

Executive Summary

CONTEXT AND GOALS

The Succession Regulation (Regulation 650/2012) is in force in 25 EU Member States since 17 August 2015.

Art. 82 of the Regulation provides that the European Commission must submit a report on the application of the Regulation by 18 August 2025, which should be accompanied, if appropriate, by proposals for amendments.

The experience of notaries in cross-border succession matters in general and with the Regulation in particular, provides a very fertile ground to find out more about the actual application of the Regulation.

Notaries are indeed leading the way in applying the Regulation. Notaries use the Regulation in all Member States to assist clients who are preparing their future succession. The Regulation is an important reference for those who want draft a will or give away some of their assets to their children while preserving the situation of a spouse.

Notaries also use the Regulation when they deal with the succession of a person who has passed away and divide the assets of the deceased among the various heirs and legatees.

In all these operations, the Regulation provides a guide as soon as a succession presents a cross-border dimension.

The MAPE project, which has been carried out by the CNUE in partnership with 4 national Chambers of notaries¹ and the ENRWA, aimed to **take stock of the experience gained by notaries** in 22 Member States during the past 7 years. This assessment also aimed to identify possible solutions or proposals for the improvement of the legal framework, by formulating recommendations.

Besides providing a contribution to the future evaluation of the Succession Regulation, the MAPE project also intended to create a methodology that could be reused for the evaluation of further EU instruments.

METHODOLOGY

In order to assess the experience of notaries, the MAPE project started with the identification of **evaluation and monitoring criteria**. Looking at the structure of the Regulation, it was decided to adopt criteria covering 6 topics addressed by the Regulation:

- General questions
- Scope of application and general concepts
- Rules of jurisdiction
- Applicable law
- Authentic acts
- European Certificate of Succession

For each of these topics, quantitative and qualitative criteria were identified taking into account the difficulties identified in the scientific literature and the experience gained in other projects. Attention was also paid to the case law of the Court of Justice of the European Union, which provided interesting information on questions arising in various Member States as well as insights on the proper interpretation of the Regulation.

In a next step, the MAPE project proceeded to identify the most adequate ways to **collect data** on the application of the Regulation. The reflection on the methods to be used was guided by the following elements:

- The very large number of potential respondents
- The diversity of experience among Member States
- The concern to collect data and information on various aspects of the Succession Regulation
- The diversity of sources of information available

In view of these elements, it was decided to **combine different data collection methods**. Three different methods were selected.

As a first step, it was decided to reach out to all notaries and notarial offices in 22 Member States and to submit them an **online survey** covering the 6 topics selected. Administering an online survey seemed the most adequate method to accommodate the high number of potential respondents. The survey was designed to collect information on the application of the Regulation by notaries. It also sought to obtain a precise picture on the frequency of cross-border successions in Europe, the use by notaries of the various tools which CNUE has created and the usefulness of the training provided to notaries in relation to the Succession Regulation.

The survey was not devised to target specifically notaries with extensive experience in cross-border succession matters. All notaries were invited to take part in the survey. In order to reflect the fact that not all notaries have the same exposure to cross-border succession matters, a first section was included in the survey, in which notaries were

asked various questions about their experience with cross-border successions.

To facilitate the participation of notaries, it was decided to work with bivariate questions with nominal values. The aim was to ensure that notaries could answer the questionnaire in a limited time.

The questionnaire included 6 chapters:

- Screening
- Scope and general issues
- Jurisdiction
- Applicable law
- Authentic acts
- European Certificate of Succession

To collect additional data, the MAPE project also targeted expert notaries: in each Member State taking part in the project, 4 notaries were selected with proven experience in handling cross-border succession cases. Since the **expert questionnaire** aimed to gather qualitative information about the application of the Regulation, selecting the same number of notaries in each Member State would not constitute an obstacle, even though the number of notaries differed significantly between Member States.

The questionnaire was structured around 10 questions. The questions were conceived keeping in mind the information which would become available through the online survey. The notaries were invited to share their actual experience (and that of other notaries with whom they were in touch) when answering those questions. Each question was considered a starting point allowing the expert notaries to share their insights.

Finally, the MAPE project also included an exercise in **institutional data collection**: the 22 participating national Chambers of notaries were asked to answer questions on the guidance and assistance they provide in order to facilitate the work of notaries in handling cross-border successions. Five topics were selected for this questionnaire :

- Training of notaries
- Wills / succession agreements
- Applicable law
- Authentic acts
- European Certificate of Succession

All questions selected relate to elements which concern the notarial profession as a whole or all succession matters in general. It was anticipated that it would be difficult to gather precise data on some of the items in the questionnaire. This is why it was foreseen that if a chamber found that no data was available and no data could be collected, it could provide an estimate, while explaining how it came to that estimate.

As anticipated, a number of respondents could not provide precise answers on some of the questions included in the questionnaire. This applied in particular to the questions concerning the prevalence of the choice of law by the deceased in cross-border successions and concerning the number of authentic acts which were declared enforceable on the basis of the Regulation.

THE DATA COLLECTED

All three data collection exercises were launched simultaneously. To ensure that the notaries were sufficiently familiar with the platform used, the actual survey was hosted on the website of the *European Notarial Network*². The national Chambers took care of the dissemination of the various questionnaires. For the online survey, national Chambers were requested to send several reminders to notaries to ensure adequate participation. Special efforts were made to collect answers from Member States with a low participation rate.

In total 2.103 respondents from 22 Member States took part in the online survey. While the response rate for some Member States was quite high, the participation rate was lower than 5% in six Member States. As all notaries are potentially faced with cross-border succession, the total number of responses guaranteed a low risk of sampling error.

The survey was built around main questions and sub-questions, which only opened if the main question was answered in a specific way. The response rate for some of the sub-questions was much lower than for the main questions. The non-response rate to some of the sub-questions was taken into account when interpreting the results.

The expert questionnaire disseminated by the national Chambers was answered by more than 60 notaries. While some of the experts limited their answers to a few words, most experts provided substantial answers, with details from their practice.

Finally, 15 national Chambers answered the institutional questionnaire. As anticipated, a number of respondents could not provide precise answers on some of the questions included in the questionnaire.

The data collection was supplemented by data provided by the European Network of Registers of Wills Association (ENRWA) : ENRWA shared data (for the period 2016 to 2021) on the number of requests to search ECS registers in other Member States and on the number of requests to search registers of wills in other Member States.

THE RESULTS

The analysis of the data collected provided a rich picture of the activities of notaries in relation to cross-border successions. The analysis focused on six topics:

- General issues
- Overall assessment of the Regulation
- Jurisdiction
- Applicable law
- Authentic acts
- European Certificate of Succession

For each of these topics, the data of the three questionnaires was analyzed in an integrated way. The analysis aimed to map the actual experience of notaries and to formulate recommendations which could be taken on board for a future adaptation of the Succession Regulation.

GENERAL ISSUES

The MAPE Project revealed that notaries have become well acquainted with the Succession Regulation: while a majority of notaries in Member States only use the Regulation occasionally, the research has confirmed that a sizeable minority of notaries apply the Regulation on a regular basis. This must be put in relation to another finding of the project, i.e. that on average, cross-border succession matters amount to 5 to 6 % of all succession cases handled by notaries.

Recommendation #1

The EU, the Member States and the notarial professional bodies should continue to support and / or organize training activities for notaries, future notaries and all those working in the notarial world in order to improve the expertise in cross-border succession matters, the application of the Regulation and the use of all tools available to notaries, including the European Notarial Network and the European Network of Registers of Wills.

The new training activities should concentrate on furthering exchanges of experiences between notaries, in particular between notaries from neighboring Member States.

The notarial profession should reflect upon the desirability and the possibility to introduce, in close cooperation with all institutions concerned, a mandatory module on cross-border succession matters in the training of all future notaries.

These training activities should ensure that the notarial profession fully embrace the various innovations of the Succession Regulation and in particular the possibility for all citizens to choose the law applicable to their succession and the possibility to issue an ECS.

2 / The survey is available
at <https://www.enm-rne.eu/publicSurvey/3>.

Across all Member States, a majority of notaries has received training on the Regulation, which almost all notaries concerned found very useful. In most Member States, a majority of them has used the various mechanisms created by the Regulation, such as the possibility to advise clients to make a choice of law. It is safe to say that notaries have adapted their practice in cross-border succession cases to take into account the innovations of the Regulation.

The mapping exercise showed that one out of two notaries already has had doubts about the applicability of the Succession Regulation. These doubts were mainly linked to the cross-border nature of the succession, the material scope of the Regulation or the applicability of the Regulation to a case of succession in which the assets are located in a Non-Member State.

Recommendation #4

The EU should consider adopting further guidance, helping practitioners determining when a succession presents the required cross-border dimension.

On a general level, the research also showed that mechanisms created to assist notaries, such as the European Notarial Network, are on the whole little used. Those notaries who have made use of the various tools, have, however, overwhelmingly expressed their satisfaction with the results.

Recommendation #3

CNUE, its members and all those involved in the notarial world should undertake renewed efforts to ensure that the various tools developed to help, assist and support notaries in their cross-border work, are effectively used by the largest number of notaries and those working in the notarial world.

GENERAL ASSESSMENT OF THE REGULATION

The data collected through the online survey and the expert questionnaire showed that most notaries consider that the Succession Regulation has made their work in cross-border succession cases easier. The Regulation is therefore viewed positively.

Notaries across Europe have welcomed the main tenets of the Succession Regulation. Notaries have, in particular, welcomed the fact that under the Regulation, a succession is in principle governed by one single law, the law of the last habitual residence of the deceased.

While there may still be some unclarity about the application of the habitual residence-test in specific situations and notaries would therefore benefit from additional guidance on the concept, the analysis reveals that notaries do not experience significant difficulty in determining the habitual residence of the deceased.

Notaries have also embraced the choice of law, a possibility introduced by the Regulation for the benefit of all those preparing their succession. Although there are differences between Member States, the choice of law has to a large extent become part of the toolbox of notaries in cross-border succession cases.

These instruments have helped notaries dealing with cross-border successions. In addition, notaries have underlined the value of having all uniform rules applicable in all Member States.

On the other hand, the experts have also highlighted three main difficulties in the application of the Regulation.

The most frequently encountered difficulty relates to the **registration of ECS or authentic acts in the national land registers**. Many experts have reported difficulties in ensuring that a national certificate or an ECS issued in a Member State is accepted to demonstrate in another Member State the existence of rights vested through the succession and to serve as a basis for registration of such rights.

A second difficulty that is very frequently raised is the **absence of a definition of the concept of habitual residence**.

The third difficulty relates to the fact that it may be difficult to find out whether succession proceedings have already started in another Member State, in the absence of a European register of succession proceedings.

RULES OF JURISDICTION

A first topic on which the MAPE Project has provided useful insights, is that of the choice of court. The questionnaires reveal that the possibility for the heirs, legatees and other parties concerned to choose the court, is little used, with only a minority of notaries having been faced with jurisdiction clauses. At the same time, a majority of notaries express support for an extension of the possibilities for parties to select the court having jurisdiction: both in the online survey and in the expert questionnaire, notaries indicate that they would favor an extended possibility for the heirs and legatees to agree on the court having jurisdiction. Such an extension could allow the choice of court even in the absence of a choice of law by the testator. In the same line, a majority of notaries endorsed the possibility for the testator to select the court having jurisdiction.

Recommendation #7

The Succession Regulation should be revised to give the **testator** the **possibility to grant jurisdiction** to the courts of the country of its nationality for future succession proceedings when the testator chooses the law of that country to govern its succession under Art. 22 of the Regulation.

The MAPE project also learned that the phenomenon of parallel succession proceedings in two Member States is not exceptional. A little less than 40% of notaries have indicated that they have been confronted with such parallel proceedings. One possible solution for this difficulty is to make information on the existence of succession proceedings accessible to all notaries. A large majority of the notaries surveyed were in favour of the creation of a European register which would record the opening of succession proceedings.

Recommendation #6

In order to prevent the occurrence of **parallel proceedings** in two (or more) Member States over the same estate, Member States should, with the assistance of the EU, ensure that notaries may verify whether a succession is not already dealt with by a notary or a court in another Member State. To that end, Member States should establish a register of pending and terminated succession proceedings. The Member States should together with the EU envisage the interconnection at European level of these national registers.

APPLICABLE LAW

The MAPE project revealed that the choice of law as instrument is well known in the notarial practice and is also used effectively. A clear majority of the notaries who responded had already advised a client on a choice of law. Most often, the choice is expressed in favour of the law of the Member State where the notary is established. The notaries were also unanimous in agreeing that the testator's right to choose the applicable law under Art. 22 of the Regulation provides a good solution.

Looking at possible evolutions, a small majority of notaries indicated that they supported introducing the possibility of an agreement between the heirs and, where appropriate, the legatees as regards the applicable law. Another possible evolution would be to allow the choice by the testator of the law of its habitual residence at the time of choice.

Recommendation #11

The EU legislator should revise and broaden the **testator's right of choice of the applicable law** and add a possibility to choose the law of the **habitual residence** of the testator (at the time of the choice). This additional choice should be taken into account in the provisions of the Regulation on choice of court (see recommendation # 7), which should be expanded accordingly.

In the absence of a choice of law, the succession is governed by the law of the last habitual residence of the deceased. A majority of notaries have indicated that they have not experienced difficulties in identifying the deceased's last habitual residence. The positive experience of most notaries with the concept of habitual residence is not, however, undivided. Notaries also reported problems with the interpretation of the notion of habitual residence in so-

called "hard cases". The MAPE Project also served to identify the strategies used by notaries to identify the habitual residence and the factors taken into account by the notaries to determine the habitual residence. A large majority of notaries have indicated that they feel that they do not have access to sufficient instruments to help them identify the habitual residence. This may explain why a large majority of notaries supported the idea of including a definition of the concept of habitual residence in the Regulation.

Recommendation #9

Measures providing more uniformity, certainty and predictability for the interpretation of the notion of "**habitual residence**" in the Art. 4 and 21 of the Regulation should be put in place. The guidance offered in **Recitals 23 and 24** should be expanded to offer a uniform approach concerning other so-called 'hard cases', as identified in the case law and in the literature. In addition to expanded Recitals, the EU should issue **guidelines** for the interpretation of the notion of "habitual residence".

The Regulation attempts to ensure that each authority applies its own law. A sizeable minority of notaries have nonetheless indicated that they had to apply foreign law to deal with a succession. Notaries who had to apply foreign law experienced to a large extent difficulties in assessing the content of foreign law.

Recommendation #13

The EU should invest in more comprehensive commonly accessible **data bases** and **information networks** on foreign legal systems for notaries and courts which have to apply foreign legal rules (even beyond the EU Member States), as it is unavoidable that a Member State is required to apply foreign law under the Regulation.

AUTHENTIC ACTS

The results of the data collection on the mechanism of acceptance of authentic acts are mixed: while some notaries have indicated that they have applied it without any difficulty, other notaries noted that that they did not need it or that it did not seem useful.

The results are also mixed when looking at the possibility to have an authentic act published in the land register in another Member State. It appears that the experience of notaries in this regard is almost evenly divided, with approximately as many notaries indicating that such a publication is possible than notaries answering that it is not.

The possibility to enforce authentic acts in another Member State appears on the other hand to be very little used.

EUROPEAN CERTIFICATE OF SUCCESSION

The Succession Regulation created the European Certificate of Succession, a European instrument aimed to facilitate the life of heirs and legatees in their cross-border dealings.

The MAPE project reveals that it is difficult to collect precise data on the actual use of the ECS, as not all Member States impose that ECS be registered.

Finally, the MAPE Project confirms that many notaries experience substantial difficulties in using ECS issued in other Member States to access land registers to record rights *in rem*. These difficulties are mainly linked to the fact the ECS does not include all information necessary, in particular information on the precise identification of the real estate concerned, the personal identification of the heirs or legatees, the exact share attributed to each heir or more in general to the identification of the assets of the deceased.

Recommendation #15

The EU should reflect on the desirability to require that Member States create a public register where all ECS would be registered. The notarial profession should strongly encourage Member States to interconnect their registers through the ENRWA platform.

While the general trend is positive, as the number of ECS issued has increased over the years, the overall figures remain modest. The ECS has not yet become the default solution when notaries want to help clients who need to assert their rights as heirs or legatees in other Member States. Notaries resort to the ECS in specific situations where the use of this certificate is justified in view of specific circumstances, for example because the ECS enjoys a better recognition than a national instrument or because the succession is a complex one, whereas in routine cases, national documents are still used. This is the case when the succession includes real estate, company shares or bank accounts abroad.

The MAPE Project has also identified several practical difficulties in relation to the ECS, concerning mainly the limited validity of the certified copy of the ECS and the need to have the ECS or part of it translated.

Recommendation #16

The EU should adopt additional measures to alleviate the burden of translating an ECS when it circulates among Member States.

Recommendation #17

The EU should modify the Regulation to provide for a longer period of validity of certified copies of a European Certificate of Succession.

Recommendation #18

The EU should invite the Member States to expand the information already available on the eJustice Portal in relation to the documents and/or information required for the purposes of registration of immovable property in the land registry of Member States. The information made available should be detailed enough to allow issuing authorities to verify whether the ECS, a national certificate of succession, or an authentic instrument on its own will effectively allow the registration of immovable property and, if this is not the case, what additional information and/or documents are required in addition to the ECS, national certificate or authentic instrument to ensure that the heirs or legatees may effectively register their rights.