Monitoring and Evaluating the Application of the Succession Regulation (EU)

MAPE SUCCESSIONS

Final report of the MAPE project

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Introduction

The European Succession Regulation[1] was adopted in 2012. It came into force in August 2015. The Regulation provides European solution to determine the law applicable to cross-border succession. It also includes unified rules of jurisdiction and a scheme for the mutual recognition of courts decisions and acceptance of authentic instruments. Finally, the Succession Regulation creates a European Certificate of Succession to help heirs and legatees to demonstrate their status and rights in all Member States.

From the outset, notaries have been closely involved in the preparation and application of the Regulation. In most Member States, notaries are primary actors in succession matters: they advise clients seeking to anticipate on the opening of their succession. They also help their clients to deal with the assets of the deceased.

Notaries are at the forefront of the application of the Succession Regulation. It is therefore natural that the Council of the Notariats of the European Union (CNUE), as the official body representing the notarial profession in Europe, took up the challenge of monitoring and evaluating how the Succession Regulation is applied. This is the ambition of the MAPE project – 'Monitoring and evaluating the application of the EU Succession Regulation 650/2012' – which was carried out by the CNUE in cooperation with a number of partners, i.e. the Bundesnotarkammer (Germany), the Lietuvos Notaru Rumai (Lithuania), the Kunsill Notarili ta'Malta (Malta) and the European Network of Registers of Wills Association (ENRWA).

This report details how the MAPE project was carried out and what its findings are. It must be read together with the Recommendations which were adopted by the CNUE in March 2023. Both documents could serve as an inspiration for the report the European Commission must submit, according to Article 82 of the Succession Regulation.

This report has been drafted by Prof. Brigitta Lurger (Universität Graz), Prof. Pierre Callé (Université Paris-Saclay) and Prof. Patrick Wautelet (Université de Liège). The MAPE project was coordinated by a Steering committee, which was responsible for the project's implementation[2]. The Steering committee was assisted by a Scientific committee[3]. Both committees have worked hand in hand during much of the project. The two committees were chaired by Ms. Marianne Sevindik, notary in Rouen (France).

The project was carried out with the expert assistance of staff members of the CNUE: Mr. Raul Radoi, Ms. Laura Gonzalez Zulaica; Ms Daniela di Pascale, Mr. Eduardo Nadal-Olivares, Mr. Gianmarco Garramone and Mr. Andrea Grisilla.

1 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, O.J., L-201/107 of 27 July 2012 (hereinafter the 'Succession Regulation').

2 Annex V of this report includes a list of the members of the Steering committee.

3 Annex VI of this report includes a list of the members of the Scientific committee.

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Chapter 1. Methodology

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This chapter gives an account of the various steps which were undertaken to select the relevant evaluation and monitoring criteria, define the methodologies for the data collection, carry out the data collection and analyse the results.

1. Scope of the evaluation

The MAPE project intended to evaluate how notaries apply the Succession Regulation. In order to streamline the data collection process and guarantee that the data collected made it possible to analyse the various questions raised by the application of the Regulation, a first step was to define the exact scope of the evaluation and to identify the relevant parameters.

Considering the aims of the project, it was agreed that the evaluation would be carried out based on the following elements:

- **Situations to be studied – estate planning and probate proceedings:** the Succession Regulation applies whenever a person passes away and the succession possesses an international dimension. It is, however, also useful when a person anticipates on a future succession in order to prepare the transmission of his/her assets ('estate planning'). Notaries are often involved in the planning which precedes the opening of a succession. It was decided that since the Regulation is important in the two contexts, the evaluation should address both the situation in which the succession has already been opened and the application of the Regulation for planning purposes before the actual death of a person.

- **Neighbouring issues:** the opening of a succession raises in the first place issues of succession law. However, a succession often requires to address issues under other rules than those directly pertaining to the succession. Questions will arise in relation to the tax treatment of the consequences of a succession. If the deceased was married or bound by a partnership, it will be necessary to consider the rules applicable to the division of assets among spouses or partners. It was decided that the evaluation should focus on the Succession Regulation as such, while taking account of other neighbouring elements only in so far as this is necessary to understand how the Regulation is effectively applied.

- **Reference period:** the Succession Regulation was adopted in 2012. It came into force in all Member states concerned in August 2015. It was agreed that, given that the project started on the 1st of December 2020 and was scheduled to last 24 months, the evaluation should cover the period between 2015 and 2021.

- **Implementation of the Regulation:** some Members States have adopted laws or other regulations in order to adapt their internal law to the rules of the Succession Regulation. Given the fact that not all Member States have adopted such measures, it was decided not to address them specifically in the framework of the evaluation.

- **Perspective for the evaluation:** the ultimate goal of the Succession Regulation is to facilitate the life and work of citizens involved in cross-border successions (see Recital 7 of the Regulation). Since the Regulation entered into force in 2015, a large number of citizens living in Europe have already been involved in cross-border successions in which the Regulation was applied. It was, however, decided to focus on the experience of professionals involved in cross-border successions, and in particular of notaries without addressing the experience of citizens. Further, canvassing the experience of citizens may reveal more on their relationship with the professional who was

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involved in their case, than on the practical application of the Regulation. In addition, it may not be easy to identify citizens who have been involved in a cross-border succession. Finally, it was noted that notaries involved in cross-border successions will also be able to report on the satisfaction (or lack thereof) of their clients.

- **Digital assets:** the Scientific committee took note of the difficult questions raised by the existence of digital assets. Given the very recent nature of the phenomenon, it was deemed quite unlikely that any representative data could be found in relation to the fate of such assets in cross-border successions. It was therefore decided that no attempt should be made to cover such assets in the project[1].

2. Survey of the available data

Before defining the evaluation and monitoring criteria, a survey was carried out of the data available on cross-border successions in Europe. The objective was to assess how much was already known on cross-border successions in order to avoid duplicating existing research. The survey of existing data could also help identify relevant criteria for the collection of data.
As a first step, the Scientific committee took note of the various figures reported by the European Commission during the preparation of the Succession Regulation. According to the European Commission, it could be estimated that at least 50.000 cross-border successions are opened on a yearly basis in Member States. 20.000 of these successions concerned persons who died in another Member State than that of their nationality. The remaining 30.000 cases concerned successions including real estate located in another Member State[2].

Since the entry into force of the Regulation, a number of studies have provided useful information on cross-border succession matters. Most of these projects have been carried out by mixed teams, with partners coming from academia and other partners from practice, generally professional associations, in particular notarial chambers. For some projects, public authorities have also been partners. Most of these projects looked at the Regulation from a specific perspective.

In what follows, the main projects will be briefly reviewed, with a focus on the data which was collected[3]. This list is by no means exhaustive.

Towards the Entry into Force of the Succession Regulation: building Future Uniformity upon Past Divergences (2014-2016)[4]

This project has been conducted by a consortium of universities led by two Italian universities. The partners included the University of Milan, the University of Genova, the University of Munich, the Fondazione Italiana del Notariato, the Institut Notarial Roman, the Consejo General del Notariado de España and the European Institute of Public Administration. It coincided with the entry into force of the Regulation. The project intended to focus on the impact of the Regulation on national legal systems, through a comparative approach. It aimed to assess the changes that the Regulation

1 The Committee took note of the Access to Digital Assets project carried out by the European Law Institute. It also noted that a project on 'Digital Assets and Private Law' was conducted by Unidroit: https://www.unidroit.org/work-in-progress/digital-assets-and-private-law/).

2 See EU Commission, Appendix to the Green Paper – Succession and wills, COM(2005) 65 final, 1 March 2005.

3 No mention will be made of the projects aimed exclusively at offering training and education on the Succession Regulation, such as the EUFamPro Project (https://www.euro-family.eu/).

4 See https://eventi.nservizi.it/evento.asp?evID=85&IDm=1002.

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would introduce in legal practice. During the project, a questionnaire was used to identify practical problems emerging from transnational successions. The questionnaire was sent out to professionals and experts. A database was also developed in the framework of the project, which includes cases decided by courts of Member States. The database includes cases decided between 1965 and 2014. A final study was published which includes 23 contributions on various topics[5].

Project EUFams II[6]

This was an academic project dealing with European private international law in family and succession matters. It aimed to assess the functioning and the effectiveness of the framework of international and European family law, detect potential problems and propose possible improvements. The project was carried out by a consortium of partners from different Member States (Heidelberg University; Max Planck Institute for International, European and Regulatory Procedural Law; Lund University; University of Milan; University of Osijek; University of Valencia; University of Verona and Spanish Association of Family Lawyers)[7].

Among the deliverables of the project, the EU Fams II project included a survey conducted with 1.400 respondents (academics and practitioners), which also contained some questions on the Succession Regulation. The survey highlighted that in comparison with other instruments, familiarity with the Succession Regulation was fairly high. Another interesting result is that the possibility to make a choice of law did not seem to be widely used. Finally, the ECS did not appear to have not yet been fully embraced in practice[8]. A survey of case law was also carried out in the framework of the project, which gave interesting insights[9].

GoInEU and GoInEU+[10]

These two projects were conducted between 2018 and 2020 by a consortium led by the Fondazione Italiana del Notariato (with partners in France, Italy, Spain, Portugal and Hungary[11]). The first project, called GoInEU, ("Governing inheritance statutes after the entry into force of the EU Succession Regulation") aimed to contribute to the correct and coherent application of the Succession Regulation through analytical and capacity building activities targeting legal practitioners. In the framework of this project, a questionnaire was sent out to collect data on three topics, i.e. migrant families and successions law, the existence of different family models and succession law and private autonomy and succession law[12]. A final report was published, which includes 19 contributions[13]. A document has been published which

5 S. BARIATTI, I. VIARENGO and F. C. VILLATA, Towards the Entry Into Force of the Succession Regulation: Building Future Uniformity Upon Past Divergencies, Final Study, JUST/2013/JCIV/AG/4666, 2016, 650 p.
6 See http://www2.ipr.uni-heidelberg.de/eufams/index.php?.
7 A final report has been published: I. VIARENGO and F. C. VILLATA, Planning the Future of Cross Border Families : a Path Through Coordination, Final Study, 304 p. The findings of this project have also been published in a book : I. VIARENGO and F. C. VILLATA, Planning the Future of Cross Border Families : a Path Through Coordination, Hart, 2020, 976 p.
8 Q. C. LOBACH and T. RAPP, An Empirical Study on European Family and Succession Law, 2019 (study conducted within the framework of the EUFams II project: 'Facilitating Cross-Border family Life: Towards A Common European Understanding'), p. II-III.
9 EUFams II, Comparative Report on National Case Law (study conducted in the framework of the EUFams II project : 'Facilitating Cross-border Family Life: Towards a Common European Understanding'), February 2020. The project database includes 61 rulings related to the Succession Regulation.
10 See http://www.goineu.eu/.
11 The partners included the University of Florence, ELTE (Eötvös Loránd Tudományegyetem), the University of Valencia, the University of Coimbra, the CNRS, the Fondazione Italiana del Notariato and AMI.
12 The results of the questionnaire have been analysed in a report: Marco Rizzuti, GoInEU Scientific Questionnaire's Assessment Report, https://eventi.nservizi.it/upload/192/altro/assessment%20report-finale_disclaimer.pdf.
13 SARA LANDINI (ed.), Insights and Proposals related to the Application of the European Succession Regulation 650/2012, Biblioteca della Fondazione Italiana del Notariato, Giuffrè Francis Lefebvre, 2019, 437 p.

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compiles controversies and difficulties arising from the application of the Regulation[14].

The GoInEU Plus ("Integration, migration, transnational relationships. Governing inheritance statutes after the entry into force of EU Succession Regulations) project aimed to contribute to the reduction of social conflicts promoting an analysis of the impact of Migration on EU Family and Succession law. It was also based on a questionnaire, which included a number of questions relating to cross-border succession matters[15].

CISUR project[16]
This project, conducted between 2018 and 2020, aimed to assess the extent to which Croatia and Slovenia have successfully implemented the Succession Regulation and to map the problems encountered by the competent authorities when applying the Regulation[17]. In order to identify difficulties, semi-structured interviews were carried out in Slovenia and Croatia with legal professionals (notaries, judges, court advisors and practicing attorneys). Focus groups were also organised[18]. Recommendations on the application of the Succession Regulation were issued on the basis of the research carried out[19].

PSEFS Project[20]
The Project on Personalised Solution in European Family and Succession Law was carried out by a consortium composed of the University of Camerino, the University of Rikeka, the University of Ljubljana, the University of Almeria and the Foundation 'Scuola di Alta Formazione Giuridica'. The project focused mainly on Regulations 2016/1103 and 2016/1104, but it also included some information on cross-border successions. The final report[21] contains national reports drawn up by experts from 27 countries[22]. Each national report includes a short section on the application of the Succession Regulation, offering insights on the application of the Regulation and the difficulties encountered in practice. Most of the information is qualitative, rather than quantitative. A report on collecting data and methodological issues also offered useful insights on the process of collecting data[23].

ICRW Project
The ICRW Project, which was led by the Ministry of Justice of Estonia, in cooperation with other partners[24], aimed to enhance the possibilities for electronically exchanging succession related information and documents

14 See https://eventi.nservizi.it/upload/192/altro/list%20of%20controversial%20issues.pdf.
15 The results of the questionnaire have been analysed in a report: F. LA FATA, C. MUGELLI and M. RIZUTTI, Questionnaire's Assessment Report, https://eventi.nservizi.it/upload/225/altro/assessment%20report%20caricato%20in%20pdf.pdf, in particular questions 15 to 20.
16 See https://www.mirovni-institut.si/en/projects/cisur-enhancing-judicial-cooperation-on-the-implementation-of-the-succession-regulation-in-croatia-and-slovenia .
17 The project was conducted by a consortium made of the Croatian Law Centre, the Ministry of Justice of Croatia, the Croatian Notaries Chamber and the Chamber of Notaries of Slovenia.
18 The methodology used and the results are presented in a final report : S. A. KRAMAR, M. TURK and K. VUCKO, Final Report on the Conducted Research on the Implementation of the Succession Regulation in Croatia and Slovenia, 2019, 126 p. (available at https://www.mirovni-institut.si/wp-content/uploads/2020/06/CISUR_Research-Report.pdf).

19 See https://www.mirovni-institut.si/wp-content/uploads/2020/06/CISUR-Recommendations.pdf.
20 See https://psfes.euro-family.eu/.
21 See L Ruggeri, I. Kunda and S. Winkler (eds.), Family Property and Succession in EU Member States. National Reports on the Collected Data, University of Rijeka, 2019.
22 Austria; Belgium; Bulgaria; Croatia; Cyprus; The Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; The Netherlands; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; Sweden; The United Kingdom.
23 Roberto Garetto (ed.), Report on Collecting Data. Methodological and Taxonomical Analysis, 2019, available at https://www.euro-family.eu/documenti/news/psefs_report_data_2019.pdf.
24 The European Network of Registers of Wills Association, the CNUE, the Estonian Chamber of Notaries, the Estonian Center of Registers and Information Systems and various other partners.

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between the Member States in order to improve and fasten cross-border communication in succession matter[25].

JuWiLi[26]
The Justice Without Litigation project was carried out by the CNUE and the Chambers of Notaries in Austria, the Czech Republic, Slovakia, Slovenia, Hungary and Croatia between 2020 and 2022. It aimed to evaluate the activities of notaries in judicial or court-like functions, e.g. as court commissioners in probate proceedings, the collection of uncontested claims, applications to public registers, out-of-court divorce. The JuWiLi project analysed the term "court" under the EU Succession Regulation in the context of non-contentious judicial procedures by notaries from a comparative law, fundamental rights and rules of law perspective. The project led to the publication of a final study[27] and a series of recommendations[28].

The Scientific committee took note of the variety of methodologies used in the framework of these projects to collect data. It also took note of the interesting data collected on various important components of the Succession Regulation. The Scientific committee found that these studies could provide inspiration as they gave useful indications on the relevant criteria to be used for the evaluation and on the data available (and how to obtain them).

25 See the final report: e-Justice Expert Group Interconnection of Registers of Wills. Final Report, 10 p.
26 See https://www.notar.at/juwili/.
27 B. LURGER, K. STÖGER and R. HERZ, JuWiLi Study 2022 – Legal Part, available at https://www.notar.at/fileadmin/user_upload/Notariatskammer/JuWiLi/Legal_Study_JuWiLi_.pdf .
28 Policy recommendations, available at https://www.notar.at/fileadmin/user_upload/Notariatskammer/JuWiLi/Policy_Recommendations.pdf.

3. Determination of the evaluation and monitoring criteria

After reviewing the existing data and taking stock of the methodology used in previous projects, the attention turned to the evaluation and monitoring criteria to be adopted to carry out the MAPE project. In order to identify the relevant areas, attention was paid to the structure of the Regulation:

- Chapter 1 - Scope and definition (Art. 1-3)
- Chapter 2 – Jurisdiction (Art. 4 – 19)
- Chapter 3 – Applicable Law (Art. 20 – 38)
- Chapter 4 – Recognition, enforceability and enforcement of decisions (Art. 39-58)
- Chapter 5 - Authentic instruments and court settlements (Art. 59 – 61)
- Chapter 6 – European Certificate of Succession (Art. 62 – 73)
- Chapter 7 – General and final provisions (Art. 74-84)

It was agreed that Chapter 4 should be left outside the evaluation, as notaries very rarely deal with issues related to the recognition or the enforcement of foreign decisions. Drawing upon the structure of the Regulation and the experience of other projects, it was decided to adopt criteria covering the following six 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, the Scientific committee investigated which

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quantitative and qualitative criteria could be included in the evaluation. The committee took into account the suggestions which had already been included in the project proposal prepared by the CNUE. It also considered the experience of its members with the Regulation and the difficulties identified both by practitioners and in the scientific literature. The committee also paid attention to the case law of the Court of Justice of the European Union, which provided information on questions arising in various Member States as well as insights on the proper interpretation of the Regulation. In view of the diversity of the questions to be addressed, the committee decided to gather both quantitative and qualitative data. The combination of the two methods was deemed useful to provide a more complete picture of the application of the Regulation.

General questions

Before addressing the content of the Regulation as such, the scientific committee decided that it would be useful to investigate various issues closely linked to the application of the Regulation in general:

- Whether or not and to which extent notaries have become familiar with the Regulation.
- Whether notaries have benefited from training on the Regulation and whether this training proved useful.
- How often notaries make use of the various tools and resources made available by the CNUE (and also by the ENRWA) to facilitate cross-border practice.

These questions aimed to provide more information on the context in which notaries apply the Regulation. The committee also agreed that it would be useful to link the answers provided by notaries to their experience in cross-border succession matters. This would allow to determine whether the answers provided by practitioners differ depending on their experience with such matters.

Scope of application and general concepts

The Regulation applies "to succession to the estates of deceased persons" (art. 1, par. 1). A number of issues are excluded from the scope of application of the Regulation. The committee identified several criteria on which it would be useful to obtain data:

Quantitative aspects	Qualitative aspects
Number of successions with a cross-border element (in relation to total number of successions)	In which situations do practitioners experience doubt concerning the application of the Regulation?
Number of successions with a link with a third country not bound by the Regulation	Do successions involving life insurance policies raise difficulties?
Number of successions in which the deceased left a disposition of property upon death (joint will, agreements as to successions)	Relationship between the Regulation and tax rules /authorities

The Regulation makes use of a number of key concepts, such as 'habitual residence', 'disposition of property upon death', 'authentic instrument' and 'court'. Some of these concepts are defined by the Regulation (article 3). Other concepts are not specifically defined but are illustrated by the Recitals. The committee decided to investigate whether these concepts have given rise to interpretation difficulties in practice:

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Quantitative aspects	Qualitative aspects
	Experience of notaries in determining whether national bodies qualify as 'court' pursuant to Article 3, par. 2 of the Regulation
	Experience of notaries in determining the habitual residence of the deceased • Which criteria do notaries use to identify the habitual residence? • Is reference made to case law (of the ECJ or national courts) dealing with other EU Regulations? • What is the value of Recitals 23 and 24 of the Regulation? • What are the 'grey' areas and the difficult cases? • Have notaries developed other techniques to deal with difficult cases (such as a declaration of the person concerned on his/her habitual residence

The rules of jurisdiction

Chapter 2 of the Regulation includes a number of rules of jurisdiction (Art. 4 – 19). Under the Regulation, the courts of the Member State where the deceased habitually resided, enjoy general jurisdiction (Art. 4). If the habitual residence of the deceased is not located in a Member State, the courts of the Member State in which assets of the estate are located can exercise jurisdiction, provided some requirements are met (Art. 10). If the deceased has made a choice of law, the heirs may agree to grant exclusive jurisdiction to the courts whose law was chosen (Art. 5).

Notaries usually deal with non-contentious matters. Further, in most Member States, notaries are not deemed to be 'courts' for the purpose of the Regulation. Notaries are therefore not the primary target of rules of jurisdiction. The committee nonetheless decided that it would be useful to investigate whether certain rules of jurisdiction raised difficulties. The following elements were selected:

Quantitative aspects	Qualitative aspects
Choice of court by the heirs of the deceased: whether and how often is this used?	Difficulty in identifying the habitual residence of the deceased
Existence of parallel succession proceedings in different Member States	Usefulness of extending the possibility under the Regulation to select the court having jurisdiction

Applicable law

Article 22 of the Regulation provides that a person "may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death". This possibility raised a number of intriguing questions which the committee decided to address:

Quantitative aspects	Qualitative aspects
Prevalence / frequency of choice of law: how often is the choice of law used (relative to total number of wills and other dispositions of property upon death - joint wills, agreements as to successions)	Use of the professio iuris: • In which situations do practitioners recommend that a person make a choice of law? • Are there situations in which practitioners would recommend that a person does *not* make a choice of law?

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Frequency of choice of law for another law than law of a notary / legal advisor (e.g. citizen of Member State A making a choice for the law of Member State A in a document drafted by a notary of Member State B)	Do practitioners experience difficulties in coordinating the choice of law in succession matters with the choice of law in other areas?
	Would practitioners favour allowing the heirs and other interested parties to choose the law governing the succession?

According to Article 21 of the Regulation, successions are governed, in the absence of a choice of law, by the law of the State in which the deceased had his habitual residence at the time of death. The committee selected a number of questions in relation to this rule:

Quantitative aspects	Qualitative aspects
	How do notaries solve difficulties relating to the location of the habitual residence?
	Application of foreign law • Experience of notaries in applying foreign law to a cross-border succession • What tools/methods do notaries use to discover the content of foreign law? • Use of online platforms (CNUE / ENN)?

The Regulation provides a number of rules which make it possible to deviate from the result achieved by applying the general principles (professio iuris / habitual residence). The most prominent exception is the public policy provision, which allows to refuse the application of a provision of the law of a State "if such application is manifestly incompatible with the public policy" (Article 35). Article 34 of the Regulation makes some allowance for the renvoi, if the rules of the Regulation lead to the application of the law of a third State. Article 21(2) includes an escape clause, which makes it possible to deviate from the result of the normal application of the main conflict of laws rule. The committee decided to investigate the use of these provisions:

Quantitative aspects	Qualitative aspects
Frequency of application of the escape clause (Art. 21 § 2)	Most common scenarios in which the escape clause is used
Frequency of application of the public policy clause (Art. 35)	In which situations is the public policy provision used? Is the public policy clause used to protect rights of heirs benefiting from a reserved share?

Authentic instruments

Chapter V of the Regulation provides rules aiming to ease the circulation of authentic instruments among Member States (Art. 59-60). The committee decided to investigate a number of questions related to these rules:

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Quantitative aspects	Qualitative aspects
Use of the public policy to refuse or revoke a declaration of enforceability of a foreign authentic act	Whether and how foreign authentic acts give access to local land registers
Existence of a conflict between an authentic act and a decision	Application of the mechanism of acceptance of authentic acts (Art. 59): in which situations and difficulties?

The European Certificate of Succession

Chapter VI of the Regulation creates a European Certificate of Succession (ECS). This certificate constitutes one of the major innovations of the Regulation. It has also given rise to a number of controversies. The committee decided to include in the study a number of quantitative and qualitative indicators relating to the ECS:

Quantitative aspects	Qualitative aspects
Number of ECS issued (yearly basis)	What is the experience of practitioners with applications to issue ECS? How do practitioners react to incomplete requests? Is the form made available a useful instrument?
Number of ECS 'received' (presented by heirs)	What is the experience of practitioners with the examination of an application to deliver an ECS? How long does the processing of an application take? How do practitioners contact potential beneficiaries of the ECS? What is the experience of practitioners in relation to the possibility to request information held in registers from the competent authority of a Member State (Art. 66 par. 5)?
Number of national certificates issued	What is the experience of practitioners when issuing the ECS? How often is the issuance of an ECS refused and on what ground? How do practitioners inform the beneficiaries of the issue of the ECS (art. 67, par.2)?
Number of national certificates used in cross-border successions	What is the experience of practitioners faced with an ECS issued by an authority from another Member State? Is the content of the ECS easily understandable?
	What is the experience of practitioners with certified copies of the ECS? How do practitioners keep a list of persons to whom certified copies have been issued? How often do practitioners have to decide to prolong the period of validity of a certified copy?
	How does an ECS issued by the authority of another Member State fit in the local environment? May ECS issued in other Member State be used to update local real estate registers?

4. Collection of data

On the basis of the criteria selected for the evaluation and the monitoring, the Scientific committee discussed the possible methods to collect relevant data.

The methodology was developed during a series of meetings of the Scientific and the Steering committees in 2021, on the basis of suggestions made by the academic team. The committees reflected on the best possible way to collect data. The reflection was guided by the following elements:

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- The very large number of potential respondents. The committee took note of the fact that the evaluation aimed at the experience of notaries in 22 Member States. This represents a very large number of professionals, exceeding 40.000. This calls for a reflection upon the best possible method to reach a representative sample of notaries.

- The diversity of experience among Member States. Drawing on the experience of members of the Steering and Scientific committees, it was concluded that it was highly likely that the experience of individual notaries differ, not only from one Member State to another, but also within one and the same Member State. Some notaries may have come in contact with the Regulation only occasionally, while other notaries may have applied the Regulation on a more frequent basis.

- The concern to collect data and information on various aspects of the Succession Regulation. The criteria which have been selected touch on very different issues: some criteria directly pertain to the actual text of the Succession Regulation and its interpretation; other criteria concern the general environment in which the Regulation is applied.

- The diversity of sources: some of the information which the project aims to collect lies in the hands of individual notaries. For other elements, the information is more of a collective nature.

In view of these elements, the Scientific committee decided to combine different data collection methods. Three different methods were selected, which will be presented one after the other.

Method 1: Online survey

As a first step, it was decided to reach out to all notaries and notarial offices in 22 Member States and to submit a survey to them covering the six topics selected. Administering an online survey seemed the most adequate method to accommodate the high number of potential respondents and obtain a representative number of answers.

The survey was devised to target notaries and notarial staff. It was decided not to include any restriction limiting the ability for people working together or in the same notarial office to answer the survey. When the survey was launched, echoes from the field showed that in larger notarial practices, only one person answered the questionnaire.

The committee aimed to produce a questionnaire which could easily be answered by notaries. In order to facilitate the participation of notaries, it was decided to work with simple questions calling for 'yes-no' answers. The aim was to ensure that notaries could answer the questionnaire in a limited time period.

The questionnaire included six chapters:

- Screening (information on the practice and experience of the notary)
- Scope and general issues
- Jurisdiction
- Applicable law
- Authentic acts
- European Certificate of Succession

The committee was aware of the fact that not all notaries have the same exposure to cross-border succession matters. In order to reflect this diversity,

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a first section was included in the survey, in which notaries were asked various questions about their experience with cross-border successions in general and with the Regulation in particular. The aim of this first section was to make it possible to distinguish among the answers in light of the experience of notaries.

When designing the questionnaire, the committee took note of the survey conducted in 2018 by the Österreichische Notariatskammer in order to collect information on the application of the Succession Regulation. This survey was addressed to +/- 1.000 notaries. The Austrian notarial chamber received 240 answers, i.e. a response rate of 23%. The results of the survey were made available by the Austrian notarial chamber.

For each section, it was decided to include main questions and subsidiary questions. The subsidiary questions were only relevant in so far as the respondent's answer to the main question justified opening the subsidiary questions.

Some of the questions were adapted to the specific position of some Member States. This applied in particular to the questions relating to the European Certificate of Succession, as notaries in some Member States do not have the competence to issue such certificates, but are nevertheless involved in the preparation of an ECS.

The online questionnaire was submitted to a technical consultant who formatted it for online use. The consultant also stood in for the communication of the results to the Scientific committee.

In order to disseminate the online questionnaire, the Steering committee required the assistance of national chambers. All Chambers were invited to send, by means of their choice, an invitation to all affiliated notaries. To facilitate the work of the Chambers, they were provided with a draft text which they could use to explain the goals of the MAPE Project and the importance of answering to the questionnaire. Some Chambers also chose to include a notice on the questionnaire in their newsletters or dedicated intranets. Communications about the online questionnaire were also done during some training sessions organised by national Chambers. National Chambers were also requested to send or post a reminder to all notaries after a couple of weeks to ensure effective participation.

Although the questionnaire could in theory be answered by anyone, it is safe to assume that only notaries and people working in the Notariat answered the questionnaire. The invitations were disseminated strictly through notarial channels. Further, the nature of the questions asked ensured that only those with a strong interest in cross-border succession took part in the questionnaire.

The actual survey was hosted on the website of the European Notarial Network[29]. This ensured that notaries were already familiar with the platform used.

The results of the questionnaire were closely monitored by the Scientific committee. At regular intervals, the Scientific committee was informed about the results and analysed the response rate in all Member States to ensure that an adequate number of answers were collected. Countries in which an insufficient number of respondents took part in the questionnaire were invited

29 The survey is available at https://www.enn-rne.eu/publicSurvey/3

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to draw their notaries' attention again to the questionnaire. Three Member States in particular were targeted in view of their limited response rates. Members of the Scientific committee liaised with representatives of these Member States to find means to increase the response rate.

In total 2.103 respondents took part in the questionnaire. The break-down by Member States can be seen in the following table:

Country	n. answers	n. notaries	%
Austria	92	533	17,26
Belgium	110	1646	6,68
Bulgaria	16	675	2,37
Croatia	38	329	11,55
Czech Republic	89	434	20,51
Estonia	7	88	7,95
France	413	16759	2,46
Germany	133	7045	1,89
Greece	85	2811	3,02
Hungary	66	313	21,09
Italy	449	5115	8,78
Latvia	21	105	20,00
Lithuania	21	238	8,82
Luxemburg	3	36	8,33
Malta	30	379	7,92
Poland	85	3719	2,29
Portugal	58	502	11,56
Romania	95	2501	3,80
Slovakia	57	333	17,12
Slovenia	16	93	17,20
Spain	182	2806	6,49
The Netherlands	37	1439	2,58
TOTAL	2103	47899	4,39

The Scientific committee addressed the statistical validity and representativeness of the results, taking into account the observations made by the external data consultant[30].

Taking into account the number of notaries who took part in the survey and the actual population of notaries in the Member States concerned, the committee noted that in 9 Member States[31], more than 10% of notaries took part in the survey. In 7 other Member States, between 5% to 10% of the notaries answered the survey. In 6 Member States, less than 5% of the notaries took part in the survey.

The Scientific committee noted the uneven distribution of participation rates

30 Fabian Stephany and Moritz Shrape, 'MAPE Survey Evaluation', DWG Datenwissenschaftliche Gesellschaft Berlin, 22 Feb.2023.
31 Hungary, the Czech Republic, Austria, Latvia, Slovenia, Slovakia, Portugal, Malta and Croatia.

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among Member States. It also took into account the fact that, for a limited number of Member States, the percentage of notaries who participated in the survey was low. Still, the overall number of notaries who participated in the survey was relatively high in those Member States (e.g. France). While the committee recognises that the statistical representativeness of the survey could be improved, it concluded that those limitations did not affect the statistical validity of the sampling. This is because in the first place, in 16 out of the 22 Member States concerned, the survey was answered by more than 5% of the notarial population. Even taking into account the diversity of the notarial practice, this appears largely sufficient to give a correct representation of the population of notaries.

While the experience of notaries may differ, the committee found that as regards the actual application of the Succession Regulation, it was unlikely that significant differences would exist between different subpopulation of notaries, such as notaries working in border regions or notaries working in as solo practitioner or in a larger firm. This is because the international dimension of a cross-border succession is not linked to a single element. A succession may have an international dimension because of a variety of factors. As a consequence, it cannot be assumed that certain subpopulations of notaries necessarily have a different experience of cross-border successions. The Scientific committee therefore decided to include all data collected in the analysis, even the data coming from Member States with a lower participation rate, as the answers from these Member States provide valuable information on the application of the Regulation.

The Scientific committee also considered the issue of the non-response error. It took note of the fact that for some follow-up questions, the total number of notaries who answered the question was only a fraction of those who had answered the main question. In the section on choice of law for example, notaries were asked whether they had ever found the existence of a so-called 'deemed choice of law'. This question was answered by 1.946 notaries. A follow-up question was asked on the difficulty to determine whether the disposition of property upon death was indeed drafted in accordance with the law that the deceased could have chosen. Only 202 notaries answered this question.

The decrease in the participating population affects a number of sub-questions. In view of this difficulty, the Scientific committee decided to carefully scrutinise the answers to the follow up questions. When the answer rate demonstrates too sharp a drop, undermining the validity of the conclusions which could be drawn from the answer, the committee decided against using the results to the sub-question.

After reviewing the different issues which could affect the validity of the answers to the online questionnaire, the Scientific committee concluded that the results met the required standards, even though the questionnaire distribution and design could be improved in the future.

Method 2: Expert questionnaire

The second step in the data collection process focused on notaries with a proven track record in cross-border succession matters. The objective was to obtain detailed answers on open questions relating to the actual experience of notaries in applying the Succession Regulation, going beyond a mere quantitative assessment. By selecting experienced notaries, the committee aimed to gather interesting insights.

In order to select the notaries for this second stage, the committee instructed

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the Chambers to identify notaries with proven experience in cross-border succession matters. This experience could appear from (formal and informal) interactions between the staff of the Chamber and notaries. It could also be demonstrated by the existence of publications by the notary, or the fact that the notary has actively taken in part in training other notaries in cross-border succession matters.

In order to obtain a sufficiently representative number of answers, it was decided to invite each national Chamber to select four notaries. The Scientific committee was conscious of the fact that the total number of notaries differed significantly between Member States. Since the expert questionnaire aimed to gather qualitative information about the application of the Regulation, the committee was satisfied that selecting the same number of notaries for each Member State would not give too much weight to Member States with fewer notaries[32].

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.

A webinar was organised on 5 May 2022 with notaries selected by the national Chambers, to explain the background of the MAPE Project, the goals of the open questionnaire and also the expectations relating to the questionnaire. The webinar was recorded, so that notaries who could not attend, had the possibility to watch the webinar at a convenient time.

In total, 65 questionnaires from notaries in 21 Member States were received. The break-down by Member State is as follows:

Austria	4
Belgium	2
Bulgaria	2
Croatia	4
Czech Republic	3
Estonia	1
France	4
Germany	4
Greece	2
Hungary	4
Italy	4
Latvia	4
Lithuania	4
Luxembourg	1
Poland	3
Portugal	2
Romania	3
Slovakia	4

To be continued>

32 The lists of notaries who took part in the expert survey is reproduced in Annex 2 of this report.

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Slovenia	2
Spain	4
The Netherlands	4

After reviewing the results, the Scientific committee is of the opinion that the answers received cover a sufficiently wide sample of European notarial practice, allowing to draw conclusions from the answers. The fact that for most Member States targeted by the expert survey, three or more answers were received provide a sufficient basis for the analysis.

- 11 Member States: 4 questionnaires
- 3 Member States: 3 questionnaires
- 5 Member States: 2 questionnaires
- 2 Member States: 1 questionnaire

The detailed nature of the answers received also contribute to the richness of the analysis. Respondents shared practical examples from their professional practice to illustrate their answers. Some respondents also drew from the experience of colleagues to provide an answer.

Method 3: Institutional questionnaire

The Scientific committee decided to use a third method to collect data not available through individual notaries. It was decided to invite the national Chambers to provide data on a number of elements which concerned all notaries or all successions of a Member State.

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.

Answers were received from the following 15 Member States:

- Austria
- Belgium
- Bulgaria
- Czech Republic
- Croatia
- France
- Hungary
- Latvia
- Lithuania
- Luxembourg
- The Netherlands
- Portugal
- Romania
- Slovakia
- Slovenia

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As anticipated, a number of respondents could not provide specific 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.

After the questionnaire had been circulated among the national Chambers, it appeared that more time was needed to collect the answer. The initial deadline was therefore extended.

Data provided by the ENRWA

The scientific committee was informed by representatives of the ENRWA that detailed data could be provided on the activities of the ENRWA. More specifically, the ENRWA agreed to share data on the number of requests to search ECS registers in other Member States. The ENRWA also agreed to share data on the number of requests to search registers of wills in other Member States. The data provided by the ENRWA covered the years 2016 to 2021.

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Chapter 2.
General issues

Chapter 2. General Issues

Before touching on the content as such of the Regulation, the MAPE Project aimed to collect data on the general environment in which the Regulation is applied by notaries in all Member States concerned. To that end, questions were asked about the following items:

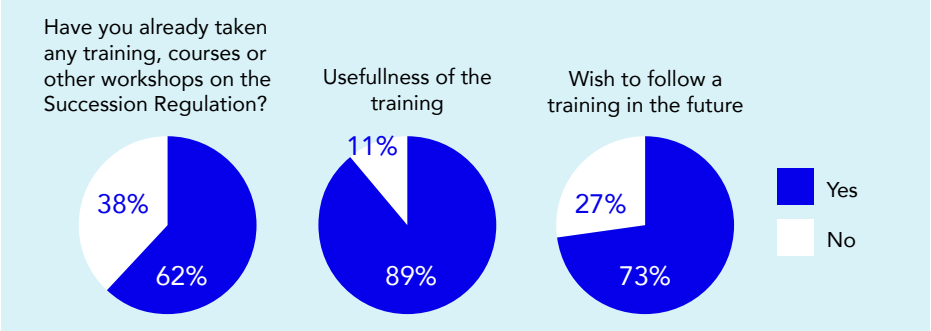
Questionnaire #1
- Training received by notaries on cross-border successions in general and on the Regulation in particular.
- Frequency of application of the Regulation.
- Frequency and nature of the cross-border succession cases.
- Difficulties linked to the application.
- Use of the support mechanisms.

Questionnaire #2
- Benefits of the Regulation.
- Obstacles not solved by the Regulation.

The answers to these questions will be reviewed in this section.

1. Training

The MAPE project aimed to collect information on the training received by notaries on the Succession Regulation. This information was useful for several reasons: looking back at the period since the entry into force of the Regulation, it is useful to find out whether the training sessions organised for notaries reached their targets and were viewed as interesting by notaries. Knowing how many notaries benefited from such training could also help better understand the answers given by notaries to the various questionnaires.



The online survey revealed that the overall training rate among notaries on the Succession Regulation is quite high, with an average of 62% of notaries who indicated that they had benefited from some sort of training[1]. The training rate is even higher in some Member States. It exceeded 90 % in Austria, the Czech Republic, Estonia, Hungary, Latvia and the Netherlands.

Conversely, some Member reported a training rate below or just above 50%: Bulgaria, Germany, Greece, Italy, Malta, Romania and Spain. This should be kept in mind when deciding where future training sessions should be organised.

The vast majority of respondents (89%) found the training they attended useful, while only 11 % answered negatively[2]. The positive feedback on the training is very widely shared, including in States with a relatively low

1 This question was answered by 2.050 notaries.
2 This question was answered by 1.252 notaries.

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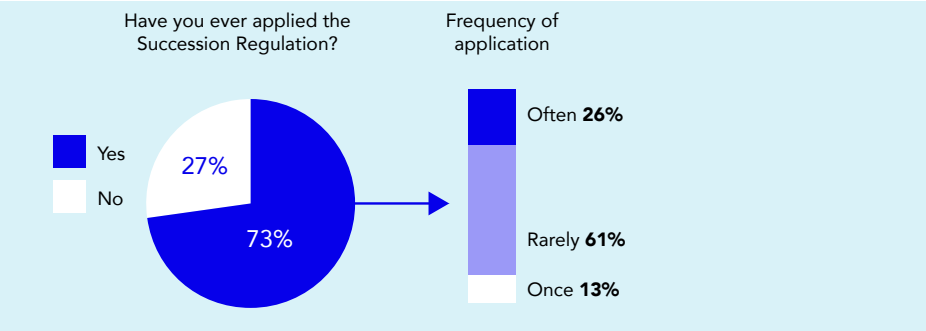
percentage of training attended[3].
It is also interesting to note that the notaries who have not yet benefited from any training overwhelmingly express the wish to receive training in the future (76%)[4]. This is true for all Member States, except Malta (44%).

The answers demonstrate that even though much has already been achieved, efforts to train notaries should be maintained, in particular in those Member States where the survey has revealed a gap.

2. Frequency of application of the regulation

The MAPE Project also aimed to discover whether and how often notaries applied the Regulation. The online survey showed that most of the notaries who responded have applied the Succession Regulation (73%) . Only 26% of the notaries surveyed apply the Regulation frequently. Only 13% have applied it only once (see figure below).



3 Germany has a lower rate of training satisfaction (12%). This result should be further investigated given the limited participation rate of German notaries.
4 This question was answered by 753 notaries.

As one could expect, there are wide differences between the Member States. In some Member States, more than 90% of the respondents have already applied the Succession Regulation – this applies for Austria, the Czech Republic, Germany, Hungary, Portugal, Spain, and the Netherlands. In other Member States, the rate of application is lower than 30% (Bulgaria: 19%, Greece: 21%, Malta: 30%).

These differences may be linked to the frequency of cross-border situations which may differ among Member States. This may in turn be linked to the number of non-nationals residing in a Member State, the percentage of nationals residing abroad, the attractiveness of the real estate market for non-residents, etc.

The survey also attempted to canvass the reasons why notaries had not applied the Regulation[5]. Notaries could choose among five possible answers. A large majority (74%) of notaries who had indicated that they had not yet applied the Regulation, explained that this was due to the fact that they had not been seized of an international succession. Among the other reasons given by notaries to justify the lack of application of the Regulation, we may note that a small portion of notaries indicate that they transfer cross-border cases to a colleague. These results need to be confirmed, as this question was only answered by a limited number of notaries. Further training might be necessary for those notaries who do not seem to be fully aware of the Regulation's principles.

The survey also attempted to canvass the frequency of cross-border

5 This follow-up question was answered by 552 notaries, i.e. slightly more than 25% of all notaries who took part in the survey. This question should therefore be asked again in future surveys.

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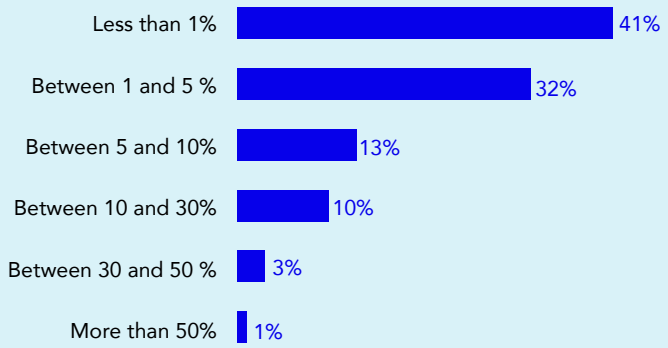
succession cases. These cases were defined by reference to the existence of a cross-border element such as assets located abroad, the location of the residence of the deceased, the fact that one of the persons concerned held a foreign nationality, etc.

Q.: In relation to the total number of succession cases in your office, what is the proportion of successions involving a cross-border element (assets abroad, residence of the deceased abroad, foreign nationality of one of the persons concerned etc.)?

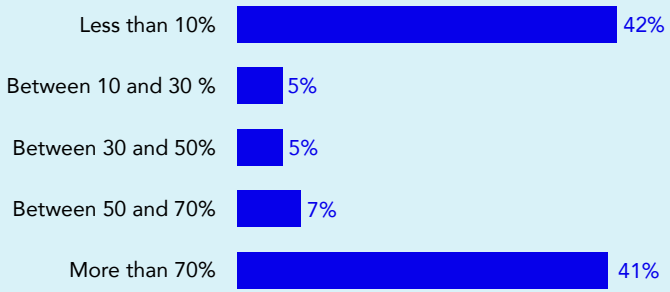


Looking at the results, it is significant that more than 70% of all respondents indicate that cross-border cases represent less than 5% of all succession cases they have to deal with. Taking all answers together, the weighted average represents 6.14% of all succession cases.

There are, however, significant differences among Member States. In some Member States, the results are quite higher than the European average: Austria, Belgium, the Czech Republic, France, Germany, Hungary, Portugal, Spain, and the Netherlands. In other Member States, the prevalence of cross-border cases is lower. This applies to Bulgaria, Estonia, Greece, Latvia, Lithuania, Malta, Poland and Romania. This goes to show that the prevalence of cross-border cases may vary from Member State to Member State. This could contribute to explain why not all notaries have a similar practice of private international law rules.

Focusing on cross-border cases, the survey also attempted to find out the relative proportion of cross-border cases with connections exclusively within the EU and the proportion of cases having exclusively links with third countries. To that end, notaries were asked to indicate the proportion of cross-border cases in which the assets are wholly located in the European Union[6].

Q.: In your office, in succession cases with assets abroad, what is the proportion of cases where assets are wholly located in the European Union?



6 This question was answered by 1.905 notaries.

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Chapter 2. General Issue

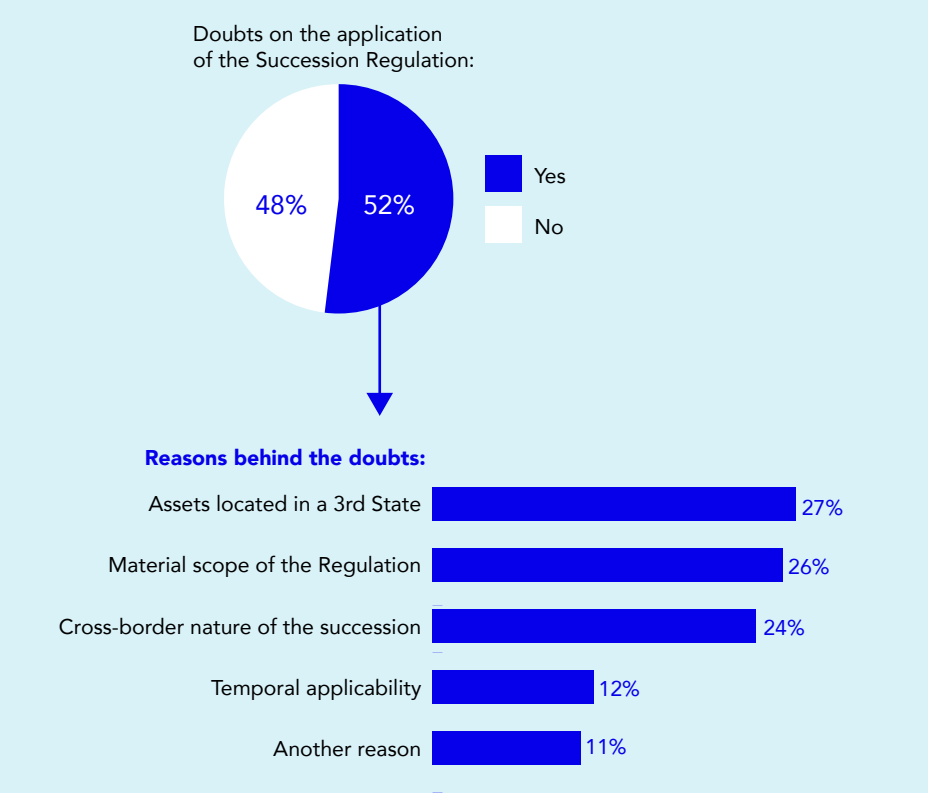
Among international successions, the number of successions in which the assets are entirely located in the European Union is on average 44,15%, i.e. slightly less than one in two successions. Slightly more than one in two successions is linked to a third country. This should be linked to the difficulties highlighted by a number of experts (see questionnaire 2) concerning relations with third countries and in particular questions such as the acceptance in third countries of the choice of law in succession matters or the recognition in these countries of ECS.

Looking beyond the average, the survey revealed significant disparities among Member States. Member States such as Germany, Spain or Luxembourg report a significantly higher rate of successions entirely located in the European Union. Conversely, Member States such as Bulgaria, Croatia, Estonia, Greece, Latvia, Lithuania, Malta, Poland, Romania or Slovakia report a much lower rate than the European average. This serves to highlight the more or less marked links that Member States have with states outside the European Union. The difficulties arising in relation to successions linked to 3rd States therefore vary from one State to another.

3. Doubts on the application of the regulation

The Succession Regulation applies "to succession to the estates of deceased persons" (Art. 1 para 1). The Regulation expressly excludes a number of issues from its scope of application, such as maintenance applications (Art. 1 para 1, e) or property rights created or transferred otherwise than by succession, for instance by way of gifts or joint ownership with a right of survivorship (Art. 1 para 1 g). The Regulation is further only applicable provided the death took place on or after 17 August 2015.

These and other requirements may in some situations make it difficult in practice to find out whether the Regulation applies. The survey aimed to discover whether notaries have indeed been faced with doubts about the applicability of the Regulation[7].



7 This question was answered by 2.028 notaries.

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Chapter 2. General Issues

The survey has shown that about one out of two notaries already has had doubts about the applicability of the Succession Regulation. The percentage is even higher in some Member States, with a number of Member States exceeding 65% (Greece, Malta, Poland, Portugal). In other Member States, the percentage was smaller than 35% (Bulgaria, Croatia, Germany, Latvia, Lithuania, Luxembourg and the Netherlands).

Various reasons were given to explain the hesitation of notaries[8]: these reasons concern almost evenly every dimension of applicability, i.e. temporal applicability of the Regulation (12%), the cross-border nature of the succession (24%), the material scope of the Regulation (26%) or the applicability of the Regulation to a case of succession in which the assets are located in a non-member state (27%).

These doubts could probably be removed by increasing training on the Succession Regulation, as the Regulation contains specific provisions on some of these issues, e.g. the temporal applicability of the Regulation.

4. Use of the support tools

The online survey also undertook to find out whether notaries make use of the various mechanisms put in place by the notarial profession to help and assist in cross-border practice. These tools include the European Notarial Network and other mechanisms.

Q.: Have you ever used a support mechanism, such as the European Notarial Network, to overcome a difficulty in a specific case?[9]

	Yes	No
Use of a support mechanism	17%	83%
Usefulness of the support mechanisms [10]	92%	8%

Mechanisms created to assist notaries, such as the European Notarial Network, are used less frequently than one might expect. In some Member States, however, such as Estonia, Hungary and Portugal, the rate of use is higher.

This is despite the quality of the services provided. Notaries who have made use of the various tools, have overwhelmingly expressed their satisfaction with the results. Notaries have expressed various reasons to explain the lack of use of the support tools[11]:

No need for the tools	41%
Lack of knowledge about the tools	50%
Other reasons	9%

The main reasons explaining the lack of use are on the one hand the lack of knowledge of the existing mechanisms and on the other hand the lack of need for these tools. 56% of respondents explained for instance that they did not know about the existence of the European Directory of Notaries. The

8 This sub-question was answered by1.657 notaries.

9 This question was answered by 2.028 notaries.
10 This sub-question was only answered by 333 notaries.
11 This sub-question was answered by 1.645 notaries.

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results were, however, more positive in some Member States such as Estonia, Germany, Lithuania, Malta and Slovenia where more than 75% of the notaries surveyed had heard about the Directory. Among those who knew about the Directory, only 31% had used it. One reason might be that notaries rely on the readily available and high-quality advice of their national research institutions for notaries.

Efforts to increase the awareness of notaries in all Member States about the existence of support tools such as the ENN or the European Directory of Notaries should therefore be kept up. These efforts should focus on those Member States where the lack of knowledge is more prevalent – such as Greece or Hungary where more than 70% of the notaries have indicated that they are not yet familiar with these tools.

Improving the actual use of the support tools such as the ENN and the Directory could also help solve some of the difficulties which were underlined by the expert notaries, and in particular the difficulties of communication between authorities and professionals from different Member States.

5. General assessment of the succession regulation

The expert notaries were asked to give a general assessment of the benefits and shortcomings of the Succession Regulation. These questions were drafted in very general terms: the experts were asked on the one hand to explain how the Regulation had made their work easier in cross-border succession matters and on the other hand what was the main obstacle in cross-border succession matters which the Regulation had not solved.

Given the open nature of the questions, many different answers were provided. In order to analyse the answers, a selection of the ten most frequent answers was made. The following table provides an overview of the ten answers which were given most frequently. The answers are ranked in descending order. The number between parentheses indicates the number of occurrences of the answer (n=63). It should be kept in mind that notaries could provide several answers.

How does the Succession Regulation make the handling of cross-border succession matters easier?	What is the main obstacle to cross-border succession not solved by the Succession Regulation?
Creation of the ECS (18)	Registration of ECS / authentic acts in national Land Registers (12)
One applicable law governing the whole succession (14)	Lack of definition of habitual residence (12)
Uniformity of rules between Member States (13)	Multiplicity of tax rules (7)
Application of the law of the deceased's last habitual residence (10)	Difficulty in establishing the content of the applicable law (7)
Increased knowledge about the conflict of laws rules (7)	Difficulties relating to the communication between authorities of different Member States (7)
Possibility for the deceased to choose the applicable law (6)	ECS: complexity of the forms (4); translation requirement (4)
Disappearance of legalisation and apostille (2)	Wide scope of the rules of jurisdiction (and their application to a request for a national certificate) (4)
Broad scope of the applicable law (2)	Lack of knowledge in certain Member States about the Regulation (3)

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Convergence of jurisdiction and applicable law (2)	The relationship between the Regulation and other EU instruments such as Regulation 2016/1103 (3)
Various answers relating to the existence of conflict of laws rules (on succession agreements; on the formal requirements) (1)	Successions in connection with third States (2)

In general, the answers provided by the experts make it clear that most notaries consider that the Succession Regulation has made their work in cross-border succession cases easier. The Regulation is therefore viewed positively.

This positive assessment also extends to the main principles and rules laid down by the Regulation: many experts express approval for the principle that only one law governs a succession case, for the application of the law of the last habitual residence of the deceased (Art. 21) and for the possibility offered to the testator to choose the law governing the succession (Art. 22). The creation of the ECS, the efforts to unify jurisdictional competence and applicable law, the wide scope of the law governing the succession (Art. 23) are also viewed positively.

More generally, the experts have explained their support for the Regulation by pointing out to the advantages of having uniform conflict of laws rules applicable in all Member States. The existence of uniform rules results in better understanding of the conflict rules, which are identical in all Member States.

Notaries who have concluded that the Regulation has not made their work easier often point out that this does not mean that it has not made life easier for heirs or facilitated estate planning. In other words, the Regulation may in their view have complicated the work of notaries, in particular since they no longer apply exclusively their domestic private international law, but it has facilitated the settlement of international successions.

The positive assessment of experts also concerns more detailed rules, such as the existence of common conflict of laws rule on agreements as to succession and on the form of testamentary dispositions and the possibility of using national certificates alongside the ECS.

The answers given by experts show a very largely positive assessment of the main guidelines of the Regulation (principle of a uniqueness of applicable law, application of the law of the last habitual residence of the deceased, possibility of choosing the national law), but also of the more specific provisions of the text. On the other hand, the experts have also highlighted some important difficulties which the Regulation has not solved. Three main difficulties are highlighted.

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. One situation where such registration proves to be impossible is when the certificate does not include certain elements required under the law of the Member State where the immovable property is located. This may be information on the real estate itself, such as a description or a reference number. This first difficulty is linked to another one, which is the difficulty of communication between authorities. The experts have underlined the difficulty of obtaining, in the State where the instrument is to be published, the information necessary for this publication.

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A second difficulty that is frequently raised is the absence of a definition of the concept of habitual residence. The guidance given by some recitals of the Regulation or in the rulings of the Court of Justice of the European Union are considered too imprecise to ensure the predictability of the concept of 'last habitual residence of the deceased'. Many experts have therefore expressed the wish that a more objective definition be provided. The use of subjective elements to characterize the habitual residence makes the solutions less predictable, which is detrimental to the non-contentious settlement of successions.

The third difficulty echoes answers given in the online survey: the experts have underlined 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, or if a will exists.

Some other pitfalls pointed out by the experts clearly are not covered by the Regulation and cannot be resolved by amending the Regulation. This is the case for the lack of uniformity of the rules on taxation of succession, the difficulties in accessing the content of a foreign law or the problems raised when the succession has links with third countries. These issues may raise serious difficulties in practice. It may be doubted, however, that a recast of the Succession Regulation could bring about any solution.

Among the difficulties less frequently highlighted, it appears that some obstacles could be lifted by improving the knowledge of the Regulation in some circles (banks, insurance companies, etc.). The same can be said to address difficulties raised by the fact that notaries still face requests to obtain an apostille or even a legalisation of a document.

Addressing other problems would require a greater degree of party autonomy for the deceased or the heirs: experts have noted that the deceased may not choose the law of his or her habitual residence instead of his or her national law. They have also noted that choice of court agreements are only accepted in specific circumstances. Broadening the scope of party autonomy could enhance the predictability of solutions. These proposals, even if they are in the minority, deserve to be highlighted because they are in line with the answers given to other questions (questionnaire n° 2 - question n°4).
Some experts also mentioned other issues, such as the fact that some of the forms may be too complex, that the scope of the escape clause (Art. 21(2)) and of the rules of jurisdiction should be clarified, particularly for the purpose of issuing national certificates of succession or ECS. Some experts questioned the application of the rules of jurisdiction of the Regulation to the issuance of national certificates of inheritance.

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Chapter 3. Rules of jurisdiction

Chapter 3. Rules of jurisdiction

The Succession Regulation includes a number of rules of jurisdiction. The principle is that jurisdiction is granted to the courts of the Member State in which the last habitual residence of the deceased was established (Art. 4). Art. 5 makes it possible for heirs and other legatees to conclude a choice of court agreement in favour of the courts of a Member State provided that the deceased had validly chosen the law of that Member State to govern his or her succession. Art. 10 allows the courts of a Member State to exercise jurisdiction over a succession if the deceased resided habitually on the territory of a third State, provided the deceased possessed some assets on the territory of the Member State and the deceased was a national of that Member State[1].

The MAPE project aimed to gather information on the use of the various rules and their possible shortcomings. No question was asked at this stage on the (concept of) habitual residence (Art. 4) and the potential difficulty of applying this concept. This item was reserved for the chapter on applicable law. No questions were specifically asked on the concept of 'court' and its interpretation for the purpose of the Regulation.

1. Choice of court

The Regulation makes it possible for parties in well-defined circumstances to choose the courts having jurisdiction. This possibility only exists if the deceased had chosen the law of a Member State to govern his or her succession. The courts of the Member State whose law has been chosen, may exercise jurisdiction if the parties to the proceedings have agreed to confer jurisdiction on the courts of that Member State (Art. 5). These courts may also exercise jurisdiction if a court previously seized has declined jurisdiction (Art. 6).

The possibility to choose, under certain circumstances and provided certain requirements are met, the court having jurisdiction was one of the major innovations of the Succession Regulation. The MAPE project sought to find out whether and in which circumstances this possibility is used. It also sought to determine whether the various provisions dealing with the possibility to choose the court gave rise to difficulties of application.

Use of the possibility to choose the court

A large majority of the notaries (84%) who responded to the online survey have not encountered jurisdiction clauses[2]. The practice of concluding such an agreement is almost non-existent in some countries (such as Bulgaria, Luxembourg, Lithuania and Greece). There are, however, a few countries where this practice seems to be more widely used (such as the Netherlands and Estonia and, to a lesser extent, Austria, Poland and Portugal).

It may be concluded that the practice whereby heirs agree, after the death of the deceased, on the competent jurisdiction when the deceased had chosen his or her national law to govern the succession, remains very limited. This is intriguing, as Article 5 makes it possible to streamline the court having jurisdiction and the applicable law, thereby avoiding the difficulties associated with the application of foreign law. Further research is needed to find out why the choice of court made possible by the Succession Regulation has not been used more frequently.

1 Or that the deceased had his or her previous habitual residence in that Member State, provided that, at the time the court is seized, a period of not more than five years has elapsed since that habitual residence changed.

2 This question was answered by 2.025 notaries.

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The future of the choice of court

The remainder of the questions on the choice of court went beyond the current text of the Regulation. Notaries were asked how they would like to see the Regulation evolving in the future. This was meant as a strategy to find out whether notaries were satisfied with the current text of the Regulation.

The results of the two questions dealing with possible developments of the Regulation were very clear: a majority of notaries (65%) have expressed the wish that the heirs should be able to agree on the competent jurisdiction even in the absence of a choice of law by the deceased[3]. An even larger majority (69%) agreed that the testator himself or herself should be given the possibility to choose the court having jurisdiction to settle disputes[4].

	In favour	Not in favour	No opinion
Choice of court by the heirs in the absence of a choice of law	65%	12%	23%
Choice of court by the testator	69%	13%	17%

As for other questions, the overall results revealed the existence of differences between Member States. Nevertheless, focussing on the possibility for the heirs to make a choice of court even in the absence of a choice of law by the deceased, it is worth noting that a majority of notaries answered positively in all Member States surveyed. If one looks at the possibility for a testator to make a choice of court during his or her lifetime, the survey revealed more variations: notaries in some Member States were overwhelmingly in favour of such an evolution (> 80% in Estonia, Greece, Lithuania, Malta, Romania and Slovenia), while the percentage of positive answers did not exceed 22% in Germany and 35% in Luxembourg.

These two solutions would need to be considered in depth. The possibility for the heirs to select the competent court even in the absence of a choice of law by the deceased could prove useful if all the heirs live in the same Member State, that of the nationality of the deceased, while the latter habitually resided in another Member State and did not make use of the possibility to choose the law. Allowing the heirs to designate the courts having jurisdiction would make it possible for them to select the courts of the Member State where they reside. This would, however, come at a price as the applicable law would remain that of the Member State in which the deceased last habitually resided.

From a technical perspective, there are several possible ways to achieve this result. One possibility would be to provide that Article 15 does not apply, and the court does not have to review its jurisdiction ex officio, when all heirs accept the jurisdiction of the courts of one Member State. A more direct method would be to cut the link in Article 5 between the choice of court and the existence of a choice of law by the deceased.

It should be noted that these results echo the findings of the expert questionnaire. Indeed, if a majority of experts did not face difficult situations where the courts of their Member State did not have jurisdiction under the Regulation, a substantial minority of experts expressed concern about one situation, i.e. where all the heirs reside in a Member State, which is that of the nationality of the deceased and also the State in which most of the deceased's assets are located, but the deceased habitually resided in another

3 This question was answered by 2.028 notaries.
4 This question was answered by 2.025 notaries.

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Member State. Under the Regulation, the courts of the latter have jurisdiction (Art. 4). However, it may be argued that the courts of the Member State in which the heirs reside are also well placed to deal with the succession, provided the main assets of the deceased are located in that Member State.

The expert notaries also expressed support for the possibility that the testator includes a choice of court in a will or in another disposition of property upon death. Leaving aside the answers of notaries who may have misunderstood the question, the majority of experts who understood the question were in favour of making it possible for the testator to grant jurisdiction to the courts of a given Member State, i.e. the State whose nationality the testator possesses[5]. One main case emerged from the answers: when the deceased has chosen his or her national law to govern his or her succession, the majority considers it useful that this choice of national law be accompanied by a parallel choice of competent court in favour of the courts of the Member State whose law has been declared applicable. Allowing the deceased to designate the courts of the Member State of his or her nationality if he or she designates at the same time his or her national law as the applicable law would, according to the experts who supported this option, enhance the predictability of solutions, because the heirs would be bound by such a choice. It would also help to streamline the applicable law with the competent court. Only a very limited number of experts supported granting the testator the possibility to choose the court of another Member State than that of his or her nationality, for example the courts of the Member State of his or her habitual residence or of the Member State whose law the testator could have chosen.

5 23 experts (Austria (4) – Belgium (1) – Croatia (2) – The Czech Republic (2) – Estonia (1) – Germany (2) – Latvia (1) – Lithuania (1) – Poland (1) – Portugal (2) – Slovakia (2) – Slovenia (1) – Spain (1) – The Netherlands (2)) indicated that they had already met a situation in which they wish they could have advised a client to include a choice of court in a will or a disposition of property upon death, while 18 experts (Belgium (1) - Bulgaria (1) – Croatia (1) – France (3) – Germany (2) – Hungary (1) – Italy (4) – Latvia (1) – Lithuania (1) – Luxembourg (1) – Slovakia (1) – Spain (1)) answered negatively.

2. Parallel proceedings

The MAPE questionnaires also included a section on parallel proceedings. The Succession Regulation includes a very clear rule dealing with the situation in which proceedings involving the same succession are brought in the courts of different Member States (Art. 17). Previous studies had, however, demonstrated that it is not uncommon for the same succession to be subject to out-of-court proceedings in one Member State and court proceedings in another one, or even for two notaries in different Member States to be seized with the same succession.

Recital 36 of the Regulation acknowledges the existence of this problem. It does not, however, provide a real solution, as it merely calls for parties to "agree upon themselves how to proceed".

The MAPE project first intended to measure the existence and the frequency of the problem. It appears from the online survey that the problem is widespread[6]: 37% of notaries who responded, declared that they have already been faced with parallel succession proceedings in two Member States . The frequency is even higher in a number of Member States (< 60% in Austria, the Czech Republic, Estonia, Luxembourg and Slovakia). In some Member States, however, the frequency of such parallel proceedings is much lower (> 10% in Bulgaria, Germany and Malta).

6 This question was answered by 2.010 notaries.

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Different solutions could be contemplated to deal with parallel proceedings not involving a court. A first step would be to make it possible for those dealing with a cross-border succession to find out easily that the succession is already dealt with in another Member State. Respondents to the online survey overwhelmingly favoured the creation of a European register which would record the opening of succession proceedings. 76% of notaries indeed indicated that it would be useful to develop a European register recording the opening of succession proceedings[7]. This figure is very high in almost all Member States.

This is in line with the opinion expressed by the expert notaries that one of the difficulties that the Regulation has not solved is finding out whether a procedure is already under way in another Member State. A European register would facilitate access to such information.

A minority of Member States (28%) already seem to have some sort of register which could record the opening of succession proceedings[8]. A large majority of notaries surveyed online (88%) indicated that they would find it useful to have such registers interconnected[9].

7 This sub-question was answered by 2.016 respondents.
8 This sub-question was answered by 1.970 respondents.
9 This sub-question was answered by 583 notaries.

	Yes	No	No opinion
Existence of parallel proceedings	37%	63%	
Usefulness of a European register for succession proceedings	76%	6%	18%
Usefulness of the interconnection of national registers	88%	2%	10%

3. Restrictive nature of the rules of jurisdiction?

Finally, the MAPE project sought to investigate whether notaries were satisfied in general with the architecture of the rules of jurisdiction of the Regulation. To that end, the expert notaries were asked whether they had experienced difficulties in a situation in which the courts of their Member State did not have jurisdiction under the Regulation.

The majority of expert notaries replied that they had not encountered difficulties of this kind[10]. For these experts, the rules on jurisdiction of the Regulation seem to cover all desirable hypotheses. Many experts insisted on the fact that notaries are in principle (but not in all Member States) not bound by the rules of jurisdiction and may therefore help their clients in settling the succession without verifying whether they have jurisdiction under the Regulation. However, a minority of the expert notaries pointed out two situations in which the rules of jurisdiction of the Regulation appeared insufficient in their view.

10 35 notaries answered in this sense, out of the 60 expert notaries who provided an answer to this question : Austria (1) – Belgium (2) - Bulgaria (2) – Croatia (3) – The Czech Republic (1) – France (3) – Hungary (4) – Italy (3) – Latvia (2) – Lithuania (3) – Luxembourg (1) – Poland (1) – Portugal (2) – Romania (2) – Slovakia (1) – Slovenia (1) – Spain (1) – The Netherlands (2)

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In a first situation, all the heirs reside in a Member State, which is that of the nationality of the deceased but the latter had established his or her habitual residence in another Member State, even though most of his or her assets were still located in the first Member State[11]. In this case, the jurisdiction of the courts of the Member State of the deceased's last habitual residence excludes the jurisdiction of the courts of the Member State where the heirs reside. However, it cannot be ignored that the latter could also provide a convenient forum, given that all or most heirs reside there and that it is also the place where the main assets are located.

A second situation in which some experts regretted the strictness of the rules of jurisdiction relates to the issuance of a European Certificate of Succession[12]. Some notaries would like to be able to issue a European Certificate of Succession in other situations than those currently foreseen in Article 64. Attention should, however, be paid to the risk that this could create situations where conflicting ECS are issued.

11 This situation was pointed out by the following experts : Germany (2) – Lithuania (1) – Poland (2); Estonia (1) – France (1).
12 This situation was pointed out by the following experts : Austria (2) – Germany (2) – Latvia (1) – Slovakia (1) ; Germany (1) (this last answer only concerned the jurisdiction to issue a national certificate).

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Chapter 4.
Applicable law

Chapter 4. Applicable law

The Succession Regulation includes uniform conflict of laws rules which are built on two principles: the law governing a cross-border succession is first the law which has been designated by the deceased (Art. 22). The *professio iuris* is a major innovation of the Succession Regulation. The MAPE project mainly sought to know whether this innovation is effectively used in practice and, if not, why. In the absence of a choice of law by the deceased, the law governing the succession is that of the last habitual residence of the deceased (Art. 21). From the outset, one main question arose in relation with this rule, i.e. whether notaries experienced difficulties in identifying the last habitual residence of the deceased.

The MAPE project also undertook to examine how notaries coped with the application of foreign law under the Succession Regulation. It also addressed two special mechanisms put in place by the Regulation, i.e. the escape clause (Art. 21 para. 2) and the public policy exception (Art. 35).

1. The choice of law

A warm embrace for the choice of law

The MAPE project first focused on the use of choice of law provisions in dispositions of property upon death. The online survey revealed that a clear majority of the notaries (68%) who responded already have advised clients on a choice of law[1].

The results show that the experience of notaries with choice of law in succession matters differ among Member States. In some Member States, more than 80% of notaries indicated that they already have had experience with the choice of law[2]. In other Member States, notaries seem less familiar with the choice of law. Four Member States recorded percentages lower than 40%[3].

There may be different reasons which could explain why some notaries are more familiar with the choice of law than other. The main reason may be that some notaries may not have to deal with cross-border cases.

These results should be read together with the answers given on a follow-up question. Notaries were also asked whether they had come across a choice of law made by a client[4]. The results were more mixed: while 45% of the respondents indicated that they had not come across a choice of law, 55% answered positively. It is interesting to note that among those who answered positively, 42% indicated that they had rarely come across a choice of law, while 13% indicated that this had occurred frequently.

When was a choice of law made?	
For a person living in another country than that of his or her nationality	49%
For a person planning for his or her succession:	42%
Other reasons:	9%

Taken together, these results indicate that even though there is still room for improvement, the choice of law as an instrument is well known in the notarial practice and is also used effectively. This echoes the findings of the

1 This question was answered by 2.001 notaries.

2 Austria (93%) Belgium (80%), Germany (79%), France (78%), Poland (91%), Portugal (94%), Spain (88%), the Netherlands (95%).

3 Bulgaria (15%), Croatia (33%), Greece (27%), Lithuania (40%).

4 This question was answered by 1.992 notaries.

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expert questionnaire: the expert notaries were asked whether the choice of law by the testator provides a good answer to the difficulties arising from cross-border succession cases. It is striking that the experts were unanimous in agreeing that the testator's right to choose the applicable law under Art. 22 of the Regulation provides a good solution. This is a remarkable result, considering the fact that, prior to the Regulation, most Member States did not make it possible for a testator to choose the applicable law.

Many experts expressed support for the rule without further explanations. Other experts commented on their answer. Among the recurring comments, many experts underlined that the possibility to choose the law should be commended because the law selected has a strong personal connection with the deceased. Other notaries also stressed that Art. 22 helps the testator planning for his or her succession and hence increases stability and predictability.

Some experts drew attention to the fact that a choice for the law of the testator's nationality works better when the courts of the Member State of the testator's nationality also have jurisdiction.

A more timid reaction for the choice of foreign law

The survey revealed less enthusiasm of the notaries when the choice is made for another law than their own[5]. Only 38 % of notaries indicated that they had been called to draw an act including a choice for another law than their own. A majority of notaries (62%) had not been faced with a choice for another law. In some Member States, the results were even more striking: in several Member States, all or almost all notaries who responded to the question indicated that they had never been requested to include a choice for another law than their own[6].

Even more striking was the fact that a strong minority of notaries declared that they were not willing to draw an act including a choice for another law than their own[7]. 36% of the notaries who responded to the question indicated that this is not a possibility that they contemplated. In some Member States, there were even more negative than positive answers[8].

When one examines the reasons given by those notaries who declared that they would not draw an act with a choice in favour of foreign law[9], it becomes clear that the main reason for this surprising result is the fact that the notaries concerned rarely come across cases requiring a choice of the law applicable to the succession (70%). Only a very small minority of notaries (3%) answered that they did not know that it was possible to choose the applicable law.

Non apparent choice of law

Notaries were also asked about their experience with less visible forms of choice of law. Two mechanisms were singled out: the implicit choice of law (Art. 22 para 2) and the deemed choice of law (Art. 83 para 4).

As far as the implicit choice of law is concerned[10], the survey revealed that this mechanism was not often used: 81% of the notaries answered that they had

5 This sub-question was answered by 1.075 notaries.

6 Bulgaria (100%), The Czech Republic (100%), Latvia (91%), Poland (95%), Slovak Republic (95%), Slovenia (100%).

7 This sub-question was answered by 651 notaries.

8 Austria (70%), Greece (57%), Hungary (58%), Malta (71%), Poland (53%).

9 This question was answered by 892 notaries.

10 This question was answered by 1.980 notaries.

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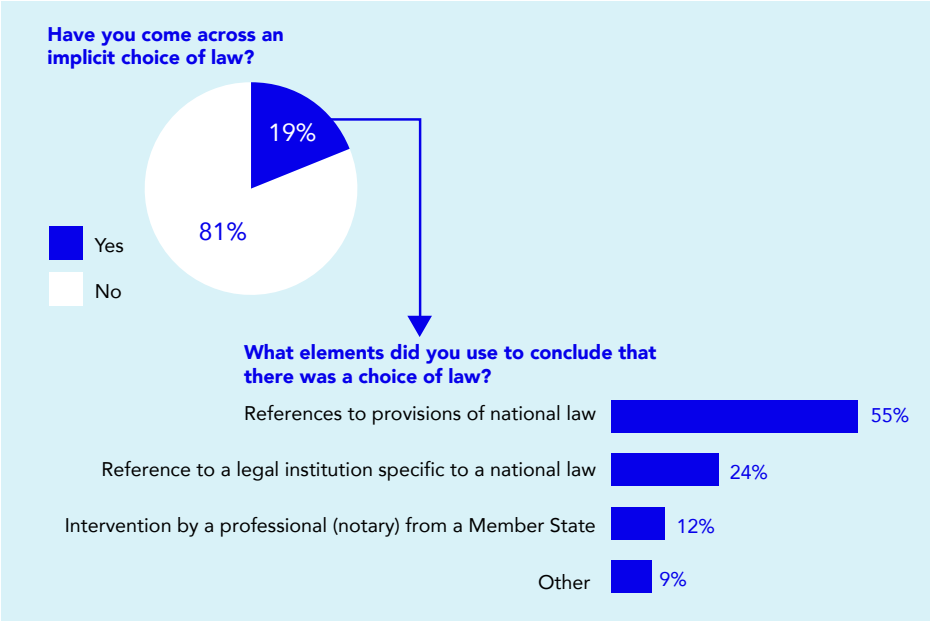
not come across such an implicit choice of law. The results differed notably in only two Member States, i.e. in Spain and in the Netherlands, where a majority of notaries had already come across such a choice.



The results were in the same line for the so-called 'deemed choice of law', which is subject to Art. 83 para 4: 89% of notaries surveyed answered that they had not come across such a choice of law[11]. The results were quite homogeneous, as only four Member States (Malta, Portugal, Spain and the Netherlands) demonstrated more than 20% of positive answers. Even in those four Member States, the deemed choice of law remains an exception, as more than 65% of notaries indicated that they had not come across such a choice of law.

The future of the choice of law

Several questions were asked about the future of the choice of law. In the online questionnaire, notaries were asked whether they would support introducing the possibility of an agreement between the heirs and, where appropriate, the legatees as regards the applicable law[12]. A small majority (56%) was in favour of such a possibility, while 20% of the notaries were opposed to this change. There were, however, strong divergences among Member States on this possible evolution. In addition, almost 25% of the notaries answered that they had no opinion on this issue.

Turning to the expert notaries, a sizeable group of notaries have argued that the possibility to choose the applicable law should be extended beyond the law of the testator's nationality: these notaries have pleaded to make it possible to choose the law of the habitual residence of the testator at the time of choice (this was most often mentioned), or (more rarely) the law of the country were (most) assets are located or the law applicable to matrimonial property. These suggestions were made by 12 notaries who took part in the expert questionnaire.

2. The law applicable in the absence of a choice of law

Article 21 of the Succession Regulation provides that in the absence of a

11 This question was answered by 1.945 notaries.

12 This question was answered by 1.983 notaries.

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choice of law, the succession is governed by the law of the last habitual residence of the deceased. From the outset, the use of this connecting factor has given rise to an intense debate. It has indeed been decried by some as leading to legal uncertainty and instability.

The habitual residence: difficult to apply?

The MAPE project aimed to find out whether notaries have indeed experienced difficulties in discovering the last habitual residence of the deceased. A majority of notaries (62%) have indicated that they have not experienced difficulties in identifying the deceased's last habitual residence[13].

This general finding should not, however, hide the fact that in some Member States, a large number of notaries have indicated that identifying the deceased's last habitual residence could prove difficult. This is the case in seven Member States which took part in the survey (Luxembourg (67%); Poland (51%); Portugal (60%); the Netherlands (51%); Hungary (53%) the Czech Republic (52%) and Austria (53%)).

It is difficult to interpret these results. It may be that notaries in those seven Member States face so-called 'difficult cases' more often than their colleagues in other Member States. This would explain the higher percentage of positive answers.

The positive experience of most notaries with the concept of habitual residence is also reflected in the answers received from the expert notaries who took part in the second questionnaire. A large majority of experts (48 out of 59) indeed indicated that in their view, the application of the law of the last habitual residence of the deceased offers a good answer to the difficulties arising from cross-border successions in the absence of a choice of law. Among the notaries who answered positively, it is worth noting that many of them work in Member States which formerly used to apply the law of the nationality of the deceased. The overwhelming support for the habitual residence also means that the main approach of the Regulation, i.e. the concentration of forum and law in the Member State of the habitual residence of the deceased, is also well received and accepted in the notarial practice. Many participants expressly underlined the advantages of submitting the succession to the law of the last habitual residence: in their view, this approach meets the expectations of most citizens. It also allows all notaries having jurisdiction on the basis of the habitual residence to apply their own law (if no law according to Art. 22 was chosen). Some participants reported, however, that there seems to have been too little information for some clients who did not notice that the law had changed (from nationality to habitual residence principle).

The habitual residence and 'hard cases'

The experience has shown that in some cases, it may be more difficult to identify the habitual residence. These 'hard cases' have been documented in court practice. Recitals 23 and 24 of the Regulation make reference to some of them. The MAPE project aimed to identify which of these 'hard cases' occurred more frequently:[14]

13 This question was answered by 1.977 notaries.

14 This question was answered by 1.499 notaries.

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The deceased lived alternatively in several countries	37%
The last place of residence of the deceased was very recent	21%
The deceased travelled from one country to another without settling permanently	9%
The deceased lived abroad for professional reasons while maintaining a close and stable link with the country of origin	18%
The last habitual residence of the deceased was a hospital, a residence for the elderly or another institution	10%
The last habitual residence of the deceased was a penitentiary institution	1%
Other situations	5%

The expert notaries who answered questionnaire 2 confirmed these findings: expert notaries indeed reported multiple problems with the interpretation of the notion of habitual residence in so-called "hard cases".

Notaries were also asked how they overcome the difficulty they face when the habitual residence of the deceased is not easily identifiable. The following table shows which solutions were used by notaries[15]:

Reference to national case law	17%
Reference to case law of the CJEU	5%
Agreement among the heirs on the habitual residence	27%
Referral of the case to let the judge decide on the habitual residence	4%
Reference to Recitals 23 & 24	10%
Request to the heirs for further evidence	26%
Difficulty not overcome	4%
Other answers	7%

This shows that notaries resort to very different strategies to identify the habitual residence. Some of the strategies used, such as referring to national case law, raise some question marks.

The factors used to identify the habitual residence

Going beyond the method used, notaries were also asked to explain which factors they use to determine the habitual residence:

Formal registration of residence	20%
Nationality	10%
Residence of family members	10%
Location of assets	14%
Country in which the deceased was engaged in an economic activity	12%
Reasons for the deceased to stay in a particular country	10%
Length of residence of the deceased in a particular country	10%
Country of the deceased's health insurance	14%
Country of schooling of the deceased's children	3%
Other elements	3%

A caveat must be made: due to technical reasons, it was not possible for respondents to select several options when answering this question. This is

15 This question was answered by 1.158 notaries.

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unfortunate, as notaries in reality probably consider more than one factor when identifying the habitual residence.

The tools and instruments to identify the habitual residence

Notaries were also asked to reflect on the instruments which they may use to identify the habitual residence, in particular the instruments giving access to evidence which may be relevant in order to determine the habitual residence[16]. A majority (75%) indicated that they do not have sufficient instruments. This may cover different situations, as notaries work in different environments. Nevertheless, this is a clear sign that notaries feel they are not sufficiently equipped to deal with the concept of habitual residence.
This finding also finds support in the answers by expert notaries to Questionnaire 2. The experts indicated their concern about the lack of instruments to gather evidence which is needed to answer the question of the last habitual residence of the deceased.

In the same line, a clear majority of notaries (73%) declared that it would be useful to include a definition of the concept of (last) habitual residence in the Regulation[17].

Arguably, the CJEU rulings already provide sufficient guidance, together with the recitals of the Regulation, on the concept of 'habitual residence'. The case law of the CJEU may, however, take a long time to develop.

When asked about the content of a possible definition, a majority of notaries (67%) expressed support for an 'objective' definition[18]. Only a minority (33%) favoured a definition which was based on the intention of the deceased. These results are not unequivocal, as the majority in a number of Member States (Bulgaria, Slovenia) was in favour of a definition based on the intent of the deceased. If anything, this shows that there is a need for further clarification on the meaning of the concept of habitual residence.

3. The escape clause

Article 21 para 2 of the Regulation makes it possible to apply another law than that of the last habitual residence of the deceased. This should only occur "by way of exception", if it is "clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State of the last habitual residence".

The MAPE project shows that only a minority of notaries (11%) have made use of this mechanism, with 89% of the notaries answering that they had not made use of it[19].

In a number of Member States, the lack of experience is even more apparent, with negative answers exceeding 90%[20]. These results are corroborated by the findings of the expert questionnaire: many participants (30 out of 60) reported that they had no experience with Art. 21 para 2. Some expert notaries indicated however that the specific meaning of Art. 21 para 2 remained mysterious.

16 This question was answered by 1.966 notaries.
17 This question was also answered by 1.966 notaries.
18 This question was answered by 1.417 notaries.
19 This question was answered by 1.957 notaries.
20 I.e. Bulgaria, The Czech Republic, France, Germany, Greece, Italy, Latvia, Lithuania, Malta, Poland and Slovenia.

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In a few Member States, the results showed a more frequent application of the escape clause: this applied to Hungary (23% positive answers), Luxembourg (33%) and Portugal (80%). This last result is very surprising, because it would mean that the escape clause in effect replaces the main rule. Further research is necessary in order to understand whether this results from the existence of very specific circumstances or from an erroneous understanding of the role of the escape clause.
In the Member States where the escape clause has been used more frequently, the answers to the online survey show that the clause is used in favour of the national law of the deceased (82%). The limited number of answers to this question, however, shows that the results should be interpreted with great caution[21]. The same may be said of the results to the question when the escape clause has been used: most notaries who answered this question (42%), indicated that they have used the escape clause for a deceased whose last residence was very recent and where everything was related to his or her country of origin. Other answers given were that the escape clause was used for a deceased whose last habitual residence was a hospital, a residence for the elderly or another institution (14%) or because all the heirs agreed to designate the law of the nationality instead of the law of the last habitual residence (20%). These results must be treated with great caution given the limited size of the sample[22].

The answers provided by the expert notaries are also difficult to interpret: while some expert notaries indicated that Art. 21 para 2 was rarely applied and that it should be applied narrowly, other experts replied that they had made use of Art. 21 para 2 in circumstances suggesting a broader understanding (such as applying the escape clause when the habitual residence of the deceased has been modified less than one year before his or her death or on the basis that foreign law was found "inconsistent with the law of the forum"). If anything, these results suggest that additional guidance on the specific meaning and scope of the escape clause would be very useful.

4. The application of foreign law

Under the Succession Regulation, the applicable law may be that of the Member State in which the notary handling the case is established. It may also be the law of another Member State or even the law of a third State, for example if the deceased last habitually resided outside the European Union.

The prevalence of foreign law

Notaries were asked if they ever had to apply foreign law to deal with a succession. Looking at the European average, 36% of the notaries answered positively, while 64% answered that they did not have to apply foreign law[23].

However, the results showed significant variation among Member States. In some Member States, a majority of participating notaries indicated that they had to apply foreign law (Austria (74%), the Czech Republic (63%), Hungary (78%) and Portugal (72%)). In other Member States, the number of notaries who had to apply foreign law was considerably lower than the average (Bulgaria (14%), Croatia (11%), Latvia (5%), Lithuania (5%), Malta (10%), Poland (1%), Slovenia (7%)).

There can be very different reasons explaining these mixed results. They should be linked to a previous question, i.e. whether notaries effectively

21 Only 208 notaries answered this question.
22 Only 274 notaries answered this question.

23 This question was answered by 1.979 notaries.

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advise their client on the possibility to choose the law. It has been shown that in some Member States, notaries rarely provide advice on this possibility to their clients. For two of these Member States (i.e. Bulgaria and Croatia), this could explain the relatively limited number of instances where foreign law is applied.

However, the high or low frequency of the application of foreign law can also be linked with other elements. A high rate of foreign law application could be related to attitudes vis-à-vis foreign law, which were nurtured in the past by the fact that cross-border successions were governed, under national conflict of laws rules, by the law of the nationality of the deceased. A higher rate of application of foreign law could also be associated with the existence of choices for the law of a third country (in Member States with large groups of citizens from third countries) or to the application of Article 10 of the Regulation, which makes it possible for a Member State to deal with the succession of a deceased who lived in a third State.

Questions should also be asked about the coherence of the results with the main principle on which the Regulation is established, i.e. that forum and applicable law should coincide. In view of this principle, instances of application of foreign law should be kept to a minimum. It may be asked whether this may be reconciled with the finding that on average more than a third of notaries had to apply foreign law to deal with a cross-border succession case.

The application of foreign law

The subset of notaries who indicated that they already had to apply foreign law, was asked further questions on their experience[24]. Unsurprisingly, a majority of these notaries (64%) indicated that they had been faced with difficulties in assessing the content of foreign law.

This is not surprising as foreign law is difficult to assess and the mechanisms that can help overcome this obstacle are still far from perfect. In some Member States, a lower percentage of notaries have indicated that they encountered difficulties with foreign law (Austria (50%), Germany (44%), Hungary (47%), the Netherlands (35%)). In other Member States, more notaries encountered difficulties with foreign law (Malta (100%), Portugal (88%), The Slovak Republic (87%)). There could be various elements explaining these results, ranging from the own personal experience of the notaries to the existence of institutional mechanisms assisting notaries in discovering the content of foreign law.

The online survey also asked notaries how they proceed to discover the content of foreign law. The following table lists the means used by notaries[25]:

Use of personal knowledge	15%
Use of an affidavit or 'certificat de coutume'	14%
Contact with a foreign notary	27%
Use of a cooperation mechanism, such as the ENN	9%
Other means	35%

24 This question was answered by 735 notaries.
25 This question was answered by 1.107 notaries.

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Chapter 4. Applicable law

5. The public policy exception

Article 35 of the Regulation makes it possible to refuse to apply a provision of the law declared applicable, if such application is "manifestly incompatible with the public policy (ordre public) of the forum".

An overwhelming majority of notaries (96%) have indicated that they have not made any use (yet) of the public policy exception[26]. In some Member States, the use of the public policy exception was slightly more frequent (Spain (9%), Hungary (5%), France (9%), Belgium (6%)). Overall, the results demonstrate, however, that the public policy remained a very rare occurrence, with all notaries in some Member States answering that they had never used the public policy exception.

Expert notaries were also given the opportunity to comment on the application of the public policy exception. Very few notaries reported that they had actual experience in applying Art. 35 of the Regulation. This confirms that the public policy exception is not used frequently. Among those who commented on Art. 35, different situations were raised, such as (1) the elimination of violations of human rights or of other fundamental principles of justice (such as non-discrimination) which are found in the legal systems of third States and (2) the protection of close relatives who want to receive the so-called reserved share in the estate.

Notaries who had indicated in the online survey that they had made use of the public policy exception, were asked a couple of follow-up questions: they were asked whether the law whose application was turned down, was that of a Member State or of a third State. They were also asked in which circumstances they had made use of the public policy exception. Those follow-up questions were only answered by a very limited number of notaries (less than 120 notaries). The results do not therefore offer the required robustness and will not be further discussed.

26 This question was answered by 1.974 notaries.

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Chapter 5.
Authentic acts

Chapter 5. Authentic acts

The Succession Regulation includes rules on the treatment of foreign authentic acts by Member States. Art. 59 deals with the evidentiary effects of authentic acts, which are captured through the mechanism of 'acceptance'. Art. 60 of the Regulation provides a rule for the enforceability of authentic acts.

The two questionnaires have touched on various issues in relation to authentic instruments.

A significant minority of expert notaries have answered the questions relating to authentic acts (Questions 8 & 9 of Questionnaire # 2) by referring to the European Certificate of Succession[1]. This could indicate that the rules relating to authentic acts are overshadowed by the European Certificate of Succession.

Further, some notaries have indicated that they do not issue authentic acts, but decisions. As a consequence, Article 59 of the Regulation is not relevant to assess the circulation of their decisions in other Member States.

1. What type of authentic acts?

Notaries have indicated in Questionnaire #2 that the Regulation is used in relation to authentic acts providing *evidence of the status of heirs*[2], in particular when the deceased possessed immovable property abroad or in order to enable the heirs to take possession of bank assets. Other notaries indicate that they have used Article 59 in relation to *declarations concerning acceptance* or *waiver of succession* and *powers of attorney* to represent somebody in succession matters. According to other notaries, Article 59 has been used in relation to *title acts from land registers*. Article 59 has also been used in relation to *wills and death and birth certificates*.

A limited number of expert notaries have indicated that there could be hesitation regarding what types of acts are covered by Art. 59[3]. The hesitation concerns mainly proxies. One notary hesitated whether a proxy empowering a person to waive a succession was covered by the Regulation. Other notaries stated that in other Member States, proxies are not drafted as authentic acts, which cause difficulties as local provisions require that proxies used to draw an authentic act, must be drafted in authentic form[4].

One possible suggestion for improvement of the Regulation is to include a (non-limitative) list of authentic acts which fall under Article 59.

2. Acceptance

According to Art. 59 of the Succession Regulation, authentic acts established in a Member State must be granted, in other Member States, the same evidentiary effects as in the Member State of origin.

The picture is mixed on the use of the mechanism of acceptance, which was the subject of a question submitted to the expert notaries.

Some notaries explain that they regularly use Article 59 in order to use an authentic act issued by a notary in another Member State or to have

1 CRO2; CRO3; HU1; POL3; NL1.
2 AU1; BEL1; BEL2; FR1; FR2; FR3; FR4.
3 ITA2; ROM1.
4 ROM1; ROM2.

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an authentic act they issued used by a notary in another Member State[5]. One notary suggests that the mechanism of acceptance only works among Member States whose national law provides for analogous instruments in order to demonstrate the status of an heir.

It seems, however, that Article 59 is often used without any explicit mention of it: French notaries indicate that the mutual acceptance of national certificates works, without mentioning Art. 59. A Polish notary explains that "as a recipient of (authentic acts), (he) has not really applied this mechanism". A Spanish notary indicates that he continues "to receive notarial and judicial documents coming from abroad with the same evidentiary effects I appreciate in our domestic documents".

Some notaries indicate that they have not made any use of the mechanism of acceptance introduced by Article 59.1[6]. Some notaries even expressed doubt on the practical use of the mechanism of acceptance, because foreign authentic instruments were already accepted before the entry into force of the Succession Regulation[7].

5 e.g. FR1, in relation to authentic acts demonstrating the status of heirs - 'acte de notoriété' or 'acte d'hérédité'; FR2; FR3; FR4; NL1; NL2.
6 CRO1; CRO4; CZE1; CZE2; LAT1; LAT2; LIT2; LIT3; PT2.
7 GER1 : Article 59 "hat in der Praxis faktisch keinen Anwendungsbereich"; GER2 : "die Bedeutung der Vorschriften meiner Auffassung auch weiterhin gering bleiben" since the ECJ decided in Oberle that „decisions relating to the issuing of such certificates contain only findings of fact, excluding any element likely to acquire the force of res judicata" (§38); GER3; GER4 ("Diese Vorschrift ist aus deutscher Sicht Überflüssig"); or because provisions of national law already provided for acceptance of authentic acts (GER4, with reference to § 35 Grundbuchordnung)

3. Access to land registers

One issue widely discussed in relation to authentic instruments is whether they may be used to update the land registers in Member States. Notaries taking part in the online survey were asked in this regard whether an authentic instrument issued in another Member State may be used for the purpose of updating their country's land registers[8]. The respondents split almost evenly: 55% indicated that authentic instruments issued in other Member States may not be used for that purpose, while 44% declared that this is possible.

Behind this average, one finds a very large diversity: in 10 Member States, the answers roughly coincide with the average. In the 12 other Member States, one can note very diverging answers, going in both directions. In some Member States[9], only a minority (less than 30%) answered negatively to the question. In other Member States[10], there is a very clear majority (> 65%) answering negatively.

Among those respondents who have indicated that authentic instruments may indeed be published in the land registers, a large majority (60%) explained that this is only possible after some formalities have been undertaken[11]. Only a very small minority (4,6%) stated that such publication may occur unconditionally. There is also some diversity within these answers: if one looks at the number of respondents who have said that authentic instruments may be published unconditionally, the answers range from 0%[12] to 15%. Turning to those respondents who have indicated that an authentic act

8 This question was answered by 1.781 notaries.
9 AU, CRO, CZE, EST, LAT, POL, SLK, SI.
10 BEL, BUL, FR, GER, LXG, MAL, ROM.
11 This sub-question was answered by 749 notaries.
12 in 7 Member States : BUL, CRO, GER, LIT, LXBG, MAL, POR and SI.

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may be published after a simple translation, the average is at 18%, but in 3 Member States, no respondent has chosen this option (answer is 0%), while in 5 Member States, the answer is higher than 40%, with two Member States reaching even higher level[13]. The answer 'with other formalities' was chosen by the majority of respondents in the majority of Member States.
Turning to what notaries wish, a majority (50%) answer that it would be useful if authentic acts could easily be published in land registers of other Member States[14]. It is noteworthy that 26% of respondents do not have any opinion on this question.

4. Enforcement

Article 60 of the Regulation provides that an authentic instrument may be "declared enforceable in another Member State". This provision is a standard fixture of all European Regulations dealing with private international law.

The notaries who have responded to Questionnaire # 2 overwhelmingly indicated that they have not been faced with an authentic act from another Member State which has been declared enforceable[15]. A number of notaries have drawn attention to the fact that the possibility to have an authentic act declared enforceable is of very little significance in practice[16].

Article 60.3 of the Regulation makes it possible to refuse to enforce an authentic instrument from another Member State if such enforcement would be "manifestly contrary to public policy (ordre public) in the Member State of enforcement". Notaries participating in the online survey were asked whether they had seen a situation where the public policy of the Member State of enforcement has been used to refuse or revoke a declaration of enforceability of an authentic instrument[17].

Only a very small number of notaries are aware of a situation where this possibility has been used (2,87%). There is almost unanimity among notaries (97,13%) to indicate that the public policy provision has not been used. We can observe very little variation among Member States in the answers: in nine Member States, the notaries unanimously (100%) declared that they were unaware of any situation in which the public policy has been used. The Member State reporting the highest frequency of use of the public policy provision is the Netherlands, with 8%.

A follow-up question was asked, i.e. on the reason why public policy was used. There were so few notaries answering this question (56 notaries from eight Member States) that the results cannot provide any meaningful basis for further analysis.

Notaries also overwhelmingly (95%) indicated that they have never encountered a situation in which an authentic instrument was incompatible with a decision adopted by a court of a Member State[18]. Only 5,27% of respondents indicated that they have been faced with this situation. In a limited number of Member States, the percentage of respondents indicating

13 CRO: 73%; MAL: 80%.
14 This question has been answered by 1.958 notaries.
15 AU2; BEL1; BEL2; BUL2; CRO1; CRO2; CRO3; CRO4; CZE1; FR1; FR2; FR3; FR4; GER1; GER4; HU1; HU2; HU3; IT1; IT2; LAT1; LIT2; POL1; POL2; POL3; PT1; PT2; ROM2; SLK1; SLK2; SI2; SP2; NL1; NL2.
16 GER1 (stating that this provision has in practice no use); HEL1 (stating that the majority of authentic acts in relation to succession are declaratory in nature and therefore excluded from the scope of Art. 60); POL2 (the practical relevance of declaration of document enforceability procedure is very insignificant, as what matters in succession is to demonstrate the status and competence in respect of succession).
17 This question was answered by 1.948 notaries.
18 This question was answered by 1.955 notaries.

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that they have faced a situation of incompatibility is higher: in six Member States, it amounts to or even exceeds 10%. In five Member States, all respondents converge to declare that they have never faced such a situation. These numbers should, however, be interpreted cautiously as only 103 respondents have answered the main question positively.

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Chapter 6. European Certificate of Succession

Chapter 6. European Certificate of Succession

The Succession Regulation created the European Certificate of Succession ('ECS'). This optional instrument aims to facilitate the life of heirs and legatees by ensuring that they can easily demonstrate their status and/or rights and powers in other Member States. The creation of this new instrument has raised many questions, which have been discussed in an abundant literature.

1. Use of the ECS

The MAPE project first undertook to find out if practitioners effectively make use of the ECS.

The online survey learned that while 56% of respondents indicate that they have not yet issued an ECS, 44% of respondents declare that they have already had the opportunity to issue an ECS[1]. It is striking that among those respondents who have issued an ECS, a large majority has issued more than one ECS: 61% have issued between 2 and 10 ECS and 12% have issued more than 10 ECS.

There are significant disparities among Member States: in five Member States (Austria (98%); Croatia (89%); Greece (97%); Hungary (83%) and the Netherlands (89%)), respondents almost unanimously reported that they had already issued ECS. In ten Member States (Bulgaria, Estonia, Germany, Latvia, Lithuania, Malta, Poland, Portugal, Romania and Slovenia), a very large majority of respondents (with figures ranging from 75% to 100%) indicated that they had not issued ECS.

Several reasons may explain why notaries in some Member States are less prone to use the ECS. A primary reason could be that in some of these Member States (such as Germany), notaries do not have the competence to issue an ECS. 17% of the respondents who have never issued an ECS indeed indicate that they have no competence to issue a European Certificate of Succession. A majority of the 'non-users' (47%) explains that they never come across an international succession with assets in another Member State. 10% of the respondents to this question indicate that they do not see the usefulness of the ECS (3,5%) or that the ECS is too complicated to fill (6%). Finally, 7% of the respondents do not know what the ECS is (4%) or do not know where to find the ECS (3%).

In some Member States, notaries do not have the competence to issue ECS, but they can be called to contribute to the issuance of an ECS. Among those notaries who have indicated that they indeed have no competence to issue a certificate (216 respondents), slightly less than 50% (48%) have answered that they have indeed been effectively involved in the preparation of an ECS. The percentage of those respondents who have been involved in the preparation of more than one ECS (75%) roughly coincides with the percentage of notaries who have issued more than one ECS (supra).

2. The process of issuance of the ECS

The Regulation includes several provisions in relation to the process of issuing an ECS.

If one looks at the time needed to issue an ECS[2], a majority of respondents (54%) explain that it takes about a week or less to issue an ECS. An additional 35% indicated that the process will last less than a month. Only 11% of respondents declared that the process of issuing an ECS may take more than

1 This question was answered by 1.985 notaries.

2 This question was answered by 793 notaries.

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one month.

Article 66 § 5 of the Regulation makes it possible for the issuing authority to request information from competent authorities in other Member States in respect of land registers, civil status registers and other registers which contain relevant information regarding the succession or the matrimonial property regime.

Among those who have provided an answer to this question[3], 32% (or 12,4% of all respondents to the questionnaire) have made use of this possibility. The percentage is substantially lower if one only considers those respondents who do not issue ECS, but are taking part in the issuance: only 13% of those notaries have made use of the possibility to request information from another Member State. Those who have made use of the possibility overwhelmingly (86%) find that the answer received was useful.

In another question, a majority of respondents (71%) find it difficult to obtain information from financial institutions[4].

3. Copies of the ECS

Article 70 of the Regulation provides that the issuing authority shall keep the original of the Certificate, but that it may issue certified copies.

Unsurprisingly, a majority of respondents (61%) who have answered this question indicated that they issue on average only one copy[5]. 25% of the respondents, however, issue on average 2 copies and 9% issue three copies.

Among those notaries who have answered this question[6], 50% declared that they keep a register of the persons to whom a certified copy is issued. This register is evenly kept on paper (58%) or in a digital form (43%).

Article 70 § 3 of the Regulation provides that certified copies shall be valid for a limited period of six months. The issuing authority may, however, apply for an extension of the period of validity of the certified copy. This possibility is often used: among those notaries who have answered this question[7], 72% have already either extended the validity of the certified copy or issued a new certified copy. However, notaries said that such extension remains a rare occurrence (54%), with 29% indicating that they "sometimes" make use of the possibility.

4. Refusal to issue an ECS

Article 67 of the Regulation provides that the issuing authority may refuse to issue a certificate if the elements to be certified are being challenged or if the certificate would not be in conformity with a court decision.

Only a minority of the respondents have had to refuse to issue a certificate: 5% of the 1.878 respondents who answered this question have indicated that they have refused such issuance. The reasons given for such refusal vary. However, given the very limited number of answers to this question[8], it is not possible to draw meaningful conclusions from the survey on this point.

3 This question was answered by 793 notaries.
4 This question was answered by 757 notaries.
5 This question was answered by 776 notaries.
6 This question was answered by 778 notaries.
7 This question was answered by 678 notaries.
8 Only 88 notaries indicated that they had ever refused to issue a ECS.

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5. Rectification, modifcation or withdrawal of the certificate

Article 71 of the Regulation provides that the issuing authority may rectify the certificate in the event of a clerical error. A certificate may also be modified or withdrawn.

The survey demonstrates that such rectification, modification or withdrawal remains exceptional: only 10% of the respondents who have answered the question, have already made use of one of the possibilities offered by Article 71[9].

Respondents who have indeed rectified, modified or withdrawn a certificate were asked if and how they had informed the persons who were issued certified copies, as is prescribed by Article 71 § 3 of the Regulation. The answers to this question are not meaningful given the limited number of respondents who answered.

6. Registers

European Certificates of Succession may be recorded in registers. Only a minority of notaries have done so (33% of those who have responded to this question, i.e. 780 notaries; or 12% of all notaries who have responded to the questionnaire). The main reason for this lack of enthusiasm about the recording lies in the fact that not all Member States provide a register for publication of the ECS. 58% of the respondents who have answered this question indicated that they have not registered an ECS because their Member State does not offer the possibility to do so. Among the other reasons given for the lack of registration, one may note the fact that the respondents did not know that ECS could be registered (28%).

A very large majority of respondents (95%) indicated that they have never queried a national register of European Certificates of Succession[10]. This lack of consultation is explained to a large extent by the fact that respondents did not need to query such a register (47%) and that the respondents were not aware of the existence of such registers (36%)[11].

7. The cross-border circulation of the certificate

When asked about the recognition of an ECS issued in another Member State, a large majority of respondents (71%) declare that they have not yet been confronted with an ECS issued in another Member State[12]. A siezable minority of notaries (29%) have experience with ECS issued in another Member States. Among this group of respondents, a large majority (81%) did not face any difficulty in understanding the ECS. In general, a very large majority of all respondents (85%) share the opinion that the automatic recognition of the effects of the ECS appears to be effective[13].

When recognition is denied or delayed, respondents indicated that this more often occurs when the ECS is presented to a bank (29%) or a land register (23%). Such difficulty is most often (43%) linked to the fact that the entity to which the ECS is presented prefers a national certificate.

A very large majority of respondents (94%) reported that they have never faced a situation in which there was a contradiction between a national certificate and a European Certificate of Succession[14].

9 This question was answered by 789 notaries.

10 This question was answered by 1.949 notaries.
11 1.816 notaries answered this question.
12 This question was answered by 1.968 notaries.
13 This question was answered by 1.866 notaries.
14 1.929 notaries answered this question.

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8. The choice between the ECS and national certificates

The use of the ECS is not mandatory (Art. 62 § 2). Practitioners and citizens may decide to resort to a ECS or a certificate issued on the basis of national law. Such national certificates come in different forms: in some Member States, the certificate is an authentic act issued by a notary (e.g. FR, BEL). In other Member States, the certificate is issued by a court (e.g. GER) or civil status officers (e.g. POR). Yet, in other Member States, the notary issues a decision which may be used to evidence the status and rights of the heirs (e.g. HU).

Respondents to the second survey were asked to explain in which situations they use the ECS and in which situations they prefer to use an instrument existing under national law.

Some notaries reported that they resort to the ECS because the ECS enjoys better recognition prospects than a national instrument. Some experts indicated that the national certificate will not be accepted to evidence the status and rights of the heirs in another Member State[15] or that there is uncertainty over the acceptance or recognition in other Member States of a national certificate[16]. Some respondents explained that in some countries, the national certificate is accepted or recognised and it is therefore not necessary to use an ECS[17]. Some respondents shared mixed experience, with national certificates being refused in some Member States and accepted in other. It is worth noticing that while some respondents declared that they have experienced a refusal by other Member States to accept or recognise their national documents, other respondents base their policy on assumptions. Intuitively, one may think that the use of the ECS may have become more commonplace over the years. The answers received did not make it possible to find out if there has been an evolution over the years.

In other instances, the respondents said that the ECS is a better choice when the succession includes real estate, company shares or bank accounts abroad[18], even though one notary indicates that foreign banks are "slow" to accept ECS. This also corresponds with the account of a Dutch-Bulgarian case in which a Dutch citizen owned real estate in Bulgaria. One notary even reports that using the ECS in such cases has become a "standard procedure".

Some notaries introduced an additional nuance: they indicated that they use (issue or request) the ECS in complex situations, while they keep using the national document in more routine cases. An example of the first situation is when the deceased was habitually resident in another Member State than the one in which he or she possessed real estate. An example of the second situation is when the deceased was a national of the Member State in which the real estate is located. This is confirmed by another respondent who declared that the use of the ECS is reserved to complex situations, whereas in routine cases, national documents are still used. In the same line, some respondents said that while they have issued ECS in situations involving assets located in other Member States, they continue to resort to national documents when the estate includes one class of assets in a neighbouring Member State where the national document is smoothly accepted[19]. Other respondents explained that they continue to use national certificates when

15 e.g. AU1; LIT1, in relation to the practice of banks in Latvia; FR4 in relation to Germany; POL2 in relation to Germany "Polish certificates of succession are not accepted in Germany".
16 GER2; GER3.
17 GER4, in relation to Austria, France and Spain.
18 AU2; BEL1; BEL2; BUL2; CRO1; CZE1; CZE2; FR1; GER1; HEL1; IT1; POL2; SLK1; SLK2
19 HUN2, in relation to bank accounts in Austria; HUN3.

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the ECS would prove deficient to make an entry into the local land register. An interesting answer may be found in the Netherlands: a Dutch notary indicated that he first obtains information from a colleague in the Member State of destination to see whether an ECS is required or whether a national certificate will be sufficient.

Looking at practical experiences of notaries with ECS, the outlook seems positive. A notary in Bulgaria explained that a certificate issued by a Dutch notary made it possible to solve all pending issues. A notary in Croatia reported positive experience in issuing and using ECS. A French notary declared that even though the ECS may require more work than a national certificate, it includes more information and the standardised form makes it easier to use. A German notary stated that when a deceased habitually resided abroad, a ECS issued abroad can easily be used in Germany. Another German notary reported that the ECS is a "suitable document" when the deceased had assets abroad. Another notary referred to the ECS as a "big advantage" ("großer Vorteil") in cross-border successions. A Hungarian respondent indicated that the ECS provides "significant legal assistance" in cross-border proceedings. An Italian notary explained that the ECS makes it possible to rapidly comply with the requirements for the transfer of assets. A notary in Latvia declared that ECS have been issued in "many cases". A notary in Poland said that the use of the ECS has made it easier to document the sale of immovable property acquired by way of inheritance. Another notary in Poland explains that the use of ECS has helped their clients in Austria and Germany secure assets of the deceased. Notaries in Portugal, who do not have competence to issue ECS, indicate that they have used ECS issued in other Member States to demonstrate the status of heirs. A Dutch notary reported that the ECS has been used in a large number of cross-border successions without much problem.

Other notaries reported that they rarely use the ECS and prefer national certificates: this maybe because there is a lack of knowledge about the ECS in practice or because there is a fear that that ECS may be fragile, because it may be withdrawn. Other factors which play a role include the fact that the ECS is not considered to be an authentic act and as such does not enjoy the same credit; or because the costs of issuing an ECS may be higher than that of a national document.

Some respondents have also explained what their practice is when the succession includes assets in third countries (e.g. USA, Canada, Switzerland, etc.). Some notaries indicate that they resort in this case to the instrument existing under their national law[20]. Some respondents indicate that ECS are accepted in third countries such as Switzerland.

9. Practical difficulties

Respondents have highlighted several practical issues in relation to the ECS, which they deem to be problematic.

- A first issue is the validity of the copy. Many notaries have indicated that they wish the validity of the certified copy of an ECS to be extended, as they deem the current period of six months (art. 70.3) to be too short[21].

- Another issue relates to the form used to issue the ECS: many notaries reported that they find the standard form for the ECS too long and too complex[22].

20 BEL2; POL1; NL2.
21 CRO1; CZE2; GER1; HEL1; SI1 – "unreasonably short".
22 CRO1 : "too extensive and complicated"; CRO3 : "too extensive"; GER1 : "unverständlich und unübersichtlich"; HEL1 : banks and tax authorities are lost when using the form.

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- In relation to the form, some respondents have indicated that they are unable to provide some of the information required to issue the ECS.

- Yet another difficulty concerns the translation of the ECS. Some notaries have stated that authorities in other Member States sometimes require the ECS to be translated into local language by a sworn translator, which leads to additional costs[23]. Other respondents stated that they prefer using the ECS because it leads to less translation costs than a national certificate. According to some respondents, the costs of translating the ECS can be proportionally too high and it would be interesting to be able to issue an ECS in another language than the official language of the Member State where the ECS is issued.

- A final item concerns the additional formalities which could be imposed. Other notaries even indicated that in some instances, authorities in Member States do not accept the ECS unless it is legalised or apostilled.

10. Access to land registers

The issue of access to land registers by an ECS issued in another Member State is a delicate one. The Succession Regulation crafted a compromise between the pan-European effects of the ECS and the possibility for each Member State to keep control of its own registers. All data collected for the MAPE project in this respect were received before the CJEU issued its ruling in the *Registru centras* case[24].

The answers from the expert questionnaire are mixed. Some notaries indicated that they are able to use ECS issued in other Member States to register rights in rem in local land registers[25] or to have rights in rem registered in other Member States based on an ECS issued locally.

A majority of respondents, however, mentioned the difficulty to register the status of heirs or legatees in relation to real estate on the basis of an ECS issued in another Member State[26].

One of the reasons why the ECS is not accepted as a valid title to register rights in rem in local land registers is that the ECS does not include all information necessary. The information which is missing may relate to the specific identification of the real estate concerned. It may also relate to the personal identification of the heirs or legatees or more in general to the identification of the assets of the deceased.

Notaries have developed answers to solve these difficulties. Some notaries draw up a local act under local law, which includes detailed information on local real estate, to supplement a ECS issued in another Member State[27]. Other notaries request information from land registers in other Member States in order to incorporate the detailed information in the ECS they issue[28]. Yet other notaries submitted, next to the ECS, a national certificate issued in the Member State of origin, in order to add information which was missing in the ECS. This, however, has an impact on the costs of the operation. Another

23 AU2; CRO1; POL3; GER1, pointing out that banks require a full translation of the ECS, even of the information available in all languages; SI2.
24 CJEU, 9 March 2023, R.J.R. v. Registru centra VI, Case C-354/21, ECLI:EU:C:2023:184.
25 CRO1; CRO4; LAT1; LAT2; POL1.
26 BUL2; CRO2; CRO3; ROM1; SP2.
27 CRO2; CRO3.
28 CRO3 - reporting on the issuance of ECS incorporating information on Slovenian real estate on the basis of excerpts from land registers from Slovenia.

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solution used by some notaries is to require a written document issued in the Member State where the ECS was issued, to explain why some information has been included or not.

In some instances, notaries go further and do not simply issue a local document to supplement the ECS issued in another Member State. They issue a notarial act which incorporates the information included in the ECS in order to make registration in the local land register possible[29].

Some notaries report, however, that they have not experienced difficulties in using national documents in situations involving real estate located in neighbouring countries[30]. Some respondents indicate that even though the ECS issued in another Member State may not be flawless, as they may lack some information required in order to update the land registers, some land registers accept to take it into account.

Other respondents indicate that they are placed in a difficult situation when they should include in the ECS detailed information on the assets of the estate and especially on the immovable located abroad, so that the ECS can be accepted by the land register of another Member State: these notaries explain that they have no competence to verify this information, in particular the existence of outstanding debts, and that they feel uncomfortable including such details in the ECS they issue[31].

29 BUL2 – in relation to an Austrian ECS, which had to be supplemented by a notarial act of findings acknowledging that the heir became the owner of the immovable located in Bulgaria.
30 CRO4, in relation to immovable located in Italy; CZE2, in relation to real estate located in Slovakia.
31 GER2, in relation to the Czech Republic; GER3 in relation to Romania; ROM1.

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Conclusion

Conclusion

The MAPE Project was an innovative exercise. It has mapped the activity of notaries in cross-border succession matters, in order to assess whether the solutions provided by the Succession Regulation have found their way in practice and to discover which difficulties notaries are facing in using these solutions.

In doing so, the MAPE project used different means to collect data relating to the experience of notaries in no less than 22 Member States. The combination of an online survey targeting all notaries and notarial staff and a questionnaire aimed more specifically at expert notaries made it possible to gather a wealth of information on the application of the Succession Regulation by notaries. In addition, the national Chambers of notaries were also asked questions on the guidance and assistance they provide to facilitate the work of notaries in handling cross-border successions.

The methodology used for the MAPE project may be further improved. Some of the questions asked to notaries and to the national Chambers proved too ambitious. In some cases, the efforts to collect relevant data proved vain or only led to partial results, as in the case of the number of European Certificates of Succession issued. Overall, however, the MAPE project has made it possible to shed a light on how the most important provisions of the Succession Regulation are perceived and applied.

The MAPE project revealed that the Succession Regulation has been well received by notaries: across all Member States, notaries apply the Succession on a regular basis, using the lessons learned during training sessions they have attended on the Regulation. Notaries across Europe have welcomed the main tenets of the Succession Regulation. While the European Certificate of Succession remains underused at this stage, it appears that the notaries have adapted their practice to take into account the main innovations of the Regulation.

One of the major challenges facing those applying the Succession Regulation is to anchor the uniform, European solutions it embodies in a legal environment shaped by local traditions and rules. The MAPE project has made clear that on some issues, the application of the Regulation may lead to some tensions linked to the need to apply European, uniform solutions in the legal order of Member States.

Based on these findings, the MAPE project has formulated a number of recommendations. Some of these recommendations are directly addressed to the European legislator and suggest improvements which could be made to the actual text of the Succession Regulation, such as extending the possibility to make a choice of law. Other recommendations aim to provide better and clearer guidance on key issues, such as the concept of habitual residence, to practitioners who apply the Regulation. Yet other recommendations relate to changes which could be made in the overall infrastructure available so that practitioners are better equipped to apply the European rules, for example by providing access to improved registers.

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Annexes

Annex I

Questionnaire #1
Succession Regulation evaluation questionnaire for notaries

Introduction

This questionnaire has been developed in the framework of the MAPE Succession project. The project aims to monitor and evaluate how the Succession Regulation (EU) No 650/2012 is applied and to provide qualitative and quantitative information and analysis on its functioning and impact on notaries and citizens in 22 civil law EU Member States (MS), where successions are settled mostly amicably by notaries. The establishment of monitoring and evaluation methodologies and their extrapolation and potential use on other similar legislative instruments would contribute, in the long term, to the EU judicial culture. and to increasing adequacy in EU law implementation by legal professionals. The project's findings and related solutions could contribute to an improvement of the law application even before 2025 or could constitute a basis for proposals for improvement originating from the practice after 2025 (year of the evaluation of the Regulation). Therefore, we ask you to sacrifice only few minutes of your time in order to contribute to the improvement of the law application.

Notice to users:

- The data collected will be processed in accordance with the legislation in force. At no time the information collected will be linked to the identity of the respondent;

- In this questionnaire, the 'Regulation' refers to the Succession Regulation adopted in 2012 by the European Union (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 judgments and the acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession).

- We hope you will answer all the questions asked. However, you may choose not to answer certain questions. To do so, you can go to the following questions.

I – Screening question – self-assessment

In order to make better use of the results of the questionnaire, the responses will be analysed in a comprehensive manner, by country, but also taking into account the level of activity in private international law of each person participating in the survey. To do so, you are asked to carry out a brief self-assessment in advance of the questionnaire itself.

I.1 How would you describe your practice in private international succession law?
1: a rare activity
2: an infrequent activity
3: an occasional activity
4: a frequent activity
5: a daily activity

II – Scope and general issues

The Regulation applies to "the succession of deceased persons" (art. 1, para. 1). A number of issues are excluded from the scope of the Regulation. These exclusions may give rise to hesitation. At the same time, there is little specific information on the number of successions with a cross-border dimension.

II.1 Have you already taken any training, courses or other workshops on the

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Succession Regulation? Yes – No
[If yes to question 1]II.1.A Did you find this training useful? Yes – No
[If not to question 1]II.1.B Would you like to take a training, course or workshop on the Succession Regulation? Yes – No

II.2 Have you ever applied the Succession Regulation? Yes – No
[If yes to question 2], II.2.A How often? Once – Rarely – Often
[If not to question 2],II.2.B please explain your answer using one of the following:
— I have never been seized of an international succession
— I still apply private international law prior to the Regulation
— I always apply my domestic law without looking for the law applicable to the succession
— I transfer the cases with an international dimension to a colleague
— Other reasons

II.3 In relation to the total number of succession cases in your office, what is the proportion of successions involving a cross-border element (assets abroad, residence of the deceased abroad, foreign nationality of one of the persons concerned, etc.)?
— Less than 1 %
— Between 1 and 5 %
— Between 5 % and 10 %
— Between 10 % and 30 %
— Between 30 % and 50 %
— More than 50 %

II.4 In your office, in succession cases with assets abroad, what is the proportion of cases where assets are wholly located in the European Union?
Less than 10 %
Between 10 % and 30 %
Between 30 % and 50 %
Between 50 % and 70 %
More than 70 %

II.5 Have you ever had doubts in a succession case about the applicability of the Regulation to the succession? Yes — No
[If yes to question 5] II.5.A These doubts were related to: (several answers possible)
— The temporal applicability of the Regulation
— The cross-border nature of the succession
— The material scope of the Regulation
— The applicability of the Regulation to a succession case in which assets are situated in a third country to the European Union
— Another reason

II.6 Have you ever used a support mechanism, such as the European Notarial Network, to overcome a difficulty in a specific case? Yes — No
[If yes to question 6] II.6.A Was it helpful to you? Yes — No
[If not to question 6], II.6.B for what reason?
— I have never needed it
— I do not know these support mechanisms
— Other reasons

II.7 Do you know the European Directory of Notaries? Yes — No
[If yes to question 7] II.7.A Have you ever used the European Directory of Notaries to find a fellow notary? Yes — No

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III — Jurisdiction

Chapter 2 of the Regulation contains a number of rules of jurisdiction. Under this Regulation, the courts of the Member State where the deceased habitually resided have general jurisdiction (Article 4). If the deceased's habitual residence was not situated in a Member State, the courts of the Member State in which the assets of the succession are situated may exercise their jurisdiction, provided that certain conditions are met (Article 10). If the deceased has made a choice of law, the heirs may agree to grant exclusive jurisdiction to the courts whose law has been chosen.

III.1 If the deceased has chosen his or her national law to govern his or her succession, the parties concerned may agree that the courts of that Member State have exclusive jurisdiction to rule on that succession. Have you ever encountered such a jurisdiction clause? Yes — No

III.2 Would you consider it useful for the heirs to be able to agree on the competent court in the absence of a choice of succession law? Yes — No — No opinion

III.3 Would you consider it useful if the deceased during his or her lifetime could choose the competent court? Yes — No — No opinion

III.4 Have you ever been confronted with parallel succession proceedings in two Member States? Yes – No
III.4.1 [Regardless of the answer to question 4 being yes or no] Would it be useful to have a European register for the opening of succession proceedings? Yes – No – No opinion
III.4.2 [Regardless of the answer to question 4 being yes or no] Is there a national register for the opening of succession proceedings in your country? Yes – No
[If yes to question 4.2] III.4.2.A Would you consider it useful for this register to be interconnected with the registers of other Member States? Yes – No – No opinion

IV — Applicable law

(1) Applicable Law: choice of law

Article 22 of the Regulation provides that a person "may choose as the law to govern his or her succession as a whole the law of the State whose nationality he or she possesses at the time of making the choice or at the time of death".

IV(1).1 Have you ever advised a choice of the law applicable to the succession to a client? Yes — No
[If yes to question 1] IV(1).1.A In what situation? (several answers possible)
— For a person who lived in a country other than the State of his nationality
— For a person who was anticipating the settlement of his succession (will, donation-partage (gift with distribution), etc.)
— For another reason

IV(1).2 Have you ever received a choice of the law applicable to the succession made by a client? No — Yes rarely — Yes frequently
IV(1).2.A [If yes to question 2] Have you ever received a choice of the law applicable to the succession in favour of a law other than yours? Yes — No
[If no to question 2.A] IV(1).2.A.b Would you agree to receive an act with a choice of law in favour of a foreign law? Yes — No
[If no to question 2] IV(1).2.B Why?
— I never have cases requiring a choice of the law applicable to the

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succession
— I did not know that it was possible to choose the law applicable to one's succession
— Other reasons

IV(1).3 Does it seem useful to introduce a possibility of agreement between the heirs and, where appropriate, the legatees, as regards the law applicable to the succession? Yes — No — No opinion

IV(1).4 Have you ever come across an implicit choice of law in a succession (choice not expressly formulated, but resulting from the terms of a disposition mortis causa, Art. 22.2)? Yes — No
[If yes to question 4] IV(1).4.A What were the elements that enabled you to conclude that there was a choice of law?
— Reference to provisions of a national law
— Reference to a legal institution specific to a national law
— Intervention by a professional (notary etc.) from a EU Member State
— Other:

IV(1).5 Have you ever found the existence of a law deemed to have been chosen in accordance with art. 83.4? Yes — No
[If yes to question 5]: IV(1).5.A Did you find it difficult to determine whether the disposition mortis causa was drafted in accordance with the law that the deceased could have chosen?

(2) Applicable Law: lack of choice of law
According to art. 21 of the Regulation, successions are governed, by default, by the law of the State in which the deceased had his or her habitual residence at the time of death . However, if it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State of his or her last habitual residence, the law applicable to the succession is the one of that other State.

IV(2).1 Have you ever experienced difficulties in identifying the deceased's last habitual residence? Yes — No

[If yes to question 1], IV(2).1.A1 in which situation(s)? (several answers possible)
— The deceased lived alternately in several countries
— The last place of residence of the deceased was very recent
— The deceased traveled from one country to another without having settled permanently in a country
— The deceased had left to live abroad for professional reasons while maintaining a close and stable link with his or her country of origin
— The last habitual residence of the deceased was a hospital, a residence for the elderly or another institution
— The last habitual residence of the deceased was a penitentiary institution
— Other situations

[If yes to question 1] IV(2).1.A2 How did you overcome the difficulty? (several answers possible)
— I have referred to my national case-law
— I have referred to the case-law of the Court of Justice of the European Union
— The heirs agreed on the last habitual residence
— I have transferred the case to the judge to decide on the last habitual residence

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— I referred to recitals 23 and 24 of the Regulation
— I asked the heirs for further evidence
— I failed to overcome the difficulty
— Other answers

[If yes to question 1] IV(2).1.A3 Which factors did you take into account in determining the habitual residence? (several answers possible)
— Formal registration (residence/domicile)
— Nationality
— Residence of family members
— Location of assets
— Country in which the deceased was engaged in economic activity
— Reasons for the deceased to stay in a particular country
— Length of residence of the deceased in a particular country
— Country of the deceased's health insurance
— Country of schooling of the deceased's children
— Other

[If yes to question 1] IV(2).1.A4 do you consider that you have sufficient instruments to have access to evidence that may be relevant to determining habitual residence? Yes — No

IV(2).2 Would you consider it useful if a definition of the deceased's last habitual residence at the time of death was included in the Regulation? Yes — No — No opinion
[If yes to question 2] IV(2).2.A Would you prefer an objective definition that does not take into account the will of the deceased or a definition that takes into account all the circumstances of the deceased's life in the years preceding the death, including the intention of the deceased?

— An objective definition
— A definition that takes into account all the circumstances of the deceased's life in the years preceding his or her death

IV(2).3 Have you already applied the safeguard clause of Article 21.2: 'Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1, the law applicable to the succession shall be the law of that other State.' Yes — No
[If yes to question 3] IV(2).3.A1 Was it in favour of the national law of the deceased? Yes — No
[If yes to question 3] IV(2).3.A2 in which circumstance(s)? (Several answers possible)
— For a deceased whose last residence was very recent and where everything was related to his or her country of origin (national State)
— For a deceased whose last habitual residence was a hospital, a residence for the elderly or another institution
— Because all the heirs agreed to designate the national law instead of the law of last habitual residence
— For another circumstance

(3) Difficulties in the application of the designated law

The Regulation provides for a number of rules that allow to deviate from the normal result. The most important exception is the public policy provision, which makes it possible to refuse the application of a provision of the law of a State "if such application is manifestly incompatible with the public policy (ordre public) of the forum." (Article 35). Article 34 of the Regulation provides for a certain possibility of renvoi if the rules of the Regulation lead to the

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application of the law of a third State.

IV(3).1 Have you ever applied a foreign law (such as the national law of the deceased) to settle a succession? Yes — No
[If yes to question 1] IV(3).1.A1 Have you encountered difficulties in accessing the content of foreign law? Yes — No
[If yes to question 1] IV(3).1.A2 How did you get access to the content of foreign law? (several answers possible)
- I had a personal knowledge of it.
- I used a certificate or affidavit as to the applicable law .
- I contacted a foreign notary
- I have used cooperation mechanisms, such as the European Notarial Network
- Other ways

IV(3).2 Have you ever applied the international public policy exception clause in order to rule out a foreign law in principle applicable? Yes — No
[If yes to question 2] IV(3).2.A1 Was the rejected law the law of a Member State of the European Union or the law of a third country?
Member State of the European Union — third country
[If yes to question #2] IV(3).2.A2 For what reason(s)? (several answers possible)
— In order to protect the rights of reserving heirs (heirs benefiting from a reserved share of succession)
— To refuse the application of a law that treats heirs differently according to their sex
— To refuse the application of a law that treats heirs differently according to their religion
— To refuse the application of a law that treats heirs differently according to their birth rank
— For another reason

V — Authentic instruments

Chapter V of the Regulation provides for a number of rules to facilitate the circulation of authentic instruments among Member States. Article 59 provides that authentic instruments drawn up in a Member State shall have the same evidentiary effects in the other Member States as in the State of origin. Article 60 allows to declare enforceable an authentic instrument which is enforceable in the Member State in which it was issued.

V.1 Can an authentic instrument issued in another Member State be published in your country's land registers? Yes — No
[If yes to question 1] V.1.A
— Unconditionally
— After a simple translation
— After being repeated by a local act
— After other formalities

V.2 Does it seem useful that an authentic instrument issued in your Member State can easily be published in a land register of another country (such as Grundbuch, etc.)? Yes — No — No opinion

V.3 Have you been aware of a situation where the public policy of the Member State of enforcement has been used to refuse or revoke a declaration of enforceability of an authentic instrument (Article 60.3)
Yes — No
[If yes to question 3] V.3.A Which one? (several answers possible)
— The authentic instrument applied a discriminatory law

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— The authentic instrument applied a law that does not have a mechanism regulating the reserved share of a succession
— Another reason
V.4 Have you been aware of a situation in which an authentic instrument issued by a Member State was incompatible with a decision adopted by a court of a Member State having jurisdiction on the basis of the Regulation? Yes — No

VI — European Certificate of Succession

Chapter VI of the Regulation creates a European Certificate of Succession. The European Certificate of Succession, which is not intended to replace existing instruments provided by national law, is a document issued at the request of an authority after examining the circumstances of the case. The certificate is intended to facilitate the procedures of heirs, legatees, executors and administrators by enabling them to demonstrate their status and/or rights in other Member States.

VI.1 Have you ever issued a European Certificate of Succession? Yes — No
a) [if yes to question 1] VI.1.A1 How often?
Once — Between 2 and 10 ECS — More than 10 ECS

b) [if yes to question 1] VI.1.A2 How long does it take on average from the moment the application is received until the European Certificate of Succession is issued?
— Less than a day
— About a week
— About a month
— More than a month

c) [If yes to question 1] VI.1.A3 Have you published it in a register of successions/last wills dispositions? Yes — No
[If not to question 1.A3], VI.1.A3.b Why?
— There is no register in my State permitting the publication of a European Certificate of Succession
— I did not know that a European Certificate of Succession could be published
— The cost of publishing is too high
— The applicant for the certificate did not wish to publish it
— Other reasons

d) [If yes to question 1] VI.1.A4 Have you ever requested information held in the registers of another State (land register, civil registry, registers of documents and facts relevant to the succession, or to the matrimonial property regime or equivalent property regime) pursuant to article 66.4? Yes — No
[If yes to question 1.A4] VI.1.A4.a Were the answers given to you useful? Yes — No
If not to question 1.A4, VI.1.A4.b Why?
— I didn't know this possibility.
— I have never had the need for information held in the registers of another State
— I did not know concretely how to formulate the request
— Other reasons

e) [if yes to question 1]VI.1.A5 Did you find it difficult to obtain information from financial institutions?
Yes — No

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f) [if yes to question 1], VI.1.A6 On average, how many copies do you issue for an original European Certificate of Succession?
— Only one
— Two
— Three
— More than three

g) [if yes to question 1] VI.1.A7 Do you keep a register of persons to whom a certified copy is issued?
Yes — No
[If yes to question 1.A7] VI.1.A7.a Is this register in paper or in digital form?
— paper
— digital form
[If no to question 1.A7] VI.1.A7.b Would a model of a standard register be useful to you?
Yes — No

h) [if yes to question 1] VI.1.A8 Has it been necessary to extend the validity of the certified copies issued or to issue a new certified copy?
Yes — No
[If yes to question 1.A8] VI.1.A8.a How often?
— rarely
— sometimes
— often
— all the time

i) [if yes to question 1] VI.1.A9 Have you already corrected, amended or withdrawn a European Certificate of Succession (art. 71)? Yes — No
[If yes to question 1.A9] VI.1.A9.a1 Did you find it difficult to inform those who had been issued certified copies? Yes — No

[If yes to question 1.A9] VI.1.A9.a2 How did you inform the persons who were issued certified copies?
— by simple mail
— by registered mail without acknowledgement of receipt
— by registered mail with acknowledgement of receipt
— by telephone
— by e-mail
— by other means

j) [If no to question 1] VI.1.B Why? (several answers possible)
— I have never come across an international succession with assets in another Member State
— I do not know the European Certificate of Succession
— I do not know where to find the European Certificate of Succession Form
— I do not see the usefulness of the European Certificate of Succession
— The European Certificate of Succession Form is too complicated to fill in
— I am not competent to issue the European Certificate of Succession
— Other reasons

[If the sixth choice is ticked]
Have you ever been involved in the preparation of a European Certificate of Succession?
Yes — No
[If yes] How often?
Once – Between 2 and 10 ECS – More than 10 ECS
Have you ever requested information held in the registers of another State (land register, civil registry, registers of documents and facts relevant to the succession, or to the matrimonial property regime or equivalent property regime) pursuant to article 66.4?

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Yes — No

e) Did you find it difficult to obtain information from financial institutions?
Yes — No

VI.2 Have you ever refused to issue the European Certificate of Succession requested to you?
Yes — No
[If yes to question 2] VI.2.A Why?
— The request was made without using the form
— The data provided by the applicant were incomplete
— The request was of no use, because there were no assets in another Member State.
— I prefer usinga national certificate
— Other reasons

VI.3 Have you ever been submitted a European Certificate of Succession issued in another Member State?
Yes — No
[If yes to question 3] VI.3.A Did you face any difficulty in understanding it?
Yes — No

VI.4 Does the automatic recognition of the effects of the European Certificate of Succession appear to you to be effective?
Yes — No
a) [if not to question 4] VI.4.B1 What are the main bodies, entities that oppose the recognition of its effects? (several answers possible)
— Banking institutions
— Insurance companies
— Land registry services
— The tax administration
— Social security bodies
— Other bodies

b) [if not to question 4] VI.4.B2 What are the reasons for this lack of recognition? (several answers possible)

— No particular reason is given
— The body requires additional information not provided by the European Certificate of Succession
— The body prefers a national certificate
— Other reasons

VI.5 Have you ever queried a national register of European Certificate of Succession?
Yes — No
a) [If yes to question 6] VI.5.A Did the query seem simple to you?
Yes — No
b) [If no to question 6] VI.5.B Why?
— I do not know the existence of such registers
— I do not know concretely how to query the registers
— I never needed to query a register
— Other reasons

VI.6 Have you ever faced a contradiction between a national certificate and a European Certificate of Succession?
Yes — No

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Annex II

Questionnaire #2
Questionnaire with open answers

[Instructions]

This open questionnaire is intended to be submitted to four highly qualified persons per Member State. The qualified persons will be chosen by the representative institutions of the notariat in each country, from among the notaries who have recurrent activity in international successions. If necessary, the questionnaire may also be submitted to other legal professionals.

For the proper analysis of the answers, it is important that each participant specifies his or her title and function.

Respondents are expected to expand on their answers in writing. Some questions may be left unanswered if needed.

If necessary, respondents may contact the project's scientific advisers to obtain further clarification on the scope of any question.

Thank you for your kind cooperation!

A. General issues
1° How has the Succession Regulation made your work easier in cross-border succession matters?
2° What is the main obstacle in cross-border succession matters which the Regulation has not solved?

B. Rules of jurisdiction
3° Did you experience difficulties in a situation in which the courts of your Member State did not have jurisdiction under the Regulation ?
4° Have you already wished you could have advised a client to include a choice of court in a will or a disposition of property upon death?

C. Applicable law
5° Does the choice of law by the testator as it is allowed by the Regulation provide a good answer to the difficulties arising from cross-border successions?
6° Does the application of the law of the last habitual residence of the deceased offer a good answer to the difficulties arising from cross-border successions when the deceased has not made a choice of law?
7° The Regulation includes a number of special rules which may influence the designation of the applicable law : escape clause (art. 21 § 2), renvoi (art. 34) and public policy (art. 35). If you have applied one of these mechanisms, do you think they offer a good answer to the difficulties arising from cross-border successions?

D. Authentic acts
8° The Regulation provides that an authentic instrument established in a Member State shall have the same evidentiary effects in another Member State (Art. 59 § 1). In which situation have you applied this mechanism of acceptance and have you faced any difficulty in this context?
9° The Regulation provides that an authentic instrument established in a Member State may be declared enforceable in other Member States (Art. 60). Have you already been faced with an authentic act coming from another

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Member State and having been declared enforceable and, if yes, in which situation?

E. European Certificate of Succession

10° The Regulation creates a European Certificate of Succession which allows parties having rights in a succession to demonstrate their status and exercise their rights. In your practice, in which situations (and for which reasons) have you used the ECS and in which situations (and for which reasons) have you rather used another instrument existing under your national law?

F. Final question

11° If you had to modify, add or delete one rule, and only one, of the Succession Regulation, which one would you choose and why?

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Annex III

List of respondents – Questionnaire #2

Austria	Dr	Laura	Temperini-Meter
Austria	Dr	Hansjörg	Brunner
Austria	Dr	Bernhard	Endl
Austria	Mag	Alice	Perscha
Belgium	Mr	Tom	De Roo
Belgium	Ms	Pascale	Ratliff
Bulgaria	Ms	Maria	Lazarova - Evtimova
Bulgaria	Mr	Petko	Kanchevski
Croatia	Mr	Denis	Krajcar
Croatia	Ms	Ljiljana	Vodopija Čengić
Croatia	Ms	Hana	Hoblaj
Croatia	Ms	Danijela	Marković
Czech Republic	Mr	Radim	Neubauer
Czech Republic	Ms	Šárka	Tlášková
Czech Republic	Mr	Martin	Říha
Estonia	Ms	Eve	Potter
France	Mr	François	Tremosa
France	Ms	Marianne	Sevindik
France	Mr	Jean	Gasté
France	Ms	Xaviera	Favrier-Challier
Germany	Dr	Torsten	Jaeger
Germany	Mr	Christian	Schall
Germany	Dr	Rembert	Süß
Germany	Dr	Ulrich	Simon
Greece	Ms	Sofia	Mouratidou
Greece	Ms	Marianna	Papakyriakou
Hungary	Mr	Gábor	Hodosi
Hungary	Mr	Levente	Szalai
Hungary	Mr	András	Kondákor
Hungary	Ms	Andrea	Kónyáné Fercsák
Italy	Mr	Domenico	Damascelli
Italy	Mr	Paolo	Pasqualis
Italy	Ms	Sabrina	Belloni
Italy	Ms	Valentina	Crescimanno
Latvia	Ms	Ilona	Purmala
Latvia	Ms	Ieva	Krumina
Latvia	Ms	Anta Maldupe	Krumina
Latvia	Ms	Skaidite	Krumina
Lithuania	Ms	Daiva	Lukaševičiūtė-Binkulienė
Lithuania	Ms	Svajonė	Šaltauskienė
Lithuania	Mr	Dainius	Palaima

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Lithuania	Ms	Dalija	Svirbutienė
Luxembourg	Mr	Christoph	Muller (Chamber of Notaries)
Netherlands	Ms	Monique	Rombouts
Netherlands	Ms	Marjolein	Gerrits
Netherlands	Mr	Branko	Reumkens
Netherlands	Mr	Koen	van den Berg
Poland	Mr	Wiktor	Karpowicz
Poland	Mr	Marcin	Margonski
Poland	Mr	Przemysław	Michalewicz
Portugal	Ms	Teresa Maria	Braz Dias Frias
Portugal	Ms	Filipa Maria	Marques de Azevedo Maia
Romania	Ms	Alexandra Lelia	Turza
Romania	Ms	Ruxandra	Cocea
Romania	Ms	Anca	Profiroiu
Slovakia	Mr	Peter	Danczi
Slovakia	Mr	Karol	Kovács
Slovakia	Mr	Juraj	Šikuta
Slovakia	Ms	Miriam Imrich	Breznoščáková
Slovenia	Ms	Natasa	Erjavec
Slovenia	Ms	Urska	Derganc Petric
Spain	Ms	Ana	Fernández-Tresguerres García
Spain	Mr	Roberto	Follía Martínez
Spain	Mr	Alvaro	Lucini Mateo
Spain	Ms	María de los Reyes	Sánchez Moreno

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Questionnaire # 3
Survey for institutional actors

The MAPE project seeks to monitor and evaluate the application of the Succession Regulation (Regulation 650/2012). To do so, the project seeks to obtain information on the application of the Regulation in 22 Member States.

The present document aims to collect data from notarial organisations : national chambers and councils, regional and local associations of notaries, organisations providing services to notaries (such as a know-how centre) and other bodies linked to or providing services to notaries.

Five topics have been chosen on which data should be collected. Some of the topics may not be relevant for some of the organizations taking part in this survey. If this is the case, the questions should be left unanswered. You may, however, indicate in the 'additional comments' section why a particular question or topic is not relevant.

The survey is addressed to the national chambers and councils. Each national chamber and council is responsible for the collection of data in relation to its Member State. Some of the data may be readily available at national level. Other data may need to be collected from other institutions, e.g. public bodies holding registers. For the evaluation to be successful, each national chamber and council should seek to obtain data held by other bodies and organizations. If another body, institution or entity has access to relevant data, but is not willing to disclose or share it, please let us know (using the 'additional comments' section).

If no data is available on a specific question, it is useful to give a brief explanation of why this is so (e.g. absence of a centralized system), in the 'additional comments' section.

Care should be taken to indicate the source of every data collected. This will make it possible to cross-check the data if necessary.

It may be that for some topics or questions, no specific data is available or can be collected. In that case, national chambers and councils are asked to provide, as far as possible, an estimation of the item sought. Such estimation may be based on the experience of professionals concerned. It may be useful to discuss estimates among professionals in order to give it more weight. You may indicate in the 'additional comments' section how you came up with a given estimate.

The survey seeks to collect data over the course of a period of six years (2016-2021). Some data may only be available for some of these years. This should not prevent the chamber or the council to provide the data which is available.

The Scientific committee assisting the CNUE for this project is available to answer all questions and queries related to the survey.

If any data is confidential and may not be communicated, please do not hesitate to inform us of this.

1. Training

This first section attempts to collect data on the training efforts which were undertaken in relation to the Succession Regulation – under the form of conferences, training, workshops etc. The information sought relates to training initiatives organised by notarial chambers (national, regional or local),

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specialised associations of notaries, international organizations (such as CNUE), universities, specialised training centres created for notaries (e.g. in France, Inafon) or private actors. We are interested in hearing about training sessions organised exclusively for notaries and training sessions targeted at notaries and notarial clerks who are involved in succession matters. Please indicate whether your answer is based on exact data or on an estimation. In both cases, please indicate the source of the data or the estimate. If any data similar to the one requested is available, please do not hesitate to include it in the table (under 'additional comments'). You may indicate in the section 'additional comments' whether some of these trainings were organised offline or online.

	2021	2020	2019	2018	2017	2016
How many training sessions were organised?						
How many notaries took part in the training sessions (total number) ?						
Relative number of notaries who took part in a training session compared to total number of notaries						

Additional comments:

2. Wills and agreements on succession

This section aims to identify the relative importance of successions governed by a will or another disposition of property upon death in comparison to intestate successions. It also aims to find out whether domestic successions differ in that respect from cross-border successions. In this section, we take a very broad understanding of testate successions : it includes situations where the deceased left a will, a succession agreement or any other voluntary arrangements relating to the succession (so-called negotia mortis causa). In this section, we understand by 'cross-border succession' any succession which would fall under the EU Regulation.
Please indicate whether your answer is based on data or on an estimation. In both cases, please indicate the source of the data or the estimate. If any data similar to the one requested is available, please do not hesitate to include it in the table (under 'additional comments').

	2021	2020	2019	2018	2017	2016
Number of succession matters opened every year by notaries						
If the number of succession matters is not known, number of deaths /year						
Number of testate successions or estimation of the percentage of testate successions						
Number of succession matters with a cross-border dimension (e.g. because the deceased habitually resided abroad or possessed assets abroad) or estimation of the percentage of such successions						

Additional comments :

3. Applicable law

The purpose of this section is to identify, through direct and indirect means, whether parties effectively make use of the possibility to choose the law (Art. 22 of the Regulation) in cross-border successions.

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Please indicate whether your answer is based on data or on an estimation. In both cases, please indicate the source of the data or the estimate. If any data similar to the one requested is available, please do not hesitate to include it in the table (under 'additional comments').

	2021	2020	2019	2018	2017	2016
% of cross-border testate successions in which the deceased made a choice of law						

	Yes	No	I do not know	This question cannot be answered with certainty
Do templates and models (proposed by publishers or professional associations, available on paper or through online drafting system) used by notaries include a choice of law?				
Are these templates and models widely used?				
Do professional notarial organisations encourage one way or the other notaries to include a choice of law in wills they receive – e.g. by publishing guidelines on the use of choice of law?				
Notaries are usually covered by professional liability insurance (whether individual or collective insurance scheme). Does the insurance scheme cover situations in which a notary advises a client to choose a foreign law to govern his or her succession?				
Additional comments				

4. Authentic acts

This section aims to identify how often authentic acts in succession matters circulate from one Member State to another. Please indicate whether your answer is based on data or on an estimation. In both cases, please indicate the source of the data or the estimate. If any data similar to the one requested is available, please do not hesitate to include it in the table (under 'additional comments').

	2021	2020	2019	2018	2017	2016
Number of authentic acts coming from other Member States which were declared enforceable on the basis of the Regulation (if possible, indicate what type of acts were at stake)						

To be continued>

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Number of last wills and other dispositions of property upon death (such as voluntary arrangements relating to the succession) issued in another State which were used in the winding up of estates						

	Yes	No
Do you know any situation in which the acceptance or enforcement of an authentic act issued in another Member State was refused on the basis of a violation of public policy?		

Additional comments:

5. European Certificate of Succession

This section aims to find out how often the European Certificate of Succession is used. Please indicate whether your answer is based on data or on an estimate. In both cases, please indicate the source of the data or the estimate. If any data similar to the one requested is available, please do not hesitate to include it in the table (under 'additional comments').

	2021	2020	2019	2018	2017	2016
Number of ECS issued						
Number of national certificates of succession (e.g. 'Erbschein', 'acte de notoriété', etc.) issued • in general • in the framework of cross-border successions						
If there is a national register of ECS: how many requests were made to obtain information from the register?						

Additional comments:

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Members of the Steering Committee

Country - Notariat	Title	First Name	Last Name
Allemagne / Germany - Bundesnotarkammer	Mr/M.	Felix	KOECHEL
Autriche / Austria - Österreichische Notariatskammer	Mr/M.	Stephan	MATYK-D'ANJONY
Belgique / Belgium - Conseil International du Notariat Belge	Mme / Ms	Elsemiek	APERS
	Mme / Ms	Pascale	RATLIFF
Croatie / Croatia - Hrvatska Javnobiljeznièka Komora	Mr/M.	Denis	KRAJCAR
France – Conseil Supérieur du Notariat Français	Mme / Ms	Marianne	SEVINDIK
	Mme / Ms	Patricia	LÉOUFFRE
Hongrie / Hungary - Chambre National des Notaires de Hongrie	Mr/M.	Tamás	BALOGH
Italie / Italy - Consiglio Nazionale del Notariato	Mr/M.	Paolo	PASQUALIS
Lituanie / Lithuania - Lietuvos Notaru Rumai	Mme / Ms	Egle	CAPLINSKIENE
Malte / Malta - Kunsill Naturili Ta' Malta	Mr/M.	Paul George	PISANI
Pays-Bas / The Netherlands - Koninklijke Notariële Beroepsorganisatie	Mme / Ms	Monique	ROMBOUTS
	Mme / Ms	Sabine	HEIJNING
Pologne / Poland - Krajowa Rada Notarialna	Mr/M.	Tomasz	KOT
Roumanie / Romania - L'Union des Notaires Publics de Roumanie	Mme / Ms	Andreea	FANDACHE
	Mme / Ms	Galia	RĂDULESCU
Slovénie / Slovania - Notarska Zbornica Slovenije	Mme / Ms	Sonja	KRALJ
	Mr/M.	Aleksander	SANCA
ARERT / ENRWA	Mme / Ms	Céline	MANGIN
	Mr/M.	François-Xavier	BARY
Bureau CNUE / CNUE Office	Mr/M.	Gianmarco	GARRAMONE
	Mme / Ms	Laura	GONZALEZ
	Mr/M.	Andrea	GRISILLA
	Mr/M.	Raul	RADOI

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Annex V

Members of the Scientific Committee

Country - Notariat	Title	First Name	Last Name
Allemagne / Germany - Bundesnotarkammer	Mr/M.	Christian	SCHALL
	Mr/M.	Ulrich	SIMON
Autriche / Austria - Österreichische Notariatskammer	Mme / Ms	Alice	PERSCHA
Croatie / Croatia - Hrvatska Javnobiljeznièka Komora	Mr/M.	Damir	KONTREC
	Mme / Ms	Hana	HOBLAJ
Espagne / Spain - Consejo General del Notariado	Mr/M.	Isidoro Antonio	CALVO VIDAL
France – Conseil Supérieur du Notariat Français	Mme / Ms	Marianne	SEVINDIK
Hongrie / Hungary - Chambre National des Notaires de Hongrie	Mr/M.	Tamás	BALOGH
	Mr/M.	Tibor	SZŐCS
Italie / Italy - Consiglio Nazionale del Notariato	Mme / Ms	Sabrina	BELLONI
	Mr/M.	Paolo	PASQUALIS
	Mr/M.	Domenico	DAMASCELLI
Lettonie / Latvia - Latvijas Zverinattu Notaru Padome	Mme / Ms	Sarmite	ORLOVSKA
Malte / Malta - Kunsill Naturili Ta' Malta	Mr/M.	Paul	PISANI
Pologne / Poland - Krajowa Rada Notarialna	Mr/M.	Tomasz	KOT
République Tchèque / Czech Republic - Ceské Republiky Notarska Komora	Mme / Ms	Šárka	TLÁŠKOVÁ
Roumanie / Romania - L'Union des Notaires Publics de Roumanie	Mme / Ms	Andreea	FANDACHE
	Mme / Ms	Galia	RĂDULESCU
Slovénie / Slovania - Notarska Zbornica Slovenije	Mme / Ms	Natasa	ERJAVEC
	Mme / Ms	Nina	KRALJ FRECE
ARERT / ENRWA	Mme / Ms	Céline	MANGIN
	Mr/M.	François-Xavier	BARY
Bureau CNUE / CNUE Office	Mr/M.	Gianmarco	GARRAMONE
	Mme / Ms	Laura	GONZALEZ
	Mr/M.	Andrea	GRISILLA
	Mr/M.	Raul	RADOI

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