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**Working Group on the Evaluation of Judicial Systems
(CEPEJ-GT-EVAL)**

Specific Study of the CEPEJ on the Legal Professions

Contribution of the Council of the Notariats of the European Union (CNUE)

Note : This document is a contribution written by the CNUE on the basis of CEPEJ data and reports (mainly 2014 data) and enriched with their analyses, opinions and conclusions on the basis of their network and experiences. The information and views set out in this study are those of the authors and do not necessarily reflect the official position of the CEPEJ. The CEPEJ, does not guarantee the accuracy of the data, analyses, opinions and/or conclusions included in this study. Neither the CEPEJ nor any person acting on the CEPEJ's behalf may be held responsible for the use which may be made of the information contained therein.

A distinction must be made between Latin-type/civil law notaries and “notaries public”, who do not have the same competences.

Latin-type/civil law notaries are independent and impartial public office-holders who have received a delegation of authority from the State to authenticate legal documents. They are entrusted with the mission of ensuring freedom of consent so that the legitimate interests of all concerned are guaranteed by providing comprehensive legal advice and information. A signature by the notary confers authenticity to legal acts. As providers of legal certainty, notaries play an essential role in helping to limit subsequent disputes. They are therefore major players in the preventive administration of justice.

Latin notaries are generally in charge of drawing up and receiving legal deeds, acknowledging signatures and statements, providing evidence, ensuring that documents comply with the law and, in some states or entities, issuing subpoenas or executing court decisions.

“Notaries Public” are typically not required to be lawyers, but instead are ministerial officers with limited powers and functions¹. They are not authorized to authenticate legal deeds and can only certify signatures².

1.1 Status, number and functions

The notarial profession exists in many member states. Most of the 47 responding states or entities who participated in the CEPEJ’s evaluation of the judicial systems based on the 2014 CEPEJ data reported that the notarial profession was a separate profession within their legal system.

In the vast majority of countries the notaries are independent private professionals (37), but subject to State supervision (33) for example in **Austria, Belgium, France, Luxembourg, The Netherlands and Spain**. This is not the case in **Sweden, UK-England and Wales and UK-Scotland** where public authorities do not exercise any control over the exercise of the profession.

The second most common status of notaries (10 states or entities) is a public one.

Latin *notaries* (see above) practice their profession as liberals such as in **Austria, Belgium, France, Luxembourg, The Netherlands, Serbia and Spain**.

In **Denmark**, the notary is an integrated function of the district courts. In **Iceland**, the 24 district commissioners act as *notarius publicus* (Public Notaries).

In most responding states or entities notaries are appointed by an official act of government as is for example the case in **Austria, Belgium, France, Georgia, Germany, Greece, Italy, Luxembourg, the Netherlands, Romania, Serbia and in Spain**.

¹ Hague Convention, Apostille Handbook, n° 126 ff.

² The notion of authentication of legal deeds is specific to the Latin system.

Table 1 - Status of notaries in 2014 (Q192³)

States/entities	Private professionals (without control from public authorities)	Private professionals under the authority (control) of public authorities	Public agents	Other
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				

³ The question number refers to the CEPEJ's questionnaire evaluating the judicial systems (see Annexes)

Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
Israel				
Nb of Yes	4	33	13	6
Nb of No or NAP	41	13	32	39
Nb of NA	1	0	1	1
Total	46	46	46	46

Between 2012 and 2014, the total number of notaries increased, thus making it possible to adapt to states' and citizens' needs. In many states and entities, the evolution ranges between - 5 % and + 5 %.

An important increase can be noticed in **Armenia, Belgium, France, Georgia, Ireland, Italy, Poland, Romania, Sweden, "the former Yugoslav Republic of Macedonia"** and **UK Northern Ireland**, whereas a significant decrease (more than 10 %) is to be observed in **Finland** and **Switzerland**.

Examples and comments may be found in the Database CEPEJ-STAT of the Council of Europe:
<http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/STAT/default.asp>

Table 2 - Functions of notaries – number of States/entities in 2014 (Q194⁴)

States/entities	Civil procedure	Legal advice	Authentication of legal deeds and certificates	Other
Albania				
Andorra				
Armenia				
Austria				
Azerbaijan				
Belgium				
Bosnia and Herzegovina				
Bulgaria				
Croatia				
Cyprus				
Czech Republic				
Denmark				
Estonia				
Finland				
France				
Georgia				
Germany				
Greece				
Hungary				
Ireland				
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Republic of Moldova				
Monaco				
Montenegro				
Netherlands				
Norway				
Poland				
Portugal				
Romania				
Russian Federation				
Serbia				
Slovakia				
Slovenia				
Spain				
Sweden				
Switzerland				
The				

⁴ The question number refers to the CEPEJ's questionnaire evaluating the judicial systems (see Annexes)

FYROMacedonia				
Turkey				
Ukraine				
UK-England and Wales				
UK-Northern Ireland				
UK-Scotland				
Israel				
Nb of Yes	27	30	44	18
Nb of No	19	16	2	28
Total	46	46	46	46

Like in other sectors, the functions of notaries vary considerably from one state or entity to another. Whereas the “authenticity” in the case of notaries public covers only the signature, the main competence of Latin type notaries is the authentication of legal acts. This consists of providing authenticity regarding the identity of the parties, their capacity and their informed consent as well as the lawfulness of the content. It should be noted that when Latin type notaries certify signatures, the certification might also entail the check of legal capacity of the involved parties and the examination of the content of the proposed transaction, as for example in Austria and Germany.

In more than half of the states or entities (30), notaries also provide legal advice. 27 states or entities entrust notaries with the performance of duties within the framework of civil procedures.

In many states, competences were transferred from the courts or public administrations to the notaries in order to unburden the former and therefore contribute to increasing the efficiency of the administration of justice.

For example, in **Romania and Latvia**, spouses that wish to divorce by mutual agreement may do so before a civil law notary.

In **Romania**, as of December 2010, a change in legislation enabled civil law notaries and officers of the civil registry to ascertain the termination of marriages by way of divorce by mutual agreement, *if there were no minor children involved*, with the first notarial and administrative divorces being finalised in January 2011. As of October 2011, the spouses were given the option to settle their divorce before a civil law notary, even in situations *where minor children were involved*. The characteristics of notarial divorce proceedings make it possible for the divorce to be finalized by the civil law notary, without being necessary to involve other legal professionals (lawyers, mediators, etc.) and without the involvement of a judge. In this context, where the law calls for the minor children to be heard during divorce proceedings, the hearing is conducted by the civil law notary⁵.

⁵ Illustration by data concerning *contentious divorces* received and processed by first instance courts in Romania

2010:

Cases pending before the courts on 01.01.2010:	Incoming cases:	Resolved cases:	Cases pending on 31.12.2010:
27.003	56.962	57.793	26.172

2012:

Cases pending before the courts on 01.01.2012:	Incoming cases:	Resolved cases:	Cases pending on 31.12.2012:
20.926	42.582	44.261	19.247

2014:

Cases pending before the	Incoming cases:	Resolved cases:	Cases pending on 31.12.2014:

In the **Czech Republic, Austria and Serbia**, notaries act as court commissioners in succession cases preparing all necessary documents and procedures for the court's decision. In **Hungary** and the **Czech Republic**, even the decision in the succession procedure is issued by the notary.

In **Portugal**, civil law notaries have been competent exclusively since September 2013 for the opening and processing of inventory procedures in family and succession matters and in the event of a former judicial procedures concerning the sharing of assets following a divorce or a succession. Since then, the average completion time of these proceedings has decreased considerably⁶.

In **Latvia**, as of 1 July 2014, with a view to facilitating the introduction of a trusteeship, the application is submitted to a civil law notary.

In **Hungary** notaries are competent for issuing orders for payment, thus contributing to the reduction of the courts' workload.

In **Lithuania**, since 2011 according to the code of civil procedure, notaries are entitled to attest written explanations of witnesses.

18 of the responding states or entities also stated that "other" functions may be performed by notaries. For example, notaries may often collect taxes (for example in **France**: notaries calculate and collect taxes on behalf of the State, their involvement guaranteeing that 100% of inheritance tax and real estate transaction tax is collected for example, at no cost for the public authorities, which represents a considerable saving for the State) and ensure the security of transactions and other objects in deposit in order to deliver them to third parties (**Austria, Estonia, Hungary, Republic of Moldova, Montenegro, Romania, Russian Federation, Serbia, Slovenia, Turkey and Ukraine**). In a few states or entities, they can handle complaints regarding bills, cheques, promissory notes or bills of exchange (**Finland, Lithuania, Republic of Moldova, Norway, Romania, Slovenia, Turkey, and Ukraine**). In other states or entities, notaries may be executors of wills, administrators of estates (**Bulgaria, France, Netherlands**) or trustees in bankruptcy and composition proceedings (**Czech Republic**). They provide various services within the framework of real estate transactions and corporate transactions (**Austria, Belgium, Bosnia and Herzegovina, Denmark, France, Germany, Greece, Netherlands, Spain**). In **Italy**, in case of a division of assets within the jurisdiction of a judge, the judge can delegate the task to a notary in his/her stead. The legislator recognised the technical specialisation of notaries in the field of real estate, but also their natural proximity to the parties, as notaries are commonly felt to be the natural trusted third party and advisor. Statistics show that divisions that are transferred to notaries reach a settlement in an overwhelmingly large number of cases, thus avoiding referral to a relevant court.

In **Lithuania**, the mortgage law underwent a reform. The notary was put in charge of attesting and registering mortgage contracts instead of the mortgage judge. In **Serbia**, mortgage agreements or statements contain an explicit statement by the obliged person that direct enforcement may be implemented on the basis of the agreement or statement. These mortgage agreements or statements are made before a notary in the form of an authentic instrument.

courts on 01.01.2014:			
16.334	34.125	33.645	16.814

Romania: divorces settled by civil law notaries:

2011:	2.895
2012:	6.593
2013:	9.975
2014:	12.395

⁶ In 2011/2012, according to the information provided by the Portuguese Ministry of Justice, the average duration of the inventory processes was, respectively, 43 and 44 months; with the processing of inventories taking place in the notary offices, in the years of 2013/2014, the average duration of these processes became, respectively, 28 and 21 months

Notaries can also be in charge of authenticating matrimonial property agreements or agreements on the property consequences of civil partnerships (**Belgium, France, Germany, Hungary, Netherlands**). In **Belgium, Bosnia and Herzegovina** and **Netherlands**, notaries are competent for the organisation of public sales of real estate, rents and mortgages. The notary working in a local registry office handles the certification of, amongst other things, signatures, copies of certificates and the authentication of *curriculum vitae* and factual situations (**Finland, Poland, Portugal, Spain**). In addition, they handle the opening and closing of safe-deposit boxes as well as the monitoring of lotteries (**Finland, Sweden, Netherlands**). Sometimes, they can also divide the sales price in enforcement proceedings (**Bosnia and Herzegovina**) or be in charge of mediation and arbitration (**Austria, Georgia, Germany, Slovakia, Netherlands**). In **Italy**, notaries act every day as mediators or arbitrators in many fields, such as real estate, inheritance law, contract interpretation, corporate and trust law, thus contributing to the unburdening of the courts.

Some specific tasks can be assigned to them such as translations or the storage of official documents as is the case in **Greece, Hungary, Lithuania, Romania, Russian Federation** or **Ukraine**. In **Italy** notaries are very often tasked by the courts in the proceedings of real estate auctions, inventories and the distribution of assets of a deceased person.

In several countries, authentic instruments can be set up electronically (for instance in **Austria, Azerbaijan, Estonia, France and Italy**). In **Italy**, since 2010, notarial deeds can be executed in a completely digital form. The use of digital technologies is particularly frequent in two fields. One is with the issuance of a Power of Attorney by banks: all major Italian banks now issue Powers of Attorney with the help of digital notarial authentic instruments, so that digital copies can be downloaded everywhere, safely and in real time. The second field concerns contracts through which the State acquires goods or services: some of these contracts, indeed, have to be executed through a digital notarial authentic instrument, thus enabling the State to create an updated, transparent and accessible database of the main contracts. The National Council of Notaries also provides, without a cost for the State, the conservation of all notarial digital documents, complying with stringent requirements as set out by the law (including the constant time-stamping of digital documents, to counteract new hacking techniques, and updating to the latest IT standards, to allow future accessibility).

In **numerous civil law countries**, notaries play a major role in eGovernment.

As an example, in **Belgium**, it is possible to incorporate a company online within a day since 2007 already. Notaries conduct all post-act formalities electronically: after the act is signed, the notary sends the file electronically to the various official databases of the Registry, the Belgian Official Journal and the Crossroads Bank for Enterprises. A few minutes later, the notary receives the business number, enabling the client to activate his/her VAT number at a one-stop-shop for businesses. Following a recent law in 2014, notaries in **Belgium** are also able to register their documents electronically with the Ministry of Finance using the eRegistration application. In **Spain**, as it is the case in many other countries, notaries are interconnected with several public administrations (cadastre, registries, tax authorities, judges, town halls, etc.) and submit to them fast and safe information. They are also involved in preventing money laundering and terrorist financing and thus, they have their own centralized body on anti-money laundering, which informs authorities about potential risks.

The so called OCP (Organismo Centralizado de Prevención de Blanqueo de Capitales) is a unit depending on the Spanish Council of Notaries that cooperates with the judicial, police and administrative authorities responsible for the prevention and fighting of money laundering and terrorist financing -regardless of the direct responsibility that notaries have as obliged persons. Its functioning can be summarized as follows:

- notaries gather information from their clients in order to find out the nature of their professional or business activities. They notify the OCP any act or transaction, even the mere attempt, regarding which there is any indication or certainty that it bears a relation to money laundering or terrorist financing;

- the OCP examines the information received from notaries and checks whether it could contain evidence of infringement. If that is the case, the OCP reports to the authorities (SEPBLAC) with all the documentation and information required by law to initiate and carry out preliminary investigations.

On the other hand, any transaction intervened by a notary is recorded in the “Indice Unico”, a huge database from where public administrations such as the Cadaster, the fiscal authorities, statistical institutions, etc. can obtain information to carry out their public duties.

In **Germany**, the notary conducts the post-act completion of all corporate transactions that require registration with the commercial register (formation of a company, changes to the articles of association, transformations, appointment/removal of directors, etc.) fully online since 2007. To this end, the notary transforms all registrations and information into structured data that the courts responsible for registration – after final validation – may use via simple click to complete the entries in the commercial registers. The involvement of the notary, who provides legal advice to the parties, drafts the legal documents and ensures the legal admissibility of the intended registrations in conjunction with the use of electronic registration tools has encouraged the increase in registration procedures.

In the **Czech Republic**, notaries are competent to make registrations in the public registers, if the facts recorded are based on notarial acts they have issued. The establishment of a legal person, including the recording in the public register by a notary, is fast. Registration on the day of the signature of the articles of association is not an exception. When establishing companies, notaries can provide comprehensive services, namely with respect to the issuance of the necessary licences. In **Italy** the legal scrutiny of companies’ bylaws can be performed by a court or by the civil law notaries, that grant both the State’s interest (as they are organs of the State) and the parties’ interest (as the notary is entrusted by them with creating the company). The notary’s involvement here makes it possible to reduce: the time required to check the articles of association by several months, thus unburdening the courts of these technical tasks.

When it comes to entrepreneurship in more general terms, it has to be noted that in **Spain**, Law 14/2013 of 27 September 2013 speeds up and facilitates the entrepreneurial activity. It introduces the out-of-court payment agreement to the many negotiation tools for businesses’ and business people’s debts. In this framework, the civil law notary is competent to name the mediator who will deal with the publicity proceedings required.

In **Austria**, **Estonia** and **France**, completely dematerialised legal documents are stored in a centralised electronic archiving system. **Austria** introduced notarial electronic registers over thirty years ago. Today, Austrian notaries can rely on secure and efficient electronic registers accepted by all such as the Austrian Central Register of Wills, the Escrow Register of the Austrian Notariat, the Austrian Central Register of Powers of Representation, and the Register of Living Wills of the Austrian Notariat.

Finally, in a large number of Member States, civil law notaries keep various official State registers. For example, in the **Netherlands**, the Dutch organisation of civil law notaries holds the the Central Digital Register of all notarial acts, the Central Testament Register and the Central Register of Living, some of which were previously under the Government’s responsibility.

In **Belgium**, the notariat has been entrusted with the creation and management of several central registers such as a register of wills and a register of marriage agreements and agreements regarding registered partnerships. The notariat is also responsible for the central register of mandate agreements with a view to organising extrajudicial protection and for the central register of declarations relating to the appointment of an administrator or a trusted person.

In **France**, through the Télé@ctes system, a system of tele-transmission implemented in notary practices and the public services concerned, notaries conduct paperless exchanges between their offices and the land registration, the Caisse des Dépôts (fund transfers) and the tax administration (payment of transfer duties, capital gains tax, etc.)⁷. In **Germany**, a fully electronic notarial archive is currently being introduced. Further, the German State put the German Federal Counsel in charge of the setting up and maintenance of the Central Register of Wills as well as the Central Register of Living wills, which are both held electronically.

1.2 Supervision and control of the profession of notary

The control and supervision of notaries is often shared between several bodies. One of the main authorities which supervises and controls notaries in the European states is the Ministry of Justice (32 states or entities out of 46 so to say almost 70%). For more than half of the states or entities (26), professional bodies are entrusted with this role. In one third of the states (18), the supervision is entrusted to judges. The role of prosecutors and “other authorities” in the supervision is relatively limited.

In the large majority of States, because of their status and the importance of their function, their legal obligations and those regarding their code of ethics and their professional discipline, notaries are subject to significant supervision and controls by several authorities cumulatively.

Some states mentioned that the supervision and control are conducted on a regular basis and occasionally upon a complaint.

In several countries where the profession of notary is supervised by the Minister of Justice, individuals can challenge notarial deeds in ordinary courts (for instance in the **Republic of Moldova**).

It has to be noted that the percentage of notarial documents actually challenged by the parties before a judge is very low. In **Italy**, official statistics state that only 0.003% of notarial deeds concerning real estate are challenged before a Court every year (and the number of non notarial contracts challenged every year before a Court is much higher). So, one must conclude that the preventive filter of the notary is an element allowing for the unburdening of the courts of extra workload.

⁷ Thus, in 2014, there were 3 694 668 information requests made by notaries to the land register (4 628 543 in 2016) and 530 656 publications of documents (1 154 105 in 2016).

Table 3 - Authority entrusted with the supervision and the control of notaries in 2014 (Q196⁸)

States/entities	Professional body	Judge	Ministry of Justice	Public prosecutor	Ministry of interior	Other
Albania						
Andorra						
Armenia						
Austria						
Azerbaijan						
Belgium						
Bosnia and Herzegovina						
Bulgaria						
Croatia						
Cyprus						
Czech Republic						
Denmark						
Estonia						
Finland						
France						
Georgia						
Germany						
Greece						
Hungary						
Ireland						
Italy						
Latvia						
Lithuania						
Luxembourg						
Malta						
Republic of Moldova						
Monaco						
Montenegro						
Netherlands						
Norway						
Poland						
Portugal						

⁸ The question number refers to the CEPEJ's questionnaire evaluating the judicial systems (see Annexes)

Romania						
Russian Federation						
Serbia						
Slovakia						
Slovenia						
Spain						
Sweden						
Switzerland						
The FYROMacedonia						
Turkey						
Ukraine						
UK-England and Wales						
UK-Northern Ireland						
UK-Scotland						
Israel						
Nb of Yes	26	18	32		1	11
Nb of No	20	28	14	40	45	35
Total	46	46	46	40	46	46

Examples and comments may be found in the Database CEPEJ stat of the Council of Europe:
<http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/STAT/default.asp>

1.3 Trends and conclusions

- *Latin type notarial activities are exercised in large parts of continental Europe, ensuring effective access to justice for citizens and companies. As an actor of preventive justice, the civil law notary prevents litigation and controls the legality of transactions with importance for citizens' lives.*
- *Civil law notaries carry out general interest missions on behalf of their supervisory authorities in the most varied areas of law, such as real estate transactions, family and succession law. They ensure legality and legal certainty of documents concluded between individuals. By exercising real prerogatives of public authority that they receive from the State, they confer on the documents they draw up a guarantee of authenticity.*
- *Important steps have already been taken to lighten the burden of the courts and governments and examples and figures show that more and more competences are transferred to notaries for that purpose. One example at EU level is the adoption of the succession regulation, where many EU Member States transferred the competence to issue the European Certificate of Succession to notaries.*
- *High level of training of the profession, initial and continuous training.*

- *In many states, the notarial profession is at the forefront of electronic processing services.*
- *The notary also contributes in an important way to the prevention of money laundering and terrorist financing*

Annexes

Annex 1: Extract from the CEPEJ's scheme for evaluating judicial systems

9. Notaries

192. Number and type of notaries in your country. If you do not have notaries please skip to question 197.

Type of notaries	Number	NA	NAP
Total			
Private professionals (without control from public authorities)			
Private professionals under the authority (control) of public authorities			
Public agents			
Other			

If "other", please specify the status:

192-1. What are the access conditions to the profession of notary:

- diploma
- payment of a fee (e.g. purchasing office)
- co-opting of peers
- other

192-2. (Modified question) What is the duration of appointment of a notary?

- Limited duration If limited, please indicate the duration in years:
- Unlimited duration

[Question 193 non-existent]

194. Do notaries have duties (multiple options possible):

- within the framework of civil procedure?
- in the field of legal advice?
- to certify the authenticity of legal deeds and certificates?
- in the field of mediation?
- other?

If "other", please specify:

194-1. Do notaries have the monopoly when exercising their profession:

- in civil procedure?
- in the field of legal advice ?
- to authenticate deeds/certificates ?

in the field of mediation?
 other?

V Please indicate any useful clarifications regarding the content of the notaries' monopoly or on the opposite regarding the competition they have to deal with:

194-2. As well as these activities, what are the other ones that can be carried out by notaries?

Real estate transaction
 Settlement of estates
 Legality control of gambling activities
 Authentication of documents
 Translations
 Signatures
 Other

195. Is there an authority entrusted with supervising and monitoring the notaries' work?

Yes No

196. If yes, which authority is responsible for supervising and monitoring notaries?

a professional body
 the judge
 the Ministry of Justice
 the public prosecutor
 the Ministry of Interior
 other

If "other", please specify:

196-1. Is there a system of general continuous training mandatory for all notaries?

Yes No

I-1. Please indicate the sources for answering question 192:

Annex 2: Extract from the explanatory note to the CEPEJ's scheme for evaluating judicial systems

9. Notaries

A notary is a legal official who has been entrusted by the public authority with the safeguarding of the freedom of consent and the protection of the rightful interests of individuals. A signature by the notary confers authenticity to legal acts. As a guarantor of legal security, the notary has an important role to play in limiting litigation between parties. Thereby, he/she is a major actor in preventive justice.

It is important to make a distinction between the Latin notaries and the “public notaries”, who do not have the same competencies. The Latin notaries are public officers who are tasked by the state authority to authenticate legal deeds. They practice their profession as liberals. The public notaries, for their part, are officials who are not authorized to authenticate legal deeds and can only certify signatures (the concept of authentication of legal deeds is specific to the Latin system).

Question 192

In addition to the differentiation between the public and the private status of the notaries, this question aims to differentiate those countries where the notary practices a fully private function, with no public nature (first choice), those where, while exercising an independent profession, the notary is entrusted with a public power (second choice), under the supervision of a public authority (for instance the public prosecutor or the judge) and countries where notaries execute their duties as public agents paid by the public authority (third choice). Please indicate only one possibility.