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CAE · BARCELONA, OCTOBER 2024

The regime of unmarried couples in Europe: de facto unions, civil unions, registered partnerships

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Final summary

6 min read · original in French

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Legal regime of unmarried couples in Europe

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CAE · PARIS, JUNE 2025

"Dejudicialisation": new horizons for the protection of individuals and families

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"Dejudicialisation": new horizons for the protection of individuals and families

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STUDY

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"Digital death": what happens to digital assets and data upon death

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"Digital death"

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SUMMARY

Notarial Academy of the Commission for European Affairs (CAE)

Final summary

Conclusions and recommendations on the regime of unmarried couples in Europe

Barcelona, 17 October 2024 6 min read Original language: French

1 The Notarial Academy of the Commission for European Affairs held in Barcelona on 17 October 2024, on the subject of unmarried couples in Europe, and in particular registered partnerships, brought out a first obvious finding:

2 There is a very wide variety of “couples”, “partnerships”, “unions” and regimes for unmarried couples in Europe.

3 First of all, the very definition of “partnership” or “registered union” is not uniform. While many countries define a “registered partnership” in line with European Regulation 2016/1104 on registered partnerships, as the “regime governing the shared life of two people, the registration of which is mandatory and which fulfils the legal requirements laid down by law for its creation” [1], others adopt a much broader definition in their domestic national law. This is the case in particular of Slovenia and of certain Spanish Autonomous Communities [2], such as Catalonia, which do not require the partnership to be “registered” with an authority in order to exist as a “partnership” and produce legal effects. Proof of factual elements, such as a shared life over a certain period of time, will thus be sufficient to demonstrate the existence of the partnership in those countries.

4 Beyond the different classifications, the regimes attached to these couples are also extremely varied: from the conditions for forming the partnership to those for dissolving it, including the personal and property effects it produces, no “standard” regime prevails.

5 This great diversity is in fact not surprising: each body of legislation on couples has been built in the light of the needs and the social, cultural and historical realities of its country.

6 Despite this great heterogeneity, we could nevertheless attempt a classification of the various regimes that exist in Europe.

7 It should be made clear beforehand, however, that some countries have never yet legislated on partnerships. This form of union thus does not exist in Bosnia and Herzegovina, Bulgaria, Georgia, Lithuania, North Macedonia, Poland, Romania, Serbia, Slovakia, Turkey and Ukraine, which know only the regime of marriage or that of the simple de facto union.

8 As regards the others, we could classify them into three groups.

9 First, there are the countries that have found in the partnership an alternative to marriage between persons of the same sex. Some European States have not opened marriage to persons of the same sex, for social, religious or cultural reasons. They are nonetheless required to offer these couples the same rights as different-sex couples, failing which equality between them would be breached. This is how Italy, Croatia, the Czech Republic, Montenegro and Austria created a new form of union, solely for same-sex couples, called a "civil union" or "partnership", the regime of which is extremely close to that of marriage but does not bear its name. These unions are, moreover, generally concluded before the civil registrar, as in the case of marriage.

10 Next, there are the countries that first created the partnership regime, modelled on that of marriage, and then opened marriage to same-sex couples. These include, for example, Spain, the United Kingdom, Greece, Malta, Germany and Switzerland.

11 Following the opening of marriage to persons of the same sex, these countries nevertheless took different paths as regards their legislation on partnerships.

12 Some, such as Germany and Switzerland, chose purely and simply to repeal this form of union. Since it offered all couples the same regime as marriage (itself open to all couples), and although it was classified differently, the partnership came to be seen as unnecessary.

13 The others made a different choice: they allowed the partnership regime to remain even though marriage was now open to all couples. These bodies of legislation therefore offer couples a practically single regime, under different classifications. The explanation is no doubt more social than legal: society has remained attached to the figure of the partnership, seen as a more flexible model, less "conventional" and less religiously "marked" than marriage.

14 In these countries, and in particular in Spain, the legislature and the case law tend to apply to all couples, whether married, partners or cohabitants, in other words whatever their classification and conditions of formation, the same regime, in the name of a principle of equality between couples. Thus in Catalonia, partners, even unregistered ones, who have shared a life together for more than two years are legal heirs in each other's succession.

15 Lastly, there are the countries that have created a registered partnership regime, alongside that of marriage, without copying it completely. The partnership is thus presented, in form as in substance, as a different proposal for a union. The opening of marriage to persons of the same sex in these countries has therefore had no consequence for the existence of the partnership. These include, for example, France and Belgium, which offer a form of union that could be described as contractual rather than institutional. Thus in France, a partner in a PACS is not a legal heir in the succession of the other partner. Nor does the PACS have any effect on filiation. It is also much easier to undo than marriage: a wish, even a unilateral one, is enough to end the partnership. At the same time, it is also less protective: no compensatory allowance is due in the event of separation. The same applies to the Belgian contract of legal cohabitation.

Recommendations of the CAE

16 At the close of this analysis and of the round table held in Barcelona on 17 October 2024 on “The regime of unmarried couples in Europe: de facto unions, civil unions and registered partnerships”, the Commission for European Affairs, chaired by notary Valentina Rubertelli, makes the following recommendations to legislators and to the member Notariats:

Need for legal certainty and predictability for couples

17 In order to ensure that partners are aware of the legal consequences of their factual situation (shared life), all the more so if they are very similar to those of marriage, the Commission for European Affairs recommends setting clear and tangible criteria for the formation of the partnership.

18 This may be a formality of registering the partnership with a public authority (such as the civil registrar or the notary) or a joint declaration before a notary, in an authentic instrument. What matters is to determine clearly when the partnership takes effect and therefore the legal regime to which the couple is subject. This act of will of the parties before a public official will ensure that they are not made subject to a regime they did not choose or of which they were unaware. The rights and duties arising from it will also be all the clearer for the partners.

Need for security and control for the State

19 To prevent fraud, “sham partnerships” formed for the sole purpose of obtaining certain effects of the partnership (tax advantages, obtaining a residence permit…), the State may entrust notaries with two tasks:

20 That of forming and registering the partnership. The couple will thus have to appear before the notary, who will record the parties’ wish to enter into the partnership.

21 That of receiving, by authentic instrument, the partners’ joint declaration of cohabitation, or possibly of requiring proof of cohabitation.

Need for advice for couples on the choice of their property regime

22 In order to inform partners of the legal consequences of their union and to enable them to choose a property regime suited to their personal and family situation, the CAE recommends that property agreements between partners be concluded by notarial authentic instrument, in the same way as marriage contracts for married couples.

23 The notary, a qualified and accessible legal professional, is indeed in a position to advise the parties on a tailor-made regime suited to their needs.

24 Where there is a cross-border element, the notary will also determine the law applicable to the property consequences of their registered partnership and will advise them, where appropriate, on the choice of another law, in accordance with European Regulation 2016/1104.

Notes

1 Article 3 of Regulation 2016/1104

2 In Spain, the regime for “unmarried couples” is not regulated at State level, but at the level of each Autonomous Community. Each region has thus defined, or not, a regime for partnerships.

COMPARATIVE TABLE

CAE Study 2024

Legal regime of unmarried couples in Europe

De facto unions, civil unions and registered partnerships, country by country

Barcelona, October 2024 5 min read Original language: Spanish

Unions between persons of the same sex with effects similar to those of marriage

	TYPE OF UNION	Date of introduction	Is proof of cohabitation required?	Couples covered	Authority competent for its formation	Personal effects	Property effects	Form of dissolution	Compensation in the event of dissolution?
ITALY	CIVIL UNION	2016	Declaration by the parties before the civil registrar.	Exclusively for same-sex couples.	Civil registrar.	Same effects as marriage (including the rules on immigration), except for the duty of fidelity and joint adoption.	Statutory regime of community of property. Possibility of agreeing contractual regimes by notarial deed or by declaration before the civil registrar. Succession and tax effects.	By joint declaration before the court in the event of disagreement.	Yes, on the same terms as marriage.

	TYPE OF UNION	Date of introduction	Is proof of cohabitation required?	Couples covered	Authority competent for its formation	Personal effects	Property effects	Form of dissolution	Compensation in the event of dissolution?
CZECH REPUBLIC	REGISTERED PARTNERSHIP	2006	Declaration by the parties.	Exclusively for same-sex couples.	Civil registrar.	Produces no effects as regards filiation. There is a reciprocal duty of assistance. Allows a residence permit to be obtained.	Powers of joint administration of property. Succession effects (the partner is a legal heir). Tax benefits. Same property regime as for spouses (community of property).	By court decision, at the request of one or both partners.	Where applicable, right to maintenance.
CROATIA	REGISTERED PARTNERSHIP	2014	Simple declaration, made in the presence of two witnesses.	Exclusively for same-sex couples.	Before the civil registrar, in the presence of two witnesses.	Same effects as marriage, including those relating to filiation and immigration.	Same property effects as marriage, including succession and tax effects. Same property regime.	By court decision, at the request of one or both partners.	Yes, on the same terms as marriage.
MONTENEGRO	REGISTERED PARTNERSHIP	2020	No. The declaration by the parties is sufficient.	Exclusively for same-sex couples.	Before the civil registrar.	Produces personal effects, including those relating to filiation and to obtaining a residence permit.	Effects similar to those of marriage: succession rights, same property regime and other legal consequences.	By mutual agreement or by court decision in the event of a dispute.	Yes, on the same terms as marriage.
AUSTRIA	REGISTERED PARTNERSHIP	2010	Simple declaration by the parties.	For same-sex couples since 2019.	Before the civil registrar.	Effects similar to those of marriage.	Same property regime as marriage. Succession effects (the partner is a legal heir). Tax benefits.	Exclusively by court decision.	Yes, on the same terms as marriage.
HUNGARY	REGISTERED PARTNERSHIP before the civil registrar / before a notary	2009	No. The declaration by the parties is sufficient.	Before the civil registry: same-sex couples only. Before a notary: open to all couples.	Civil registrar or notary, depending on the form.	Partnerships formed before the civil registry produce effects similar to those of marriage.	Those formed before the civil registry have effects similar to those of marriage: same property regime, succession effects, etc. The same is not true of those formed before a notary.	Before the civil registry: before a notary if there is agreement; before the court in the event of conflict. Before a notary: by notarial act.	Yes.

	TYPE OF UNION	Date of introduction	Is proof of cohabitation required?	Couples covered	Authority competent for its formation	Personal effects	Property effects	Form of dissolution	Compensation in the event of dissolution?
SWITZERLAND	REGISTERED PARTNERSHIP	2007 Repealed by the Act of 1 July 2022, which opened marriage to same-sex couples.	Declaration by the parties.	Exclusively for same-sex couples.	Before the civil registrar of the parties' place of residence.	Effects as regards filiation (adoption and medically assisted reproduction) and obtaining a residence permit.	Separation of property, unless otherwise agreed. Succession and tax effects.	Court proceedings.	Yes. One partner may claim maintenance from the other.

Unions open to all couples with effects similar to those of marriage

	TYPE OF UNION	Date of introduction	Is proof of cohabitation required?	Couples covered	Authority competent for its formation	Personal effects	Property effects	Form of dissolution	Compensation in the event of dissolution?
UNITED KINGDOM	CIVIL PARTNERSHIP	2004 Open to heterosexual couples since 2019.	Presence of two witnesses at the time of the declaration.	Open to same-sex and different-sex couples since 2019.	Before the civil registrar, in the presence of two witnesses.	Same effects as marriage.	Same effects as marriage.	By court decision.	Yes, in accordance with the applicable regime.
SPAIN (regime of the Autonomous Communities)	REGISTERED PARTNERSHIP	1998 in Catalonia, the first Autonomous Community to introduce it.	Yes. Cohabitation may be proved by any means of evidence, for example by a sworn statement.	Open to same-sex and different-sex couples.	Before a notary or before the competent authority, at the parties' choice. In Catalonia a notarial deed is required.	Effects similar to those of marriage, including filiation (adoption, assisted reproduction, etc.) and residence permit.	Effects similar to those of marriage: succession, tax, joint and several liability for debts, etc. There is no statutory property regime; a contractual one may be agreed.	By unilateral or joint declaration entered in the Register of De Facto Couples, or by marriage.	Only if agreed beforehand. Possibility of maintenance.
GREECE	REGISTERED PARTNERSHIP	2008 Reform of 2015.	No.	Open to same-sex and different-sex couples since 2015.	Exclusively before a notary.	Effects similar to those of marriage, except adoption by same-sex couples.	Effects similar to those of marriage. The surviving partner is an heir of the deceased.	By unilateral or joint declaration recorded in a notarial deed.	Yes.

	TYPE OF UNION	Date of introduction	Is proof of cohabitation required?	Couples covered	Authority competent for its formation	Personal effects	Property effects	Form of dissolution	Compensation in the event of dissolution?
ANDORRA	REGISTERED PARTNERSHIP	2005	Simple declaration by the parties.	Open to same-sex and different-sex couples.	Civil registrar.	Effects similar to those of marriage, including filiation and immigration (residence permit).	Effects similar to those of marriage: succession rights, tax benefits, etc. Same property regime as marriage.	By entry of the dissolution in the civil registry.	Yes.
MALTA	CIVIL UNION	2014	Simple declaration by the parties.	Open to same-sex and different-sex couples.	Civil registrar.	Effects similar to those of marriage, including filiation and immigration (residence permit).	Effects similar to those of marriage: succession rights, tax benefits, etc. Same property regime as marriage.	In accordance with the regime laid down for marriage.	Yes, on the same terms as marriage.
SLOVENIA	COHABITATION	2016	No.	Open to all couples.	At the parties' choice, before a notary or another competent authority.	Same effects as marriage.	Same effects as marriage.	There is no specific procedure for the dissolution of the cohabitation.	Yes.

Unions whose legal regime differs from that of marriage

	TYPE OF UNION	Date of introduction	Is proof of cohabitation required?	Couples covered	Authority competent for its formation	Personal effects	Property effects	Form of dissolution	Compensation in the event of dissolution?
FRANCE	PACS (CIVIL SOLIDARITY PACT)	1999 Reform of 2006.	No. Declaration by the parties.	Open to same-sex and different-sex couples.	Before the civil registrar of the municipality or before a notary.	There is no duty of fidelity and no possibility of joint adoption, which is reserved for marriage.	In principle, separation of property, with the option of community. No succession effects, except a right over the home, and tax effects equal to those of marriage. There is a primary regime: joint and several liability and contribution to household expenses.	By unilateral or joint declaration.	No.

	TYPE OF UNION	Date of introduction	Is proof of cohabitation required?	Couples covered	Authority competent for its formation	Personal effects	Property effects	Form of dissolution	Compensation in the event of dissolution?
LATVIA	REGISTERED PARTNERSHIP	2024	Yes.	Open to same-sex and different-sex couples.	Exclusively before a notary.	Effects as regards social security (pensions). No effects on filiation or on obtaining a residence permit.	No co-ownership or community of property. No succession effects. Tax effects similar to those of marriage.	By court decision or by mutual agreement recorded in a notarial deed.	No.
BELGIUM	LEGAL COHABITATION	-	Simple declaration.	Open to same-sex and different-sex couples.	Declaration before the civil registrar. The parties may regulate their property regime by contract before a notary.	Produces no personal effects comparable to those of marriage.	Separation of property. Special protection of the family home. No succession effects, except the usufruct of the shared home.	By unilateral or joint declaration before the civil registrar.	No.
ALBANIA	REGISTERED PARTNERSHIP	2009	Yes. Cohabitation must be proved.	Opening to same-sex couples is not indicated.	Before a notary.	No effects on filiation or on obtaining a residence permit.	No property, succession or tax effects.	No answer was provided.	No answer was provided.

Countries without legislation on registered partnerships: Bosnia and Herzegovina, Bulgaria, Georgia, Lithuania, North Macedonia, Poland, Romania, Serbia, Slovakia, Turkey and Ukraine. Germany abolished the registered partnership regime in 2017, when it opened marriage to same-sex and different-sex couples.

Switzerland: since the entry into force of the Act of 1 July 2022, which opened marriage to all couples, it is no longer possible to form new registered partnerships.

SUMMARY

Notarial Academy of the Commission for European Affairs (CAE)

“Dejudicialisation”: new horizons for the protection of individuals and families

What role and what functions fall to the notary?

Chaired by Dr Valentina Rubertelli · Paris Chamber of Notaries, 5 June 2025 16 min read

Original language: Spanish

1 The Commission for European Affairs (CAE) of the UINL, made up of 41 European members, met in Paris on 5 and 6 June 2025 at the historic Paris Chamber of Notaries.

2 At this fifth meeting of the legislature, chaired by the Italian notary Valentina Rubertelli, the theme chosen for the Notarial Academy was “Dejudicialisation: new horizons for the protection of individuals and families”.

3 The subject of non-contentious jurisdiction and the transfer of powers to notaries in non-contentious matters is a “flagship” theme of the legislature of the President of the UINL, Lionel Galliez. The UINL Congress, to be held in Berlin, Germany, from 2 to 4 October 2025, will moreover devote its Theme No. 2 to this subject, under the title “Voluntary magistracy: new missions in the service of the public”.

4 The round table held in Paris therefore gave the President of the CAE, Valentina Rubertelli, who is also the coordinator of Theme No. 2 at the Berlin Congress, the opportunity to organise a major “dress rehearsal”.

5 The organisers of the round table decided to focus the discussions on four areas of the law of persons and family law that lend themselves to the transfer of powers from the judge to the notary:

- The protection of vulnerable persons
- Divorce
- Change of matrimonial property regime
- Mediation

6 After a presentation of the challenges and the relevance of the subject for the notarial profession by the Secretary General of the UINL, Thierry Vachon, seven countries spoke on the subject of the protection of vulnerable persons:

- France (the lawyer Mathilde Lodier), Poland (the lawyer Szymon Kołodziej), Belgium (Alain Deliège) and Andorra (the lawyer Joan-Carles Rodríguez Miñana) to explain the future protection mandate regime of their respective countries.
- Spain (Dr José Ignacio González) on the notary's assessment of the person's capacity and the notary's important role in Spain in the protection and care of vulnerable persons.
- Italy (Dr Sabrina Belloni) on a new and important function of non-contentious jurisdiction granted to notaries in Italy: the issuing of authorisations to conclude an act on behalf of a minor or of an adult under guardianship (sale, acceptance or renunciation of a succession, etc.).
- France (Dr Bertrand Basseville) on the scope of Article 507-1 of the Civil Code, as amended by the Act of 23 March 2019, which allows the representative of the protected person to accept the succession, without court intervention, if the assets manifestly exceed the liabilities, after obtaining a certificate from the notary in charge of settling the succession.

7 As regards divorce by mutual consent, the French divorce without a judge (presented by Mr Stéphane David, notary in France) was then compared with divorce before a notary in Romania (presented by Ms Oana Rosenberg, notary in Romania). Both France and Romania have the particular feature of allowing out-of-court divorce, even where there are minor children. In France, the judge will assess the best interests of the child only if the child, being capable of discernment, asks to be heard. The law does not give the notary the power to verify whether the best interests of the child have been respected. In Romania, by contrast, although spouses may choose between three different authorities in order to divorce by mutual consent (the civil registrar, the notary or the judge), where there are minor children the divorce must take place through the courts or before a notary. In the latter case, the notary is the guarantor of the best interests of the child.

8 As regards the change of matrimonial property regime, the lawyer Caroline Ginglinger-Poyard (notary in France) pointed out that the role of the French notary is much broader: in particular, the notary is responsible for assessing the interests of the family and of minors.

9 Next, the notary Bernhard Endl (from Austria) shared the Austrian notarial experience of mediation, which allows family conflicts to be resolved amicably before they reach the judge.

10 These enriching exchanges, which showed the full variety and broad scope of notarial functions in Europe in the law of persons and family law, were finally summarised by the legal adviser of the UINL, Sophie Potentier Rios.

11 That summary is reproduced below.

Summary of the proceedings

Sophie Potentier Rios, legal adviser of the UINL

* * *

12 Protection of vulnerable persons, divorce, change of matrimonial property regime, mediation… This round table has undoubtedly shown new horizons for the protection of individuals and families, but also for the notarial profession.

13 Admittedly, this is only a sample and many other powers could have been mentioned: registered partnerships, the obtaining of consents to adoption and assisted reproduction, succession law… That will be for the Berlin Congress!

14 Be that as it may, this sample has revealed a whole range of possibilities, which are growing as regards the responsibility and trust that the State places in the notarial profession.

15 Context. — Before going into the detail of the themes, it is essential to recall that this movement of dejudicialisation forms part of a specific context.

16 A context of congested courts, of reduced public spending on justice, but also of contractualisation of the law of persons and family law, and of the increasingly important place given in our societies to the autonomy of the will.

17 Who better than myself to decide how and by whom my assets will be managed once I can no longer do so? Who better than the spouses, who freely chose to enter into the bonds of marriage, to decide the terms of their separation or of their change of matrimonial property regime?

18 The answer is no longer the judge, nor even the notary.

19 It is the person concerned.

20 Dejudicialisation means giving primacy to the will of the person.

21 While the will is paramount, few States have withdrawn completely from human relationships and fully privatised family law.

22 While judicial control is relaxed, another public authority, in this case the notary, is asked to continue to exercise a certain control.

23 The notary is asked to accompany the will; in other words, to make sure of the free and informed consent of the parties and to verify the legality of their agreement.

24 Objectives. — One of the objectives of this Academy was, first, to take stock of notarial powers and functions in the law of persons and family law in the various European countries.

25 But, since we are speaking of horizons, it was also necessary to ask the following question: how far is it possible to go? To what extent can matters be dejudicialised and new powers transferred to the notary?

26 A priori, there are two main limits to this transfer of powers:

27 1. Conflict. This transfer can take place only in non-contentious matters, that is, where there is no dispute to be resolved.

28 2. The impossibility for the notary to deliver a judgment or a decision: in principle, the notary has no judicial power over the parties. The notary may accompany and advise the parties, but cannot decide in their place.

29 However, after this round table, perhaps all of this is no longer so simple and the limits are no longer so clear:

30 - The notary may act as a “certified” mediator, as in Austria, which presupposes the existence of a prior conflict. Thanks to his or her qualities as a “magistrate of conciliation”, the notary resolves the conflict and prevents it from reaching the judge.

31 - The notary may be required to safeguard the best interests of the child and to refuse the spouses a divorce if those interests are not sufficiently respected, as in Romania.

32 - The notary may also, as in Italy, authorise or refuse acts on behalf of minors or of adults under guardianship.

33 Dejudicialisation therefore changes the rules of the game and alters the role of legal actors, and in particular of the notary.

34 Society evolves, the law evolves, judicial control with it and, no doubt, notarial functions too. This movement of dejudicialisation gives the notary the opportunity to occupy a place, perhaps a different one.

35 This is what we shall see as we go into the detail of the various themes.

* * *

36 As was to be expected, we opened the Academy with the subject of the protection of vulnerable persons and, in particular, with the future protection mandate, an instrument already well known in notarial circles.

37 Half of the countries of the Commission for European Affairs (CAE) have incorporated this instrument into their legislation.

38 The regimes can vary considerably from one country to another.

39 In some, the mandate takes the form of a power of attorney that remains in force despite the principal’s loss of capacity (for example, in Germany); in others, the mandate takes effect only from the loss of capacity (as in France). In Andorra, Spain and Belgium, both forms are possible.

40 Poland will soon join the list of countries that have this type of mandate: a reform is being adopted there, and its regime has been inspired by the French mandate, although, it must be said, with some improvements.

41 - The Polish mandate will, first of all, have to be granted before a notary, as in 75% of the CAE countries that have this type of mandate.

42 [In France, the notarial form is not, in theory, mandatory, since the future protection mandate may also be granted by private instrument. In that case, however, the mandate has a very limited scope, as it will only allow the agent to carry out administrative formalities. In practice, therefore, the mandate is almost always granted before a notary; otherwise, it is of little use.]

43 - Another advantage of the Polish mandate over the French one is its publicity regime. Every mandate received by the notary will be entered in a specific register, created and administered by the Polish Notariat. This is also the case, for example, in Belgium, where registration of the mandate is even mandatory on pain of nullity.

44 - In the Polish reform bill, the role of the notary will not, moreover, be limited to the stage of drafting the mandate; it will also fall to the notary to establish that the mandate has taken effect, in the light of the medical certificates attesting to the impairment of the principal's faculties.

45 In France, dejudicialisation is not complete at this stage, since the medical certificate must be registered at the court registry.

46 In this respect the Polish mandate has drawn more on the Andorran mandate, or even on the Spanish one.

47 As Joan Carles Miñana explained to us, in Andorra the law provides that it is for the principal to determine the time and the circumstances in which the mandate takes effect. To that end, provision may be made for a notarial act to be issued which, in addition to the "notarial judgment" (that is, the notarial assessment), includes an expert report confirming the need to put the mandate into practice. The same is true in Spain, where the notary may also be entrusted with the task of activating the mandate himself or herself.

48 Is a first step not being taken here towards the "judicial" function of the notary?

49 Beyond advice on the drafting of the mandate, the framing of the regime, the verification of the free and informed consent of the parties and the legality of the agreement, the notary is asked to activate the mandate, once the loss of capacity has been established.

50 In fact, the Spanish or Andorran notary acts here in a manner similar to the justice of the peace in Belgium, since in that country this function may be entrusted to the justice of the peace.

51 Of course, the notary is not the only one to take on this task; the notary will act in accordance with the medical opinion, but, even so, the legislature here relies on the notary's assessment to establish and confirm the loss of capacity.

52 Spain appears to be particularly advanced in this respect already. In Spain, as Mr Ignacio González pointed out, the notary has become the main institution of support for the vulnerable person, even before the judge: the notary helps the person to express his or her will and to exercise his or her rights. The judicial authority intervenes on a subsidiary basis, as a last resort.

53 In line with the recommendations of the United Nations, Spain has thus managed to change paradigm: it is no longer a matter of depriving the vulnerable person of his or her rights, but of supporting and helping that person in decision-making. And it is the notary who is responsible for this.

54 With the example of Italy, the convergence between the judge and the notary is even more striking.

55 For a short time now, the notary has taken on a function that can truly be described as judicial, consisting in authorising or not authorising an act in the interests of a vulnerable person or of a minor. Sale of a property, acceptance or renunciation of a succession… The judge's authorisation is no longer mandatory; it may also be granted by the notary in charge of the main act (this is a "dual track", as the lawyer Sabrina Belloni pointed out).

56 The notary will assess, in the light of the reasons put forward by the parties, whether the act is in the interests of the vulnerable person or of the minor (the notary will examine the need for the act and its appropriateness, including from an economic point of view, for the vulnerable person or minor in question). Sabrina Belloni told us that, in this case, the notary has a "power of investigation". And the notary may refuse to authorise the act if he or she is not "convinced" of its usefulness or appropriateness for the protected person. If the notary refuses, he or she must give reasons for the decision, just as a judge would!

57 Perhaps the French legislature will draw inspiration from this Italian reform to extend the scope of Article 507-1 of the Civil Code to acts other than the acceptance of a succession and to other persons, such as minors.

58 This task would entail a much greater responsibility for the notary, an assessment of the appropriateness of the act and of the interests of the family and of the minor, but this would not be something entirely new:

59 With the reform of the change of matrimonial property regime and the almost systematic disappearance of court approval, it now seems to fall to the notary to assess the interests of the family and of minor children.

60 However, this function has not been given to the French notary in matters of divorce.

61 In the French divorce "without a judge", the notary ultimately only confirms, after a review of legality, an agreement freely negotiated by the spouses, but is not required to advise the spouses or to verify the balance of the agreement.

62 Yet this form of out-of-court divorce is permitted even where there are minor children. And the child will be heard by the judge only if he or she so requests. The lack of a systematic assessment of the best interests of the child by a public authority has, as Stéphane David showed, given rise to difficulties in having the divorce recognised abroad.

63 Romania has managed to overcome these difficulties by giving the notary a central role in matters of divorce and particularly broad functions. When entrusted with the divorce, the notary is in fact the only authority that guarantees the balance of the agreement: the notary replaces both the judge and the

lawyers! The presence of lawyers is not mandatory and, according to the lawyer Rosenberg, is not even necessary.

64 Above all, in Romania the notary is the guarantor of the best interests of the child. If the spouses' agreement is not in the best interests of the child, the notary will refuse to formalise it.

65 In conclusion, this round table demonstrates the confidence of the public authorities in the notarial profession, and that is a cause for satisfaction. For, although these new powers entail more risks for the notary, although they increase the notary's responsibility, although they complicate the notary's work, they are proof of the State's trust and a guarantee of the profession's continuity.

66 If the transfer of powers is frequently made to the notary, and not to another authority, it is because the notary combines the qualities sought by the public authorities for performing these non-contentious tasks:

- The notary is a public official, to whom public authority is delegated.
- The notary is a legal professional.
- The notary is impartial and independent.

67 It should also be stressed that this transfer of powers to the notary is not made "by default" or "for want of a better option". On the contrary, it is genuinely useful for the public service of justice and brings real advantages for the State and for citizens, as the speakers emphasised on several occasions.

68 Benefits for the citizen: the various experiences presented during the round table demonstrate them:

69 Advantages in terms of time and deadlines (the procedure before the notary is much shorter than before the judge).
And even advantages in terms of cost (the Romanian divorce shows this: no lawyer is needed, only one professional in charge of the procedure, the notary, whose cost is set by a fee scale — that is another subject, but the existence of a fee scale is undoubtedly an argument for obtaining new powers, since it guarantees the citizen access to the public service at a reasonable price —). The advantage of receiving impartial advice from a trusted third party. An advantage in terms of confidentiality. The advantage of having to turn to only one person for several formalities (for example, in Romania, the Romanian notary deals with the divorce agreement, the agreement on the exercise of parental authority, compensatory allowances, the liquidation of the matrimonial property regime and the division of property).

- Usefulness for the State: this transfer relieves the burden on the courts and guarantees social peace. "More notaries, fewer conflicts before the courts", as our President and moderator, Valentina Rubertelli, has often recalled.

RECOMMENDATIONS OF THE COMMISSION FOR EUROPEAN AFFAIRS OF THE UINL TO THE MEMBER NOTARIATS

70 Following the Notarial Academy held in Paris on 5 June 2025, on the theme “Dejudicialisation: new horizons for the protection of individuals and families”

71 In order to take on new powers in non-contentious matters, the President of the Commission for European Affairs of the UINL proposes the following recommendations to the member notariats:

- Highlight the notary’s status as a public official. Like the judge, the notary is appointed by the State, is under its supervision, and the acts the notary authenticates enjoy authenticity.
- Encourage the initial and continuing training of notaries so that they can take on new powers in all fields, in particular in the law of persons and family law.
- Use the existence of the notarial fee scale as an additional argument with political decision-makers for taking on new powers: it guarantees the citizen access to the public service at a reasonable price, set by the State.
- Highlight the importance and the need for advice to the parties: the autonomy granted to them to establish their agreements makes indispensable the intervention of a qualified professional who informs them of the legal rules, the options available to them and the consequences of those options.
- Recall the independence and impartiality of the notary: “The latitude granted to the will of the parties naturally falls within a framework free of disputes, and the advice to be given must not create difficulties; impartiality is therefore fundamental in the assistance given in drafting contracts, which replace judgments in dejudicialised fields”.
- Highlight the need to maintain the presence of a public authority for the review of legality: “The correct application of the law by the parties, on the one hand, and the review of compliance with that law in contracts, on the other, argue for a review and verification of these contracts from the moment they are signed (ex ante) and not through subsequent litigation (ex post) fed by a badly drafted contract or an incorrect application of the law”.

72 Beyond a review of legality, and in particular as regards agreements in the law of persons and family law, the notary is also in a position to assess the interests of the family, the interests of minors and even, more generally, those of vulnerable persons, where the law so provides.

- Highlight the characteristics and advantages of the notarial authentic instrument:

73 “Probative and enforceable force: Since the aim here is to propose a substitute for the judicial decision, unsurpassable probative force and enforceability, conceived in the image of judgments delivered at last instance, immediately appear as the perfect attributes for maintaining the quality of the act (instrumentum) that replaces the judgment.

74 Entry in public registers: Many judicial decisions are intended to be entered in public registers relating to the civil status of persons (adoption, recognition of filiation, divorce, registered partnerships, etc.), and admitting to those registers acts bearing only a private signature, in place of judgments, would only

greatly undermine the security expected of such registers. Here again, the notarial act appears able to replace the judicial decision with the same level of security.

75 Preservation: The security reasons inherent in these same acts make it indispensable that their preservation be guaranteed; the notarial act carries this legitimate requirement in its very essence".

STUDY

Study by the Commission for European Affairs (CAE) of the International Union of Notaries · 2025

Notarial competences in non-contentious matters

What the notary does in 33 European countries, competence by competence

Under the responsibility of notary Bertrand Basseville (France) and the Presidency of the CAE, held by notary Valentina Rubertelli (Italy)

57 min read Original language: Spanish

Introduction

1 Settlements, mediation, conciliation, divorce without a judge, lasting powers of attorney (...): in barely a decade, notaries have been entrusted with many new areas of competence.

2 These new competences, in non-contentious matters, are the result of a phenomenon that began several years ago, known as “dejudicialisation” or the transfer of competences from judges to notaries, which has led to a new distribution of tasks between the two professions.

3 The aim is to relieve the courts of certain non-judicial tasks that can be performed by another public authority with the same legitimacy as the courts. To that end, notaries quickly proved to be a particularly suitable solution: as holders of a public office, legal professionals and impartial and independent third parties, they are perfectly capable of “replacing” the courts, provided there are no disputes to be resolved.

4 Notaries have therefore become actors in the out-of-court resolution of conflicts, mediators, court clerks and judicial officers in non-contentious matters, and the Commission for European Affairs wished to carry out a thorough study of these new functions taken on by notaries.

5 The aim is to draw up an inventory of notarial competences in the various European member countries of the UINL and, by comparison, to identify possible areas of development in non-contentious matters for each notariat.

6 **Thirty-three countries** responded to our survey, the results of which are presented in two ways.

7 The **first part** examines and summarises the results of the various questionnaires collected. It highlights the areas most suited to the transfer of competences to notaries (divorce, the law on vulnerable persons, company law, succession law, property law, the law of persons, etc.). The study distinguishes between:

- **The competences that notaries have long held**, in which they are the "natural" authority or the experts in the field. These include succession law (notaries draw up the deed of notoriety or the certificate of inheritance in 80% of European notariats), the matrimonial property regime (80% of European countries entrust notaries with the task of drawing up marriage contracts or changing the spouses' matrimonial property regime) and company law (in more than half of European countries, notaries are the authorities responsible for forming and registering legal persons).
- **These are more recent areas of competence for the notariat,** but ones in which more and more non-judicial tasks are being assigned to notaries. Divorce is an excellent example: 32% of European countries have already introduced divorce before a notary, whereas twenty years ago it was practically unknown. The law on vulnerable persons is also an area perfectly compatible with notarial competences. "Lasting powers of attorney", "powers of representation", *the "mandat de protection* future" or *"preventive* powers of attorney" have developed considerably over the last twenty years under the impetus of the notariat, and a growing number of legislatures, both European and non-European, are taking an interest in this model.
- **Notarial competences "under development"**: these have been given to notaries in only a few countries, but they are likely to develop, since they are particularly well suited to the notarial function. This is the case, for example, of marriage. In Europe, only the notaries of Spain and Andorra can marry spouses, whereas in Latin America notaries often share this responsibility with civil registrars. Few countries provide for notaries also to take on certain tasks relating to the law of persons or filiation. Yet notaries are particularly well placed to obtain the consent of the parties and to ensure that it is "free and informed" (in 23% of the countries surveyed, notaries are competent to obtain consent in matters of assisted reproduction; in 15%, they obtain consent to adoption; and in fewer than 3%, they carry out voluntary changes of first name, surname or gender in the civil register).

8 In these examples, notaries replace the courts or offer an alternative solution. The trend towards dejudicialisation has also given the notary another function, that of accompanying the judge as a legal assistant (the function of notary as "clerk", notary as "expert" before the court, etc.). Sometimes notaries also intervene before or at the same time as the dispute, in order to resolve conflicts: in 24% of the countries surveyed, notaries act as mediators or conciliators.

9 All these tasks assigned to the notary pursue the same aim: to allow the courts to concentrate on their main judicial function, by relieving them of tasks that can be carried out by an equally legitimate authority, since the State has placed its trust in it.

10 Lastly, the **second part** of the study takes the form of an Excel table [1] . It identifies, in each country, the competent authority that carries out each of the **66 non-contentious tasks** we have identified. The aim of this second part is therefore more pragmatic: it will be useful to notaries in their daily practice for identifying a European counterpart to whom they can turn for a specific matter.

11

A notariat that broadens its competences is a notariat that its users recognise as useful.

The aim of this report is to help all notariats to move in this direction.

[12] Bertrand Basseville

[13] Vice-President of the CAE

[14] *Head of the CAE study on dejudicialisation*

[15] Sophie Potentier Ríos

[16] *Legal adviser of the UINL*

[17] The Commission for European Affairs wishes to thank the delegates of *Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Kosovo, Latvia, Lithuania, London (United Kingdom), Luxembourg, North Macedonia, Malta, Montenegro, the Netherlands, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey and Ukraine,* who responded to our survey and contributed to this study.

[18] Special thanks also go to the two students of the Master 2 in International Notarial Law at the University of Lyon 3 (France), **Mae Row and Jessica de Betono**, who took part in the data collection, the summary and the layout.

VULNERABLE PERSONS

Opening of a protective measure for a vulnerable adult

[19] The countries in which notaries are competent to adopt a protective or support measure for a vulnerable adult are:

- Austria
- Spain
- Romania

[20] In other words, in **9.1% of the European countries that responded to our survey.** This includes:

- The only country in which notaries have **exclusive competence**: Romania, that is, **33.3% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Austria and Spain, that is, **66.7% of the countries with notarial competence.**

[21] This competence is rarely "dejudicialised". It can, however, be removed from the court system, since some countries have entrusted the notary with shared competence, and one country has even given the notary exclusive competence.

[22] Where the notary has been given shared competence, the other authority with which the notary shares that competence is the judge.

Opening of a protective measure for a vulnerable minor

23 There is no country in which notaries are competent to adopt protective measures for vulnerable minors.

Appointment of a representative for vulnerable adults

24 The countries in which notaries are competent to appoint a representative or assistant for the vulnerable adult in order to perform the functions of guardianship or curatorship, when the protective measure is opened, are:

- Albania
- Austria
- Spain
- The Czech Republic
- Romania

25 In other words, in **14.7% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania and Romania, that is, **40% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Austria, Spain and the Czech Republic, that is, **60% of the countries with notarial competence.**

26 This competence is rarely "dejudicialised". It can, however, be removed from the court system, since some countries have entrusted the notary with shared competence, or even exclusive competence. Where the notary has been given shared competence, the other authority with which the notary shares that competence is the judge.

Appointment of a representative for vulnerable minors

27 The countries in which notaries are competent to appoint a representative or assistant for the vulnerable minor in order to perform the functions of guardianship or curatorship, when the protective measure is opened, are:

- The Czech Republic
- Romania

28 In other words, in **5.9% of the European countries that responded to our survey.** This includes:

- The country in which notaries have **exclusive competence**: the Czech Republic, that is, **50% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Romania, that is, **50% of the countries with notarial competence.**

29 It is very rare for this competence to be removed from the court system. It can, however, be removed from it, since some countries have entrusted the notary with shared, or even exclusive, competence.

30 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the judge.

Authorisation to execute a deed on behalf of a vulnerable person



31 Authorisation to conclude a document on behalf of a vulnerable person

- Exclusive competence of the notary / exclusive competence of the notary
- Joint competence of the notary and another authority/shared competence of the notary

32 The countries in which notaries are competent to authorise the execution of a deed on behalf of a vulnerable person (for example, sale, acceptance or renunciation of an inheritance, etc.) where such authorisation is necessary are:

- Albania
- Spain
- Italy

33 In other words, in **9.1% of the European countries that responded to our survey.** This includes:

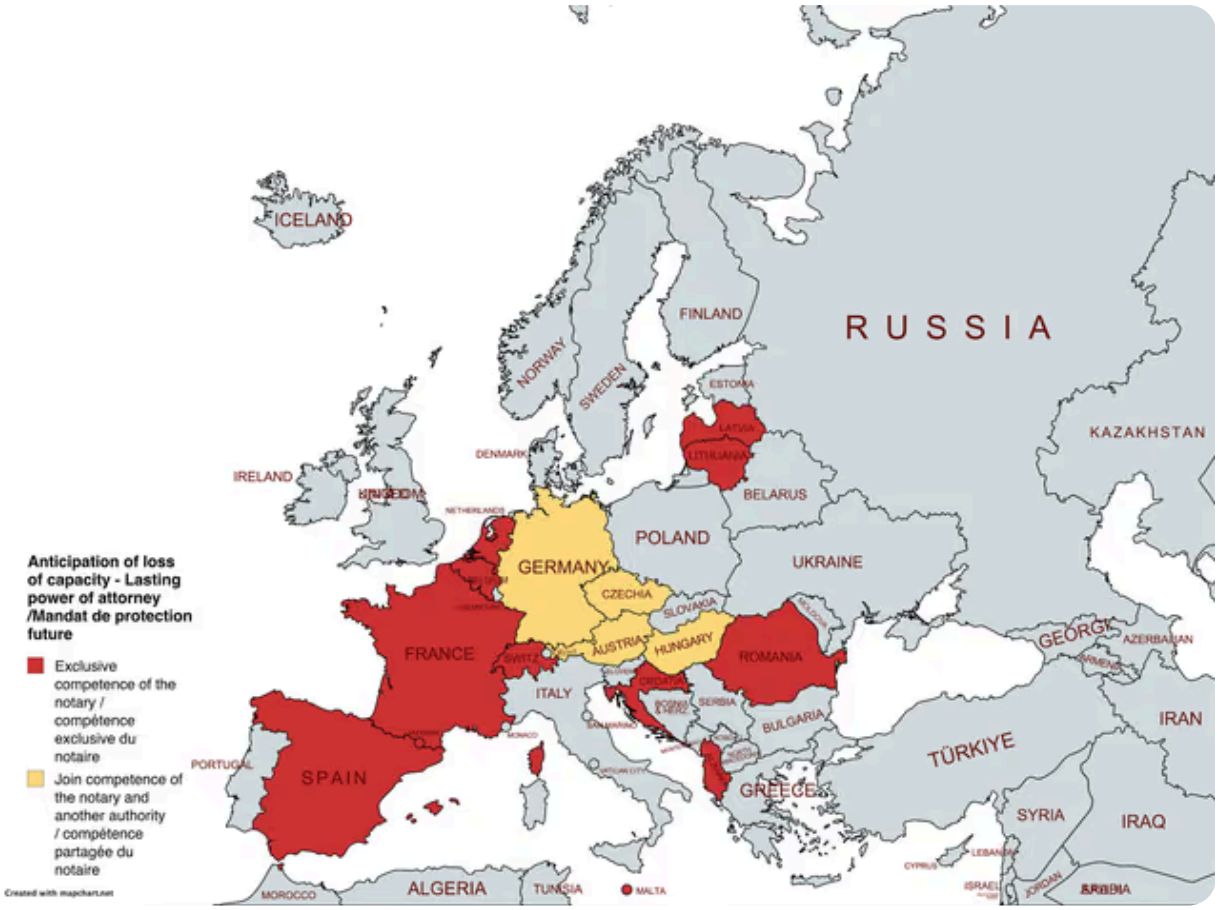
- The country in which notaries have **exclusive competence**: Albania, that is, **33.3% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Spain and Italy, that is, **66.7% of the countries with notarial competence.**

34 This competence is rarely removed from the court system. It can, however, be removed from it, since some countries have entrusted the notary with shared competence, and one country has even given the

notary exclusive competence.

35 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the judge.

Anticipating a future loss of capacity



36 Anticipation of loss of capacity - Lasting power of attorney / Future protection mandate

- Exclusive competence of the notary
- The notary's competence is combined with that of another authority.

37 The countries in which notaries are competent to adopt a preventive measure in order to anticipate a future loss of capacity (powers of representation such as the lasting power of attorney) are:

- Albania
- Germany
- Andorra
- Austria
- Belgium
- Croatia
- Spain
- France
- Latvia
- Lithuania
- Malta
- The Netherlands
- The Czech Republic
- Romania
- Switzerland
- Hungary

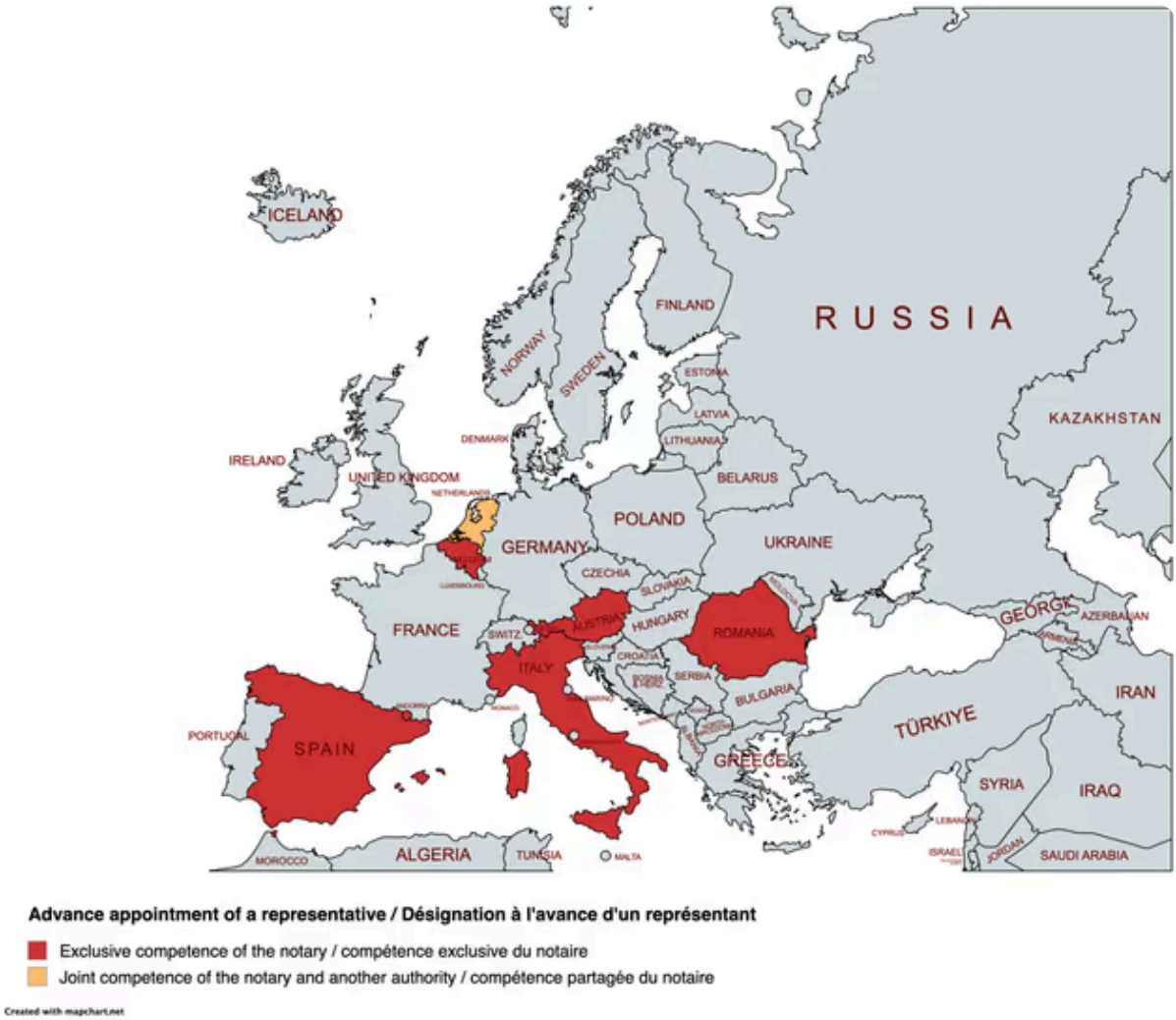
38 In other words, in **48% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Belgium, Croatia, France [2] , Latvia, Lithuania, Malta, the Netherlands, Romania, Spain and Switzerland, that is, **75% of**

the countries with notarial competence.

- The countries in which notaries have **shared competence**: Germany, Austria, Hungary and the Czech Republic, that is, **25% of the countries with notarial competence.**

Advance designation of a representative



39 Advance appointment of a representative

- Exclusive competence of the notary / exclusive competence of the notary
- Joint competence of the notary and another authority/shared competence of the notary

40 The countries in which notaries are competent to designate or exclude in advance a specific person to act as curator or guardian are:

- Andorra
- Austria
- Belgium
- Spain
- Italy
- The Netherlands
- Romania

41 In other words, in **20.6% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Andorra, Austria, Belgium, Spain, Italy and Romania, that is, **85.7% of the countries with notarial competence.**

- The country in which notaries have **shared competence**: the Netherlands, that is, **14.3% of the countries with notarial competence.**

42 This competence is rarely removed from the court system. It can, however, be removed from it, since some countries have entrusted the notary with shared, or even exclusive, competence.

43 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the judge.

Entry into force of the advance lasting power of attorney

44 The countries in which notaries are competent to decide on the entry into force of powers of representation (for example, the lasting power of attorney) at the time of the loss of capacity are:

- Andorra
- Austria
- Spain

45 In other words, in **9% of the European countries that responded to our survey.** This includes:

- The country in which notaries have **exclusive competence**: Andorra.
- The countries in which notaries have **shared competence**: Austria and Spain.

46 The notary is therefore rarely competent to "activate" the power of attorney at the time of the loss of capacity. This is usually done by the court ("greffe du tribunal" in France), the doctor or even the person who received the power of attorney (as in the Netherlands, for example).

Advance medical directives



47 Advance medical directives

- Exclusive competence of the notary
- Joint competence of the notary and another authority

48 The countries in which notaries are competent *to draw up advance directives on medical treatment* are:

- Andorra
- Austria
- Croatia
- Spain
- Hungary
- Italy
- Latvia
- The Netherlands
- Switzerland

49 In other words, in **27% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Austria, Croatia, Hungary, Latvia and the Netherlands, that is, **55% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Andorra, Spain, Switzerland and Italy, that is, **45% of the countries with notarial competence.**

50 Where the notary has been given shared competence, the other authority with which the notary shares that competence is usually the health-care staff, the hospital or the judge.

CIVIL STATUS

Change of surname or first name in the civil register

51 The country in which notaries are competent for the change of first name or surname in the civil register is:

- Estonia

52 In other words, in **2.9% of the European countries that responded to our survey.** This includes:

- No country gives the notary **exclusive competence**.
- The country in which notaries have **shared competence**: Estonia.

53 It should be noted that the notary is competent for the change of name only after a divorce. In other cases, competence lies with the civil registrar
and the judge.

Change of gender in the civil register

54 The country in which notaries are competent for the change of gender in the civil register is:

- Malta (in this case, the person may also change his or her first name in the same act).

55 In other words, in **2.9% of the European countries that responded to our survey.** This includes:

- The country in which notaries have **exclusive competence**: Malta.
- No country gives **shared competence**.

Emancipation of minors

56 The countries in which notaries are competent for the emancipation of minors are:

- Andorra
- Malta

57 In other words, in **5.9% of the European countries that responded to our survey.** This includes:

- The country in which notaries have **exclusive competence**: Andorra, that is, **50% of the countries with notarial competence.**
- The country in which notaries have **shared competence**: Malta, that is, **50% of the countries with notarial competence.**

58 It is very rare for this competence to be removed from the court system. It can, however, be removed from it, since one country has entrusted the notary with shared competence, while another country has entrusted the notary with exclusive competence.

59 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the court.

Declaration of absence

60 No country has entrusted notaries with the competence to issue declarations of the disappearance of persons.

Consent to organ donation



61 Consent to organ donation

- Joint competence of the notary and another authority
- Exclusive competence of the notary

62 The countries in which notaries are competent to receive consent to organ donation are:

- Andorra
- Armenia
- Bulgaria
- Croatia
- Kosovo
- Switzerland

63 In other words, in **18% of the European countries that responded to our survey.** This includes:

- The country in which notaries have **exclusive competence**: Andorra, that is, **17% of the countries with notarial competence.**

- The countries in which notaries have **shared competence**: Armenia, Bulgaria, Croatia, Kosovo and Switzerland, that is, **83% of the countries with notarial competence.**

64 Where the notary has been given shared competence, the other authority with which the notary shares that competence is usually the health-care staff.

LEGAL PERSONS

Formation and registration of legal persons



65 Formation and registration of legal persons

- Exclusive competence of the notary
- The notary's competence is combined with that of another authority.

66 The countries in which notaries are competent for the formation and registration of legal persons are:

- Andorra
- Austria
- Belgium
- Bulgaria
- Spain
- Estonia
- Germany
- France [3]
- Italy
- Kosovo
- Latvia
- Lithuania
- Luxembourg
- The Netherlands
- Poland
- Portugal
- The Czech Republic
- Slovakia
- Slovenia
- Switzerland
- Ukraine

- Hungary

67 In other words, in **66% of the European countries that responded to our survey.** This includes:

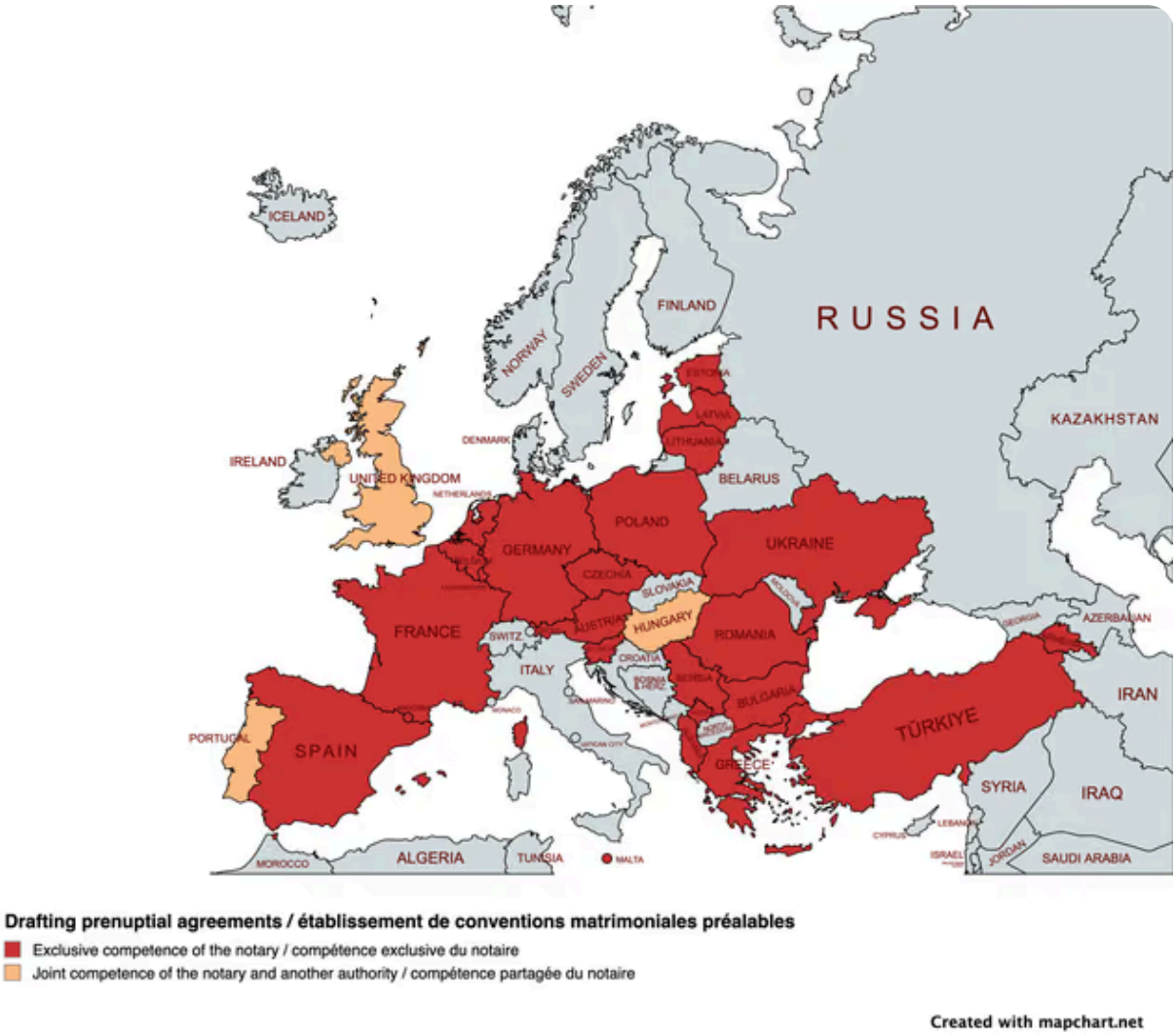
- The countries in which notaries have **exclusive competence**: Andorra, Italy, Germany, Belgium, Bulgaria, Spain, Slovenia [4], Kosovo, Luxembourg [5] and the Netherlands, that is, **45% of the countries with notarial competence.**
- The countries in which notaries have **shared or optional competence**: Austria, the Czech Republic, Estonia, Hungary, France, Latvia, Lithuania, Poland, Portugal, Slovakia, Switzerland and Ukraine, that is, **55% of the countries with notarial competence.**

68 This competence is fairly widespread and can therefore be removed from the court system, since some countries have entrusted the notary with shared, or even exclusive, competence.

69 Where the notary has been given shared competence, the other authorities with which the notary shares that competence are: the lawyer, the court, the party concerned and the commercial register. In many cases, the notary forms the company and the court registers it (Austria and Poland), or the notary forms the company and then sends the authentic instrument to the commercial register for registration (Germany). Where competence is shared with the party concerned, this may mean that it is the party concerned who forms the company and the notary who registers it (as in Ukraine), or that the notary is competent only if the party concerned is a foreigner (Estonia). It should be noted that in Latvia competence is shared, since the notary only has to authenticate the signature of the parties concerned. In France, notaries are competent for the formation of companies, but their involvement is optional.

MARRIAGE

Prenuptial agreements



70 Drafting of prenuptial agreements
--Exclusive competence of the notary

Joint competence of the notary and another authority/shared competence of the notary

71 The countries in which notaries are competent to draw up prenuptial agreements are:

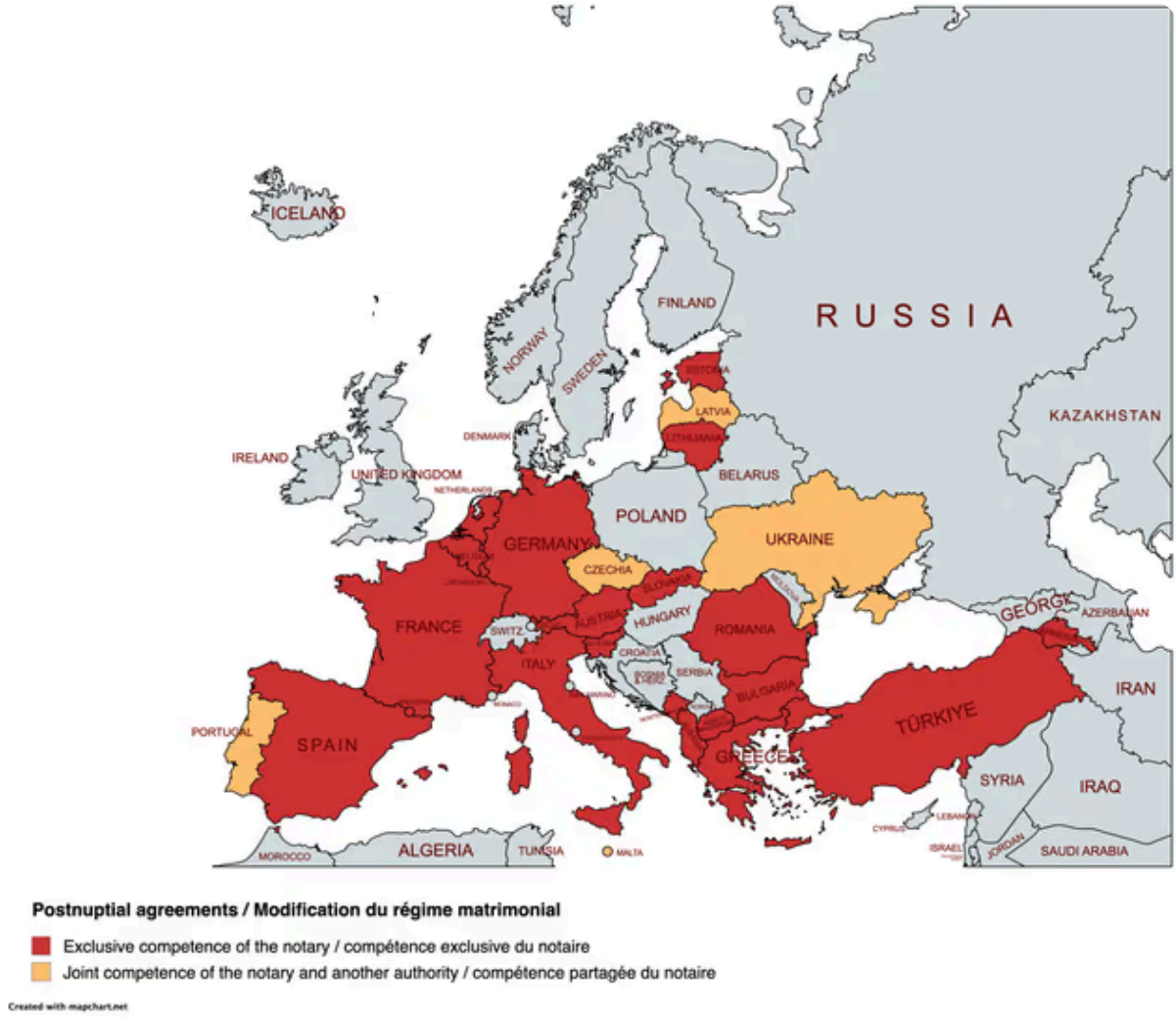
- Albania
- Germany
- Andorra
- Armenia
- Austria
- Belgium
- Bulgaria
- Spain
- Estonia
- France
- Greece
- Hungary
- Kosovo
- Latvia
- Lithuania
- The United Kingdom (London)
- Luxembourg
- Malta
- The Netherlands
- Poland
- Portugal
- The Czech Republic
- Romania
- Serbia
- Slovenia
- Turkey
- Ukraine

72 In other words, in **79.4% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Greece, Kosovo, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Romania, Serbia, Slovenia, Spain, Turkey and Ukraine, that is, **88.9% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Hungary, the United Kingdom (London) and Portugal, that is, **11.1% of the countries with notarial competence.**

73 This competence is usually "dejudicialised" in favour of notaries.

Change of matrimonial property regimes



74 Postnuptial agreements

- Exclusive competence of the notary
- Joint competence of the notary and another authority / shared competence of the notary

75 The countries in which notaries are competent to change the matrimonial property regime are:

- Albania
- Andorra
- Austria
- Germany
- Armenia
- Belgium

- Bulgaria
- Spain
- Estonia
- France
- Greece
- Italy
- Latvia
- Lithuania
- Luxembourg
- North Macedonia
- Malta
- Montenegro
- The Netherlands
- Portugal
- The Czech Republic
- Romania
- Slovakia
- Slovenia
- Switzerland
- Turkey
- Ukraine
- Hungary

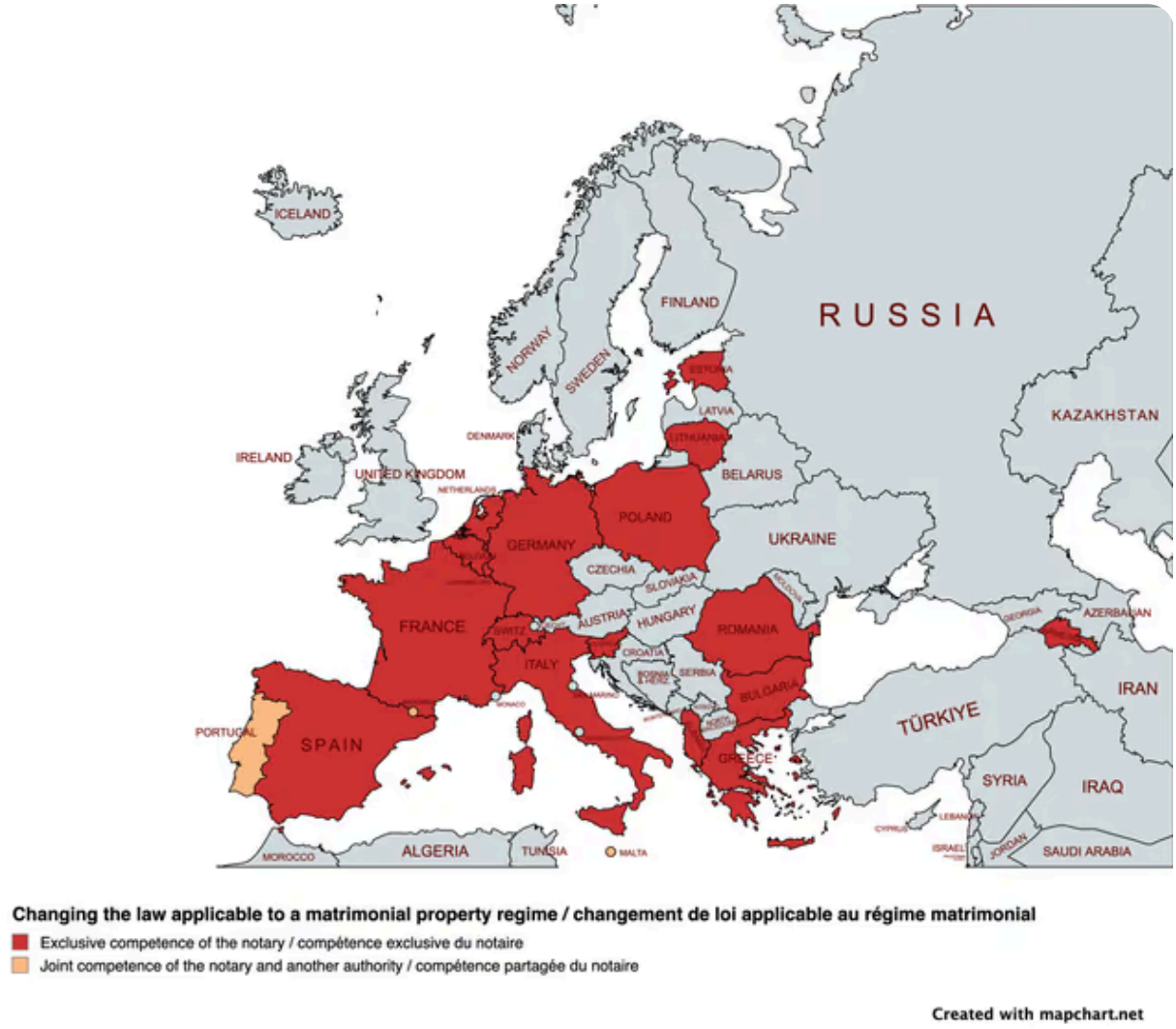
76 In other words, in **85% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, Estonia, France, Germany, Greece, Italy, Lithuania, Luxembourg, North Macedonia, Montenegro, the Netherlands, Romania, Slovakia, Slovenia, Turkey and Spain, that is, **78% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: the Czech Republic, Latvia, Malta, Portugal, Hungary and Ukraine, that is, **22% of the countries with notarial competence.**

77 This competence is usually "dejudicialised" in favour of notaries.

78 Where there is shared notarial competence, it is shared with the courts, judges and civil registrars. Where competence is shared with the judge, this may mean that the judge must approve the agreement (Malta)

Designation or change of the law applicable to the matrimonial property regime



79

Change of the law applicable to a matrimonial property regime

- Exclusive competence of the notary
- Joint competence of the notary and another authority

80

The countries in which notaries are competent to designate or change the law applicable to a matrimonial property regime are:

- Albania
- Germany
- Andorra
- Armenia
- Belgium
- Bulgaria
- Spain
- Estonia
- France
- Greece
- Italy
- Lithuania
- Luxembourg
- Malta
- The Netherlands
- Poland
- Portugal
- Romania
- Slovenia
- Switzerland
- Hungary

81 In other words, in **64% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Armenia, Belgium, Bulgaria, Estonia, France, Germany, Greece, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovenia, Spain and Switzerland, that is, **81% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Andorra, Hungary, Malta and Portugal, that is, **19% of the countries with notarial competence.**

82 This competence is usually "dejudicialised" in favour of notaries.

Celebration of marriages



83 Celebrating the marriage

Joint competence of the notary and another authority/shared competence of the notary

84 The countries in which notaries are competent to celebrate marriages are:

- Andorra
- Spain

85 In other words, in **5.9% of the European countries that responded to our survey.** This includes:

- There is no country in which the notary has **exclusive competence**.
- The countries in which notaries have **shared competence**: Andorra and Spain.

86 In Europe, this competence is not usually entrusted to notaries.

87 Where the notary has been given shared competence, the other authorities with which the notary shares that competence are the mayor, the civil registrar and the religious authority.

Formation of partnerships



88 Registering partnerships

- Exclusive competence of the notary
- Joint competence of the notary and another authority / shared competence of the notary

89 The countries in which notaries can form partnerships are:

- Andorra
- Spain
- Estonia
- France
- Greece
- Hungary
- Malta
- Latvia

90 In other words, in **24% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Spain, Estonia, Hungary, Latvia and Malta, that is, **62% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Andorra, France and Greece, that is, **38% of the countries with notarial competence.**

91 Where notarial competence is shared, the other authority is the civil registrars.

Dispensation in the event of an impediment to marriage

92 In no country are notaries competent to grant a dispensation in the event of impediments to marriage.

Certificate of the matrimonial property regime for the civil register

93 The countries in which notaries are competent to issue the certificate establishing the matrimonial property regime for entry in the civil register are:

- Andorra
- Belgium
- Bulgaria
- Spain
- Estonia
- France
- Hungary
- Latvia
- Luxembourg
- Malta
- The Netherlands
- Portugal
- Romania
- Serbia
- Slovakia
- Slovenia
- (Switzerland [6])

94 In other words, in **47% of the European countries surveyed.** This includes:

- The countries in which notaries have **exclusive competence**: Andorra, Belgium, Bulgaria, Estonia, France, Hungary, Luxembourg, the Netherlands, Romania, Serbia, Slovakia, Slovenia and Spain, that is, **81.25% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Latvia, Malta and Portugal, that is, **18.75% of the countries with notarial competence.**

95 This competence is usually “dejudicialised”

DIVORCE

Separation/divorce by mutual consent where there are minor children



96 Separations/divorces by mutual consent where there are minors.

- Exclusive competence of the notary
- Joint competence of the notary and another authority / shared competence of the notary

97 The countries in which notaries are competent for separations or divorces by mutual consent where there are minor children are:

- Estonia
- France
- Greece
- Latvia
- Malta [7]
- Montenegro
- Romania
- Slovenia

98 In other words, in **24% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Greece and Latvia, that is, **25% of the countries with notarial competence.**

- The countries in which notaries have **shared competence**: Estonia, France, Malta [8] , Montenegro, Romania and Slovenia, that is, **75% of the countries with notarial competence.**

99 This competence can be removed from the court system, since some countries have entrusted their notaries with shared, or even exclusive, competence.

100 Where the notary has been given shared competence, the other authorities that share that competence are the judge and the civil registrar
. In France, the notary is competent, but the judge will intervene if the minor so requests.

Separation or divorce by mutual consent where there are no minor children



101 Separations/divorces by mutual consent without minor children.

- Exclusive competence of the notary
- Joint competence of the notary and another authority

102 The countries in which notaries are competent for separations or divorces by mutual consent where there are no minor children are:

- Spain
- Estonia
- France

- Greece
- Latvia
- Lithuania
- Luxembourg
- Malta [9]
- Montenegro
- Romania
- Slovenia

103 In other words, in **32.4% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Greece, Latvia, Lithuania, Luxembourg, France and Slovenia, that is, **54.5% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Spain, Estonia, Malta [10] , Montenegro and Romania, that is, **45.5% of the countries with notarial competence.**

104 This competence can be "dejudicialised", since some countries have entrusted their notaries with shared, or even exclusive, competence.

105 Where the notary has been given shared competence, the other authority that shares that competence is the judge or the civil registrar. In Romania, the civil registrar is competent for divorces by mutual consent only where there are no minor children; where there are minor children, competence lies with the judge and the notary.

FILIATION

Recognition of paternity/maternity



106 Recognition of paternity or maternity

- Joint competence of the notary and another authority
- Exclusive competence of the notary

107 The countries in which notaries are competent for the recognition of paternity or maternity are:

- Andorra
- France
- Greece
- Hungary
- Italy
- Lithuania
- Malta
- Montenegro
- The Netherlands
- Poland
- Switzerland
- Turkey

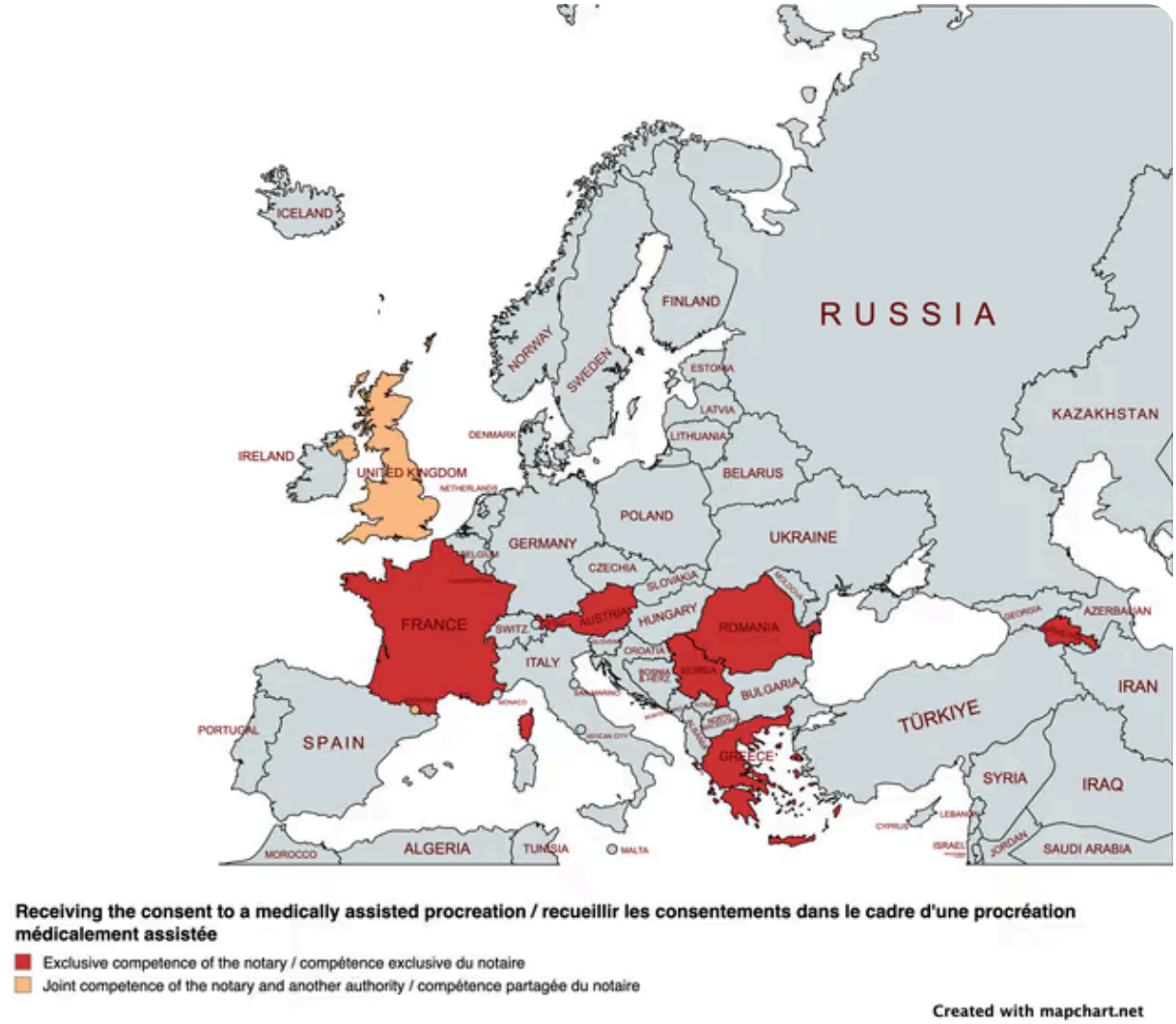
108 In other words, in **36% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Greece, that is, **8% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Andorra, France, Hungary, Italy, Lithuania, Malta, Montenegro, the Netherlands, Poland, Switzerland and Turkey, that is, **92% of the countries with notarial competence.**

109 This function can be excluded from the scope of the court system: some countries have entrusted it to the notary on a shared basis or have even given the notary exclusive competence.

Where competence is shared, the notary exercises it together with the judge, the civil registrar or the guardianship authority (Hungary)

Assisted reproduction



110 Obtaining consent to medically assisted reproduction.

- Exclusive competence of the notary
- Joint competence of the notary and another authority

111 The countries in which notaries are competent *to receive consent to medically assisted reproduction* are:

- Andorra
- Armenia
- Austria
- France
- Greece [11]
- The United Kingdom (London)
- Romania
- Serbia

112 In other words, in **23.5% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Armenia, Austria, France, Greece, Romania and Serbia, that is, **75% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Andorra and the United Kingdom (London), that is, **25% of the countries with notarial competence.**

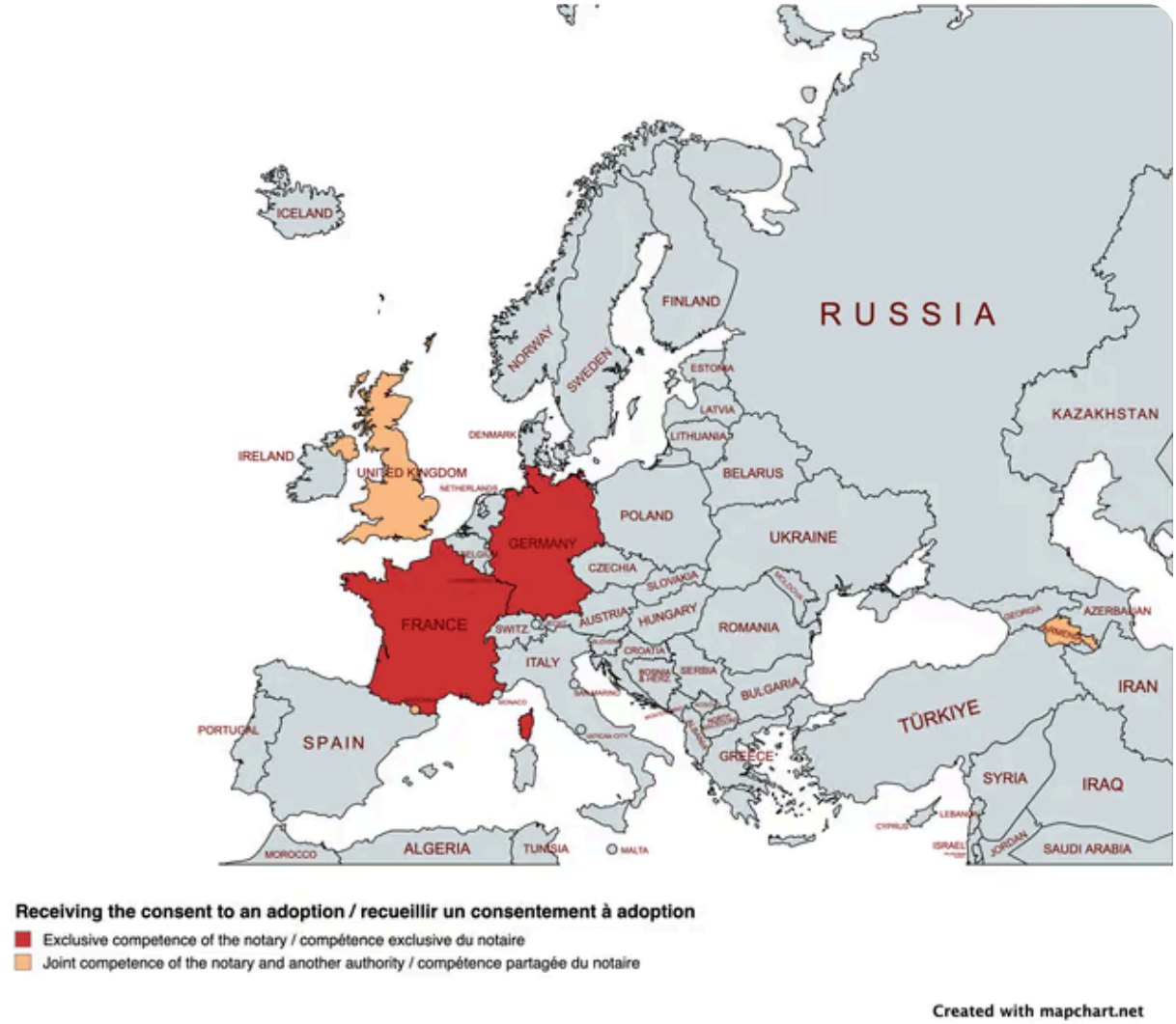
113 Consequently, this function can be excluded from the judicial sphere, and several countries have entrusted it to the notary, on a shared or even exclusive basis.

114 Where this function is separated from the court system, the notary shares it with the civil registrar or, for example, with the lawyer (in the United Kingdom).

Granting of adoption

115 There is no country in which notaries are competent to authorise an adoption.

Receiving consent to adoption



116 Receiving consent to adoption

- Exclusive competence of the notary

Joint competence of the notary and another authority/shared competence of the notary

117 The countries in which notaries are competent to receive consent to an adoption:

- Germany
- Andorra
- Armenia
- The United Kingdom (London)
- France

118 In other words, in **14.7% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Germany and France, that is, **40% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Andorra, Armenia and the United Kingdom (London), that is, **60% of the countries with notarial competence.**

119 This function is rarely excluded from the judicial sphere. It can, however, be excluded from that sphere, given that some countries have entrusted it — on a shared or even exclusive basis — to the notary.

120 Where this function is shared, the authority that shares it with the notary is the civil registry, the social services or the lawyer (in the United Kingdom).

Establishing de facto guardianship

121 The countries in which notaries are competent *to draw up a deed establishing de facto guardianship (in respect of a minor, a vulnerable adult...)* are:

- Albania
- Andorra
- Armenia
- Croatia
- Spain
- Hungary

122 In other words, in **17.6% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Croatia and Spain, that is, **66.6% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Armenia and Hungary, that is, **33.3% of the countries with notarial competence.**

123 Consequently, this competence can be removed from the court system and assigned to the notary, who may exercise it on an exclusive or shared basis.

Establishing possession of status

124 The only countries where notaries are authorised to establish possession of status are Spain and France, which represents 5.9% of the European countries that responded to the survey. Neither of these countries gives notaries exclusive competence.

125 In these two countries — Spain and France — notaries therefore share the competence.

126 It should be noted that 38.2% of the European countries that responded to the survey do not recognise possession of status. Where this concept exists, possession of status may be established by a notary or by

a judge.

Setting or changing maintenance

127 The countries where notaries are competent to establish, set and review maintenance are:

- Belgium
- Lithuania

128 This represents 5.9% of the European countries that responded to the survey. Neither of these countries gives notaries exclusive competence.

129 In Belgium and Lithuania, notaries therefore exercise shared competence.

130 Where competence is shared, the notary shares it with the judge or the court.

Decision on the administration of community property where one of the spouses lacks capacity

131 No country recognises notaries as competent to take a decision on the administration of community property where a spouse is unable to express his or her will.

SUCCESSIONS

Settlement of successions

132 The countries in which notaries are, in general, competent for the settlement of successions are:

- Andorra
- Armenia
- Austria
- Croatia
- Spain
- Estonia
- France
- Hungary
- Italy
- Latvia
- Lithuania
- Luxembourg
- North Macedonia
- Malta
- Montenegro
- Poland
- Portugal
- Romania
- Serbia
- Slovakia
- Switzerland
- Ukraine

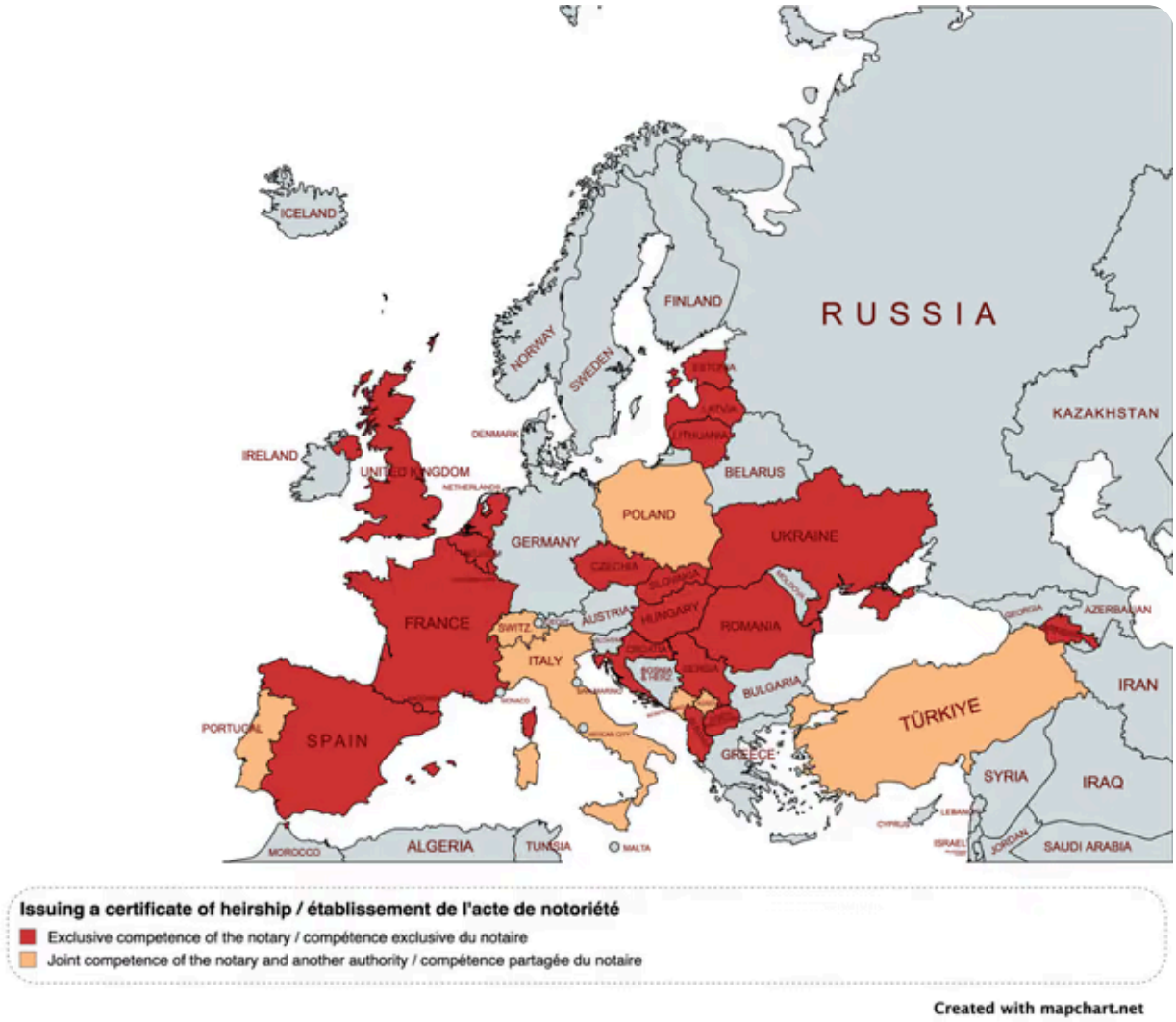
133 In other words, in **67% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Andorra, Armenia, Croatia, France, Hungary, Lithuania, Luxembourg, North Macedonia, Malta [12] , Montenegro, Romania, Serbia, Slovakia, Spain and Ukraine, that is, **73% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Austria, Italy, Latvia, Switzerland, Poland and Portugal, that is, **27% of the countries with notarial competence.**

134 Most of this competence has been “dejudicialised”

135 Where the notary has been given shared competence, the other authority with which the notary shares that competence is usually the judge or the civil registrar.

Certificate of heirship / Deed of notoriety



136 Issuing a certificate of inheritance

- Exclusive competence of the notary
- Joint competence of the notary and another authority/shared competence of the notary

137 The countries in which notaries are competent to issue a certificate of heirship or a deed of notoriety are:

- Albania
- Andorra
- Armenia
- Belgium
- Croatia
- Spain
- Estonia
- France
- Hungary
- Italy
- Kosovo
- Latvia
- Lithuania
- The United Kingdom (London)
- Luxembourg
- North Macedonia
- Montenegro
- The Netherlands
- Poland
- Portugal
- The Czech Republic
- Romania
- Serbia
- Slovakia
- Switzerland
- Turkey
- Ukraine

138 In other words, in **79.4% of the European countries that responded to our survey.** This includes:

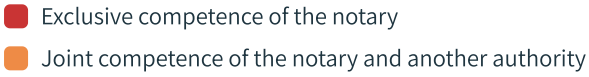
- The countries in which notaries have **exclusive competence**: Albania, Andorra, Armenia, Belgium, Croatia, the Czech Republic, Estonia, France, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, North Macedonia, Romania, Serbia, Slovakia, Spain, Ukraine and the United Kingdom (London), that is, **74.1% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Italy, Kosovo, Montenegro, Poland, Portugal, Switzerland (Vaud) and Turkey, that is, **25.9% of the countries with notarial competence.**

139 Very often this competence is dejudicialised and assigned to the notary.

Sometimes the notary shares this competence with a judge, a court or a civil registrar.

European Certificate of Succession (ECS)

140 Issuing European Certificates of Succession - European Certificate of Succession



141 The countries in which notaries are authorised to issue the European Certificate of Succession are:

- Austria
- Belgium
- Croatia
- Spain
- Estonia
- France
- Hungary
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Montenegro
- The Netherlands
- Poland
- Portugal
- The Czech Republic
- Romania
- Slovakia

142 In other words, in **76% of the European countries that responded to the survey and are familiar with the ECS.** This includes:

- The countries in which notaries have **exclusive competence**: Austria, Belgium, Croatia, Estonia, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Romania and Slovakia, that is, **68.4% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Spain, Malta, Montenegro, Poland, Portugal and the Czech Republic, that is, **31.6% of the countries with notarial competence.**

143 This competence is usually “dejudicialised” in favour of the notariat.

144 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the judge, the court or the civil registrar.

Inventory

145 The countries in which notaries are competent to draw up an inventory of assets are:

- Albania
- Germany
- Andorra
- Armenia
- Austria
- Belgium
- Croatia
- Spain
- France
- Greece
- Hungary
- Italy
- The United Kingdom (London)
- Luxembourg
- North Macedonia
- Malta
- The Netherlands
- Poland
- Portugal
- The Czech Republic
- Romania
- Serbia
- Slovakia
- Switzerland

146 In other words, in **72% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Germany, Armenia, Austria, Belgium, the Czech Republic, France, Greece, Hungary, Luxembourg, the Netherlands, Romania, Serbia and Slovakia, that is, **55% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Andorra, Croatia, Spain, Italy, Hungary, the United Kingdom (London), North Macedonia, Malta, Switzerland, Poland and Portugal, that is, **45% of the countries with notarial competence.**

147 This competence is usually "dejudicialised"; it is therefore capable of dejudicialisation.

148 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the judge, the court, the court clerk, the *solicitor*(London) or the bailiff. In Malta, for example, the notary is competent, but only with the prior authorisation of the judge.

Opening and registration of holographic wills

149 The countries in which notaries are competent for the procedure of opening and registering a holographic will are:

- Albania
- Germany
- Andorra
- Austria
- Belgium
- Croatia
- Spain
- Estonia
- France
- Hungary
- Italy
- Kosovo
- Latvia
- Lithuania
- The United Kingdom (London)
- Montenegro
- The Netherlands
- Poland
- Portugal
- The Czech Republic
- Romania
- Serbia
- Slovakia
- Switzerland
- Ukraine

150 In other words, in **75% of the European countries that responded to our survey and recognise holographic wills.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Austria, Belgium, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, the Netherlands, Portugal, Romania, Serbia, Slovakia, Spain and Ukraine, that is, **72% of the countries with notarial competence.**

- The countries in which notaries have **shared competence**: Croatia, Kosovo, Lithuania, the United Kingdom (London), Montenegro, Switzerland and Poland, that is, **28% of the countries with notarial competence.**

151 This competence is often "dejudicialised" in favour of the notary.

152 Where the notary has been given shared competence, the other authority with which the notary shares that competence is usually the court.

Opening and registration of mystic (secret) wills

153 The countries in which notaries are competent for the procedure of opening and registering secret wills are:

- Albania
- Germany
- Andorra
- Armenia
- Austria
- Belgium
- Bulgaria
- Croatia
- Spain
- Estonia
- France
- Hungary
- Italy
- Kosovo
- Latvia
- Lithuania
- The United Kingdom (London)
- North Macedonia
- Montenegro
- The Netherlands
- Portugal
- The Czech Republic
- Romania
- Serbia
- Ukraine

154 In other words, **75% of the European countries that responded to our survey and recognise mystic wills.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Armenia, Austria, (Belgium), Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Lithuania, Portugal, Romania, Serbia, Spain and Ukraine, that is, **76% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Croatia, Kosovo, the United Kingdom (London), North Macedonia, Montenegro and the Netherlands, that is, **24% of the countries with notarial competence.**

155 This competence is usually "dejudicialised" in favour of the notary.

156 Where this competence is removed from the court system, the authority that shares its competence with the notary is, as the case may be, the court, the *solicitor* (United Kingdom) or the judge. In the Netherlands, competence is shared between the notary and the judge, in that the notary registers the mystic will, but it is the judge who opens it.

Opening and registration of international wills

157 The countries in which notaries are competent to open and register international wills are:

- Albania
- Germany
- Andorra

- Austria
- Belgium
- Bulgaria
- Croatia
- Estonia
- France
- Hungary
- Italy
- Kosovo
- Latvia
- Lithuania
- The United Kingdom (London)
- Montenegro
- Portugal
- The Czech Republic
- Romania
- Slovakia
- Switzerland

158 In other words, **64% of the European countries surveyed recognise international wills.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Austria, Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Latvia, Portugal, Romania and Slovakia, that is, **71% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Croatia, Kosovo, Lithuania, the United Kingdom (London), Switzerland and Montenegro, that is, **29% of the countries with notarial competence.**

159 This competence is usually "dejudicialised" in favour of the notary.

160 Where the notary has been given shared competence, the other authority with which the notary shares that competence is usually the court.

Opening and registration of authentic/public wills

161 The countries in which notaries are competent to open and register authentic/public wills are:

- Albania
- Germany
- Andorra
- Armenia
- Austria
- Belgium
- Bulgaria
- Croatia
- Spain
- Estonia
- France
- Hungary
- Italy
- Kosovo
- Latvia
- Lithuania
- The United Kingdom (London)
- Luxembourg
- North Macedonia
- Malta
- Montenegro
- The Netherlands
- Poland
- Portugal
- The Czech Republic
- Romania
- Serbia
- Slovakia
- Switzerland
- Ukraine

162 In other words, in **90% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Kosovo, Latvia, Lithuania, Luxembourg, North Macedonia, Malta, the Netherlands, Portugal, Romania, Serbia, Slovakia, Spain and Ukraine, that is, **84% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Croatia, the United Kingdom (London), Montenegro, Switzerland and Poland, that is, **16% of the countries with notarial competence.**

163 This competence is usually “dejudicialised” in favour of the notary.

164 Where the notary has been given shared competence, the other authority with which the notary shares that competence is usually the court or the judge.

Opening and registration of oral wills

165 The countries in which notaries are competent to open and register oral wills are:

- Austria
- Hungary
- The Czech Republic
- Spain
- The United Kingdom (London)

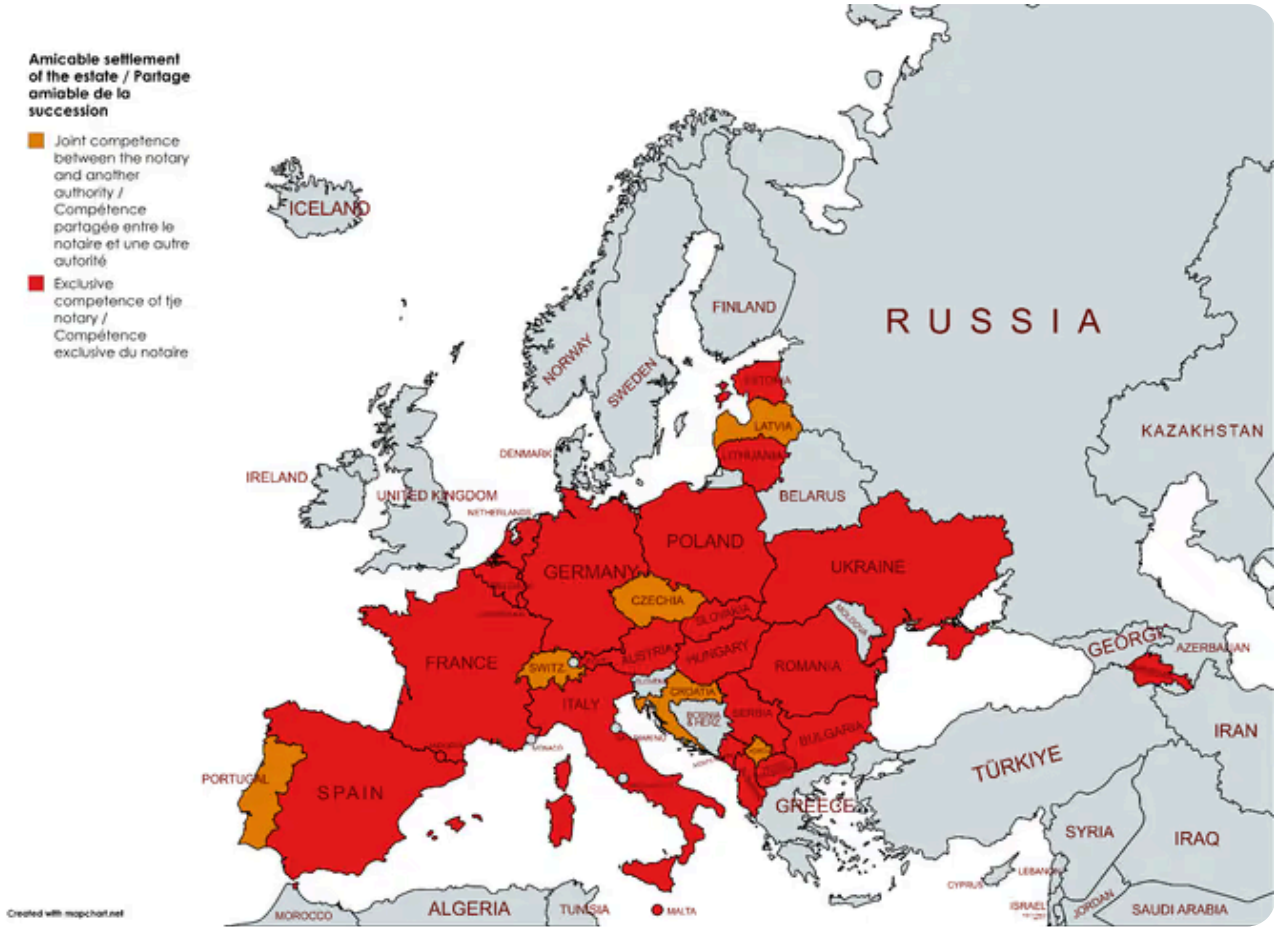
166 That is, in **31% of the European countries that responded to our survey and recognise oral wills.** Only **47.1% of the European countries surveyed are familiar with oral wills.** This includes:

- The countries in which notaries have **exclusive competence**: Spain, Hungary and the Czech Republic, that is, **60% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Austria and the United Kingdom (London), that is, **40% of the countries with notarial competence.**

167 This competence is rarely removed from the jurisdiction of the courts. It can, however, be taken out of the court system, since some countries have entrusted the notary with shared competence, or even exclusive competence.

168 Where the notary has been given shared competence, the other authority that shares that competence is the judge and the. In Austria, competence is shared between the judge and the notary, since the notary opens the oral will, but the judge decides on its validity.

Amicable settlement of the succession



169 Amicable division of the inheritance

- Joint competence of the notary and another authority
- Exclusive competence of the notary

170 The countries in which notaries are competent to settle amicably the division of the estate are:

- Albania
- Germany
- Andorra
- Armenia
- Austria
- Belgium
- Bulgaria
- Croatia
- Spain
- Estonia
- France
- Hungary
- Italy
- Kosovo
- Latvia
- Lithuania
- Luxembourg
- North Macedonia
- Malta
- Montenegro
- The Netherlands
- Poland
- Portugal
- The Czech Republic
- Romania
- Serbia
- Slovakia
- Switzerland
- Ukraine

171 In other words, in **88% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence** (in some cases, only as regards immovable property): Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, Estonia, France, Germany, Hungary, Italy, Lithuania, Luxembourg, North Macedonia, Malta, Montenegro, the

Netherlands, Poland, Romania, Serbia, Slovakia, Spain and Ukraine, that is, **80% of the countries with notarial competence.**

- The countries in which notaries have **shared or optional competence**: Croatia, Kosovo, Latvia, Portugal, Switzerland and the Czech Republic, that is, **20% of the countries with notarial competence.**

172 In many cases this competence is “dejudicialised” in favour of the notary

173 Where the notary has been given shared competence, the other authority that shares that competence with the notary is the court, the judge, the lawyer or the civil registrar.

Liquidation and division operations in the context of judicial division



174 Liquidation and division operations in the context of a judicial division

- Joint competence of the notary and another authority
- Exclusive competence of the notary

175 The countries in which notaries are competent to carry out liquidation and division operations as part of the judicial division of a succession are:

- Austria
- Belgium
- Spain
- France
- Italy
- Luxembourg
- The Netherlands
- Poland
- Portugal
- Slovakia
- Switzerland

176 In other words, in **33% of the European countries that responded to our survey.** This includes:

- The only country in which notaries have **exclusive competence**: Poland, that is, **9% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Austria, Belgium, Spain, France, Italy, Luxembourg, the Netherlands, Portugal, Switzerland and Slovakia, that is, **91% of the countries with notarial competence.**

177 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the judge, the court clerk and sometimes the lawyer. In Portugal, competence is shared between the judge and the notary, since the judge must approve the division of the assets and the liquidation is carried out by the notary.

Formal demand to exercise the succession option

178 The countries in which notaries are competent to require the heir to accept or renounce a succession are:

- Albania
- Austria
- Croatia
- Spain
- Estonia
- France
- Hungary
- Kosovo
- Latvia
- The United Kingdom (London)
- North Macedonia
- Malta
- Montenegro
- Poland
- Portugal
- The Czech Republic
- Romania
- Serbia
- Slovakia
- Ukraine

179 In other words, in **58.8% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Austria, the Czech Republic, Estonia, France, Hungary, Kosovo, Latvia, North Macedonia, Montenegro, Romania, Serbia, Slovakia, Spain and Ukraine, that is, **75% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Croatia, the United Kingdom (London), Poland, Malta and Portugal, that is, **25% of the countries with notarial competence.**

180 Most of this competence has been “dejudicialised” in favour of notaries.

Declaration of acceptance with the benefit of inventory

181 The countries in which notaries are competent to receive a declaration of acceptance with the benefit of inventory (up to the net value of the assets) are:

- Albania
- Andorra
- Armenia
- Austria
- Belgium
- Spain
- Estonia
- France
- Hungary
- Italy
- Latvia
- Lithuania
- The United Kingdom (London)
- North Macedonia
- Montenegro
- Poland
- The Czech Republic
- Serbia

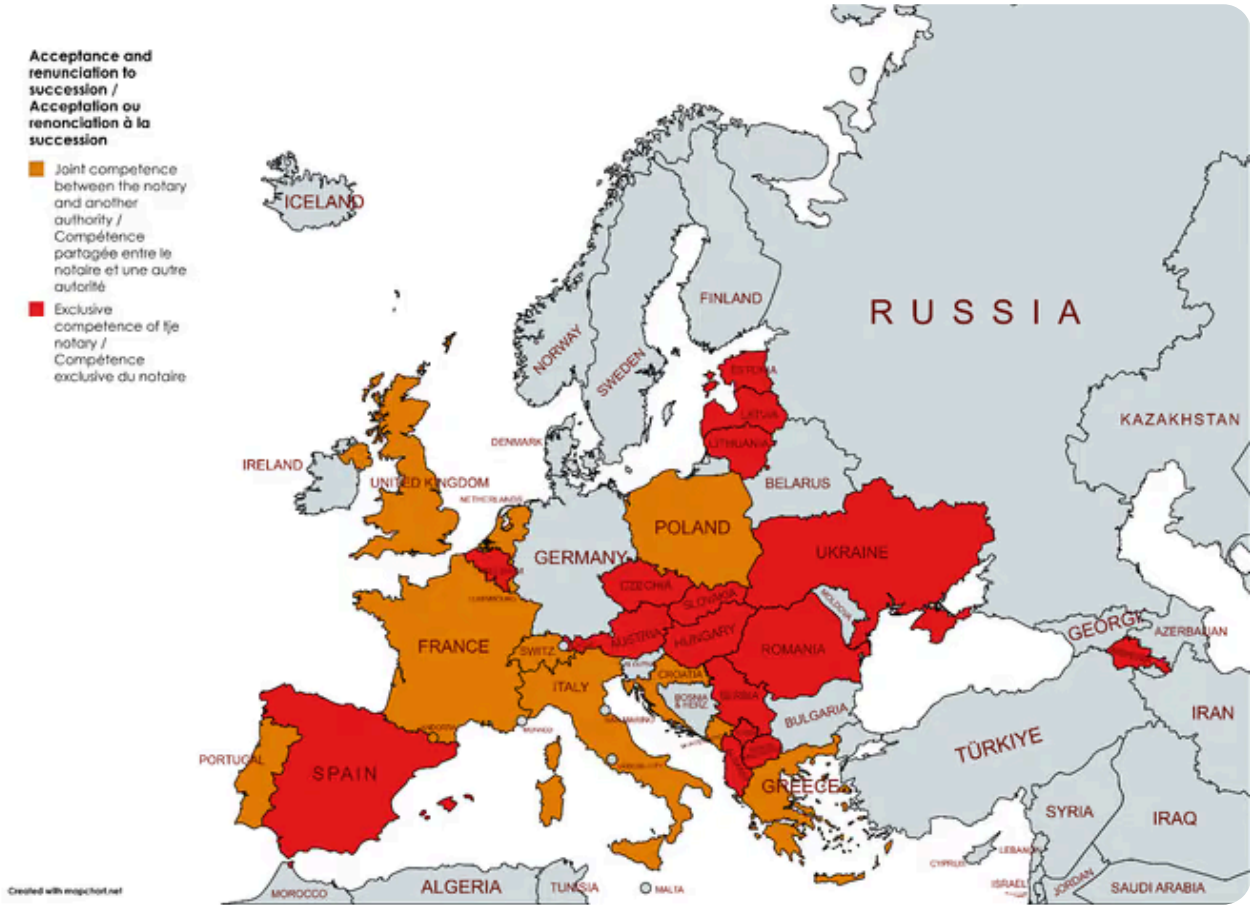
- Slovakia

182 In other words, in **55.9% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Armenia, Austria, Belgium, the Czech Republic, Estonia, France, Hungary, Latvia, Lithuania, North Macedonia, Serbia, Slovakia and Spain, that is, **78.9% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Italy, the United Kingdom (London), Montenegro and Poland, that is, **21.1% of the countries with notarial competence.**

183 Most of this competence has been "dejudicialised" in favour of notaries.

Formalising acceptance or renunciation of the succession



184 Acceptance and renunciation of the succession

- Joint competence of the notary and another authority
- Exclusive competence of the notary

185 The countries in which notaries are competent to receive a declaration of acceptance or renunciation of the succession are:

- Albania
- Andorra
- Armenia
- Austria
- Belgium
- Croatia
- Spain
- Estonia
- France

- Greece
- Italy
- Hungary
- Kosovo
- Latvia
- Lithuania
- The United Kingdom (London)
- North Macedonia
- Malta
- Montenegro
- The Netherlands
- Poland
- Portugal
- The Czech Republic
- Romania
- Serbia
- Slovakia
- Switzerland
- Ukraine

186 In other words, in **85% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Armenia, Austria, Belgium, the Czech Republic, Estonia, Hungary, Kosovo, Latvia, Lithuania, North Macedonia, Romania, Serbia, Slovakia, Spain and Ukraine, that is, **57% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Andorra, Croatia, Greece, Italy, the United Kingdom (London), France, Malta, Montenegro, the Netherlands, Switzerland, Poland and Portugal, that is, **43% of the countries with notarial competence.**

187 This competence is often dejudicialised in favour of notaries.

188 Where the competence is dejudicialised, the authority that shares that competence with the notary is, as the case may be, the judge, the court, the civil registrar or the solicitor (United Kingdom). In Greece [13] and the Netherlands, competence is shared, since the notary is competent in the event of acceptance, but the judge or the court is competent in the event of renunciation.

Formalising acceptance or renunciation of the office of executor

189 The countries in which notaries are competent to receive the acceptance or renunciation of the office of executor are:

- Albania
- Andorra
- Armenia
- Austria
- Belgium
- Croatia
- Spain
- Estonia
- France
- Hungary
- Portugal
- The United Kingdom (London)
- The Netherlands
- The Czech Republic
- Romania
- Serbia
- Slovakia
- Ukraine

190 In other words, in **55% of the European countries surveyed.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Armenia, Belgium, the Czech Republic, Estonia, France, Hungary, the Netherlands, Romania, Serbia, Slovakia and Ukraine, that is, **72% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Austria, Croatia, Spain and the United Kingdom (London), that is, **28% of the countries with notarial competence.**

191 In half of the European countries that responded to the survey, this competence has been separated from the court system.

192 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the court, the court clerk or the lawyer (United Kingdom).

Supervision of the executor

193 The countries in which notaries are competent to supervise the performance of the executor's duties are:

- Albania
- Croatia
- France
- Hungary
- The United Kingdom (London)
- The Czech Republic
- Romania
- Slovakia

194 In other words, in **23.5% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, the Czech Republic, France, Hungary, Romania and Slovakia, that is, **75% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Croatia and the United Kingdom (London), that is, **25% of the countries with notarial competence.**

Revocation of the appointment of the executor

195 The countries in which notaries are competent to revoke the appointment of the executor are:

- Albania
- Croatia
- Hungary
- The Czech Republic
- Romania
- Slovakia
- Ukraine

196 In other words, in **20.6% of the European countries that responded to our survey.** This includes:

- The only countries in which notaries have **exclusive competence:** Albania, Hungary, the Czech Republic, Romania, Slovakia and Ukraine, that is, **85.7% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Croatia, that is, **14.3% of the countries with notarial competence.**

Opening of a vacant succession

197 The countries in which notaries are competent to open a vacant succession (an estate with no known heirs) are:

- Albania
- Andorra
- Austria
- Belgium
- Croatia
- Spain
- Estonia
- Latvia
- Lithuania
- North Macedonia
- Montenegro
- Romania
- Serbia

198 In other words, in **38.2% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Austria, Estonia, Latvia, Lithuania, North Macedonia, Romania, Serbia and Spain, that is, **76.9% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Belgium, Croatia and Montenegro, that is, **23.1% of the countries with notarial competence.**

199 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the court.

Authorisation of acceptance or renunciation where authorisation is required

200 The countries in which notaries are competent to authorise the acceptance or renunciation of a succession where such authorisation is necessary are:

- Albania
- Andorra
- Kosovo
- Latvia
- Romania
- Serbia
- Slovakia
- Turkey
- France (for an adult under guardianship if the assets clearly exceed the liabilities)

201 In other words, in **26.5% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Romania, Serbia, Slovakia and Turkey, that is, **55.6% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Andorra, France, Kosovo and Latvia, that is, **44.4% of the countries with notarial competence.**

PROPERTY LAW

Boundary demarcation of properties

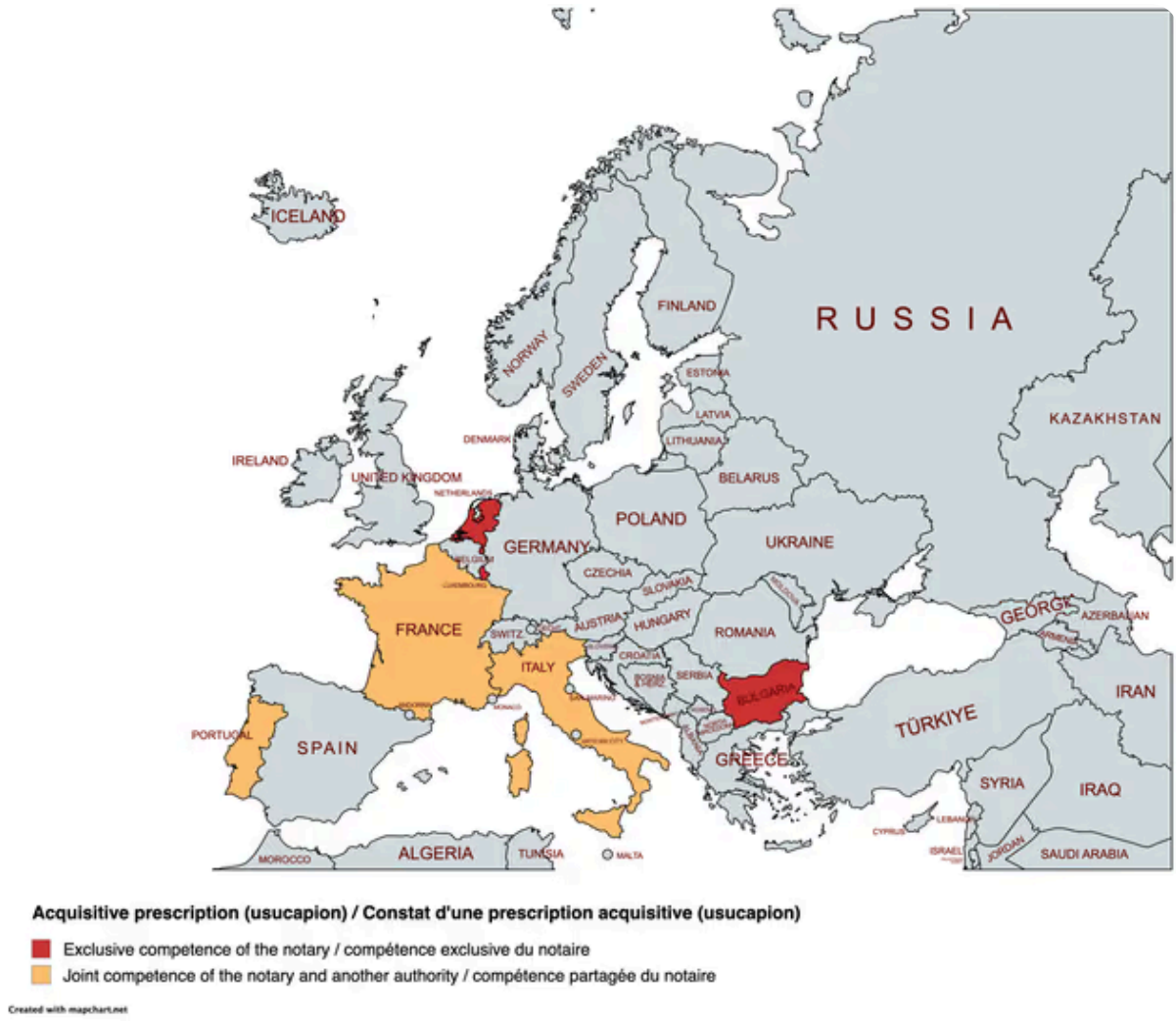
202 The countries in which notaries are competent for the demarcation of property boundaries are:

- Albania
- Andorra
- Armenia
- Greece
- The Netherlands
- Italy

203 In other words, in **18% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Albania, Andorra, Greece and the Netherlands, that is, **66% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Armenia and Italy, that is, **34% of the countries with notarial competence.**

Establishing acquisitive prescription (usucaption)



204 Acquisitive prescription (usucaption)

- Exclusive competence of the notary
- Joint competence of the notary and another authority/shared competence of the notary

205 The countries in which notaries are competent to establish acquisitive prescription are:

- Bulgaria
- Italy
- Luxembourg
- The Netherlands
- Portugal
- France

206 In other words, in **18% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Bulgaria, Luxembourg and the Netherlands, that is, **33.33% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Italy, France and Portugal, that is, **66.66% of the countries with notarial competence.**

Supervision of land registers

207 The only country in which notaries are competent to keep the land registers is Andorra. In other words, in **2.9% of the European countries that responded to our survey.** This is an exclusive competence.

Supervision of the registers of motor vehicles, ships, boats and aircraft

208 The countries in which notaries are competent to supervise the registers of motor vehicles, ships, boats and aircraft are:

- Slovakia
- Turkey

209 That is, in **5.9% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence** are Slovakia and Turkey (as regards motor vehicles)

210 *In Turkey, the Motor Vehicle Register for land vehicles is kept by the Union of Turkish Notaries. For this reason, all types of transactions relating to motor vehicles are carried out exclusively by notaries.*

211 *In the case of maritime vehicles and aircraft, the registers are kept separately by the State. Transactions relating to these vehicles are carried out by notaries, but competence is shared with those registers (depending on whether it is an aircraft or a maritime vehicle).*

COMMERCIAL LAW

Supervision of commercial account books.

212 No country has given the notary the competence to supervise commercial account books.

Supervision of commercial registers

213 No country has given the notary the competence to supervise commercial registers.

Issuing orders for payment



214 Issuing orders for payment (order for payment procedures)

- Exclusive competence of the notary
- Shared competence of the notary and another authority

215 The countries in which notaries are authorised to issue orders for payment (order for payment procedures) are:

- Austria
- Croatia
- Spain
- Hungary
- Latvia
- North Macedonia

216 In other words, in **17.6% of the European countries that responded to our survey.** This includes:

- Hungary, where notaries have **exclusive competence.**
- The countries in which notaries have **shared competence**: Austria, Croatia, Spain, Hungary, Latvia and North Macedonia.

Non-contentious procedures in commercial law

217 The countries in which notaries are, in general, competent for non-contentious procedures in commercial law (presentation of accounts; appointment and removal of liquidators; audit; mediation, etc.) are:

- Andorra
- Armenia
- Belgium
- Spain
- Serbia

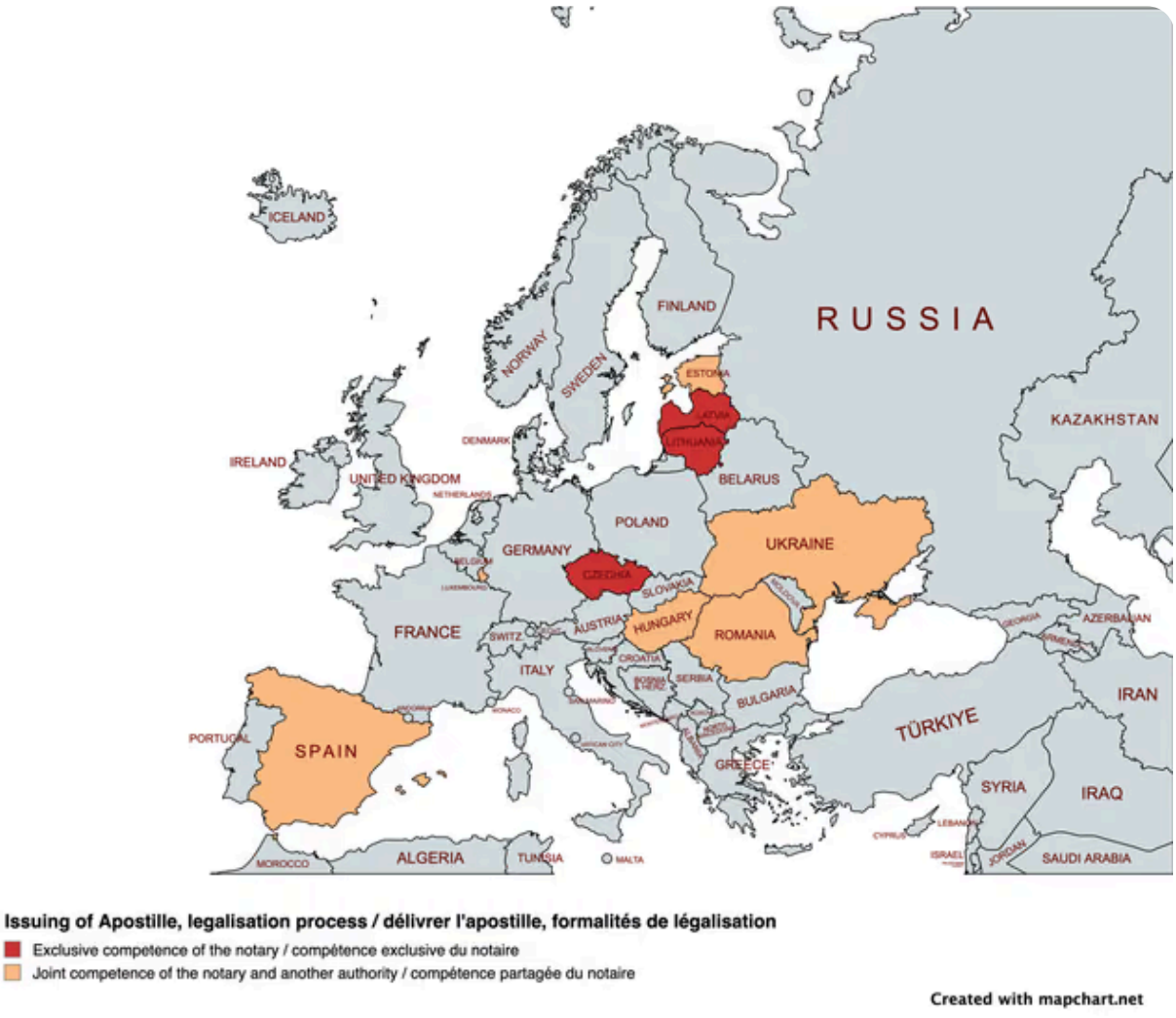
218 In other words, in **14.7% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Andorra and Spain, that is, **40% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Armenia, Belgium and Serbia, that is, **60% of the countries with notarial competence.**

219 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the judge, the court or the mediator.

OTHER

Legalisation / Apostille



220 Issuing the apostille, legalisation process

Exclusive competence of the notary

Joint competence of the notary and another authority

221 The countries in which notaries are competent to issue the apostille or carry out legalisation formalities are:

- Spain
- Estonia
- Hungary
- Latvia
- Lithuania
- Luxembourg
- The Czech Republic
- Romania
- Ukraine
- France

222 In other words, in **30% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Hungary, Latvia, Lithuania, France and the Czech Republic, that is, **50% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Estonia, Luxembourg, Romania, Spain and Ukraine, that is, **50% of the countries with notarial competence.**

223 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the Ministry of Justice, the Ministry of Foreign Affairs, the prefecture or the court registry.

224 Some details on the States in which notaries have **shared competence:**

- Estonia: legalisation by the Ministry of Foreign Affairs and apostille by the notary public
- Romania: the notary for notarial acts and the prefecture for civil status records
- Ukraine: the notary submits the documents to the Ministry of Justice
- Hungary: the apostille is issued by the Hungarian Chamber of Civil Law Notaries (the apostille for judicial documents is issued by the Ministry of Justice, and the apostille for documents of the tax administration is issued by the Ministry of Foreign Affairs)

Conciliation



225 Conciliation procedure

Joint competence of the notary and another authority/shared competence of the notary

226 The countries in which notaries are competent in matters of conciliation are:

- Belgium
- Spain
- Latvia
- Hungary

227 In other words, in **12% of the European countries that responded to our survey.** This includes:

- no country in which notaries have **exclusive competence**.
- countries in which notaries have **shared competence**: Belgium, Spain, Hungary and Latvia.

228 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the parties themselves, the lawyer, the court clerk, the “justice of the peace” (Spain) and the certified mediator.

Mediation procedures



229 Mediation procedures

- Exclusive competence of the notary
- Joint competence of the notary

230 The countries in which notaries are competent for mediation procedures are:

- Austria
- Belgium
- Greece
- Spain
- Italy
- Hungary
- Lithuania
- The Netherlands
- France

231 In other words, in **27% of the European countries that responded to our survey.** This includes:

- The only country in which notaries have **exclusive competence**: Austria.
- The countries in which notaries have **shared competence** are: Spain, Belgium [14] , Italy, Hungary, Greece [15] , Lithuania, France and the Netherlands, that is, **89% of the countries with notarial competence in mediation procedures.**

232 Although this competence is dejudicialised, the competent authorities are: the notary, the mediator, the judge or the lawyer. In Spain, mediation is free, but the agreement must be formalised in a notarial act in order to be enforceable.

Judicial auctions

233 The countries in which notaries are competent in matters of judicial auctions are:

- Austria
- Belgium
- Croatia
- Spain
- Greece
- Italy
- Luxembourg
- The Netherlands
- Slovakia

234 In other words, in **26% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Belgium, Greece and Slovakia, that is, **33% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Austria, Croatia, Spain, Italy, Luxembourg and the Netherlands, that is, **67% of the countries with notarial competence.**

235 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the court, the court clerk or the bailiff. In Luxembourg and the Netherlands, competence is shared between the notary and the bailiff, since the notary is competent for immovable property and the bailiff for movable property.

Enforcement of enforceable court decisions

236 There is no country in which notaries are competent to enforce enforceable court decisions.

237 However, in **Hungary,** if the decision or the deed — containing an enforceable order or undertaking — was issued by the notary, the notary is competent to issue the enforceable title.

Testimony, documentary evidence and taking of oaths



238 Taking of testimony, written evidence and sworn statements.

- Exclusive competence of the notary
- Shared competence of the notary

239 The countries in which notaries are authorised to take testimony, written evidence and sworn statements are:

- Andorra
- Armenia
- Belgium
- Croatia
- Spain
- Greece
- Kosovo
- Latvia
- Lithuania
- Luxembourg
- Malta
- Montenegro
- The Netherlands
- Romania
- Serbia
- Switzerland

240 In other words, in **48% of the European countries that responded to our survey.** This includes:

- The countries in which notaries have **exclusive competence**: Montenegro, that is, **6% of the countries with notarial competence.**
- The countries in which notaries have **shared competence**: Andorra, Armenia, Belgium, Croatia, Greece, Kosovo, Latvia, Lithuania, Luxembourg, Malta, Romania, Serbia, Switzerland and Spain, that is, **94% of the countries with notarial competence.**

241 Where the notary has been given shared competence, the other authority with which the notary shares that competence is the judge and the court.

Notary as "expert" appointed by the court?

242 **In 48% of the European countries surveyed,** the notary may be appointed as a court expert: Andorra, Belgium, Spain, France, Greece. Hungary, Italy, Kosovo, Latvia, Lithuania, Luxembourg, Malta, Montenegro, the Netherlands, Switzerland and Turkey.

Fees / Fee scale

243 Regulated fee scale:

244 The countries in which notarial fees are proportional are:

- Albania

245 In other words, in **3% of the European countries surveyed, notarial fees are proportional.**

246 The countries with fixed notarial fees are:

- Armenia
- Austria
- Croatia
- Kosovo
- Montenegro
- Slovakia
- Slovenia
- Ukraine (only for public notaries)

247 In other words, in **23.5% of the European countries surveyed, notarial fees are fixed.**

248 The countries in which notarial fees are fixed and proportional are:

- Germany
- Andorra
- Belgium
- Spain
- Estonia
- France
- Greece
- Hungary
- Latvia
- Lithuania
- Luxembourg
- Malta
- North Macedonia
- Poland
- Portugal
- The Czech Republic
- Romania
- Serbia
- Switzerland
- Turkey

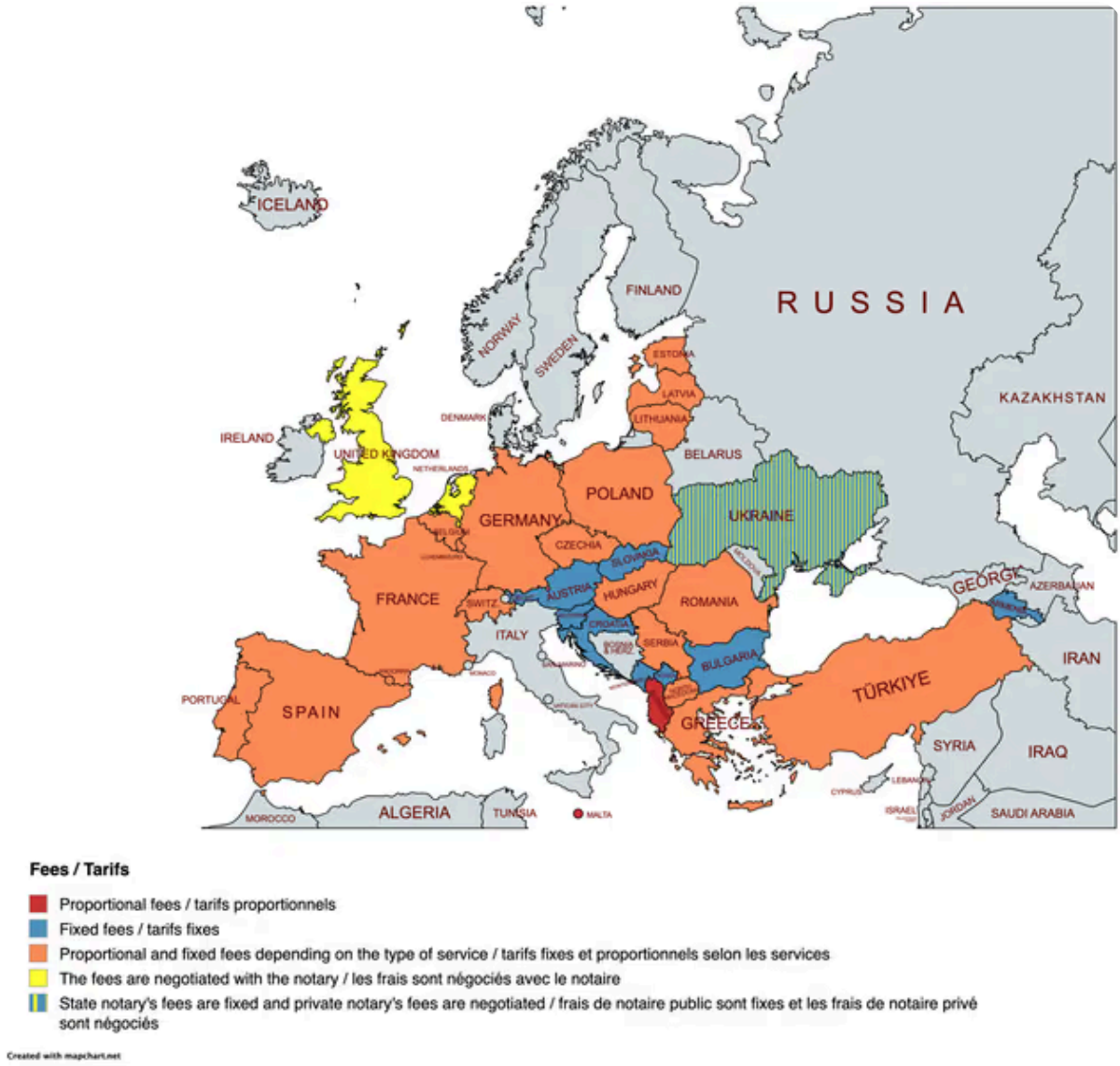
249 In **62.5% of the European countries surveyed, notarial fees are fixed and proportional.**

250 No fee scale:

251 The countries in which notarial fees are freely negotiated are:

- The United Kingdom (London)
- The Netherlands (fees negotiated with maximum limits set for workers on the minimum wage)
- Ukraine (only for private notaries)
- Italy

252 In other words, in **11% of the European countries surveyed, notarial fees are freely negotiated**



253 Fees

- Proportional fees
- Fixed fees/fixed tariffs
- Proportional and fixed fees depending on the type of service
- Fees are negotiated with the notary.
- The fees of State notaries are fixed, while those of private notaries are negotiable.

Other non-contentious legal acts. Observations of the notariats consulted

254 Germany: “It seems to me that German legislation imposes fewer judicial or State procedures than other legal systems. This is particularly striking in the field of succession law”.

255 Croatia: the parents of minors are their legal guardians. In the case of a major transaction affecting the property of a minor (real estate, a large sum of money, works of art, etc.), the transaction must be formalised by notarial deed.

256 Spain: deposit with a notary of notarial securities or commercial paper and their sale. Adoption of measures in the event of theft, loss or destruction of securities. Tender of payment and deposit. Notarial

files relating to the land registers: for the registration of real property; for the recovery of title deeds; for the verification of excess surface area; for the coordination and rectification of the property cadastre, etc.

257 Hungary: there are around 20 non-contentious procedures.

258 Lithuania: authorisation of deeds relating to the property relations of minors or to the family home, where the family has minor children.

259 The Netherlands: forced sale of immovable property, acknowledgment of debt, deed of procedural agreement.

260 Turkey: certificate of inheritance, handing over the key of a property to a tenant, notice to the spouse who leaves the family home [16] .

Conclusion of the study

261 After analysing the 33 replies to the 64 questions put to the member notariats of the Commission for European Affairs, it is time to take stock.

262 First of all, the diversity of the competences assigned to notaries by the public authorities should be highlighted, which shows the great adaptability of the notarial profession.

263 Their special status as legal professionals and public officials allows the State to assign new tasks to notaries in response to the expectations of citizens and to changes in public policy.

264 These functions are extremely varied, since the legal training of notaries allows them to act in almost all areas of private law: family law, the law of persons, succession law, matrimonial property regimes, property law, contract law, company law, etc.

265 These functions naturally include the so-called “traditional” areas of notarial competence (1), where competence no longer needs to be demonstrated; the emerging notarial competences (2), closely linked to the trend towards dejudicialisation and to the need to relieve the courts of non-judicial tasks for which judges are not the only legitimate authority; and, lastly, the notarial competences “in the making” (3), which are not yet very widespread in Europe, but which meet a real need of society and are therefore destined to grow.

Traditional notarial competences

266 In these matters, notaries are the competent authority by nature and, often, the only one.

- Matrimonial property regime

267 In more than 80% of the countries studied, notaries are competent to draw up marriage contracts establishing the matrimonial property regime of the future spouses and to amend them subsequently at their request, with or without the approval of a judge.

268 These countries include Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, Estonia, France, Germany, Greece, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovenia, Turkey and Spain. In these countries, notaries have exclusive competence in this matter.

- Succession law

269 In 63% of the countries surveyed, notaries are the authority to which citizens turn to deal with a succession (Andorra, Armenia, Austria, Croatia, Estonia, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, North Macedonia, Malta, Montenegro, Poland, Portugal, Romania, Serbia, Slovakia, Spain and Ukraine) [17] . In almost 80% of European countries, notaries issue the deed of notoriety or the certificate of inheritance, as well as the European Certificate of Succession, where the State takes part in Regulation (EU) No 650/2012 on successions.

270 Similarly, European notaries usually take charge of the procedure for opening wills and of the liquidation and amicable distribution of the estate. In some countries, notaries may even be competent to carry out liquidation and distribution operations in the context of a judicial liquidation (Austria, Belgium, Spain, France, Italy, Luxembourg, the Netherlands, Poland, Portugal and Slovakia). In this case, the notary acts as an assistant to the judge and relieves the judge of what are usually long and complex operations. Beyond succession, these liquidation and division operations may also be carried out by the notary in the context of a contested divorce.

271 The exercise of succession options is also being increasingly dejudicialised in European countries. In 82% of the countries surveyed, it is not mandatory to go to court to accept or renounce the inheritance. It is possible to do so before a notary and, in 60% of those countries, the notary is even the only authority that can receive this declaration from the heir. This notarial competence sometimes extends to acceptance with the benefit of inventory (up to the value of the net estate): in 56% of the countries this can be done before a notary and, where that is the case, the competence is usually exclusive (78.9% of the countries with notarial competence in this field).

272 Lastly, it should be noted that the procedures for opening a vacant or unclaimed succession may also be assigned to notaries (38.2% of the European countries that responded to the questionnaire have this competence).

- Company law

273 Notaries take an active part in the formation and registration of companies in more than half of European countries (66%). In Germany, Italy and Spain, for example, notaries have exclusive competence to form limited liability companies and public limited companies, which underlines their essential role in the business sector.

274 In general, in Europe, where notaries are competent to form legal persons, they have exclusive competence in half of the countries.

275 Alongside these “traditional” notarial competences, new ones are emerging. Divorce law, the law on vulnerable persons and registered partnerships are areas in which dejudicialisation has advanced significantly.

Emerging notarial competences

276 The legal training of notaries and their role as family advisers have enabled them to acquire new competences in family law and the law of persons. These emerging notarial competences bear witness to the closeness of notaries to citizens and to the role they play at the important stages of their lives (marriage, divorce, situations of vulnerability…).

- Divorce by mutual consent

277 Over the last twenty years, many countries have turned to notaries to relieve judges of divorce by mutual consent proceedings. While 33% of the European notariats surveyed are, under the legislation in force, competent to draw up a deed of divorce by mutual consent, half of those that do not have this competence stated that they would like the legislature to grant it to them. The role of notaries in this field varies enormously, and not all countries give them the same function [18] . Their function may range from simply registering the divorce agreement already reached by the spouses [19] to drawing up an authentic instrument formalising the divorce, after verifying the agreement [20] . Their competence also varies depending on whether or not the divorce affects minors. The presence of minors sometimes means that divorce by mutual consent is referred back to the courts. In Spain, for example, the minor must be heard by a judge. In Romania, however, the notary is competent to assess the interests of the minor, and divorce by mutual consent where there are minors cannot be concluded before a civil registrar, but must take place before a notary or a judge.

- Protection of vulnerable persons

278 The legislation on vulnerable persons is an area particularly suited to dejudicialisation. In addition to reducing the workload of the courts, it gives vulnerable persons greater scope to manage their own affairs and to exercise their rights effectively. The international conventions (the New York Convention of 13 December 2006 on the Rights of Persons with Disabilities and the Hague Convention of 13 January 2000 on the International Protection of Adults) encourage systems of voluntary prevention and of support chosen by the person concerned. In this respect, notarial practice has developed instruments that allow adults, while they are still in full possession of their faculties, to establish in advance powers of representation, “preventive powers of attorney” [21] or “acts of self-protection or future protection mandates”, in which they designate a representative and/or organise the management of their personal and property affairs in anticipation of possible future vulnerability. In most of the countries that already use this instrument, notaries play a central role in creating it (Spain, France, Germany, Belgium, Romania, Croatia, the Netherlands, Latvia, Lithuania, etc.), and sometimes even in its application or entry into force (Andorra, Austria, Spain, the Netherlands). As a qualified, impartial and objective support authority, they are naturally chosen by the legislature or by citizens themselves to perform this new function as guardians of the fundamental rights of vulnerable persons. For example, in Spain, the Spanish legislature has designated notaries as institutional support for vulnerable persons, helping them to express their wishes and to exercise their rights [22] .

279 These foreign examples are a source of inspiration for other countries, such as Italy, which, driven by the notariat, is currently working on a reform bill that will introduce into Italian law a *“mandato di protezione per futura* incapacità” [23] . The inspiration is mutual, since many notariats are also interested in a specific competence recently acquired by the Italian notariat. This is the granting of authorisation to conclude an

act of administration or disposal on behalf of the protected person. In Italy, in order to authorise an act, such as the conclusion of a sale on behalf of a protected person or the acceptance of an inheritance, it is possible to apply either to a judge or to a notary. This is a notarial competence that is unique in Europe, since no other notariat among those studied currently performs this function.

280 Other countries have gone even further down the path of dejudicialisation. In Romania, for example, notaries have exclusive competence to initiate protective measures for vulnerable adults.

281 Lastly, it should be noted that notarial competences in the protection of vulnerable persons are not limited to property matters. In several countries, notaries are authorised to draw up advance medical directives (Andorra, Austria, Croatia, Spain, Hungary, Italy, Latvia and the Netherlands).

- **Formation of registered partnerships**

282 The other area in which the notariat is called upon to play an active role is that of registered partnerships and, more broadly still, property relations between unmarried couples [24] . The study shows that 24% of the European notariats surveyed are competent to form registered partnerships (Andorra, Spain, Estonia, France, Greece, Hungary, Malta and Latvia) and that, in more than half of these countries, notarial competence is exclusive (62%).

283 The presence of a notary when the partnership is formed, and sometimes even when it is dissolved, offers the partners security, legal predictability and legal advice on property matters; and, lastly, it provides an act that can be entered in the public registers, which makes the partnership enforceable against third parties.

Notarial competences under development

284 Some non-contentious competences are particularly well suited to the function and status of notaries, but they are not yet very widespread or exercised in Europe. The transfer of these competences would help to relieve the workload not only of the courts but also, in some cases, of the civil registry offices and of the public administration in general.

- Celebration of marriages

285 Like their American counterparts, Spanish and Andorran notaries celebrate marriages. As public officials present throughout the country thanks to a national network, notaries can easily replace civil registrars in this function. This competence also complements their more “traditional” function of drawing up marriage contracts.

- Change of civil status

286 In the field of civil status, Maltese notaries have been given a specific notarial competence to change gender (and first name) in the civil status registers. This is a notarial competence that is unique in Europe, since no other notariat among those studied currently performs this task. It could nevertheless develop in the future, since this non-contentious procedure is, in general, judicial or administrative in nature and consists in checking that the conditions for requesting a change of sex in the civil status registers are met and in making sure that the applicants have given their free and informed consent.

- **Obtaining consent for the purpose of establishing filiation**

287 Obtaining the consent of the parties and ensuring that it is given freely and in an informed manner lie at the heart of the notary's mission. That is why some European countries have given notaries the task of obtaining consent in the context of medically assisted reproduction (Andorra, Armenia, Austria, France, Greece, the United Kingdom (London), Romania and Serbia) or of adoption procedures (France, Germany, Andorra, Armenia and the United Kingdom/London). In the field of medically assisted reproduction, notaries have exclusive competence in most cases (75%), whereas, in the case of adoption, this competence is usually shared with another authority.

- Mediation

288 Often described as "officials responsible for out-of-court agreements", notaries may act as mediators in 39% of the countries surveyed. Their competence is rarely exclusive (except in Austria), but it could become widespread. As an impartial and independent third party, it is part of the notary's mission and natural role as mediator to help the parties reach an agreement. However, in the context of a conflict between the parties, this new competence usually requires additional specialised training.

- Issuing apostilles and e-apostilles

289 The formalities for the legalisation or apostille of public documents to be produced, which originally fell to the courts or the Ministries of Foreign Affairs, are increasingly being assigned to notaries (26% of the notariats of Europe have this competence). This transfer of competences generally responds to the need to shorten time limits and to speed up and modernise the issuing procedures. Indeed, several notariats can issue electronic apostilles (Estonia, Latvia and France). By assigning this procedure to notaries, States reduce the workload of the courts and public administrations, while maintaining the same level of legal certainty.

* * *

290 This overview of notarial competences in non-contentious matters pursues two aims.

291 First, the increasingly important role played by the notariat in the process of "dejudicialisation" should be highlighted. A true magistrate of non-contentious jurisdiction, the notary enjoys the legitimacy of public authority, which allows notaries to take on new non-judicial functions and to relieve the workload of judges [25] . However, these new functions are gradually transforming the role of the notary: in addition to checking legality, notaries are sometimes required to review appropriateness, with all the responsibility that this entails.

292 The second is to encourage mutual inspiration among European countries and even beyond.
The exchange of experiences, which lies at the heart of this report, is fully in keeping with this dynamic of anticipating future transformations.

293 This exchange, which lies at the very heart of the missions of the Commission for European Affairs (CAE), takes on its full meaning here.

294 We therefore wish to express our most sincere thanks to all the members of the Commission for their remarkable work over the last three years of the legislature.

295 This work, rich in reflection and exchange, lays the foundations for new perspectives and competences for the notariats of tomorrow.

296 The Commission for European Affairs and the International Union of Notaries will not fail to follow all these developments.

297 Bertrand Basseville

298 *Vice-President of the CAE*

299 *Head of the CAE study on dejudicialisation*

300 Sophie Potentier Ríos

301 *Legal adviser of the UINL*

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Documents of the UINL and of the Commission for European Affairs

302 ***Divorce in Europe: the role of the notary in 33 European countries,*** study by the Commission for European Affairs, legislature 2020-2022.

303 ***The role of the notary in successions in Europe,*** summaries, conclusions and recommendations of the Academy of the Commission for European Affairs, meeting in Thessaloniki in June 2024.

304 ***Lasting powers of attorney and the protection of vulnerable persons:*** summaries, conclusions and recommendations of the Academy of the Commission for European Affairs, meeting in Rome in June 2023.

305 ***The regime of unmarried couples in Europe: de facto unions, civil unions, registered partnerships***; summaries, conclusions and recommendations of the Academy of the Commission for European Affairs, meeting in Barcelona in October 2024.

306 ***The prospects for dejudicialisation***, Recommendations of the International Union of Notaries on *the possibilities of transferring or sharing competences between judges and notaries in non-contentious matters,* presented in Brasilia on 9 November 2023.

307 ***Conclusions of Theme 2, "Non-contentious procedures", of the UINL Congress held in Berlin,*** by the international coordinator Valentina Rubertelli.

Notes

1 https://docs.google.com/spreadsheets/d/1x8LGHA1qutaWX2Ijd66v4niztbqf8N1d/edit?usp=drive_link&ouid=112165848355163960722&rtpof=true&sd=true

2 Exclusive competence of the notary only for the most important acts

3 Notarial involvement in the formation of companies is optional; registration takes place at the court registry (greffe)

4 Exclusive competence for public limited companies and limited liability companies

5 Exclusive competence for companies limited by shares (public limited companies, limited liability companies, partnerships limited by shares) and European companies

6 In Switzerland, prenuptial agreements are not entered in the civil register. However, a notary may draw up a certificate stating the matrimonial property regime.

7 In Malta, notaries have this competence only in the case of separation and have none at all in the case of divorce

8 In Malta, notaries have this competence only in the case of separation and no competence at all in the case of divorce

9 Notaries only in matters of separation and not in matters of divorce.

10

11 In Greece, the notary has exclusive competence to receive consents only in cases where the medically assisted reproduction concerns a single woman or a woman living in a de facto union. In other cases, the law requires consent to be given in writing, but not necessarily by notarial act (Art. 1456 of the Civil Code).

12 In Malta, exclusive competence is limited to immovable property only.

13 In Greece, since March 2024, heirs may also accept the succession before the clerk of the competent court, with the assistance of a lawyer (Law 5095/2024, published on 15 March 2024).

14 The notary may take a training course to obtain the title of mediator

15 Competence shared between the judge and the accredited mediator (who may be the notary)

16 A spouse who has left the family home for at least four months may be given notice to return home by means of a notarial demand, at the request of the other spouse. If the spouse does not return home, this will constitute justified grounds for divorce against him or her. This competence is shared with the family court judge.

17 For further details, see the summaries, conclusions and recommendations of the Academy of the Commission for European Affairs, meeting in Thessaloniki in June 2024, on “The role of notaries in successions in Europe”.

18 See the study published by the Commission for European Affairs on “Divorce in Europe: the role of the notary in 33 European countries”, 2023.

19 Example of France and Greece

20 Example of Spain and Romania

21 “*poder* preventivo” in Spanish

22 See the summaries, conclusions and recommendations of the Academy of the Commission for European Affairs, meeting in Rome in June 2023, on the theme “Lasting powers of attorney and the protection of vulnerable persons”.

23 In Poland, a reform bill to introduce the lasting power of attorney into Polish legislation is also under way

24 In this respect, see the summaries, conclusions and recommendations of the Academy of the Commission for European Affairs, meeting in Barcelona in October 2024, on the theme “The regime of unmarried couples in Europe: de facto unions, civil unions, registered partnerships”.

25 In this respect, see the *RECOMMENDATIONS of the INTERNATIONAL UNION OF NOTARIES* on the possibilities of transferring or sharing competences between judges and notaries in non-contentious matters, presented in Brasilia on 9 November 2023

SUMMARY

Notarial Academy of the Commission for European Affairs (CAE) of the International Union of Notaries (UINL)

“Digital death”

What happens to digital assets and data upon death

Turin, Thursday 20 November 2025 28 min read Original language: French

INTRODUCTION

1 The choice of the **theme** of the Academy held in Turin on 20 November 2025 stems from a commonplace observation:

2 “Our succession law was created for tangible assets. Today we also have to deal with Instagram, cryptocurrencies and the photos of our pets in the cloud”. In other words, we must ask ourselves what happens to our electronic correspondence, our social media profiles, our digital photo albums, our private messages, our personal documents archived in the cloud, our web search history, our contact lists, not forgetting our most intimate conversations.

3 A study by the *Oxford Internet Institute* estimated in 2019 that by 2070 the number of accounts belonging to deceased persons would exceed that of living users on social networks. By way of example, it is estimated that around 8,000 Facebook account holders die every day.

4 We therefore tried to understand how to find our way in this new world which, although virtual, requires legal protection, because as notaries we are the first who have to provide solutions to our clients.

5 We therefore started from a **“down-to-earth” example** to make everyone understand that **we** are not **talking** about distant questions, but about **the present**.

6 Let us imagine that Brigitte Mardot, a French citizen residing in Turin, and therefore in Italy, dies leaving a substantial digital estate, namely:

7 - An account in **bitcoins** of significant value,

8 - **email** accounts, including her personal correspondence with the actor Alain Deloin

9 - Excellent **playlists** on Spotify

10 - A **digital film library** ;

11 - **Family photos on iCloud** ;

12 - Her **Instagram profile, with 1 million followers**, which generated regular income through advertising partnerships.

13 What **answers can we give** to this case?

14 To do so, we must first **examine** the various problems and then try to provide a solution to them.

15 We should start from the principle that today's theme, **digital inheritance**, is neither a fashion nor an exercise in style: it is the natural consequence of the fact that an ever larger part of our life **no longer** takes place in a **physical space**, but in a **digital** space.

16 Every day **we archive documents** in the cloud, we communicate through platforms, we keep photos, family memories, professional relationships, personal relationships. And, alongside this content, **new assets** are beginning to take on **economic importance**: cryptocurrencies, electronic wallets, monetised content, digital identities with public visibility or even economic value.

17 Faced with this reality, we lawyers – and in particular **we civil lawyers and notaries** – have a duty **to avoid two** opposite **errors**:

- the first, **inventing new categories from scratch**, as if the digital world were another planet;
- the second consists in **denying the problem**, as if it were enough to apply the usual rules without any adaptation.

18 The balance lies in the middle: **keeping the method**, without ignoring the novelty of the phenomenon as an inevitable consequence of the evolution of the practices, customs and needs of society.

19 The civil law tradition already offers us the conceptual tools: the concept **of the universality of succession**, the distinction between **property rights** and **personal (non-transferable) rights**, the centrality of **the will of the deceased** as the governing criterion. These principles must not be left behind: they must be **readapted** in a different context.
In other words, it is not necessary to create a new succession law, but **to apply** the **existing rules in the light of the digital environment**.

20 The first fundamental distinction – and the most important – is the one between **digital estate** and **digital identity**.

21 Assets and relationships that have an economic value, direct or indirect, may be passed on to the heirs, under the general rules of succession law.

22 **Digital identity**, by contrast, is a projection of the person and, as such, is **strictly personal** and **non-transferable**. Here the law has another function: not that of regulating transmission mortis causa, but that of **protecting the dignity** and the **memory, as well as the privacy,** of the deceased and of the persons with whom he or she was in contact.

23 The aim was therefore to try to **bring order precisely** to this frontier: **to distinguish** what **is passed on** from what is **not**, and above all to understand **how** it is passed on.

24 For, as we know, in the digital field **access cannot be taken for granted**: the content exists, but without a password, without cryptographic keys or without the cooperation of the platform, **it is not legally available**.

25 Here **law** meets **technology** and, in a certain way, **sociology and philosophy**.

DIGITAL ASSETS

26 "Digital assets" are nothing other than movable property represented in binary form, that is, by a particular type of "language" (a computational logical sequence of 0s and 1s called a "bit", from the English "binary digit") with which they are created, processed, exchanged and stored using a computer.

27 It is then necessary to distinguish the digital **content** (digital assets and digital data) – the mediate object – both from **the** "**access key**" and from the **medium** (or container) – the immediate object – in which the content is stored or kept.

28 A distinguishing method that seems, from a legal point of view, to be useful for identifying the (digital) object of the succession is the one that differentiates by nature between:

"Offline" digital assets

(digital resources located outside the network)

29 = files, software and electronic documents created and/or purchased by the deceased, such as images, audio files, videos, films, text documents, domain names, websites, blogs, etc.), regardless of the physical storage medium (hard drive, USB stick, CD-ROM, DVD, PC, smartphone or tablet, etc.) and/or virtual storage medium (cloud storage, for example Google Drive, Dropbox, iCloud, OneDrive, etc.)

"Online" digital assets

(digital resources and content available on the network)

30 = all those present on the web that are created, exchanged and processed by means of service contracts concluded with service providers through accounts (email, for example Virgilio, Libero, Yahoo, Google; social networks, for example WhatsApp, Instagram, Twitter, Facebook, TikTok; financial, for example Binance; e-commerce, for example Amazon, Ebay; electronic payment, for example PayPal, Satispay)

31 **Cryptocurrencies** (also called "virtual currencies") are digital financial assets based on distributed ledger technology and may therefore be classified as movable digital assets.

[32] They may be held directly (in which case they are kept in wallets whose access keys are the responsibility of the holder) or indirectly (through investment funds or other professional intermediaries). In the first case (direct holding), the practical problems generally concern identifying the wallet (whether it is a web wallet, a "hot wallet", a hardware wallet, a software wallet or a paper wallet) and recovering the login details; in the case of indirect holding, these digital assets form part of the estate to be divided among the heirs if they are not the subject of a specific legacy.

[33] The "**electronic document**" is the electronic document that contains the computerised representation of legally relevant acts, facts or data (Art. 1(1)(p) of Legislative Decree 82/2005, CAD). It is any content kept in electronic form, in particular text or sound, visual or audiovisual recording.

WHAT IS NOT A DIGITAL ASSET?

[34] Contrary to what is generally thought, the following do not fall within the notion of digital assets:

- The **account**, which is the sign of a simple contractual relationship between the information society service provider (Internet access provider or FAI) and the user. Under this contractual relationship, the user may benefit from a service and from a specific virtual environment (which remains the property of the provider), generally customisable, with particular content and features (the use of which is governed by the contract signed with the user). In this case, succession could take place, at most, in the **normal contractual relationship,** which is, however, not permitted by the (standard) contract concluded with the IT service provider.
- **Login details (or passwords)** which, far from being digital assets, may be classified as simple virtual keys giving access to the content (economic or non-economic) that they protect (voluntarily or necessarily), have a function of protection and identification.
- **Online accounts** are merely a virtual extension of a real account and are therefore subject to the ordinary rules of succession mortis causa.

WHICH ELEMENTS OF THE (DIGITAL) ESTATE ARE NOT SUBJECT TO SUCCESSION?

[35] The following are excluded from the succession:

- **pirated digital assets** (because of the unlawfulness of the object, even if they are protected by protection systems)
- **licensed content** because the deceased had no ownership of the copy of the licensed program. The "licence to use" is an atypical contract by which the licensor (ICT service provider) grants the licensee (user) the personal right of enjoyment (applying, by analogy, the rules on leases) of one or more copies of a program that gives access, the reading, viewing and use of digital content (free of charge or for consideration, that is, in return for a payment that may be made in a single instalment or through a periodic fee).

- **electronic signature accounts** (for example those provided by Aruba, Namirial, Infocert). This is the affixing of a handwritten signature to a document: it is an essential element of the act for determining its origin and identifying its author, and therefore for attributing legal effects to it (legal capacity and capacity to act cease on death).
- **digital identity accounts** (for example SPID), because they are characterised by elements of intimate personality that justify their extinction on the death of their holder.

WHAT ARE THE DIFFERENT SYSTEMS OF PROTECTION IN EUROPE?

Comparative legal framework

European legislation

36 Recital 27 of Regulation (EU) 2016/679 on the protection of personal data states that "the regulation does not apply to the personal data of deceased persons. Member States may provide for rules regarding the processing of personal data of deceased persons".

37 Few States have legislated on the matter.

38 We have tried to summarise the experiences of the countries in which the legislature or the judiciary has addressed this question, in order to analyse the different approaches.

39 Two principles alternate: that of the **right to be forgotten** and that of **the transmission of one's digital identity to third parties (such as heirs or relatives).**

The French experience

40 With Act No. 2016-1321 of 7 October 2016 for a Digital Republic, France adopted an approach similar to that of the right to be forgotten: in other words, the principle that rights over one's personal data and identity are extinguished on death applies by default; unless the deceased gave prior instructions concerning access to those data, their retention, their deletion, their disclosure, etc.

41 That is why, in the absence of advance directives from the deceased, the heirs may request very limited access to the deceased's accounts, that is, under certain conditions, for example: the access is necessary for preparing the declaration of succession or settling the succession, for deleting or updating the user account, or where they are linked to family memories.

42 It is interesting to analyse Article 85 of the French Data Protection Act (loi Informatique et Libertés), which provides for a distinction between general and specific directives:

a. General directives concern all the personal data relating to the data subject and may be registered with a digital trusted third party certified by the Commission Nationale de l'Informatique et des

Libertés (CNIL).

b. **Specific directives** concern the processing of personal data mentioned in those directives. They are registered with the **controllers** concerned. They are subject to the condition of the specific consent of the data subject, but no reference is made to the requirement of written form.

43 Another problem remains. Can the **general terms and conditions** of digital services (iCloud, social networks, etc.) limit the rights to confidentiality?

44 In France, Article 85 of the Data Protection Act specified that "any contractual clause contained in the general terms of use of a processing of personal data that limits the prerogatives granted to the person under this Article is deemed **unwritten**".

The Spanish experience

45 Under Article 96 of the LOPDDGDD and Article 2 of the Código de la Privacidad, the principle of the survival of the data subject's rights after death applies: the heirs may, by default, access the digital accounts and personal data of the deceased, unless the deceased expressly prohibited it during his or her lifetime (for example in a will).

The experience of Catalonia

46 In accordance with Art. 411-10.6 CCCat, the right to be forgotten applies by default; in other words, the principle is that of the deletion of data and personal data: in the absence of provisions expressly left by the deceased, the wish for the digital profiles to be deleted or extinguished is presumed.

The experience of Germany

47 In the absence of specific legislation, an important judicial precedent marked a decisive step for all other countries: the German Federal Court of Justice (BGH, pronounced BE-GHE-HA), in its judgment of 27 August 2020 (III ZB 30/20), held that Facebook had to grant the parents direct access to the account of their deceased daughter, while prohibiting them from actively using the account, thereby adopting the principle of the survival of the digital identity of the deceased person and treating the contractual relationship between the (deceased) user and the social network like any other asset or right included in the estate. It also added that even if the general terms of the contract signed by the deceased with the social network provided for a total and explicit principle of non-transferability, those terms would be regarded as not applicable or in any event unenforceable against the heirs.

The Portuguese experience

48 Act No. 58 of 8 August 2019, transposing Regulation (EU) 2016/679, provides that the rights of access, rectification and erasure are exercised by default by any person designated for that purpose by the deceased person or, failing that, by his or her heirs, unless the deceased expressly provided otherwise.

49 In other words, the principle of the survival of rights also applies here, together with the right of the heirs to access the digital accounts and personal data of the deceased, unless the deceased, during his or her

lifetime, expressly prohibited it or designated a person other than the heir to exercise those rights.

THE ITALIAN EXPERIENCE

50 In accordance with Article **2 terdecies** [1] of the Privacy Code, the rights referred to in Articles 15 to 22 of the Regulation relating to personal data concerning deceased persons may be exercised by any person who has **an interest of his or her own,** or who acts to **protect the data subject**, as an agent, or for **family** reasons deserving protection: all of this subject to the contrary will of the deceased, who may expressly exclude or limit the exercise of the rights by third parties by means of: (i) a written declaration, (ii) a will, (iii) instructions given during his or her lifetime to providers or by means of digital planning tools (legacy contacts, account managers in the event of death).

51 In other words, while the Italian legislature establishes on the one hand a right of transmission to the heirs, on the other hand it gives overriding weight to the will of the deceased.

52 The Privacy Code therefore provides for a broadening compared with Article 93 of the Copyright Act, which states that, for letters and correspondence, "where they are confidential in nature or refer to private life", consent to publication belongs to the spouse and the children or, failing them, to the parents; in the absence of a spouse, children and parents, to the brothers and sisters and, failing them, to the direct ascendants and descendants up to the fourth degree. The circle of persons concerned is therefore wider than that of the heirs and of those called to the succession. There seems to be no doubt that cohabitants, among others, are included, given that the rule is more concerned with factual situations (family reasons) than with legal situations.

IS IT AN ACQUISITION *IURE PROPRIO* OR *BY INHERITANCE*?

53 Three solutions are possible:

a. Part of the legal literature has observed that the provision of paragraph 2, which allows the data subject to prohibit the *post mortem* exercise of the rights referred to in paragraph 1, solely by a written declaration to the data controller, has as its **only precondition that there must necessarily be "the entry of the successors** of the deceased into the ownership of those [**rights**], that is (...) an acquisition *iure hereditario*".

b. In reality, the very fact of prohibiting "the exercise of the rights" and not the transfer of the rights would suggest the opposite, namely that those rights **already** belong to the persons designated by the rule who, consequently, could be regarded as having acquired them *iure proprio*.

c. It should be noted that the Court of Bologna, on 25 November 2021, in a tragic case concerning the suicide of a teenager and the possibility of accessing his iCloud, states "that she [the mother] is acting *also as heir* [emphasis added]". The legislative provision of Article *2-terdecies* therefore provides for a **dual track**: extraordinary standing and the "necessary" ownership of the heirs.

HOW CAN POST MORTEM DISPUTES BE PREVENTED?

54 At present, the best way of regulating post mortem digital interests seems to be the judicious use of the will, which makes it possible to:

- prohibit (and revoke or amend the prohibition of) the exercise of the right of access (Art. 15), of rectification (Art. 16) and of erasure (Art. 17), of restriction of processing (Art. 18), of objection (Art. 21) and of data portability (Art. 20) as regards personal data (Regulation (EU) 2016/679, known as the GDPR)
- assign digital assets by specific or universal title
- specify the (immediate and mediate) object of the legacy, taking care (relatio ad locum, relatio al contenuto) to identify clearly whether the testator's interest is to leave the ownership of the medium (including its content, whether economic or non-economic in nature) to the beneficiary of the disposition or whether it is to "break down" (with a different destination for the corresponding beneficiary) the digital content from the medium or from the "keys" that give access to it
- entitle the beneficiary of the disposition to exercise certain rights against the various service operators (for example Meta, Instagram, Apple, Google, etc.), allowing a partially novated succession in the contractual relationship.

SOME TESTAMENTARY CLAUSES:

55 E.g. clause 1) In accordance with Article 2-terdecies of Legislative Decree No. 101 of 10 August 2018, **I expressly authorise** [SURNAME FIRST NAME, contact details] to exercise the rights referred to in Articles 15 to 22 of Regulation (EU) 2016/679 and relating to my personal data.

56 E.g. clause 2) In accordance with Article 2-terdecies of Legislative Decree No. 101 of 10 August 2018, I expressly authorise [SURNAME, FIRST NAME, contact details] to exercise the rights of access (Art. 15) and/or rectification (Art. 16) and/or erasure (Art. 17) and/or restriction of processing (Art. 18) and/or objection (Art. 21) and/or data portability (Art. 20), referred to in Regulation (EU) 2016/679 and relating to my personal data.

57 E.g. clause 3) In accordance with Art. 2-terdecies of Legislative Decree No. 101 of 10 August 2018, **I refuse and prohibit the exercise** of the rights referred to in Articles 15 to 22 of Regulation (EU) 2016/679 and relating to my personal data.

58 E.g. clause 4) In accordance with Article 2-terdecies of Legislative Decree No. 101 of 10 August 2018, **I refuse and prohibit** the exercise of the rights of access (Article 15) and/or rectification (Article 16) and/or erasure (Article 17) and/or restriction of processing (Art. 18) and/or objection (Art. 21) and/or data portability (Art. 20), referred to in Regulation (EU) 2016/679 and relating to my personal data.

WHICH RULES APPLY WHERE THERE ARE CROSS-BORDER ELEMENTS?

59 In accordance with Art. 3(2) of Regulation (EU) No 679/2016 (GDPR), from the point of view of the "territorial" criterion, the regulation applies to the processing of personal data:

60 1. carried out in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

61 2. of data subjects who are in the Union, carried out by a controller or processor not established in the Union, where the processing activities relate to: a) the offering of goods or services to data subjects in the Union, irrespective of whether a payment of the data subject is required; or b) the monitoring of their behaviour as far as that behaviour takes place within the Union.

62 3. carried out by a controller not established in the Union, but in a place subject to the law of a Member State by virtue of public international law. *[applied in the Google Spain case, judgment of 13 May 2014 delivered in Case C-131/12 by the Court of Justice of the European Union; same principles used by the Italian courts: search engines are subject to the European directive on the protection of personal data*]

WHAT HAPPENS IN THE EVENT OF A CONFLICT BETWEEN THE HEIRS, THE AGENT AND OTHER INTERESTED PARTIES?

63 If Italian law [2] applies, Article 2 terdecies of the Privacy Code does not provide, so to speak, for any form of ranking, so it is not clear whether the will of the heirs is to be preferred to that of the other persons mentioned in the rule.

64 A possible legislative reference, together with an axiological and non-formalistic reading of the provision, should lead to a possible interpretation.

a. Article 24(3) of the Copyright Act, which provides that in the event of disagreement between the various heirs on the publication of unpublished works, "the decision is taken by the judicial authority, after consulting the public prosecutor. In all cases, the will of the deceased is respected where it is recorded in writing".

b. A case-by-case assessment is necessary, taking into account the overriding interests, which could also arise from the personality of the *deceased* (possibly a public figure).

65 The case law on Article 93 of the Copyright Act considers that: **a)** if knowledge of the writing is required for the purposes of civil or criminal proceedings, then it prevails over the will of the deceased or of his or her heirs (Cass. 19/06/2020, No. 11979; 20/09/2013, No. 21612); the private and intimate nature of correspondence constitutes "a specific limit to the right to information, and therefore also to historiographical research" (Trib. Rome, 22/05/2018).

66 Paragraph 5 of Article 2 terdecies deals with this aspect by providing that “In all cases, the prohibition may not produce effects prejudicial to **the exercise by third parties of the property rights** arising from the death of the data subject, nor to **the right to defend their interests in court**”.

67 On this point, **the Italian Data Protection Authority (the Garante; measure of 26 October 2023)** accepted that access may take place, in accordance with Article 6 of the GDPR, on the basis of a legitimate interest, which must be:

- genuine,
- serious,
- not instrumental or diverted from its purpose,
- concrete and current, and not purely potential.

LIMITS ON THE RIGHT OF ACCESS

68 **Article 2 terdecies, paragraph 3, last subparagraph**, provides that “the prohibition may concern only the exercise of some of the rights referred to in the aforementioned paragraph”. Is it nevertheless possible for the deceased to impose additional restrictions, for example by authorising access to his or her *social media accounts* and to the published content (for example, photos, comments, etc.), but not to the correspondence associated with them?

69 The analysis of Article 85 of the French Data Protection Act, which provides for a distinction between general and specific directives, is of interest:

a. *General directives concern all the personal data relating to the data subject and may be registered with a digital trusted third party certified by the Commission Nationale de l'Informatique et des Libertés (CNIL).*
b. ***Specific directives** concern the processing of personal data mentioned in those directives. They are registered with the **controllers** concerned. They are subject to the specific consent of the data subject, but no reference is made to the requirement of written form.*

70 The Italian Privacy Code makes no provision in this respect.

71 In the aforementioned decision of 26 October 2023, the Garante specified that the right of access may not be:

- used for speculative purposes,
- exploited to obtain intimate information about the deceased without a valid reason,
- exercised against the will of the deceased.

72 The right of access may therefore not undermine:

- the reputation of the deceased,
- the dignity of and respect for his or her memory,

- the confidentiality choices expressly made.

73 This aspect is also addressed in the judgment of **the Court of Cassation No. 17790 of 8 September 2015,** which held that:

- the right of the heir or successor in title **may not undermine the personal data of third parties**,
- access must be limited to the data strictly necessary for that purpose.

74 It therefore seems to refer to the principle of minimisation, laid down in Article 5 of the GDPR, according to which the processing of data must concern the minimum of personal data.

75 Similarly, **the Court of Cassation, in its judgment No. 39531 of 13 December 2021**, although it concerned a property relationship (an insurance contract), reaffirmed that:

- the heir may access the data relating to the contract concluded by the deceased,
- but may not obtain data concerning the health or private life of the third parties concerned,
- except with consent or unless they are indispensable for asserting a right in court (Art. 2-terdecies, para. 5).

76 Another problem remains. Can the **general terms and conditions of contracts** for digital services (iCloud, social networks, etc.) limit the rights granted by Article 2 terdecies of the Privacy Code?

77 In France, Article 85 of the Data Protection Act specified that "any contractual clause contained in the general terms of use of a processing of personal data that limits the prerogatives granted to the person under this Article is deemed **unwritten**".

78 Italian case law has stated on several occasions that **the will of the deceased prevails over the general terms of the social network** (Trib. Venice, order of 4 June 2025 (No. 5516/2025), Trib. Rome, Court of Milan, 10 February 2021).

79 One passage of the Venetian decision is particularly interesting, where it is stated that "family members may obtain access if this is consistent with the presumed will of the deceased or in the absence of a contrary will".

80 **The formal requirement of written form** is therefore **left behind**, since it is considered that the will of the deceased – albeit as regards digital services – may also be inferred from other evidence.

THE OTHER COUNTRIES SURVEYED [3]

81 In all the other countries where there is no ad hoc legislation (and they are the majority) governing what happens to the digital data/accounts (emails, social networks, cloud files, etc.) of all providers and the underlying rights of access, succession planning with the help of one's trusted notary remains fundamental: it is essential that the testator's wishes be expressed in writing so that they are respected: it is therefore necessary, *among other things*, to draw up the list of accounts, passwords and succession

instructions and to designate the person who will be responsible for "executing" your digital identity in the broad sense (on some social networks, this person is called the "legacy contact"). The personal safe (the IZIMI platform created by the Belgian notariat), for storing and managing important documents and personal data, is in this sense a very good example of the management and anticipation of digital succession.

SOLUTION TO THE PRACTICAL CASE [4]

a) Law applicable to the succession

82 Brigitte Mardot is a French citizen, but resides in Turin: Article 21 of the European Succession Regulation (Regulation (EU) No 650/2012) will therefore apply, that is, Italian law as the law of the State of habitual residence of the deceased.

b) Account in bitcoins

83 The economic value of cryptocurrencies cannot be denied, since they are capable, albeit only within the restricted community of their users, of becoming a unit of measurement for exchanges of goods and services, and may be classified as digital movable property. Moreover, they are expressly taken into account by Article 1(qq) of Legislative Decree No. 231 of 21 November 2007, on combating money laundering, which defines "virtual currency" as "the digital representation of a value, not issued or guaranteed by a central bank or a public authority, not necessarily linked to a currency that is legal tender, used as a means of exchange for the purchase of goods and services or for investment purposes, and transferred, stored and traded electronically".

84 It follows that the cryptocurrency in question may be regarded as an asset capable of being included in the succession.

c) Spotify playlist

85 The playlist could be treated as belonging to the category of "online" digital assets that are not protected by an exclusive and absolute right of ownership held by their owner: the owner is instead the holder of a "licence agreement", that is, of a contractual position that gives him or her the right to enjoy the content covered by the agreement under certain conditions and for a certain period (never exceeding his or her lifetime) in return for the payment of a periodic or one-off fee.

86 This contract is regarded by the leading legal literature (Rossello) as an atypical contract, and it is considered that the rules specific to the lease contract may apply to it, within the limits of compatibility.

87 In view of this configuration, it seems necessary to conclude that licensed digital assets are non-transferable on death, because the user acquires only a right to use them for a fixed period and, consequently, acquires no right of ownership in that respect. This asset cannot be included in the digital estate of the deceased.

d) Digital film library

88 In this respect, it should be made clear that if those films were hosted on a platform accessible by subscription, the considerations just set out for licensed digital assets would apply again.

89 If, on the contrary, the film collection can be regarded as the full and exclusive property of the deceased, who acquired ownership of it by paying the price, these would undoubtedly be offline digital assets of an economic nature, because they have an intrinsic economic value for their owner.

90 Depending on the fundamental choice made as to the ownership of the film collection, different conclusions will therefore be reached as to transferability on death, only a subjective situation that is not extinguished by death being appropriate.

91 If the aforementioned film library were to be regarded as a set of digital assets belonging to the same person and having a single purpose, Article 816 of the Italian Civil Code could apply, in the logic of succession by specific title

e) Family photos and email accounts containing personal correspondence

92 According to the legal literature and case law that have addressed the question, these assets may be regarded as “writings” of a confidential nature or relating to private life.

93 This category is not regulated by the legislature.

94 The delimitation of these concepts was therefore left to the case law which, adopting the considerations of the legal literature, specified that a writing is “confidential” where its author intends to open his or her heart to the addressee, in view of the particular relationship of trust between them, in order to convey his or her moods, feelings and opinions, whatever the context in which this occurs, that is, in order to share intimate aspects of his or her private life.

95 Act 633 of 1941 on copyright appears to apply to these assets, and in particular Article 93, so that the heirs may not dispose of them freely, but must, on the one hand, respect the sender’s right to confidentiality and, on the other hand, may not publish, reproduce or disclose anything without the consent of the close relatives of the addressee (if they are different from the heirs), who do indeed have the right to object. [5]

96 **f) Instagram profile with 1 million followers that generates regular income through partnerships and advertising.**

97 This question raises the issue of succession to the account, which may be defined as a contractual relationship between the service provider and the user for the use of a specific customisable virtual environment.

98 Unlike other digital assets, the account remains the property of the provider and its use is governed by the terms accepted at the time of registration (which often contain clauses imposing the non-transferability of the content or its mandatory deletion).

99 These circumstances may hinder, pending a court decision, the transfer of its digital content which, however, having an undeniable economic dimension, appears capable of being transferred *mortis causa*, with only the manner in which this can happen remaining to be verified in practice.

100 In the present case, the general terms of use of the social network in question state verbatim:

101 ***" 7.2 Holders of rights within the meaning of this agreement.***

102 *This agreement does not confer any rights on third parties.*

103 *The user may not transfer the obligations or rights provided for by this agreement without our consent.*

104 *Our rights and obligations may be assigned to third parties. This could happen, for example, in the event of a change of ownership (by merger, acquisition or sale of assets) or by operation of law".*

105 ***7.4 Handling of disputes.***

106 *In the event of claims or disputes relating to the use of the Service by the user as a consumer, the user and Meta agree to resolve individual disputes and claims before a competent court of the user's main country of residence that has jurisdiction in the matter. In that case, the laws of the country in question apply, irrespective of the provisions on conflict of laws.*

107 *In the event of a claim or dispute arising from the use of the Service in any other capacity, including, without limitation, access to and use of the Service for professional or commercial purposes, the user agrees that the dispute shall be decided before a competent court in Ireland and accepts the application of Irish law, irrespective of the provisions on conflict of laws.*

FINAL CONSIDERATIONS

- There is no doubt that **society** as a whole is undergoing a **profound transformation**, as is **contemporary law**, brought about not only by **globalisation**, but also by **the polycentrism of rules and its internationalisation**, marked by the **contradiction** and **indeterminacy** of the rules themselves.
- Faced with **the complexity** of social relationships and **the absence of rules** capable of governing them, **the role of the notary** as a professional who **picks up** the new demands of society, translates them into **innovative solutions** (even if they are built de iure condito), and creates flexible law (**soft law**) that then **inspires the legislature**, which, with its longer timescales, eventually legislates, is of **growing importance.**
- We can therefore only hope that the legislature will intervene to create **national**, **or even European, rules** with a common language aimed at
    - legally recognising the **digital estate** as an object of succession, guaranteeing the heirs a right of access, management and disposal, within predefined limits;

- defining the **status of digital identity** as a non-economic asset protected even after death and removed from any risk of commodification
- establishing a uniform framework of **relations between heirs and digital service providers** through obligations of cooperation, interoperability and respect for the will of the deceased
- Providing for **innovative legal instruments** (such as digital wills, IT executors and fiduciary registers of login details) to ensure that the post mortem will is actually carried out

108 Digital inheritance confronts us with a very simple truth: we will not be remembered **for the objects** we owned, but **for the traces** we left behind.

109 And those traces, today, **are not found in drawers. They are found on servers.**

110 We **notaries** are – allow me this image – the **guardians of the last locks** of those **drawers** and, in a way, of **life** itself**.**

111 The pen, the seal, the method are not tools of the past: they are tools that **are needed precisely when everything becomes volatile**, intangible, **"cloud",** and above all when we find ourselves in a period of transition and of **regulatory vacuum** that causes **uncertainty.**

112 Let us not forget one thing, however: the regulatory vacuum can be a means of giving greater prominence to the **centrality of the will of the deceased and therefore the centrality of the notary as a bridge between private autonomy and the certainty of the rule of law.**

113 As long as there is someone who **has something to bequeath** – and someone else **ready to receive it** – our **pivotal role** will remain essential.

114 Even **in the digital field**. Believe me: **above all in the digital field**.

Notes

1 Legislative Decree No. 101 of 10 August 2018, Art. 2-terdecies (Rights concerning deceased persons)

Paragraph 1. The rights referred to in Articles 15 to 22 of the regulation [Regulation (EU) 2016/679, known as the GDPR, which does not apply to deceased persons; see recital 27] [right of access (Art. 15), of rectification (Art. 16) and of erasure (Art. 17), of restriction of processing (Art. 18), of objection (Art. 21), of data portability (Art. 20)] relating to personal data concerning deceased persons may be exercised by any person who has a legitimate interest [for example, a creditor who has accidentally deleted his or her correspondence and wishes to access the deceased's mail in order to obtain the document on which the legal claim is based; a successor, heir or legatee, by reference to paragraph 5 below; Art. 620(2) of the Civil Code on the publication of the will, "any person who considers that he or she has an interest", and (5), "any person who has an interest in it"], or who acts for the protection of the data subject, as an agent [mandate post mortem exequendum; executor], or for family reasons deserving protection [non-economic interests of a moral or emotional nature].

Paragraph 2. The exercise of the rights referred to in paragraph 1 is not permitted in the cases provided for by law or where, in the context of the direct offer of information society services, the data subject has expressly prohibited it by a written declaration submitted or communicated to the controller.

Paragraph 3. The data subject's wish to prohibit the exercise of the rights referred to in paragraph 1 must be expressed unequivocally and must be specific, free and informed; the prohibition may concern the exercise of only some of the rights referred to in the aforementioned paragraph.

Paragraph 4. The data subject has the right at any time to revoke or amend the prohibition referred to in paragraphs 2 and 3 [provisions which, in part, relate to Article 587(2) of the Italian Civil Code]. "Provisions of a non-economic nature, which the law allows to be included in a will, are valid if they appear in an act having the form of a will, even in the absence of provisions of an economic nature"; Articles 587(1) and 588 of the Civil Code].

Paragraph 5. In any event, the prohibition may not produce effects prejudicial to the exercise by third parties [for example, the statutory and/or testamentary heirs] of the property rights arising from the death of the data subject, nor to the right to defend their interests in court.

2 Art. 3 DIP (Legislative Decree 218/1995): Scope of jurisdiction

Art. 9 DIP (Legislative Decree 218/1995): Non-contentious jurisdiction: national law where the measure requested concerns an Italian citizen or relationships to which Italian law is applicable

Art. 24 DIP: Personality rights: national law of the person whose rights are at issue

Art. 46 DIP: Succession on death, now replaced by Regulation (EU) No 650/2012, Articles 20-27: from the national law to the law of the State of residence

Art. 48 DIP: Form of the will

Art. 51 DIP: Possession and rights in rem: law of the place where the assets are located

Where, under the rules in force, it is the location of the assets that determines those rules, the territorial nature of digital assets escapes the common criteria for identifying the competent court and raises doubts. Procedural legal literature suggests here too a way out of the impasse by "locating" virtual assets according to the place where power over them can be exercised, and therefore the place where their owner is located. In case law, this same criterion was applied by the High Court of Justice in the decision D'Aloia v Persons Unknown and others, of 24 June 2022.

Art. 54 DIP: Rights over intangible assets: law of the State of use

Art. 57 DIP: Contractual obligations, Rome Convention of 19 June 1980 applicable under Act 975/1984

Art. 5 c.p.c.: Decisive moment for jurisdiction and competence (linked to Art. 8 DIP: Decisive moment for jurisdiction)

3 These are the United Kingdom, Andorra, Armenia, Bulgaria, Croatia, Greece, Hungary, Lithuania, Malta, North Macedonia, Slovakia, Slovenia, Serbia, Switzerland, Turkey and Ukraine.

4 Brigitte Mardot, a French citizen residing in Turin, in Italy, dies leaving a substantial digital estate, namely:

- An account in bitcoins of significant value,
- email accounts, including her personal correspondence with the actor Alain Deloin
- Excellent playlists on Spotify
- A digital film library ;
- Family photos on iCloud ;
- Her Instagram profile, with 1 million followers, which generated regular income through advertising partnerships.

5 It should be recalled that the Italian Data Protection Authority, in its decision of 26 October 2023, specified that the right of access may not be:

• used for speculative purposes,

• exploited to obtain intimate information about the deceased without a valid reason,

• exercised against the will of the deceased.

The right of access may therefore not undermine:

• the reputation of the deceased,

• the dignity of and respect for his or her memory,

• any confidentiality choices expressly made.

COMPARATIVE TABLE

“Digital death” · Notarial Academy of the CAE, Turin, November 2025

Summary table of European regulations

What happens to personal data and digital assets upon death, country by country

Turin, November 2025 11 min read Original language: French

	Regime governing what happens to personal data upon death	Regime governing the transmission of digital assets (having economic value)	Role played by the notary in digital transmission	Notarial platform for the management, storage and transmission of digital data
European Union	Recital 27 of Regulation (EU) 2016/679 on the protection of personal data provides that “the regulation does not apply to the personal data of deceased persons. Member States may provide for rules regarding the processing of personal data of deceased persons”.	The devolution of digital assets depends on the law applicable to the succession, as defined by European Regulation No 650/2012 in the States participating in the regulation.		
COUNTRIES WITH LEGAL PROVISIONS or CASE LAW REGULATING WHAT HAPPENS TO PERSONAL DATA UPON DEATH				

	Regime governing what happens to personal data upon death	Regime governing the transmission of digital assets (having economic value)	Role played by the notary in digital transmission	Notarial platform for the management, storage and transmission of digital data
France	**Act No. 2016-1321 of 7 October 2016 for a Digital Republic.** • **Principle of extinction** of rights over personal data upon death; • **Unless** the deceased had given advance directives concerning access to those data, their retention, their erasure, disclosure, etc. [1] In the absence of advance directives given by the deceased, the **heirs** may request **restricted access** to the deceased's accounts, provided that they concern the organisation or settlement of the succession, the deletion or updating of the user account, or are akin to family memories.	Ordinary legal regime (follows the classic devolution of the estate)	Yes Planning (help with drafting advance directives…)	No
Germany	• No specific legislation • But there is important **case law** laying down a **principle of survival** of rights over personal data and of **transferability to the heirs**. The **Federal Court of Justice in Karlsruhe (Bundesgerichtshof)** [2] delivered a landmark decision in 2018 allowing the heirs to access the Facebook account of a deceased person, treating the user contract of a social network like any other asset of the estate (in other words, the Facebook account would be transferable to the heirs like any other contract or document). • **By way of exception,** agreements may provide that the rights or contracts are not transferred to the heirs, but the corresponding general terms and conditions are without effect.	Ordinary legal regime (follows the classic devolution of the estate). *The heir or heirs automatically become owners of all digital assets, whatever their content (professional, personal).*	No	

	Regime governing what happens to personal data upon death	Regime governing the transmission of digital assets (having economic value)	Role played by the notary in digital transmission	Notarial platform for the management, storage and transmission of digital data
Italy	**-Art. 2-terdecies(1) of Legislative Decree No. 196/2003** makes it possible to obtain – in accordance with Art. 15 of the GDPR – access to all the data of the deceased "stored" by the controller. **-Under the Act of 10 August 2018, No. 101:** • **Principle of survival** of the data subject's rights after death • **Unless** the deceased expressly prohibited the post mortem exercise of his or her rights by his or her successors in title, by a written declaration communicated to the controller of the personal data. *(Court of Bologna, Section I, order of 25 November 2021)*	Ordinary legal regime (follows the classic devolution of the estate)	Yes The National Council of Notaries has presented a short guide to the legal regime of "digital inheritance": https://www.notariato.it/it/notariato/eredita-digitale/	No
Spain	**Organic Law 3/2018 on the Protection of Personal Data and the guarantee of digital rights (Art. 96 of the LOPDDGDD) and Art. 2 of the Código de la Privacidad.** • **Principle of survival** of the data subject's rights after death: the heirs or other authorised persons may access the digital accounts and personal data of the deceased, amend them or delete them. • **Unless** the deceased expressly prohibited it during his or her lifetime (in a will, for example).	Ordinary legal regime (follows the classic devolution of the estate)	Yes *The most practical way of managing digital inheritance is to include specific instructions concerning digital assets in an open, notarial will. This ensures that the heirs know how to act and that the wishes of the deceased are respected.*	No
Catalonia (Spain)	**Art. 411-10.6 CCCat** • **Principle of extinction** of personal data: in the absence of provisions made by the deceased, the wish for the digital profiles to be deleted or extinguished is presumed. No tacit authorisation of management by the heirs. • Possibility of appointing a "digital executor".	Ordinary legal regime (follows the classic devolution of the estate)	yes	No

	Regime governing what happens to personal data upon death	Regime governing the transmission of digital assets (having economic value)	Role played by the notary in digital transmission	Notarial platform for the management, storage and transmission of digital data
Portugal	**Law No. 58/2019 of August 8** (*Ensures the implementation, in the national legal order, of Regulation (EU) 2016/679 of the Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.)* The rights provided for in the GDPR relating to personal data of deceased persons, covered by the previous paragraph, namely **the rights of access, rectification and erasure, are exercised by whomever the deceased person has designated for this purpose or, failing that, by their heirs**. **Data subjects may also, under applicable law, specify the impossibility of exercising the rights referred to in the previous paragraph after their death.** • In other words: • **Principle of survival of rights:** the heirs may access the digital accounts and personal data of the deceased; • **Unless** the deceased expressly prohibited it during his or her lifetime or designated another person to exercise those rights.	Ordinary legal regime (follows the classic devolution of the estate).	Yes *On the same terms as the other assets of the inheritance*	No

	Regime governing what happens to personal data upon death	Regime governing the transmission of digital assets (having economic value)	Role played by the notary in digital transmission	Notarial platform for the management, storage and transmission of digital data
Georgia	• Existence of a regime that strictly regulates access to the personal data of the deceased: *The **Personal Data Protection Law** contains an explicit rule concerning deceased persons. Article 8 of the Georgian law on personal data protection **allows the processing of a deceased person's personal data** (a) on the usual legal grounds, (b) unless close relatives have prohibited it, (c) after a period of 30 years from the death, or (d) where this is necessary to exercise succession rights. This means that relatives and estate administrators have clear legal channels, but also limits* [3] .	*Georgia has rules governing what happens to a person's digital data after death, but there is no single law on the "succession of digital assets" that overrides the ordinary rules on succession and data protection. The outcome is determined by a combination of (1) the Civil Code (succession law), (2) the Georgian law on personal data protection and (3) other sectoral laws (for example, electronic communications).* *Succession is governed by the Civil Code. Property (in the broad sense) passes to the heirs under the Civil Code, either by will or by statutory succession; this framework applies to all assets capable of being inherited. If a digital asset has proprietary or economic value and can be transferred, the rules of succession apply. However, digital assets, such as social media accounts, cryptocurrencies and digital files, are not explicitly mentioned in Georgian legislation* [4] .	Yes. *In Georgia, the role of the notary in digital inheritance is indirect but important, depending on how the digital assets are classified and transferred. As indicated, there is no separate law on "digital inheritance" in Georgia. Consequently, the ordinary rules on succession laid down in the Georgian Civil Code apply, with the notary acting as the central authority responsible for supervising the succession process* [5] *. Since "digital assets" (emails, social networks, crypto wallets, online accounts, digital property rights, etc.) are not excluded from the definition of property, they may form part of the estate.* *The notary's involvement then depends on the nature of the asset: in the case of digital financial assets (cryptocurrencies, digital wallets) that are identifiable and inheritable, the notary records them as estate assets and may certify their transfer to the heirs. However, practical access (private keys) must be arranged by the heirs themselves; the notary cannot override the laws on confidentiality or data protection. The law on personal data protection (Art. 8) limits the processing of the data of deceased persons, unless it is necessary for succession purposes. The notary does not obtain the passwords or private keys: the heirs must provide them or obtain access by lawful means. Platform policies (Google, Meta, Apple, etc.) often require a court decision or an official certificate of inheritance issued by the notary in order to release account data* [6] .	No. *No electronic notarial system yet directly manages "digital estate transfers", although digital signatures and electronic notarial systems (in accordance with the law on notaries) can be used to formalise declarations* [7] .

	Regime governing what happens to personal data upon death	Regime governing the transmission of digital assets (having economic value)	Role played by the notary in digital transmission	Notarial platform for the management, storage and transmission of digital data
COUNTRIES WITHOUT SPECIFIC REGULATIONS				

	Regime governing what happens to personal data upon death	Regime governing the transmission of digital assets (having economic value)	Role played by the notary in digital transmission	Notarial platform for the management, storage and transmission of digital data
United Kingdom	No specific regulation	***The UK is actively working on legislation*** *(in particular the Property (Digital Assets etc) Bill) which will make a meaningful difference to the transfer of digital assets on death. But no comprehensive statute yet resolves all categories of digital data/accounts (email, social media, cloud files, etc) across all providers and underlying rights of access. So in practice, estate planning remains important to ensure the testator's wishes are carried out, ie list accounts, passwords, legacy instructions, and nominate who should be the "executor" for digital data.*	No	No
Andorra	No specific regulation	Ordinary legal regime (follows the classic devolution of the estate).	Yes	
Armenia	No specific regulation	-	No	
Bulgaria	No specific regulation	Ordinary legal regime (follows the classic devolution of the estate).	No	No
Croatia	No specific regulation	Ordinary legal regime (follows the classic devolution of the estate).	Yes *The notary carries out inheritance proceedings as a court commissioner*	No
Estonia	No specific regulation	*"Since there are no particular rules governing the succession of digital assets, we must start from the principle that the general rules of succession laid down by succession law apply"* [8] .	*The notary is competent to settle the succession, but the distribution or transfer of digital assets is generally not part of the succession procedure conducted by the notary* [9] .	*Estonia has a good infrastructure, which forms the basis of an "ecosystem" capable of handling digital assets within succession processes* [10] *. The e-Notary system allows notaries to carry out these procedures digitally. Estonia has a well-developed electronic identity (e-ID) system and the X-Road (X-tee) data exchange layer enables secure data transfer between government agencies. The Estonian legal system provides clear rules on inheritance, and the laws governing data protection and registers (such as the Personal Data Protection Act) ensure the secure handling of information. However, digital assets (for example, cryptocurrencies, social media accounts) are not yet covered by Estonian succession law. The conditions for putting in place future legal frameworks that could formalise the inheritance of digital assets and accounts are in place, but the legislation does not yet exist* [11] *.*

	Regime governing what happens to personal data upon death	Regime governing the transmission of digital assets (having economic value)	Role played by the notary in digital transmission	Notarial platform for the management, storage and transmission of digital data
Greece	No specific regulation	Ordinary legal regime (follows the classic devolution of the estate).	No	No
Hungary	No specific regulation *By the request of the heirs the "rights and obligations attached to the data" can be the subject of probate in Hungary.*	Ordinary legal regime (follows the classic devolution of the estate).	Yes *Only for the request of the heirs; if they do not indicate subjects of digital inheritance in the probate documents, the notary will not be involved.*	No
Latvia	No specific regulation. *The relatives or heirs of the deceased may individually contact the data controller and arrange the transfer or erasure of the data. No legal basis is currently provided for in national legislation* [12] *.*	No regulation.	No	*The Latvian notariat operates two platforms for storing and managing client data: DigiNotary, a platform for scheduling and organising online client appointments, in videoconference format, and for storing and managing client information. This includes the clients' contact details and the list of documents issued to them (the latter being visible only to the client).* *"NIIS" (in English: Internal Information System of Notaries) – a platform for checking client data, updating data, obtaining data from public registers and drafting documents.* ***No platform for the transfer of personal data and digital assets is currently in use*** [13] ***.***

	Regime governing what happens to personal data upon death	Regime governing the transmission of digital assets (having economic value)	Role played by the notary in digital transmission	Notarial platform for the management, storage and transmission of digital data
Lithuania	No specific regulation *The fifth book of the Civil Code of the Republic of Lithuania (Inheritance), as well as other sources of Lithuanian law, does not mention the inheritance of digital assets. In other words, the institution of digital asset inheritance is currently not directly regulated in Lithuania, either in the Civil Code or in other legal acts. On the other hand, to a certain extent, the inheritance of digital assets should still be possible in Lithuania, even though it is not clearly and comprehensively regulated by law.* *It is believed (this opinion can be found in legal doctrine and scientific articles) that in Lithuania, the possibility of inheriting digital assets arises from the principle of universality of inheritance enshrined in the Civil Code, and already now, in Lithuania, at least in theory, it is possible to inherit either the digital property itself (if it meets the requirements for an object of property rights) or the author's rights to the digital property (if such digital property meets the criteria applicable to an object of intellectual property).* *Another opinion, which is also correct to a certain extent in the relevant context, is that inheritance of data contained in personal accounts — such as email, social media, or digital library accounts — is not governed by the provisions of inheritance law, but rather determined by the agreements or terms of use established between the user and the service provider. For example, many platforms allow users to designate individuals who may manage their accounts in the event of their death.*		Yes *If the heirs were to apply to a notary and submit documents proving the deceased person's property rights to certain digital assets or the author's rights to the digital property, the notary could issue a certificate of inheritance.*	No
Malta	No specific regulation	Ordinary legal regime (follows the classic devolution of the estate).	No	No
North Macedonia	No specific regulation	Ordinary legal regime (follows the classic devolution of the estate).	No	
Slovakia	No specific regulation	Ordinary legal regime (follows the classic devolution of the estate).	No	No
Slovenia	No specific regulation	*Digital assets are not regulated in succession law in slovenia, even not in private international law.*	No	No
Serbia	No specific regulation	Ordinary legal regime (follows the classic devolution of the estate).	Yes *If the notary acts as a commisioner of the court he/she will issue the succesion certificate*	No

	Regime governing what happens to personal data upon death	Regime governing the transmission of digital assets (having economic value)	Role played by the notary in digital transmission	Notarial platform for the management, storage and transmission of digital data
Switzerland	No specific regulation. *In the absence of specific and comprehensive regulation in Switzerland concerning what happens to digital data and assets after death, their fate is determined by a combination of principles of succession law, the law of personality, data protection law and, to a large extent, the general terms of use (GTU) of online services. Transmission, where it takes place, rests on indirect and analogical legal foundations.*	*The general rules of succession law and, where appropriate, of data protection law should be applied, taking into account the nature of the asset or the data.*	Yes *In Switzerland, the notary may take part in digital transmission, mainly in the event of death, although there is no specific regulation detailing the notary's role in this particular field. The notary's involvement stems from his or her general functions in matters of succession and from his or her duty of care.*	No
Turkey	No specific regulation. *The deceased person's social media accounts remain as they are. The deceased person's electronic government accounts are closed, and their electronic signature is revoked.*	Ordinary legal regime (follows the classic devolution of the estate).	Yes [14]	
Ukraine	No specific regulation. *Contracts concluded with online services may contain provisions limiting the transfer of digital data and assets to third parties after death*	Ordinary legal regime (follows the classic devolution of the estate).	Yes *The role of the notary in the process of transmitting the inheritance may consist in obtaining the necessary information on the existence of digital data and assets and in issuing a certificate of the right to inherit the corresponding digital data and assets. In this case, the object of the inheritance may be rights arising from certain contracts as well as digital assets or data having the characteristics of property.*	No

Notes

1 Article 85 of the Act: Any person may define directives relating to the retention, erasure and disclosure of his or her personal data after death

2 Bundesgerichtshof (BGH) = Federal Court of Justice, judgment of 12 July 2018 –III ZR 183/17

3 Personal Data Protection Law contains an explicit rule for deceased persons. Article 8 of the Law of Georgia on Personal Data Protection allows processing of a deceased person's personal data (a) on the usual legal grounds, (b) unless close relatives have prohibited it, (c) after 30 years have passed since death, or (d) when necessary to exercise inheritance rights. That means relatives and estate administrators have clear legal channels but also limits.

4 "Georgia has rules that affect what happens to a person's digital data after death, but there is no single "digital-assets inheritance" law that overrides ordinary inheritance and data-protection rules. The outcome is determined by a mix of (1) the Civil Code (inheritance law), (2) the Law of Georgia on Personal Data Protection, and (3) other sector laws (e.g., electronic communications). Inheritance is governed by the Civil Code. Property (broadly speaking) passes to heirs under the Civil Code either by will or by statutory succession; that framework applies to any assets capable of being inherited. If a digital item has proprietary or economic value and is capable of being transferred, inheritance rules apply. Though, digital assets, such as social media accounts, cryptocurrencies and digital files, are not explicitly addressed by Georgian Law."

5 Under the Civil Code, the notary: opens the succession on death; verifies the will (if any) or applies the rules of intestate succession; issues the certificate of inheritance; identifies and authenticates the heirs, guaranteeing their rights over the property of the deceased.

6 "The notary's involvement then depends on the nature of the asset: digital financial assets (cryptocurrency, digital wallets) if identifiable and inheritable the notary records them as estate assets and may certify transfer to heirs. However, practical access (private keys) must be arranged by heirs themselves; The notary cannot override privacy or data-protection laws. The Law on Personal Data Protection (Art. 8) limits processing of data of deceased persons unless it is necessary for inheritance purposes. The notary does not obtain passwords or private keys — heirs must provide those or obtain access through lawful means. Platform policies (Google, Meta, Apple, etc.) often require a court order or official certificate of inheritance issued by the notary to release account data.In Georgia today digital inheritance is handled within the general inheritance procedure; Notary involvement is mandatory for issuing inheritance certificates (even if the estate is purely digital)".

7 No electronic notarial system yet directly manages "digital estate transfers" — though digital signatures and e-notarial systems (per the Law on Notaries) can be used to formalize declarations.

8 *Since there are no special rules for the inheritance of digital assets, we must proceed from the fact that the general rules of inheritance set out in the Law of Succession apply; or, if a will has been made regarding the digital assets, that will can be followed instead.*

9 *The succession procedure is carried out by a notary, but the distribution or transfer of digital assets is generally not part of the succession procedure conducted by the notary.*

10 "For example, Estonia has a succession register kept by the Chamber of Notaries, which contains data on wills, successions and heirs. Notaries can search databases (such as the population register or the land register) in order to verify the rights and obligations of a deceased person".

11 *In Estonia there is a good infrastructure, that provides a foundation for an "ecosystem" capable of handling digital assets within inheritance processes. For example, Estonia has an Inheritance Register maintained by the Chamber of Notaries, containing data about wills, estates, and heirs. Notaries can make inquiries in databases (such as the Population Register or Land Register) to verify a deceased person's rights and obligations. The e-Notary system allows notaries to perform these procedures digitally. Estonia has a well-developed electronic identity (e-ID) system and The X-Road (X-tee) data exchange layer enables secure data transfer between government agencies. The Estonian legal system provides clear rules for inheritance and laws governing data protection and registers (such as the Personal Data Protection Act) ensure the secure handling of information. However, digital assets (e.g. crypto holdings, social media accounts) are not yet covered by Estonian inheritance law. The conditions for future legal frameworks that could formalize the inheritance of digital assets and accounts are there, but the legislation is not. Estonia does not yet have specific regulations governing digital inheritance.*

12 "The relatives or heirs of the deceased can individually contact the data controller and organise the transfer or erasure of data. No legal basis currently provided in national law".

13 "Notariat of Latvia operates two platforms for storing and managing client data: "DigiNotārs" (English - DigiNotary) – a platform for scheduling and organising online, videoconference-format client appointments, storing and managing client information. This includes client contact information and a list of documents that have been issued for the client (the latter being visible to client only). "NIIS" (English – Internal Information System of Notaries) – platform for carrying out client data checks, updating data, obtaining data from public registers and drafting documents. No platforms for transferring digital personal data and assets are currently in use".

14 *The deceased person's certificate of inheritance can be issued by a notary (the Magistrate Court Judges are also authorized, but people find notaries more efficient, so they prefer to obtain this document from a notary even if the fee is slightly higher). Heirs can access information about the deceased's real estate, bank accounts, and insurance policies, etc., through their own electronic government accounts using this inheritance certificate.*

GUIDE

"Digital death" · Notarial Academy of the CAE, Turin, November 2025

Digital inheritance

The ten commandments of the notariat

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1 With technological change and an online life that keeps growing, the boundaries of what can be defined as an inheritance are blurring, and it now covers far more than immovable property, bank accounts, manuscripts or valuables kept in safes. There is now a genuine digital inheritance made up of data, accounts, social media content, blogs, investments managed online and many other items, which must be dealt with in advance, as one would for any other type of asset.

2 Careful planning of the rights by the person concerned allows them to be exercised after that person's death and makes it possible to protect moral, personal and family interests as well as economic ones, avoiding costly international disputes whose outcome is uncertain.

3 Calling on an expert able to help you find your way through the complexity of the subject is the wisest choice; Italian notaries have been dealing with digital inheritance since 2007. This guide is the result of their experience and aims to raise public awareness and to answer preliminary questions on the subject.

4 1 The legal framework is uncertain and constantly changing. At present, in Italy as in Europe, there is no specific legislation. So do not count on the law taking care of it for you. It is therefore important to plan in advance the transfer of the digital inheritance, that is, all digital resources offline (for example, the files, software and electronic documents created and/or purchased by the deceased, such as images, audio files, videos, films, text documents, domain names, websites, blogs, etc.) and online (such as those associated with email accounts such as Virgilio, Libero, Yahoo, Google; with social media accounts, such as WhatsApp, Instagram, X, Facebook, TikTok; with financial accounts such as Binance; with e-commerce accounts such as Amazon, eBay; with electronic payment accounts such as PayPal, Satispay, etc.). This applies whatever the storage medium, whether physical (that is, PC, smartphone or tablet, hard drive, USB stick, CD-ROM, DVD, etc.) and/or virtual (cloud storage, for example Google Drive, Dropbox, iCloud, OneDrive, etc.).

5 2 Passwords are not part of the digital inheritance, but are important virtual access keys to a given item of digital content, which must be kept safe and up to date. Indeed, as is often the case, the main problem lies in recovering the login details, which may have been lost or were not passed on in time by the deceased, thereby preventing access to his or her data, except after costly, or even international, disputes.

[6] 3 You may entrust your login details (username and password) to a trusted person, giving clear instructions on what to do in the event of death: destroy all or part of the data, or hand them over to the persons you have designated. This is known as a post mortem mandate, and it is permitted under our law for digital data and resources of sentimental, family and moral value (for example, photos, images, personal videos). If you change your password, as good security practice recommends, do not forget to update your instructions. You may also dispose of your digital rights and interests by will (specifying, for example, whether or not your data may be accessed, and designating the persons authorised to access your computers, your files, etc.). A will is the most appropriate instrument in the case of digital data and resources that have economic value, but not only in that case.

[7] 4 Entrusting your passwords to someone does not mean transferring to that person, in the event of death, the resource to which they give access. The use of the passwords of absent or deceased users to access online resources, data, services and platforms should also be avoided, all the more so if you are not authorised to do so. That is why all instructions and provisions on the use of passwords must be very clear: the notary will be able to assist and advise you.

[8] 5 Pirated digital assets, licensed content (for example, content requiring payment of a subscription, such as the Office 365 package, Netflix, Spotify, etc.), electronic signature accounts (provided by Aruba, Namirial, Infocert, etc.) and digital identity accounts (SPID provided by Poste Italiane, Aruba, Infocert, Namirial, etc.) are excluded from the succession. Attention should also be paid to data held by the deceased but belonging to third parties, such as employers or clients, since in principle they must be returned to them.

[9] 6 Cryptocurrencies or virtual currencies (for example Bitcoin, Ethereum, Tether, Litecoin, Monero, Ripple, Stellar, etc.), generally kept in digital *wallets*, are genuine digital assets with economic value.

[10] 7 Beware of online bank accounts: an online account is nothing other than the virtual extension of a real account. The heirs may therefore claim what is due to them through the traditional channels.

[11] 8 Very often, Internet access providers (FAI) — that is, the companies offering access to services, spaces and platforms on the Internet — have their registered office outside national and European territory (for example in the United States, in China, etc.). This means that, in the absence of express provisions on digital succession, the only way to access the data and digital assets of a deceased relative is to bring costly and uncertain contentious proceedings, sometimes at international level.

[12] 9 Some online services, recently introduced by various FAI and provided for in the general terms of use at the time of activation, offer the possibility of creating memorial accounts, of authorising or prohibiting the disclosure of data, and of deactivating or closing the account after the user's death has been "reported". Among the best-known services is the function allowing a "legacy contact" to be designated; this person is entitled to exercise certain rights of a moral, sentimental and family nature, but is not always in a position to safeguard the interests of the deceased, in particular as regards digital resources of economic and financial value. Other services, by contrast, provide for the outright destruction of all data in the event of death, resulting in their permanent loss.

[13] 10 Italian notaries have been dealing with the issue of digital inheritance since 2007. If in doubt, call on your trusted notary to find the solution best suited to your needs, both real and digital. For more information: www.notariato.it

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