her to obtain information on the assets located abroad with it. However, foreign banks did not accept this particular certificate instead of the European Certificate of Succession. The act was therefore amended again, in 2018, and the rules on the probate certificate were repealed. According to the latest version of the act, the beneficiary of the estate shall provide information on the assets located abroad in the first place, but the notary may also take action *ex officio* for obtaining documentary evidence to verify the existence of foreign assets and that they form part of the estate. In our opinion, this is rather a formal and not a substantial solution of the problem concerned, because – as seen above – neither the beneficiaries nor the notaries have any effective means of obtaining all the necessary information on foreign assets in all Member States.[31]

3 Adaptation Proceedings

If the legal system of a Member State does not know a right *in rem* which is created or transferred to a beneficiary by succession under the applicable law 'that right shall, if necessary and to the extent possible, be adapted to the closest equivalent right *in rem* under the law of that State, taking into account the aims and the interests pursued by the specific right *in rem* and the effects attached to it' according to Article 31 of the Regulation. However, the Regulation does not provide for the rules of the adaptation proceedings itself. It is stated in Recital No. 17 only that the 'adaptation of unknown rights *in rem* as explicitly provided for by this Regulation should not preclude other forms of adaptation in the context of the application of this Regulation'.

The Hungarian legislator enacted the rules of adaptation proceedings into the Act LXXI of 2015 on Adaption Proceedings of Article 31 of Regulation (EU) No 650/2012 of the European Parliament and of the Council. According to Section 3 Para 3 of this act The Central District Court of Buda (i.e. one of the district courts in Budapest) has the exclusive competence in the first instance to decide on the adaptation of those particular foreign legal institutions that do not exist in Hungarian law.

However, the Chamber of Notaries is convinced that the adaptation of several foreign rights, rules, terms and institutions is going to be very difficult if not impossible. The so-called

[31] See Szőcs (n 16) 1–5.

Dauertestamentsvollstreckung (long-term will-executorship) under German law[32] can serve as an example (this states that if the only heir of the deceased is his six-year-old child, then the deceased can designate someone as a long-term executor of the wills, similar to a trustee). *Dauertestamentsvollstreckung* does not exist under Hungarian law. Another example is the notaries' right to act as estate-trustees *(Verlassenschaftkurator)* in Austria. The Hungarian notaries are not allowed to do so. This difference follows also from the diverging traditions of substantive succession laws in the two countries. While in Hungary the succession occurs *ipso iure,* i.e. when the bequeather dies, in Austria the estate becomes *hereditas iacens* first and has legal personality; and the heirs acquire ownership on the estate only by the decree of the probate court.[33]

To sum up, it is questionable whether these rights or legal institutions could be registered into the Hungarian land register and, if yes, under which legal title. For example, in the case of long-term will-executorship, there are several possible solutions: this could be converted either into 'prohibition of alienation and encumbrance'[34] or to a title based on 'fiduciary asset management contract'.[35]

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[32] See Section 2209 of the German Civil Code. 'According to this provision, the deceased may entrust an executor with the administration of the estate without assigning to him any tasks other than those of the administration; he may also direct that the executor is to continue the administration after the completion of any other tasks assigned to him.' <https://www.gesetze-im-internet.de/englisch_bgb/> accessed 12 February 2020.

[33] Cf. Section 546-547 ABGB: 'Verlassenschaft als juristische Person § 546. Mit dem Tod setzt die Verlassenschaft als juristische Person die Rechtsposition des Verstorbenen fort. '
'Gesamtrechtsnachfolge § 547. Mit der Einantwortung folgt der Erbe der Rechtsposition der Verlassenschaft nach; dasselbe gilt mit Übergabebeschluss für die Aneignung durch den Bund.'
See also 'Einantwortungsprinzip § 797. (1) Niemand darf eine Erbschaft eigenmächtig in Besitz nehmen. Der Erwerb einer Erbschaft erfolgt in der Regel nach Durchführung des Verlassenschaftsverfahrens durch die Einantwortung der Verlassenschaft, das ist die Übergabe in den rechtlichen Besitz der Erben.'

[34] Cf. Sections 5:31–5:34 of the Hungarian Civil Code. For the essence see: 'Section 5:31 [Establishing the prohibition of alienation and encumbrance]
(1) For the purpose of securing a right regarding the object of ownership, the owner may establish a prohibition of alienation and encumbrance or a prohibition of alienation regarding the object of the ownership, effective against third parties. With regard to real estate, the real estate register shall also indicate the right that is secured by the prohibition.
(2) The prohibition of alienation and encumbrance and the prohibition of alienation shall be terminated upon the termination of the right the prohibition intended to secure.'

[35] Cf. Sections 6:310–6:330 of the Hungarian Civil Code. According to Section 6:310 Para 1: 'Under a fiduciary asset management contract, the trustee shall manage on his own behalf and for the benefit of the beneficiary the things transferred to his ownership, as well as the rights and obligations transferred to him by the settlor (hereinafter "trust property"), and the settlor shall pay the fee.' On the registration of the trustees' property right see Section 17 Para 1 No. 28 and Section 38 of the Act No. CXLI of 1997 on the Register of Immovables.

IV Some Closing Remarks

The Regulation is – no doubt – an important milestone in the harmonisation of European law. However, the first impressions and experiences of the notarial practice direct one's attention to the ambiguities and lacunae (unharmonised issues, undefined terms such as habitual residence, coexistence of the Regulation and of the national rules on applicable law and jurisdiction if, for example, probate procedures in third countries are involved) inasmuch as to the factual and practical difficulties of the application (access to information on assets located in another Member State). The former challenge could be met in the first place by the Court of Justice of the European Union; its judgments are going to be an important contribution to the autonomous and uniform application of the Regulation. It can be overlooked that the legislators of the Member States are also responsible for the obstacle-free and smooth application of the Regulation, since several more or less technical norms shall be enacted to serve this purpose, despite the direct effect of the Regulation. Without these additional rules, harmonization – which is the aim of the Regulation – can easily fail.

Moreover, it remains to be seen whether the harmonisation of jurisdiction and applicable law will have an impact on substantive succession law and if it does then to what extent. The notaries and courts will apply foreign law more often because of the new jurisdiction rules, and therefore information on foreign (succession) laws is expected to become more widespread and to become part of the everyday (in Hungary: mainly notarial) practice. National and international knowledge bases will likely be developed. This transparency of the various succession law regimes, the awareness of their similarities and differences will very probably influence the choice of law and facilitate choosing the applicable law in general. At the end of the day, it cannot be excluded that the wheels of the European legal approximation turn to (some) harmonisation of the substantive succession law, too. This could be seen as salutary according to scholarly writings and maybe the difficulties on this field are not as serious as they seem to be.[36]

[36] Reinhard Zimmermann, 'Kulturelle Prägung des Erbrechts?' (2016) 71 (7) JuristenZeitung (JZ) 321–332.

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