JUSTICE WITHOUT LITIGATION

Legal Study

Executive Summary

JuWiLi II – Justice Without Litigation II

Project No. 101192055 – JUST-2024-JCOO

Date: July 2026

Co-funded by the European Union.

Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the granting authority can be held responsible for them.

Justice Without Litigation II

JuWiLi Study 2026 Legal Part

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Abbreviations

AußStrG	Außerstreitgesetz (Austrian Non-Contentious Proceedings Act)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BNotO	Bundesnotarordnung (German Federal Code for Notaries)
Brussels II *ter*	Brussels IIB = Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction
BVerfG	Bundesverfassungsgericht (German Federal Court)
CC	Civil Code
C civ	*Code civil* (French civil code)
CJEU	Court of Justice of the European Union
CPC	Code of Civil Procedure
CRC	Civil Registry Code
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECS	European Certificate of Succession
e.g.	exempli gratia (for example)
EheG	Ehegesetz (Austrian Marriage Law)
Enforcement Regulation	Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims
EU-CFR	EU Charter of Fundamental Rights
FamFG	Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (German Code on Proceedings in Family Matters)
HETV	Hungarian Act XXXVIII of 2010 on Succession Proceedings
i.e.	id est (that is to say)
LNP	Law of Public Notaries and Notarial Activity
MainReg	Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and

	cooperation in matters relating to maintenance obligations (Maintenance Regulation)
Matrimonial Property Reg.	Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
Payment Order Regulation	Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
PIL	Private International Law
PKTS	Vital Statistics Act (perekonnaseisutoimingute seadus)
Property Regulation for Registered Partnerships	Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships
RESA Registry)	**Recueil électronique des sociétés et associations** (Luxembourg Business
Rome III	Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation
SDG	UN Sustainable Development Goal
SE	Societas Europaea
Service of Documents Reg.	Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)
SPOT	Slovenian Business Points
SR	Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (Succession Regulation)
Taking of Evidence Reg.	Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence)
TFEU	Treaty on the Functioning of the European Union
ZGD-1	Slovenian Companies Act

1 Executive summary (Legal Study)

Part 1 (Overview of country reports): Based on 22 country reports provided by notaries from 22 participating EU Member States, we were able to compare the diverse legal frameworks provided by jurisdictions for the administration of justice by authorities which are not courts in the traditional sense, with a focus on notarial actors. Some of the tasks have been outsourced from the courts rather recently while others have a longer tradition of extra-judicial practice. In all cases, the non-judicial authorities unburden the national court systems. Broadly speaking, two models of notarial action can be identified: Under type 1, notaries act as 'courts' or 'court commissioners' under national law, pursuant to a delegation of power or under the control of a court ('court commissioner model'). Under type 2, notaries reduce the workload of courts by taking over functions that were or are usually performed by courts without any specific relationship between the notary and the court. We found that there is a wide variety of such tasks (type 1 or 2), with considerable differences between the participating countries.

Notarial administration of justice in non-contentious proceedings is very common in matters of succession, family law (with consensual divorce having been subjected to separate analysis), enforcement of debt, in the context of public registries and in company law. National provisions can serve as examples for other EU Member States considering an extension of notarial tasks by which the court system is unburdened. This applies, in particular, to the field of consensual divorce. This instrument can be found in 20 of the participating EU Member States, ten of which have – only recently – partially or completely outsourced these proceedings either to notaries or, in a minority of cases, to public administrative authorities. In six countries (Estonia, France, Lithuania, Romania, Slovenia and Spain), notaries have a shared competence with either courts, civil registrars or both, while, in two countries (Greece and Latvia), notaries are exclusively competent for consensual divorce.

Part 2 (**Public law**) examines the country reports with respect to the independence and impartiality of notaries. This part confirms the results from JuWiLi I – then for six countries – for the much larger number of 22 participating EU Member States. In all these countries, notaries (while not 'courts' in the meaning of Art. 6 ECHR due to the absence of disputes to be settled before them) enjoy the guarantees of impartiality and independence as defined by Art. 6 ECHR. This is important insofar as this makes the notarial profession particularly suitable to exercise tasks that could otherwise be handled by courts. National and EU legislators should take this into account when preparing proposals concerning a transfer of tasks from courts to non-judicial actors. In this context, we also found that the future transfer of additional tasks to notaries would not meet insurmountable constitutional obstacles across all participating EU Member States. Both models, *type 1* ('court commissioner') and *type 2* ('no special relationship') can therefore serve as recommendable examples for unburdening courts through non-judicial actors, ensuring a high quality of service with respect to constitutional guarantees (fair trial, independence, impartiality). These justice services can be implemented in accordance with the specific features of the respective national legal system.

Part 3 (Private law) of the legal study analyses two levels of private law: **(3.2.) conflict of laws** and (3.3) substantive private and procedural law. (3.2.) We conclude that, in the *lex lata* perspective, a coherent interpretation of the notions of 'court' and 'decision' and the legal consequences that they imply for 'older' EU regulations such as Brussels I *bis*, 'medium old' regulations such as the Succession Regulation and Matrimonial/Partnership Property Regulations, and the recent developments surrounding Brussels II *ter*, is not possible. In the *lege ferenda* perspective, considering prior EU research projects (JuWiLi I, Code-FS) and literature, as well as the OECD approach of 'people-centred justice', we found an urgent need for a more uniform approach in the area of non-contentious proceedings in the EU. It is necessary to overcome the unjustifiably unequal treatment of citizens from different EU Member States in cross-

border enforcement situations, depending on the field of law and life concerned (different EU regulations) and depending on the particularities of an EU Member State's legal system where access to justice is sought (*type 1* system with 'court commissioner' or *type 2* system with 'no special relationship' to a court).

We suggest a uniform architecture across EU regulations as well as divergent EU Member States' systems, based on the formula: 'same function + same quality = same legal consequences' in cross-border enforcement of private law claims (resulting from non-contentious proceedings). This includes a broad notion of 'court' = (alternatively) 'actors in a court-like position' for all EU regulations dealing with conflict of laws – requiring quality standards for the respective actors, but *not* an institutional link to a court.

Art. 1*:* **Broad notion of 'court' in the sense of the Regulation – comprising certain other public authorities**

> *"Under this Regulation, any authority with competence in matters falling within the scope of this Regulation,* ***will be considered to be in a 'court-like' position (****alternative****: 'court')****, provided that such authority offers guarantees with regard to independence and impartiality and the right of all parties to be heard and provided that their acts under the law of the Member State in which they operate:*
>
> *(a) may be made the subject of an appeal or review by a judicial authority; and*
>
> *(b) have a similar force and effect as an act of a judicial authority on the same matter would have."*

Art. 2: International jurisdiction of extra-judicial actors in a 'court-like' position

> *"(1) The 'decisions' rendered by an 'authority' in the sense of Art. 1 will be recognised and enforced on the basis of the provisions of this Regulation for decisions of proper courts (in the sense of Art. 267 TFEU and EU-CFR) provided that the Member State of origin of the decision had international jurisdiction under the Regulation. In these cases, the rules of lis pendens will apply as well.*
>
> *(2) 'Authorities' in the sense of Art. 1 and any other public authority providing administration of justice services are always free to act outside the rules of international jurisdiction."*

Art. 3: **Consequences of lack of international jurisdiction or lack of requirements of Art. 1**

> *"(1) Where an 'authority' in the sense of Art. 1 (meeting all requirements of Art. 1) is not domiciled in a Member State which has international jurisdiction under the Regulation, the provisions of this Regulation for recognition and decisions of proper courts and for lis pendens will not apply. Where applicable, the instrument will be 'accepted' and enforced in all other Member States in accordance with the rules for 'authentic instruments'.*
>
> *(2) The same applies to all instruments of 'authorities' which do not comply with all requirements of Art. 1."*

The broadly accepted 'extension of effects theory' shall apply to 'recognition' (in the broader sense) of decisions and documents of non-court and court actors. This means that the rules of 'recognition' in a regulation will not change the limits of the effects that a legal instrument has in its jurisdiction of origin. Only effects that an instrument has in the EU Member State of origin will be extended to the other EU Member States.

In **3.3.** (**substantive private and procedural law**), general guidelines for the evaluation of rules of substantive private and procedural law with respect to the practice of extra-judicial actors in the civil justice system are developed. The following core principles should be taken into account: Self-determination of citizens in their private and family lives, and their economic activities; protection of a fair balance of interests of the parties and of the interests of weaker parties; and de-escalation of conflicts. The blueprint for these principles is provided by the EU's human rights' framework. In line with the OECD approach of people-centred justice and the Council of Europe's work, the following evaluation criteria should be added: easy access to the justice service, encouraging trust in justice institutions and the State, fast and affordable services, services flexibly adapting to people's needs.

On the basis of these criteria, the legal systems of EU Member States are advised to improve and extend the involvement of the notarial profession in the following non-contentious private law proceedings, with the goals of reducing the workload of courts and ensuring a high quality of services: succession matters, consensual divorce, division of assets, execution of claims, registration in public registries, recognition of paternity/maternity to a child, taking of evidence, service of documents and company law. Best practice examples are presented in succession, out-of-court-divorce (consensual divorce), division of assets or property, execution of claims, public registries, recognition of parenthood and taking of evidence, service of documents, and company law.

Part 4 summarises the **policy recommendations** as important results of the Legal Study.