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(CEPEJ)  
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EVAL)**

**Specific Study of the CEPEJ on the Legal Professions:  
Notaries – 2020 data**

**Contribution from 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 2020 data) and enriched with its analyses, opinions and conclusions based on its networks and experience. The information and positions in this study are those of the authors and do not necessarily reflect the CEPEJ's official position. The CEPEJ cannot guarantee the accuracy of the data, analysis, opinions and/or conclusions of this study. Neither the CEPEJ nor any person acting on its behalf can be held responsible for the use which may be made of this information.

The data were collected not only in the Council of Europe member States, but also in Israel (ISR), Kazakhstan (KAZ) and Morocco (MAR). Unless otherwise specified, the analyses in this study therefore include replies from all these countries or entities. It is worth mentioning that the three observer States have not been taken into consideration for the establishment of the European medians and averages. The latter are based solely on data provided by the Council of Europe member States/entities.

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There are two different types of notaries, the Latin-type/civil law notaries and the “notaries public”, whose status and competencies differ greatly.

Civil law notaries, on the one hand, are independent and impartial public officeholders who have received a delegation of authority from the State to produce authentic acts which have evidentiary effect and which are enforceable, like court decisions. They are entrusted with ensuring freedom of consent, checking the identity of the parties and their legal capacity, so that the legitimate interests of all concerned parties are guaranteed by providing comprehensive legal advice and information. A signature by the notary confers authenticity to legal acts. As guardians of legal certainty, civil law notaries play an essential role in avoiding subsequent judicial disputes, also reducing the workload and costs of the courts by exercising non-litigious legal competences. Therefore, they play a key role in the preventive administration of justice.

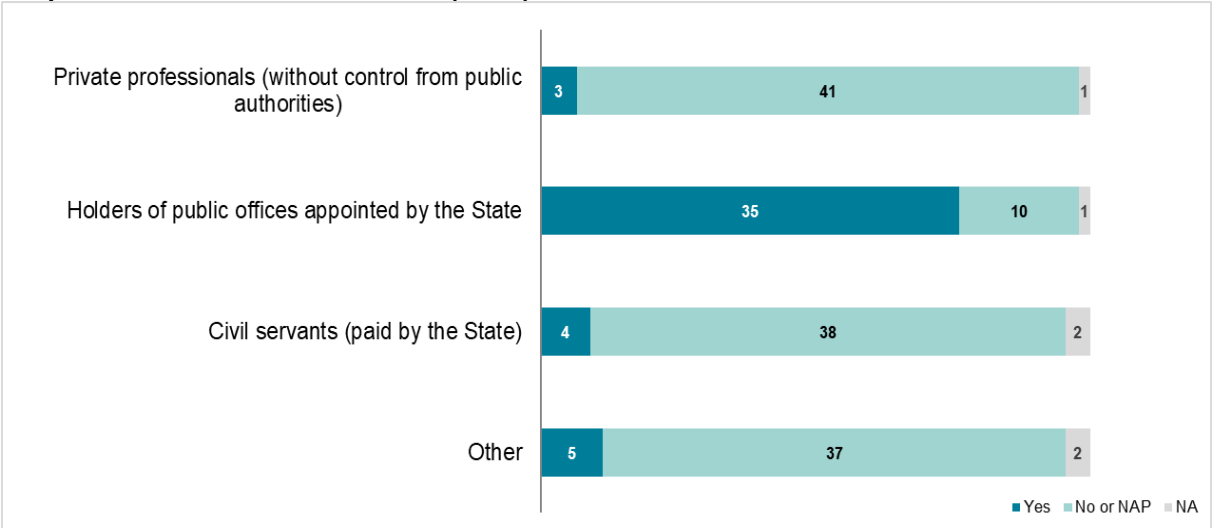
Generally speaking, civil law notaries are in charge of drawing up authentic instruments, certifying signatures and statements, providing evidence, ensuring that documents comply with the law and, in some states or entities, issuing subpoenas or executing court decisions.

“Notaries Public”, on the other hand, are not necessarily required to have a law degree. They are rather ministerial officers or mere professionals with limited powers and functions, which means they have no authority to draw up authentic instruments but only to certify signatures.

The present study is based on 2020 CEPEJ data collected within the framework of the last evaluation cycle (2020-2022) in which 46 member States and entities and 3 observer States have participated. Besides, it relies on data which are collected on an annual basis by the Council of the Notariats of the European Union (CNUÉ). Based on these data, this study illustrates the numbers and facts about notaries and displays the competences, activities and best notarial practices in various fields.

**A) Status, number and functions**

**Graph 1: Status of notaries in 2020 (Q192)**



The notariat exists in many of the 49 states and entities that have participated in the 2020-2022 evaluation cycle. **The vast majority of states (35) have Latin type/civil law notaries.** As outlined above, civil law notaries are public office holders appointed by an official act of government who uplift legal acts to the rank of authentic instruments. As a guarantor of legal certainty, the notary is a major actor in the civil law system of preventive administration of justice.

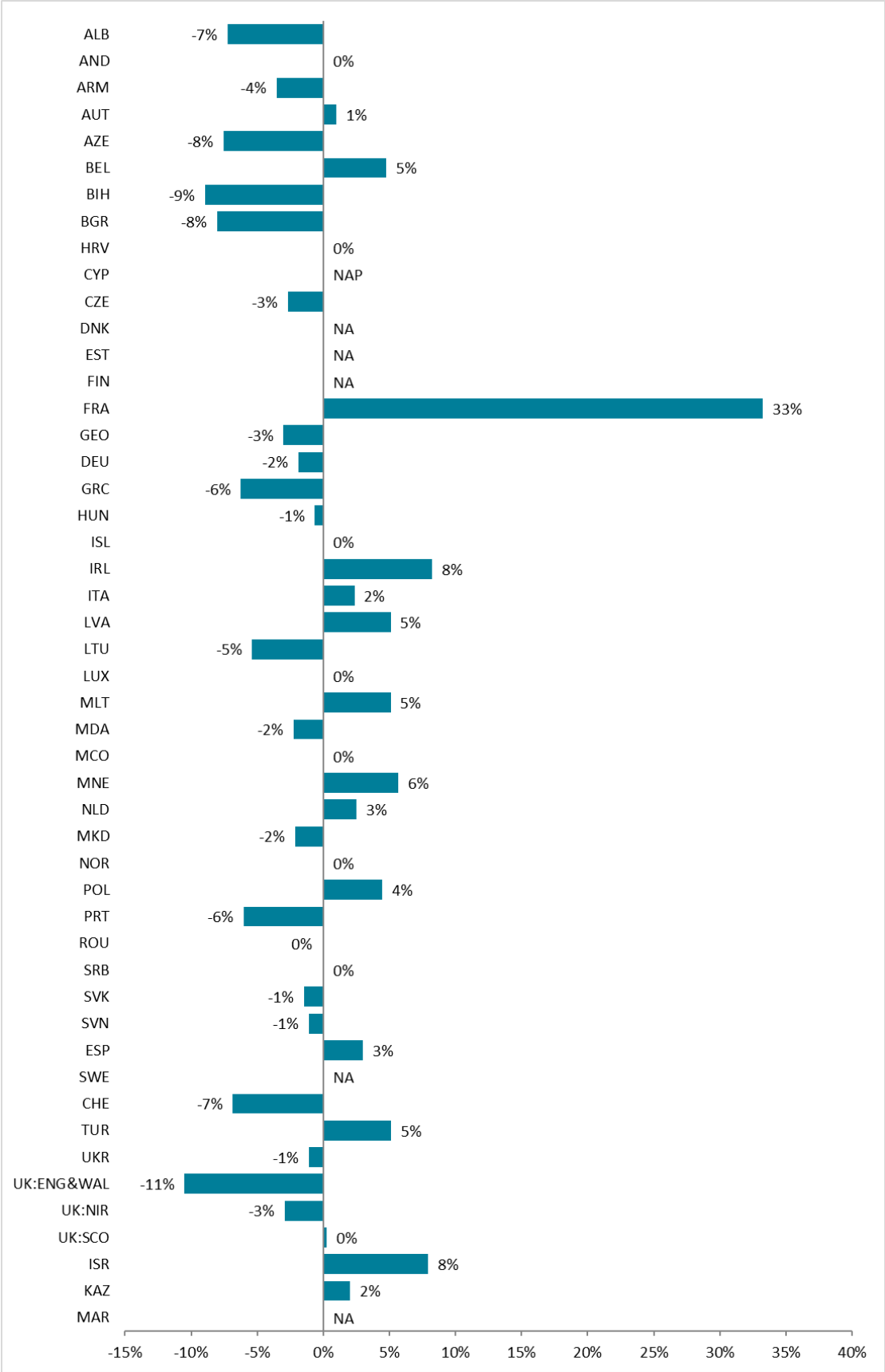
Some states and entities, such as **UK- England and Wales, UK-Northern Ireland and Ireland**, rely on “Notaries Public”. In **UK-England and Wales** they are predominant. In **UK-Scotland**, all practicing solicitors can apply to be admitted as a notary public since it does not qualify as a separate profession. These entities follow the tradition of the Common Law. The concept of preventive

administration of justice is not as fundamental for the functioning of the Common Law system as it is for the Civil Law system.

In only four states, **Finland, Norway**, some cantons of **Switzerland** and **Ukraine**, notaries practice their profession as civil servants paid by the State.

In only a limited number of states, public authorities do not exercise any control over the exercise of the notarial profession, such as **Israel** and **UK-England and Wales**. In **Switzerland** and **Ukraine** notaries with different statuses coexist, including private professionals without control from public authorities.

**Graph 2: Absolute variation in number of notaries between 2018 and 2020 (Q192)**

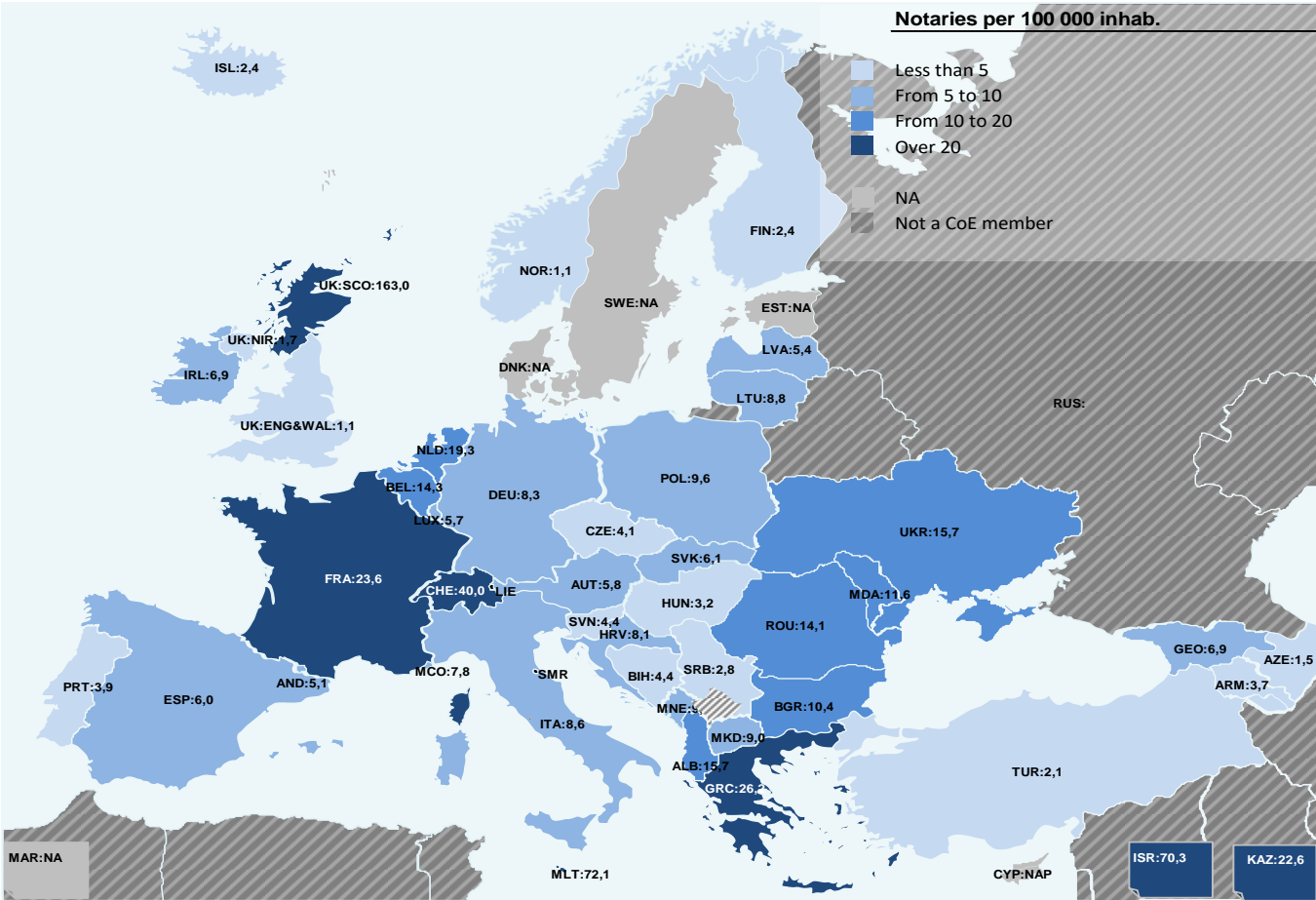


Notaries perform public functions that are in constant demand, adapting to states' as well as citizens' needs. Between 2018 and 2020, the average absolute number of notaries increased in Europe. Only in 9 states the absolute number of notaries remained stable, while in most of the countries it had some variations.

An increase of 5% or more can be noticed in **Belgium, France, Ireland, Israel, Latvia, Malta, Montenegro** and **Türkiye**, whereas a decrease of 5 % or more is to be observed in **Albania, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Greece, Lithuania, Portugal, Switzerland** and **UK-England and Wales**.

The most important decrease is noticed in **UK-England and Wales** (-11%), while the greatest increase is registered in **France** (+33%), following a legislative reform.

**Graph 3: Number of notaries in 2020, standardised by 100 000 inhabitants (Q1, Q192)**



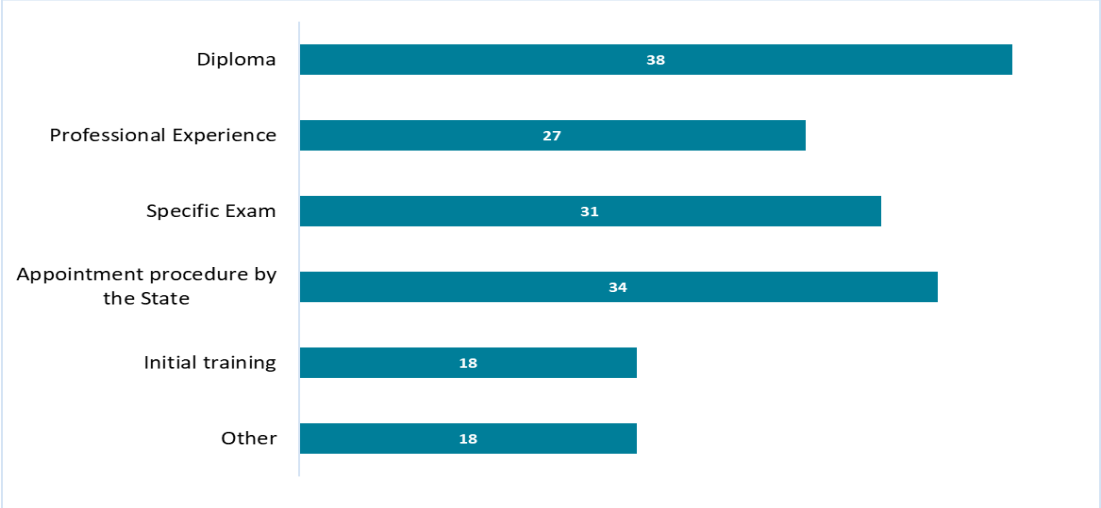
As for the average number of notaries per 100 000 inhabitants, it remained stable in Europe (13,9 notaries per 100 000 inhabitants). Nevertheless, there are major differences between the responding states and entities. 12 member States and 2 observer States have more than 10 notaries per 100 000 inhabitants. **UK-Scotland** has over 100 notaries per 100 000 inhabitants. However, this state follows the Common Law tradition in this respect, which means that this number is referring to notaries public, not Latin-type/civil law notaries.

Regarding gender equality, recent data gathered by the Council of Notariats of the European Union<sup>1</sup> on the percentage of men and women in the notariat show a significant increase in the number of female notaries. In the vast majority of states with civil law notaries, more than 50% of the notaries

<sup>1</sup> Notaries of Europe, Facts and figures, CNUE, 2020

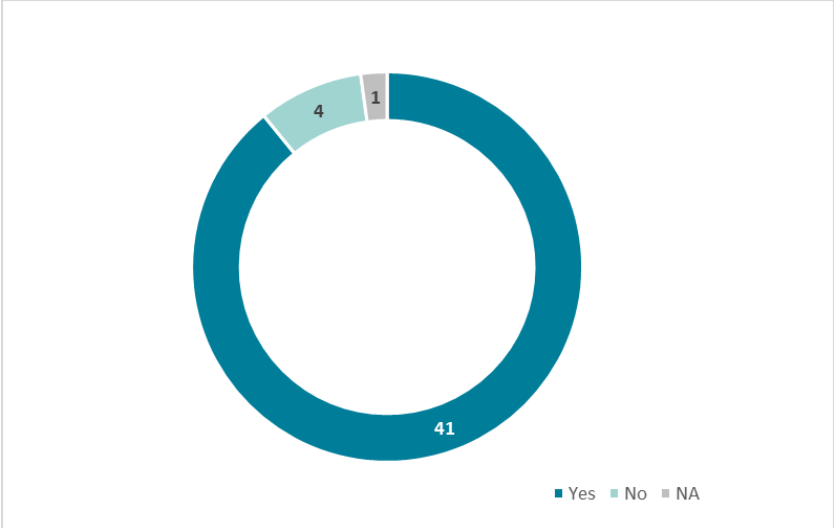
are women, such as in **Bulgaria, Croatia, the Czech Republic, France, Hungary, Malta, Montenegro, North Macedonia, Poland, Romania, Serbia** and the **Slovak Republic. Estonia, Greece, Latvia, Lithuania, and Portugal** even exceed the percentage of 75% of female notaries in 2020. **Belgium, Italy** and **Spain** follow the same trend with 30 to 40% of female notaries.

**Graph 4: Access conditions to the profession of notaries in 2020 (Q192-1)**



In order to practice the notariat, it is compulsory to hold a diploma in 38 member States and entities and two observer States. In the vast majority, candidates to the notariat have to pass an exam (31 member States and **Kazakhstan**), especially in those states with Latin-type/civil law notaries. In some states, according to mandatory law, the examination is an integral part of the state appointment procedure, such as in **Belgium** and **Spain**.

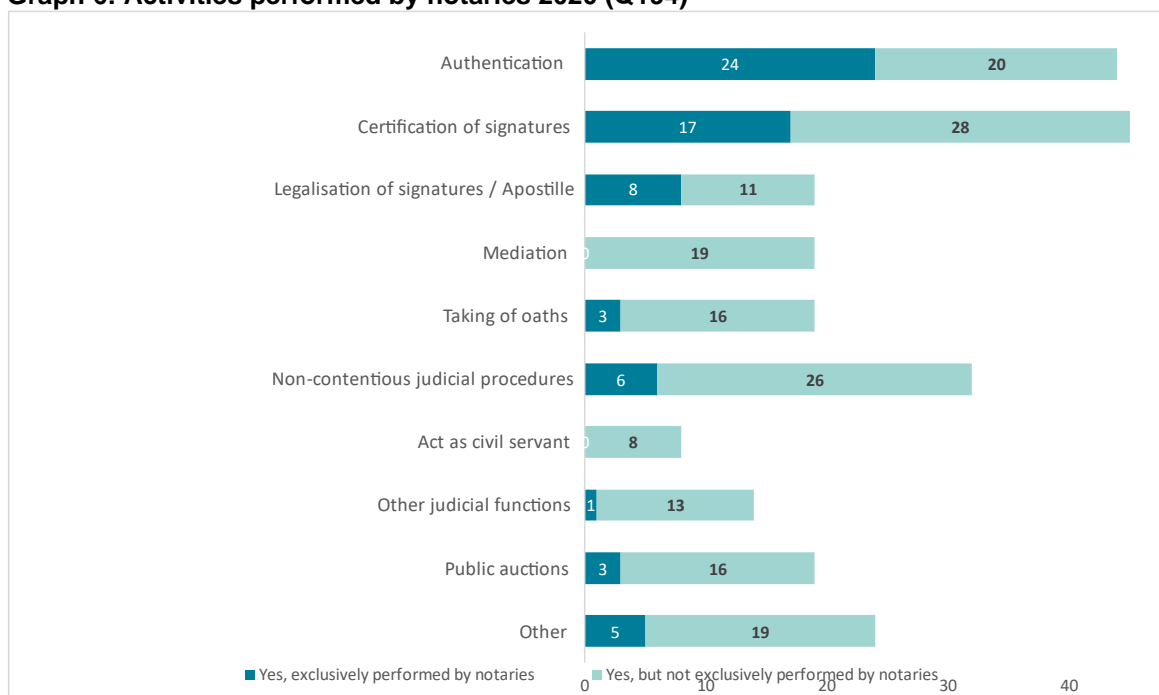
**Graph 5: Notaries appointed for an undetermined period (Q192-2)**



In 41 member States and two observer States notaries like judges are appointed for an undetermined period of time and may exercise their functions office until an official age of retirement, which ranges from 65 to 70.

## B) Competences and activities performed by notaries

Graph 6: Activities performed by notaries 2020 (Q194)



The competences and activities of notaries vary from one state to another. As stated in the introduction, the main **competence of a Latin-type/civil law notary** is the authentication of legal acts. By authenticating an act, the civil law notary guarantees the identity of the parties involved, their legal and mental capacity as well as the genuineness of their signatures. However, the notary's contribution is not limited to these aspects. As an independent, objective and impartial adviser to all parties involved, the civil law notary also ensures that the parties are comprehensively informed about the content and the consequences of the authentic instrument, a task particularly important with regard to consumer protection. In addition, the civil law notary examines the intentions of the parties, drafts the contracts or other instruments necessary to carry out the intended legal action and ensures the lawfulness of the content for which the parties can hold the notary responsible. Therefore, by authenticating an act, the civil law notary takes full responsibility for the validity of the legal act as a whole and not only for the parties' signatures.

In most of the states and entities (44 member States and entities and one observer State), notaries are the competent body for the authentication of acts and in almost all of them notaries are also competent for the certification of signatures, meaning they can legally confirm the genuineness of the signature of a present person. The procedural law of many states and entities requires that applications to public registers (e.g., land register, commercial register, etc.) shall be in a certified form in order to ensure the applicant's identity and thus guarantee the register's accuracy. Therefore, notaries are a crucial part of the states' register system. Additionally, some procedures of the certification of signatures might also entail the check of legal capacity of the parties involved and, at least insofar as to prevent abuse, the examination of the content of the document submitted for certification, as for example in **Austria** and **Germany**. In some states, notaries are held to exercise further checks with regard to possible legal restrictions and limitations (e.g., the existence of pre-emptive rights) when certifying applications to land registers, for example in **Slovenia**.

However, in many states, notaries do not exercise these tasks exclusively. In 20 of the member States and 1 observer State, other official authorities, such as courts, are also entitled to perform the authentication of legal acts. Furthermore, in 28 member States and 2 observer States, the competence to certify signatures is not limited to notaries but is rather shared with other official authorities, such as courts and ministries.



Moreover, 19 member States entrust notaries with the legalisation of signatures or placing the apostille. Between contracting States of the Hague Convention of 5 October 1961, the Apostille is the only formality required to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears. As a procedure, placing the Apostille is a formality that comes only after the valid conclusion of the authentic instrument.

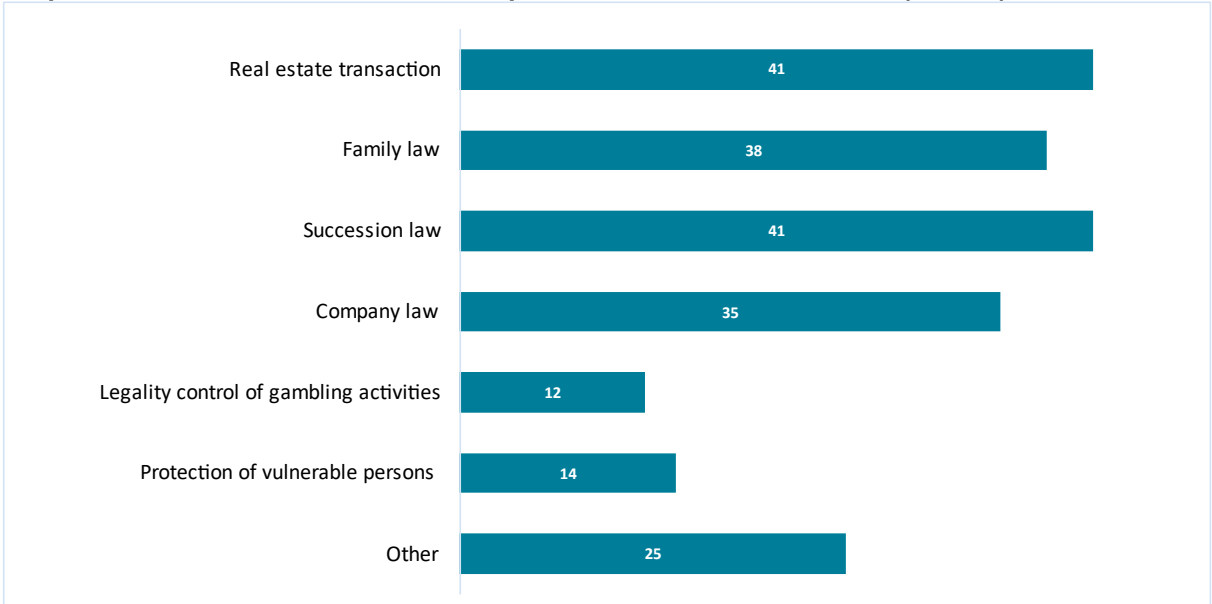
In 19 member States, notaries act as mediators. This is the case in **Austria, Belgium, France, Greece, Italy, the Netherlands, Portugal, and the Slovak Republic**. Furthermore, 19 states entrust notaries with the taking of oaths, such as **Austria and Germany**.

As far as the performance of non-contentious judicial procedures (e.g., acting as court commissioner in a successions file, performing divorce, division of estate) is concerned, 32 member States and one observer State entitle notaries with this task. In these states, notaries help to unburden the judiciary and the public administration at lower cost. A detailed overview of these non-contentious judicial procedures is given later in this study.

In 14 member States, notaries exercise other judicial functions, such as the issuance of payment orders. The competence has been transferred from the judiciary to notaries thereby unburdening civil courts. However, in most of these states, the competence is shared, meaning either the notary or the competent court can file these procedures. Furthermore, not only judicial competences were transferred to notaries, but also previous activities of civil servants outside the field of the judiciary (in 8 member States).

Finally, notaries in 19 member States also perform public auctions. In **Belgium**, for instance, an online platform has been developed that allows public auctions of immovable property under the supervision of a notary<sup>2</sup>.

**Graph 7: Areas of law in which notaries perform their activities in 2020 (Q194-2)**



When it comes to the specific area of law in which notaries perform their activities, they have a broad field of activities not being limited to one certain area of law. Notaries are active in all matters that are of importance to citizens and companies in different stages of their lives. This includes both civil law and public law.

<sup>2</sup>Biddit platform : [www.biddit.be](http://www.biddit.be);  
 Article 1193 Judicial Code:  
[https://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=fr&la=F&cn=1967101004&table\\_name=loi&&caller=ist&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=\(text+contains+\(%27%27\)\)#Art.1193](https://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&la=F&cn=1967101004&table_name=loi&&caller=ist&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=(text+contains+(%27%27))#Art.1193)  
 Article 1 Notarial Code on the notarial competence for public auctions of immovable goods:  
[https://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=fr&la=F&cn=1803031630&table\\_name=loi&&caller=ist&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=\(text+contains+\(%27%27\)\)#Art.1](https://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&la=F&cn=1803031630&table_name=loi&&caller=ist&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=(text+contains+(%27%27))#Art.1)

In most of the states, notaries perform real estate transactions (41 member States and entities and two observer States) and are active in the field of succession law (41 member States and entities and two observer States).

In addition, notaries exercise their office in the field of family law (38 member States and 2 observer States).

In 35 member States and two observer States, notaries perform activities in the field of company law.

Moreover, 12 member States entitle notaries with the legality control of gambling activities, whereas 14 member States entrust notaries to perform activities with regard to the protection of vulnerable persons.

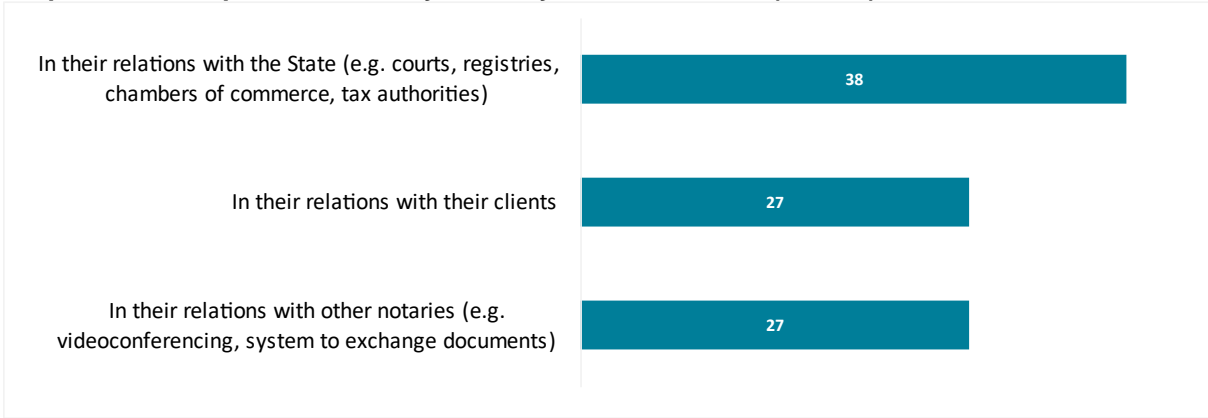
Finally, all notaries are essential collaborators with public administrations in the fight against money laundering, terrorism, corruption and fraud.

In conclusion, notaries perform a great number of activities and have many competences, either exclusive or shared ones. They perform their tasks in various fields of law, making them an essential pillar of the states' judicial systems.

**C) Information and communication technology (ICT)**

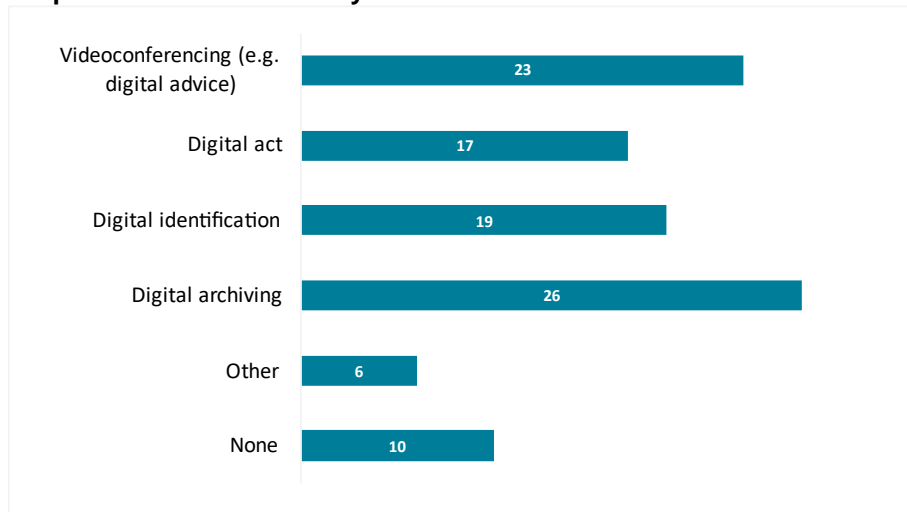
The information and communication technologies (ICT) sector evolved rapidly in the past years, especially in the work environment, and as for the notariat, it is no exemption from this trend. This is due in no small part to the fact that a global pandemic occurred, which was forcing businesses as well as public officers, like civil law notaries, to digitize certain working methods.

**Graph 8: Use of specialised ICT systems by notaries in 2020 (Q194-3)**



In most states, notaries have already implemented some sort of ICT in their everyday working life. To grant an overview, a first distinction can be made as to whether notaries use **specialised ICT systems** in their relations with the **state**, their **clients** or with **other notaries**. ICT in this particular case means specific (online) tools of a higher technical level with regard to safety and data protection. According to the data provided by the CEPEJ, in a vast majority of countries (38 member States and two observer States), notariats use ICT systems already in their relations with the state, whereas in 27 member States and one observer State, notariats likewise use these tools regarding both their relations with clients and other notaries. Only 7 member States do not use specialised ICT systems in their relations neither with the state, nor with their clients, nor with other notaries. Almost half (22) of the member States use ICT tools in their relations to all the three aforementioned (e.g., **Armenia, Austria, Azerbaijan, Belgium, Bulgaria, France, Georgia, Hungary, Italy, Monaco, the Netherlands, Spain**, etc.).

**Graph 9: Use of ICT tools by notaries in their relations with clients in 2020 (Q194-7)**



Regarding the specific ICT systems that are being used by the notaries **in their relations with clients**, the most common one is digital archiving, closely followed by videoconferencing tools. Almost every state, in which notaries use ICT tools in their relations with their clients, has implemented a system for digital archiving (26 member States and one observer State) as well as for videoconferencing (23 member States), e.g., **Austria, Belgium, France, Italy**, the **Netherlands, Spain** and many more. Further ICT systems being frequently used among the notariats are digital identification tools (19 member States) to reliably identify the client as well as instruments for a digital act (17 member States and one observer State) which allow original notarial documents to be created digitally and to have the same value as the equivalent paper document.

In accordance with the legislation in **Belgium** and **France**, for instance, digital processes have been extended during the pandemic, such as the use of digital authentic powers of attorney and videoconferencing.

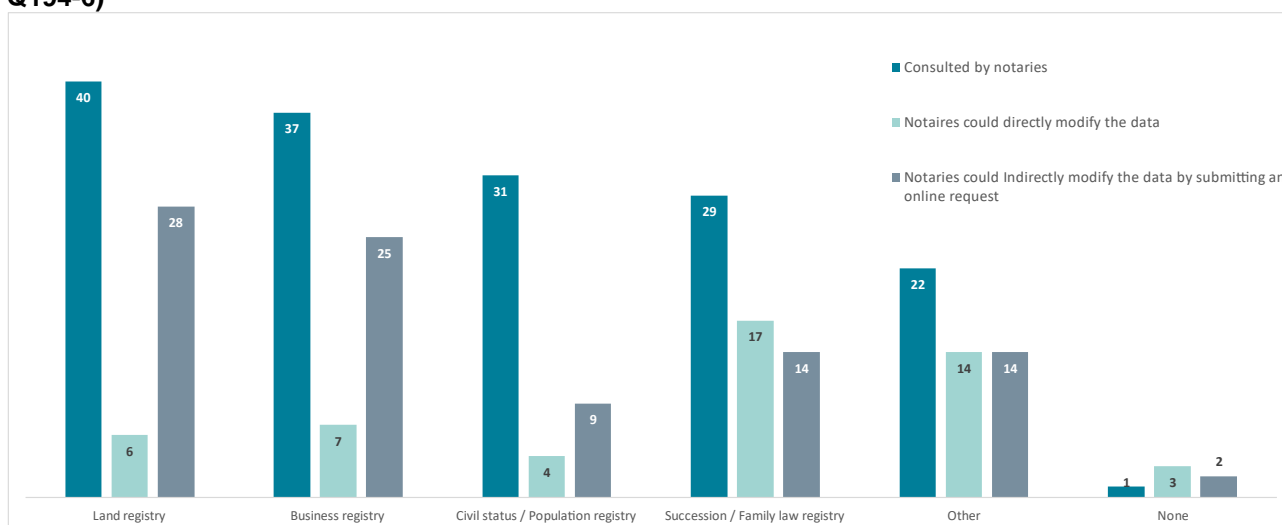
Another example is the possibility for notaries in **Austria** to notarize deeds digitally, to create digital notarial acts as well as having digital general assemblies. These digital options emerged from the legislative response to the pandemic and thereby exist since April 2020. Subsequently, Austrian notaries have been generally empowered to perform official notarial acts using an electronic communication facility, with the exemption of wills. However, this possibility is linked to strict security measures, notably for identifying the client.

In many states, for instance **Italy** and **Spain**, the possibility to set up a limited liability company online has been introduced.

The **German** notariat has developed a highly innovative and secure procedure for the online formation of limited liability companies and online registrations to the commercial register using a secure videoconferencing system developed and hosted by the notariat, reliable identification via eID means of the highest assurance level and qualified electronic signatures by the founders, which results in a digital authentic instrument that will be automatically stored in the new electronic archive.

The **French, Italian** and **Spanish** notariats have continued developing advanced technological means such as an electronic authentic deed and videoconferencing. In **France**, at the beginning of 2020, more than 85% of offices had at least videoconferencing, room or software access.

**Graph 10: Computerised registries consulted and modified by notaries in 2020 (Q194-4 and Q194-6)**



A further topic in the field of ICT is the possibility for a notary to **consult a computerised** (online) **registry** as well as the question whether **notaries** also **run these registries**. The notion of running a register can involve the technical operation, responsibility for the data or financial aspects. Ultimately, a further question regarding these registries is as to whether notaries can modify the data, either directly or by submitting an online request.

The information provided by these registries can vary greatly from documents in various forms (e.g., transaction contract) to simple facts (e.g., ownership). According to the data provided by the CEPEJ, 40 member States and one observer State say their notaries can consult a land registry, followed by business registries (37 member States and one observer State), civil status or population registries (31 member States and one observer State) and succession or family law registries (29 member States and one observer State). In 22 states, notaries can also consult additional registries like notaries in **Latvia** the register of vehicles and drivers' licences or notaries in **Ukraine** the State register of real property rights or the Unified register of powers of attorney.

In terms of the possibility to either directly or indirectly modify data within these registries, in only a small number of states their notaries are empowered to directly modify data of land registries (6), business registries (7) and civil status / population registries (4) whereas in significantly more this possibility exists likewise regarding succession / family law registries (17) and other, not mentioned registries (14). For example, in the **Netherlands**, the Register of ultimate beneficial owners can be modified directly. Also, notaries in **Romania** have the power to directly modify several registries such as the Notarial register for the record of liberalities (RNNEL), in which all the donation documents, the testamentary provisions, their revocation, as well as the withdrawal of their revocation are registered or the Notarial register of Matrimonial Regimes (RNNRM).

Concerning the possibility to modify data indirectly by submitting an online request, in many states, notaries are capable of doing so when it comes to land registries (28 member States and two observer States), business registries (25 member States) and succession / family law registries (14 member States) whereas only a smaller number of claims likewise regarding civil status / population registries (9 member States). According to mandatory national law, in **Germany**, after having examined the application for registrability, the notary submits electronic applications in structured form to the land registry and business registry. The court then transfers these data directly into the registry. The prior examination and the structured form unburden the court and contribute to the correctness and reliability of public registers.

As for the question whether **notaries** also **run** (part of) the existing **registry infrastructure**, in a majority of the states (27 member States and one observer State) notaries are empowered to do so.

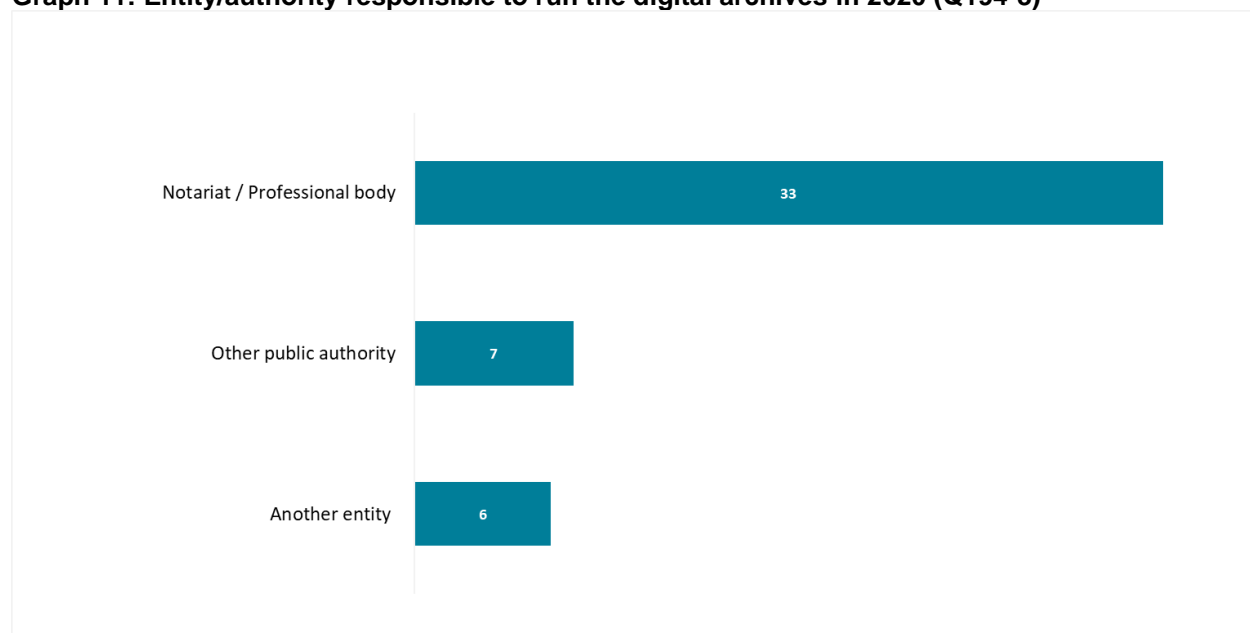
In **Austria** and **Germany**, for example, notaries run the Central register of testaments and wills and the Central representation register/ Register of lasting powers of attorney.

In **Romania**, notaries run inter alia the National notarial registry of succession options, where all the notarial documents regarding the acceptance and waiver of the inheritance, drawn-up in authentic form, are recorded as well as the National notarial registry of powers of attorney and their revocations and the National registry of divorce certificates.

In **Slovenia**, notaries run the Register of marital property agreements and the Central register of wills.

Also, in **France**, there are registries run by notaries such as the Register of wills or the Register of European certificates of succession.

**Graph 11: Entity/authority responsible to run the digital archives in 2020 (Q194-8)**



Finally, as far as **digital archives** are concerned, there is the possibility that these archives are run by the respective notariat / professional body, other public authorities or a different entity. In a clear majority of the states, the notariat / professional body (33 member States and 2 observer States) runs the digital archives, whereas only in a few states, they are run by other public authorities (7) or a different entity (6).

#### **D) Best practices identified by the CNUE in the field of new technologies during the COVID-19 pandemic**

As public officers, civil law notaries have a general obligation of public service. Even and especially in times of crisis, it is important for citizens that notaries continue to render their services to them.

During the COVID-19 pandemic, which has started at the beginning of 2020, notaries all over Europe continued to provide their services to the public, either in presence or via digital means. For certain notarial activities, civil law notariats have developed digital solutions or extended the use of already existing means, all at the highest technical level and in a secure way, as has been stated in the previous part dedicated to ICT.

However, in line with their legal systems and traditions and the needs of their citizens, the states followed different approaches to guarantee the access to notarial services in the times of a pandemic. Common to all is, that the focus of the notariat remains on individual advice and legal certainty.

In some states, such as the **Czech Republic** and the **Netherlands**, in response to the pandemic, national law entitled notaries to communicate with their clients by electronic means.

In other states, such as **Austria, Belgium, Estonia, France** and **Lithuania**, the use of electronic means in order to authenticate or certify an instrument has been introduced or extended. Generally, the electronic authentication procedure requires that the parties are connected to the notary in a way

that is similar to being physically present (e.g., videoconference). Strict security measures are applied with respect to the reliable identification of the parties involved.

Furthermore, in states such as **Austria, Italy, Germany, Slovenia and Spain**, the possibility for virtual general meetings and the adoption of resolutions virtually have been introduced for certain types of legal entities.

#### **E) Best practices identified by the CNUE in the field of justice: non-litigious legal competences**

As far as non-litigious legal competences are concerned, a number of best practices in the areas of family law (e.g., authentication of matrimonial property agreements, formalisation of marriage, divorce by mutual consent), succession law or other areas of civil law (recovery of claims, protection of vulnerable persons) are in place in the various notariats. This illustrates that the decision to delegate certain competences of the courts to the notariat served its purpose, namely to reduce the workload of the courts and to contribute to the efficiency of justice, to the benefit of citizens.

A first example of good practice is divorce by mutual consent. In states such as **Estonia, France, Latvia, Slovenia, Spain or Romania**<sup>3</sup>, national law allows spouses wishing to divorce by mutual consent to rely on a civil law notary. The notarial procedure not only helps to relieve the burden on the courts, but also allows a discreet and rapid resolution of the divorce by mutual consent, ensuring the same quality of legal service as that of a court. Moreover, there is an increasing tendency in various states to delegate this competence to notaries. It is clear that notarial competences in this area may vary from one state to another: while in some states, notaries can settle a divorce even when there are minor children, in others, it is not possible. In all cases, notaries are responsible for verifying compliance with legal requirements and making the agreement between the parties enforceable.

For example, in **Romania**, since October 2011, spouses have been able to settle their divorce before a civil law notary, also when minor children are involved. The characteristics of the notarial divorce procedure make it possible to pronounce a divorce in front of a civil law notary without necessarily having to involve other legal professionals (lawyers, mediators, etc.) or a judge. Where the law requires a minor child to be heard during divorce proceedings, a civil law notary conducts the hearing. In the event of divorce with minors, the spouses must agree on certain aspects concerning the exercise of parental authority by both parents, as well as on the contribution to the costs of bringing up, teaching and training children. In order to confirm the agreement on the above aspects, the notary authenticates the parental agreement. The agreement constitutes an enforceable title under Article 101 of Law No 36/1995 on public notaries (revised), for the establishment of the child's home, for maintaining the parents' personal relationship with the minor, and for other measures which parents may have at their disposal.

In **Spain**, the Law 15/2015, of 2 July, introduced the possibility of divorce by mutual consent before a notary or a court clerk when there are no minor or disabled children. This regulation provides legal certainty to non-disputed private relationships more quickly and economically than judges.

In **France**, the notary checks that the legal requirements of the divorce are met, authenticates the divorce agreement and records it. The deposit of the agreement with the notary gives it *certain date* and makes it enforceable, i.e., the agreement is then applicable.

In **Germany**, spouses who wish to divorce can solve major divorce-related issues such as maintenance and payments due to the dissolution of matrimonial property regimes by way of a notarial marriage contract (so-called divorce agreement). In this case, the courts do not have to deal with these issues but can focus on checking the prerequisites for the divorce itself. Therefore, even if notaries do not perform the act of divorce themselves, they support the courts by dealing with many divorce-related legal matters.

Also, in the area of family law, notaries authenticate matrimonial agreements (**France, Italy, Lithuania, Romania and Spain**) and even formalize marriage (**Estonia and Spain**).

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<sup>3</sup> See Articles 374 and 375 of the Romanian Civil Code.

In matters of parenthood, the notary in **France** has sole competence to record the consent of the couple who has recourse to medical assistance for reproduction with third party donors or consent for adoption, as well as to deal with requests for the issuing of affidavit establishing parenthood by presumption.

Notaries also unburden courts in succession matters in particular by issuing national certificates of succession (and the European Certificate of Succession (ECS)).

As regards the ECS, notaries in states such as **Austria**<sup>4</sup>, **France**, **Italy**, **Malta**, **Poland**, **Romania** and **Spain** are the competent authorities to issue the ECS<sup>5</sup>. In **Germany**, notaries authenticate the application for the issuance of a certificate of inheritance and the ECS. Notaries compile the necessary information and documents and submit the application to the competent court. This facilitates the court's task to issue the national certificate or the ECS.

In some states, notaries perform court functions, in particular in succession procedures organized in these states as court procedures. This is the case in **Austria**<sup>6</sup>, **Croatia**, **the Czech Republic**<sup>7</sup>, **the Slovak Republic** and **Spain**. Notaries in these states perform judicial functions under a delegation of powers or under control by the court system, for instance, in the capacity of the **Austrian** "Gerichtskommissär" as well as in **Hungary** as "court", for non-contentious inheritance proceedings. Notaries acting in the service of the judiciary, either as "courts" or as "court commissioners", meet the guarantees of independence (including protection against removal from office) and are under an obligation to hear all parties involved. Accordingly, they meet the institutional requirements of a fair trial even in cases which fall outside the scope of these provisions. In some states, such court functions exercised by notaries are extended to other areas of non-contentious court procedures, such as public registers (**Austria**, **the Czech Republic**<sup>8</sup>) or the execution proceedings for uncontested claims or issuance of European payment orders (**Croatia**, **Hungary**).

In **Belgium**<sup>9</sup> and **Italy**<sup>10</sup>, the declaration of waiver of the inheritance and the declaration of acceptance of the inheritance are made before a notary. In **France**, pure and simple acceptance of the succession on behalf of a minor under guardianship or an adult under guardianship no longer requires the prior authorization of the family council or a judge if a notarial certificate responsible for settling the succession shows that the assets clearly exceed the liabilities (art. 507-1 of civil code).

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<sup>4</sup> Austria's notification (European Judicial Atlas in civil matters)

<https://e-justice.europa.eu/380/DE/succession?AUSTRIA&member=1>

<sup>5</sup> See European e-Justice portal - <https://e-justice.europa.eu/166/EN/succession> competent authorities

<sup>6</sup> Sources: Lurger/Stöger „Justice Without Litigation, non-contentious proceedings by notaries in the European Union“ (ed. Manz Vienna 2022); Justice Without Litigation (JuWiLi was an EU-financed project (2020-2022): <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/31070247/101007315/JUST> .

See also Gerichtskommissärsgesetz (GKG):

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002173>

<sup>7</sup> Section 100(1) of Act No. 292/2013 Coll., on Special Court Proceedings. This provision states that succession proceeding is conducted by the notary as a court commissioner. The Czech wording is available here: <https://www.zakonyprolidi.cz/cs/2013-292>

<sup>8</sup> The notary is entitled to make registries in the public register that are held and governed by courts, in case the registered facts are based on a notarial deed draw up by this particular notary. Besides that, the client can also file an application for the entry towards the court.

<sup>9</sup> Declaration of waiver of the inheritance: See Article 4.44 Civil Code:

[https://www.ejustice.just.fgov.be/cgi\\_loi/loi\\_a1.pl?language=fr&la=F&cn=2022011920&table\\_name=loi&&caller=li st&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=\(text+contains+\(%27%27\)\)#Art.4.44](https://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?language=fr&la=F&cn=2022011920&table_name=loi&&caller=li st&F&fromtab=loi&tri=dd+AS+RANK&rech=1&numero=1&sql=(text+contains+(%27%27))#Art.4.44)

<sup>10</sup> On the one hand, according to article 475 of the Civil Code, the express acceptance of the inheritance is a formal operation and must take the form of an authentic instrument, which necessarily implies the notary's competence, or a private document (verbal acceptance is not considered valid, even if it is a tacit acceptance). Under article 519 of the Civil Code, on the other hand, "waiver of the succession must be notified by a declaration, received by a notary or by the registrar of the court of the district in which the succession was opened, and entered in the succession register. A waiver made free of charge in favour of all those to whom the waiver would have been devolved only takes effect if the forms indicated in the previous paragraph have been observed by one of the parties". Once again, the formal and solemn nature of the instrument is reiterated, as it can only be made in the prescribed form and, unlike the instrument of acceptance of the succession, can also be received by the registry of the court in the district in which the succession was opened.

In **Hungary**, notaries have the competence to issue the payment order and they have set up an efficient and reliable electronic method for the collection of financial debts.

Another area in which notaries are particularly involved is the protection of vulnerable persons. For example, in **Austria, Belgium, France, Germany and Spain**, according to national law, the lasting powers of attorney for an adult can be drawn up in an authentic instrument before a notary. Lasting powers of attorney offer the possibility of appointing a trusted person as a legal representative in the event that a person loses his or her capacity to act as a result of accident, illness or old age. The legal representative can then represent the person concerned by taking decisions on his or her behalf, in principle without the involvement of the guardianship court. This extrajudicial protection mandate drawn up before the notary thereby ensures that the interests of the vulnerable persons are protected. In the case of minors, the choice of guardian for the child may be decided while the parents are still alive by means of a will or special statement before a notary. In other states, such as **Italy**, where lasting powers of attorneys do not exist, the person may designate a support administrator in view of his or her possible future incapacity by means of a notarial act meaning that the court will appoint a trusted person as curator.

Furthermore, in states such as **Austria, Belgium, Germany, Italy, the Netherlands and Spain**, national law provides that notaries can receive advance directives on medical treatment. Citizens can thereby express in anticipation of their own inability to self-determination – the decision whether or not to undergo certain treatments (for example wishes for medical treatment as well as consent or refusal for diagnostic tests or therapeutic choices, organ donation, wishes on a certain form of cremation indications).

In **Belgium and Germany**, the notarial chambers have created central registers offering information on the existence of powers of attorney and advance directives on medical treatment particularly in case of loss of capacity of the principal.

#### **F) Best practices identified by the CNUE in the field of Anti-Money Laundering**

The prevention of money laundering and terrorist financing is one of key responsibilities of European notaries. With the 4<sup>th</sup> AML Directive (EU) 2015/849, the role of the notaries in the fight against money laundering and terrorist financing has become even more important. The 5<sup>th</sup> AML Directive (EU) 2018/843 by June 2020 has further increased the notaries' due diligence obligations.

In most states, notaries are designated obliged entities under the national anti-money laundering laws, a role they perform with great responsibility and diligence. As obliged entities, they identify all natural persons and beneficial owners of companies and other legal entities that participate directly or indirectly in real estate or corporate transactions. This is key for all customer due diligence obligations as well as the correctness and reliability of public registers. Since notaries are already obliged under national professional law to identify their clients with utmost care, they accordingly act very cautiously when identifying the customer or beneficial owner of a company or corporate structure. Thereby, notaries expose mere figureheads who act on behalf of somebody else and may be used to obfuscate ownership and control structures. Notaries act as gatekeepers for public registers like the land and the business registers. They thus ensure that all companies and other legal entities disclose their ownership and control structures. The notary will also consult the national beneficial ownership register in order to identify the beneficial owner. That way, it is always clear who ultimately owns or controls a legal entity or real estate. In many states, national law prohibits notaries to authenticate an act if the company refuses to disclose its ownership and control structure and thus its beneficial owner cannot be identified<sup>11</sup>. The obfuscation of the ownership structures through letterbox companies is thereby effectively prevented.

The supervisory authorities closely monitor the fulfilment of these obligations and non-compliance may result in severe disciplinary sanctions.

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<sup>11</sup> In Germany, for instance, this is the „Gesetz über das Aufspüren von Gewinnen aus schweren Straftaten“ (Geldwäschegesetz - GwG).



In addition, notaries are obliged to file a report of suspicion to the national Financial Intelligence Unit if certain criteria under national law are met. Thereby notaries support the work of law enforcement agencies.

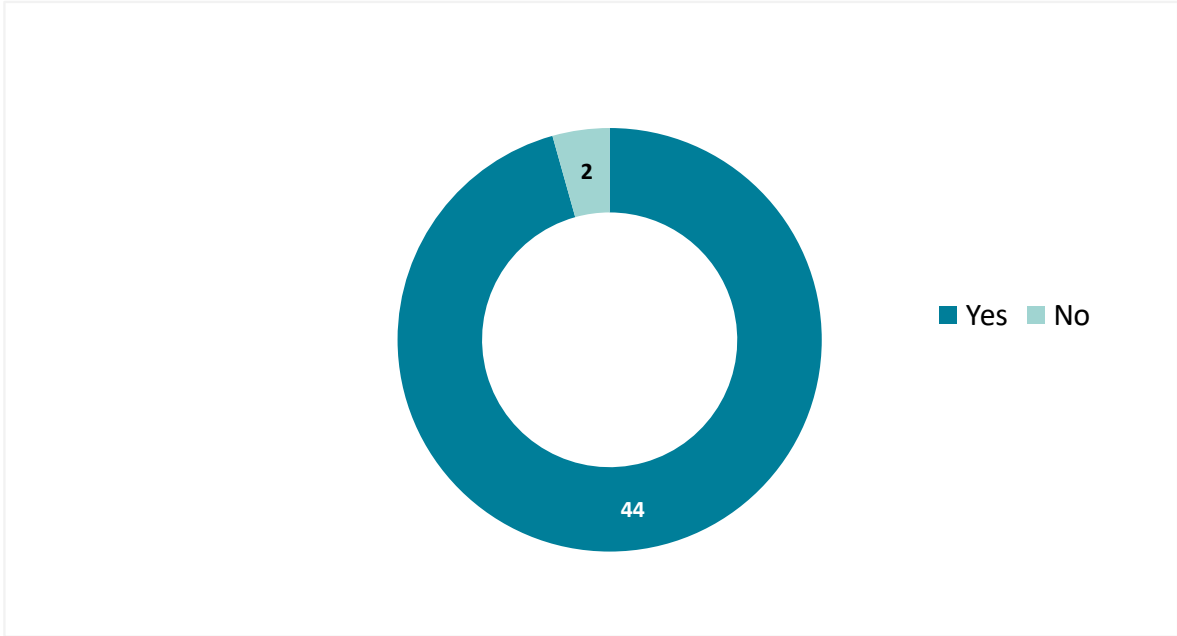
Furthermore, notaries are obliged to check if a person involved in a transaction appears on an official financial sanctions list. If this is the case, the notary has to take further steps and is prohibited to authenticate the transaction. This effectively implements financial sanctions and prevents sanctioned legal entities and natural persons from buying or selling important assets like companies and real estate.

However, not only the identification of beneficial owners is crucial in the fight against money laundering. Due to the notaries' excellent knowledge of the business activity at their office location, they are also able to identify contractual arrangements that could facilitate laundering money.

Moreover, notaries have developed individualised tools (often IT tools) and best practices adapted to the needs of their respective regions, thus being able to perform their respective functions efficiently.

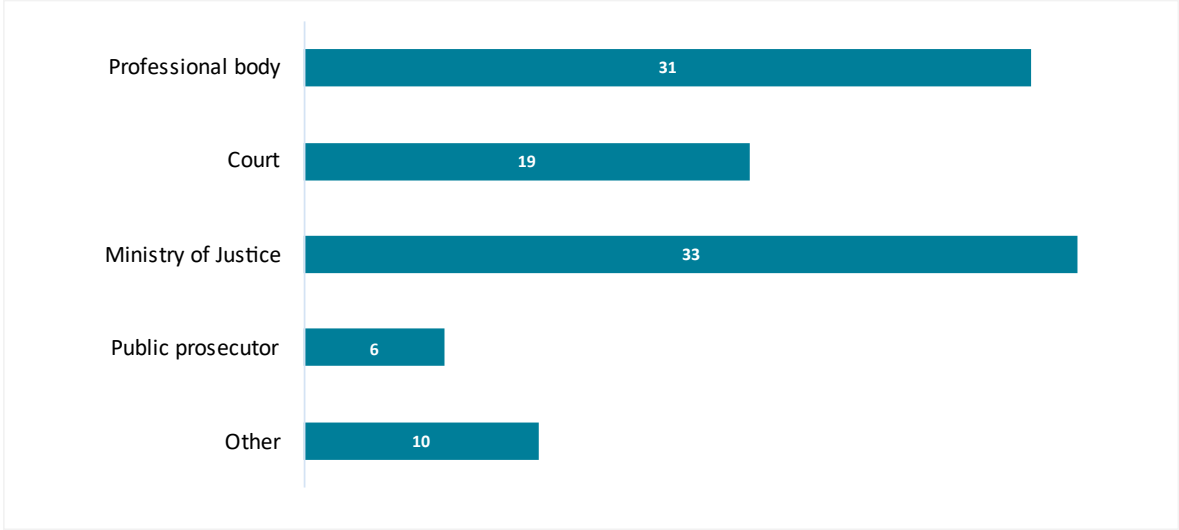
**G) Supervision and monitoring of the notariat**

**Graph 12: Existence of an authority responsible for supervising and monitoring notaries in 2020 (Q195)**



In terms of supervision and monitoring, it can be stated that in 44 member States and 2 observer States, a specific authority has been established for this task. In particular, in those states where notaries exercise public functions, supervision is an essential element for the effective functioning of the notarial system.

**Graph 13: Authority responsible for supervising and monitoring notaries in 2020 (Q196)**



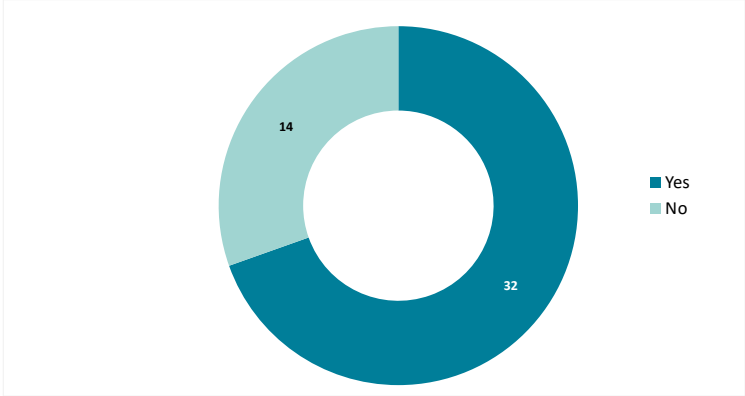
In the vast majority of the cases, the supervision and monitoring role is assumed by the Ministry of Justice (33 member States and 2 observer States). In 31 member States, this role is ensured by a professional body which has either an exclusive competence or a shared one with another authority (Ministry of Justice, courts or other).

Finally, public prosecutors may intervene in this context in 6 member States, two of which are EU Latin notariat states. Other supervision and monitoring bodies exist in 10 member States, four of which are EU Latin notariat states.

**H) Training with regard to the notariat**

The high level of qualification of notaries in Europe is a distinctive feature of the notarial function, both in the preparatory phase for entering the profession and in the exercise of the profession.

**Graph 14: Existence of a system for general continuous training for all notaries in 2020 (Q196-1)**



According to the CEPEJ data, the majority of notarial systems in Europe provide for a general continuous training system to ensure professional preparation through the acquisition of specific skills in all legal issues affecting the profession.

In **Belgium**<sup>12</sup>, for instance, all notaries, candidate notaries and notary trainees are obliged to follow a minimum of training hours in a period of two years. Within a cycle of two calendar years, notaries and candidate notaries must attend at least 40 recognized training hours, whereas every notary trainee must

<sup>12</sup> Regulation of the National Chamber of notaries on continuous training dd. 24 April 2007, most recently modified dd. 22 June 2023.

complete at least 60 recognized training hours. A special recognition committee can recognize both national and foreign training.

In **Italy**<sup>13</sup>, the period of permanent training lasts two years, in which notaries are required to obtain 100 training credits, with a minimum of 40 credits per year. Usually, the training takes place both in person (or via audio/video connection), as well as with e-learning arrangements, with a growing focus on the issues of a European/international matrix. It should be noted that in the last three years, multiple training and comparison activities have been carried out on topics characterized by transnational elements. The COVID-19 epidemiological emergency significantly affected the implementation of the training courses. For example, notaries had to rely on e-learning platforms to achieve the desired training objective.

## **I) Trends and conclusions**

Civil law 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.

In many states, notariats are at the forefront of developing new technologies via electronic channels. This is not only due to the COVID-19 pandemic but instead reflects the general effort of the notariat to facilitate access to justice as well as providing legal certainty in the digital age.

Important steps have also been taken to lighten the burden of the courts and public administration offices. The examples and figures in practice show that more and more competences are transferred to notaries for that purpose. Along with the succession regulation, where many EU Member States entrusted the competence to issue the European Certificate of Succession to notaries, also the notarial competence of divorce by mutual consent as well as the role of the notaries as court commissioners/courts reflect this evolution. Likely, this trend will continue in the future.

Given the transposition of the 4<sup>th</sup> and 5<sup>th</sup> AML Directives into national law in most EU states, the role of the notaries in the fight against money laundering and terrorist financing has become more important and is evolving ever since. Notaries do also cooperate with authorities in fighting against corruption, fraud and other illegal practices in different fields.

High level of training of the profession, initial and continuous training, is a continuous ambition as well as the promotion of genuine equality between men and women in the practice of the notariat and representation in the profession's decision-making bodies.

In conclusion, the notariat has not only proven essential pillar of the states' judicial systems, especially in an emergency like the COVID-19 crisis, but also a pioneer in the field of new technologies. Notaries thereby provide legal certainty in the digital sphere.

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<sup>13</sup>In 2012 the reform of the professions (DPR. 137/2012) established the obligation of permanent training for all professionals, in order to guarantee the quality and efficiency of services in the best interests of the user and the community. The National Council of Notaries has therefore issued the new Regulation on permanent professional training which came into force on 1 January 2014.