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Economic Analysis

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Economic Analysis

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Executive summary

Purpose and scope

The organisation of civil justice involves a fundamental allocative choice: which institutional actors should be entrusted with the resolution of legal disputes and the authentication of legal transactions, and on what grounds. Across a growing number of European Union Member States, legislatures have answered this question by systematically reallocating broad categories of non-contentious proceedings – particularly succession, consensual divorce, as well as land and business registration – from courts to notarial institutions. The Justice Without Litigation II project ('JuWiLi II'), co-funded by the European Union under the JUST-2024-JCOO call, provides the analytical infrastructure for a rigorous comparative examination of this structural transformation across 22 EU Member States: Austria, Belgium, Bulgaria, Croatia, Czechia, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain.

This study pursues two interconnected objectives. The primary objective is to characterise the comparative role of notaries in non-contentious proceedings by mapping out the structural variation in institutional design and the degree of judicial delegation. The secondary objective is to evaluate this delegation through the lens of outsourcing theory, that is whether the reallocation of case-handling competence from courts to notaries constitutes an efficiency-enhancing reform and under which conditions.

Method and data

The empirical architecture is based on a structured data collection instrument, the Economics Questionnaire, administered to national notarial chambers across the 22 participating EU Member States. The questionnaire collects harmonised data for the reference years 2018, 2020 and 2022, covering the volume and legal composition of non-contentious caseloads; processing durations disaggregated by legal area; cost structures and fee transparency; caseflow management indicators; quality assurance and training regimes; as well as the state of digitalisation. This longitudinal panel spans both pre-pandemic baseline conditions and the structural accelerations attributable to the COVID-19 pandemic. The methodology is calibrated against the reporting formats of the European Commission for the Efficiency of Justice (CEPEJ), ensuring comparability with the EU Justice Scoreboard. The analytical framework maintains the distinction, essential to law-and-economics scholarship, between productive efficiency, i.e. the minimisation of resource costs for a given legal output and allocative efficiency, i.e. the alignment of institutional design with the needs of the population served.

The economic baseline

Legal expenditure across the European Union is substantial, heterogeneous and predominantly private in nature. Adjusted for purchasing power, public spending on legal services in 2022 ranged from approximately 46 euro to 186 euro *per capita* – a fourfold

difference – while private legal expenditure ranged even more widely, from roughly 1 euro to 586 euro *per capita*. Judicial expenditure in the narrower sense accounted for between 0.3% and 1.6% of total government expenditure. *Per capita* legal spending correlates positively with Gross Domestic Product (GDP) (R^2 of 0.47 for 2022), indicating that roughly half of the cross-country variation reflects differences in prosperity. The remainder points to institutional choices, including the degree to which non-contentious functions are delegated. Across both legal traditions (common and civil law), private legal expenditure exceeds public expenditure – by a factor of about 2.4 across the whole of the EU (EU-27). The main welfare implication follows directly. Given that citizens bear most legal costs through direct private outlays rather than taxation, institutional arrangements that reduce the cost and complexity of accessing non-contentious services generate savings that are felt primarily, and broadly, in the private sphere.

The main cross-country findings

The comparative evidence supports the project's central theoretical proposition: where proceedings are genuinely non-contentious, the delegation of case-handling competence to notaries constitutes, in welfare-economic terms, a Pareto-superior arrangement relative to court-based processing, provided the quality of legal certainty is held constant. The condition is reflected in the data. In the systems with an extended delegation – Austria, Czechia, Estonia, Hungary, Italy, Latvia, the Netherlands and Slovenia – notaries process the overwhelming majority of resolved succession or registry matters (approaching 99 – 100% in several jurisdictions), clearance rates sit at or near unity, disposition times are short and second instance forwarding rates remain below one per cent, showing evidence of high first instance decision quality and a correspondingly low appellate burden on the courts.

Three efficiency mechanisms recur across the high-performing systems: specialisation, which concentrates standardised, high-volume work in a profession optimally configured to process it; scale, which supports the fixed costs of digital infrastructure that would be uneconomic at lower volumes; and digitalisation, which lowers per case administrative cost and processing time.

The geographic accessibility evidence provides the most direct welfare case for delegation. In every system for which spatial data are available, notarial networks are materially closer to citizens than court networks. Given that travel and time costs have the greatest impact on rural and peri-urban residents, the distributional properties of the notarial network are progressively beneficial, reducing the search and travel transaction costs of access to legal services.

Variation, boundary conditions and structural anomalies

The comparative picture is not uniform and the study deliberately resists overgeneralisation across jurisdictions. Several EU Member States demonstrate that the

institutional prerequisites for efficient delegation may be present without the corresponding legislative grant of competence. Malta presents the clearest such case, with its sizeable, well-trained and territorially dense notarial profession. However, the absence of an autonomous statutory transfer of competence leaves citizens bearing higher access costs than the network could otherwise support. Bulgaria similarly confines notarial functions to authentication and certification while reserving case resolution for courts and registry agencies, producing persistently elevated system level workload indicators. Portugal's narrow, judicially supervised perimeter introduces dual-track coordination costs, manifest in an inventory process backlog of 5,573 pending cases and average durations of 1,763 days – a textbook deadweight loss for citizens awaiting formalisation of asset division. Romania's bifurcated structure – near-pure outsourcing in succession alongside a settled tripartite division in divorce – illustrates that competence splitting may reflect revealed preferences rather than transitional states.

Data availability is itself a finding. In certain EU Member States, structural features of the national justice system preclude the construction of the four composite performance indicators. Where judicial administration is distributed across sub-national units without a centralised authority maintaining caseload statistics, the necessary data cannot be aggregated. In other systems, an analogous absence of caseflow data leaves the jurisdiction qualitatively within the high integration, autonomous competence category yet outside the quantitative benchmarking. These limitations are structural rather than incidental and constrain the precision of cross-national comparison accordingly.

Policy implications

The country-level recommendations are calibrated to the institutional context and follow from explicit welfare criteria rather than from a presumption in favour of delegation as such.

Three themes predominate:

First, where delegation is mature and performance demonstrably high, the marginal welfare gains lie in extending notarial competence to adjacent non-contentious areas – most prominently consensual divorce, recently entrusted to notaries in Lithuania, Latvia and Slovenia and warranting evaluation elsewhere – provided that the proceedings concerned are genuinely non-adversarial.

Second, the principal-agent problem of optional digital competence investment, whose social return exceeds its private return, justifies a mandatory baseline of digital literacy training and the systematic, published measurement of digitalisation effects on workflow and citizen outcomes.

Third, adaptive governance requires that institutional reforms should be accompanied by structured, CEPEJ-compatible monitoring of disaggregated caseload, processing time and satisfaction data, so that future reallocations are based on evidence rather than presumption.

Contribution

Treated as constraints rather than trade-offs, legal certainty, equal treatment and procedural fairness frame the central conclusion: the question is not simply what is efficient, but which institutional arrangement best achieves efficiency within the constraints of the rule of law.

The comparative evidence assembled here indicates that, for genuinely non-contentious matters, well-designed notarial delegation – supported by adequate quality assurance, fee transparency, territorial density and digital infrastructure – achieves both productive and allocative efficiency gains whose benefits accrue disproportionately to citizens through reduced private cost and improved access.

The study's contribution lies in grounding that proposition in a harmonised, longitudinal dataset including 22 countries, as much as in precisely mapping out the conditions under which the predicted efficiency dividend is realised, attenuated or foregone.