



JuWiLi II – Legal Study

presentation by

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Structure of the Study

- 1. Overview of Country Reports**
- 2. Public Law**
- 3. Private Law**
 - 3.1. Conflict of Laws – Cross-Border Cases / EU Regulations**
 - 3.2. Substantive Law – Quality Criteria, Best Practice**
- 4. Summary of Recommendations**
- 5. Executive Summary**
- 6. Consortium Recommendations (National & EU Levels)**

JuWiLi I & JuWiLi II

➤ JuWiLi I – 6 participating Member States

focusing on

- definition of ‘court’ in EU Regulations
- the institution of a ‘court commissioner’
- constitutional guarantees and framework of notarial profession

➤ JuWiLi II – 22 participating Member States

studying the

- more general question of **conditions, chances, and challenges of non-judicial administration of justice** (with a particular focus on **notarial** profession)
- different **perspectives** contributing to a comprehensive **assessment of quality** of justice services: including constitutional guarantees, cross-border recognition, substantive private law justice, OECD / Council of Europe criteria
- + economic, psychological, digitalization qualities

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Structure of the Study

1. Overview of Country Reports

Description of the status-quo in non-comprehensive manner

- Two ,worlds‘ of ,court commissioners‘ (minority) and notaries without a specific link to a court (majority)
- Examples of national rules in succession, family law, enforcement and debt-related tasks, registers, company law, and others.
- Particular focus on consensual **divorce** outside the court system
10 Member States; different actors in different combination;
differences in minor children inclusion, time limits, control of
fairness of content of the agreement

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Insights from Part I – Notarial Tasks

We recommend that national legislators use the wide range of diverse examples of co-operation between courts and notaries in the individual Member States **as an opportunity to consider new ways in which the notarial profession can help alleviate the workload on their courts**, drawing on examples from other Member States. A broad selection of these examples will be presented in the legal part of the JuWiLi II.

We found that, from the **perspective of constitutional law**, further transfer of tasks to notaries **does not meet insurmountable obstacles** across all Member States participating in this study. For the national legislator transferring administration of justice services to notaries, we recommend a choice between the model of either type 1 (court/court commissioner) or type 2 (unburdening without specific relationship court – notary) in view of the already existing structures and traditions in the respective jurisdiction.

Independence of Notaries (I)

- Notaries in all participating countries have to respect the guarantees of independence and impartiality
- This makes the profession **particularly suitable** to assist and/or unburden courts
- Accordingly, notaries in non-contentious procedures can act along the requirements of fair trial in all participating Member States
- **To avoid misunderstandings:** Notaries shall not “replace” courts as they are not “courts” in the sense of Art 6 ECHR or EU primary law (on this, most recently, opinion in C-98/24 [Koda])

Independence of Notaries (II)

- Council of Europe, New Research Note on Case Law of the European Court of Human Rights concerning the role of notaries for the effective administration of justice, CDCJ-BU(2026)02rev
- Of particular significance: ECtHR 29 April 2025, No. 49617/22, **Kavečanský v. Slovakia**, n. 61.

Regarding procedural protection in the context of Article 8, the Court has attached particular weight to lawyers' professional privilege, which is linked to their **role in the administration of justice and the protection of a client's right to a fair trial**, as guaranteed by Article 6 of the Convention. The same argument may also apply to the protection of information relating to the exercise of other legal professions that involve the processing of client information covered by professional secrecy, **such as the profession of notary in the Slovak legal system.**

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Perspectives of JuWiLi II

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Two-Track System: court decision – authentic instrument

- **TRACK 1: court decisions/judgements** – uniform rules of international jurisdiction (Art. 4 SR), *lis pendens* and halt of proceeding rule, recognition and enforcement (Art. 39 SR)
- **TRACK 2: authentic instruments and court settlements** (formalization of an agreement) = Art. 59 SR (acceptance), Art. 60 SR (enforcement)

Novelty in **Art. 64, 65 Brussels I Iter**:

- court decisions **AND**
 - authentic instruments
- are subject to same rules – those of **TRACK 1**
provided there is international jurisdiction

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Private Law – Conflict of Laws – the EU Regulations

Recommendations (p. 70 et seq.)

1. **Notion** of ‘court’ or ‘actors in a court-like position’: with national law competence, with quality standards (independence, impartiality, fair trial), appeal/review to a court, similar force and effect as court act.
no requirement of a **link** to a court: no delegation or control required
this means that administration of justice activities by notaries in both worlds – ‘court commissioner’ and not – are included.

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this means that administration of justice activities by notaries in both worlds – ‘court commissioner’ and not – are included.
2. **However**: There is only an **option** recommended – notaries in the sense of this definition can follow the rules of international jurisdiction of the respective EU Regulation OR NOT if they or their clients want to.

Private Law – Conflict of Laws – the EU Regulations

Recommendations (p. 70 et seq.)

2. Where they **choose** to do so and, actually, **have international jurisdiction**: Their documents will be enforced like court judgements.

Where they do not have international jurisdiction (or any other of the requirements is lacking) their documents will be enforced in accordance with the **respective other rules**: in cases of authentic

Why do we have this obsession with international jurisdiction?

International jurisdiction is a pre-requisite of the **concentration-of-competence** system of the EU Regulations that avoids parallel and contradictory proceedings and decisions, **IJ must, therefore, be present to justify the consequences of track 1: *lis pendens* etc.**

Private Law – Conflict of Laws – the EU Regulations

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3. We recommend to stick to the traditional '**extension of effects rule**': only effects a national instrument (decision or other) has in the Member State of origin will be extended to the other Member States. This rule should apply to decisions by proper courts as well as to decisions of non-judiciary actors.

Systematic character and comprehensiveness:

The **advantage** of these 3 recommended rules is that they can be inserted into each and every EU Regulation. These rules would make the system much clearer, less contradictory, and more easily accessible for all. It would give parties a better orientation and avoid unequal treatment that cannot be reasonably justified.

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Substantive Private Law – Evaluation Criteria and Best Practices

Recommendations (p. 70 et seq.)

5. Substantive law - core principles for quality services: **self-determination** of citizens in private and family lives and economic activities; protection of **fairness** and **weaker parties**; **de-escalation of conflicts**.
6. Constitutional standards: impartiality, independence, fair trial.
7. Additional criteria:
easy access to justice service;
encouraging **trust** in justice institutions and the state;
fast and **affordable** services;
services **flexibly** adapting to **people's needs**.
(supported by OECD concept of 'people-centered justice systems' and Council of Europe approach)

Substantive Private Law – Evaluation Criteria and Best Practices

Recommendations (p. 70 et seq.)

8. Based on these material standards of evaluation (recom. 5-7):
the notarial profession is best suited to perform tasks in the administration of justice instead of or besides courts.

We encourage extension of notarial activities in national jurisdictions – taking advantage of the experiences in other Member States – in particular in the following areas of law and life:

consensual divorce

succession

division of assets

execution of claims

public registers/registration

recognition of paternity to a child

taking of evidence

service of documents

company law

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Legal Study JuWiLi II in Steps

1. Questionnaires (general + divorce) created

Basis

2. Country Reports = answers to the questionnaires

Basis

3. Analysis of and drafting of legal study by academic

Questions

4. Discussions in the Working Group, Task Forces, Steering Committee and JuWiLi events and conferences

Questions

5. Final version of Legal Study for publication

Answers



**Thank you very much for
your attention !!!**



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