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JUDGES AND NOTARIES: COMPLEMENTARY NATURE AND PROXIMITY OF THE PROFESSIONS

1. Introductory Remarks.

Distinguished representatives of the Notaries, distinguished organisers of this initiative, dear colleagues, dear friends.

It is a great honour and a pleasure for me to address you in the framework of this important event. I would like to thank, first of all, the International Union of Notaries, for this invitation. I would like also to add that it is a particular pleasure for me to take the floor during an event organised by notaries, being myself a former teacher and lecturer for more than twenty years in the Notarial School of Turin.

The purpose of my speech here is to provide you with some information on the organisation I have the honour to represent here: the International Association of

Judges (IAJ), as well as on the future of a possible improvement of the co-operation between judges and notaries, both at national and international level.

2. The International Association of Judges (IAJ): Its Organisation and Aims.

As maybe some of you already know, the main purpose of the IAJ is to reinforce the independence of the judiciary as an essential attribute of the judicial function, together with the protection of the constitutional and moral status of the judiciary and the guarantee of fundamental rights and freedoms (thorough information on the IAJ is available in the following web site: https://www.iaj-uim.org).

The IAJ has consultative status with the United Nations (namely the International Labour Office, the U.N. Economic and Social Council and the UNODC, but mainly with the office of the UN Special Rapporteur on the Independence of Judges and Lawyers), on one side, and with the Council of Europe, on the other side. As far as the latter is concerned, we enjoy the position of observer within the *CEPEJ* (*Commission Européenne pour l'Efficacité de la Justice* – European Commission for the Efficiency of Justice), as well as within the *CCJE* (*Conseil Consultatif de Juges Européens* – Consultative Council of European Judges).

The IAJ is governed by its Central Council, composed of representatives of the member associations (currently 94, from 94 different countries of the five continents), and also by the Presidency Committee, which is the administrative organ under the leadership of a President, who is elected every two years, as are the members of the Presidency Committee, consisting of the President, six Vice-Presidents and, for a period of two years, the immediate past President.

The Association has four Study Commissions, whose task it is to study a different topic each year in various fields:

- The first is engaged in the study of the status of judges, the independence of the judiciary, judicial administration and the protection of individual freedoms.
- The second commission is involved in the study of civil law and procedure;
- The third commission is engaged in the study of criminal law and procedure;
- The fourth commission is involved in the study of public and social law.

At meetings and congresses, the member countries try to gain a better knowledge of the country where the conference is being held, of its legal system, and of the problems encountered by its judges. Petitions and recommendations are produced at the conclusion of each congress.

Within the IAJ there are also four Regional Groups whose aim is to monitor closely specific questions relating to the judiciary in different parts of the world:

- the European Association of Judges (EAJ);
- the Ibero-American Group;
- the African Group;
- the "ANAO" (Asian, North American and Oceanian) Group.

As far as the Study Commissions are concerned, the one which is closer to your aims and activities is of course the second (civil law and civil procedural law).

3. IAJ's Studies and Topics of Interest for Notaries.

Actually, since its creation, IAJ'Second Study Commission has sometimes dealt with topics which may be of some interest for Notaries. Its conclusions for each annual meeting are available at the IAJ's website (https://www.iaj-uim.org/general-reports-and-conclusions-by-the-2nd-study-commission/).

Let me mention just some of them:

- (1980) "Effects of foreign judgements in fields not covered by international conventions. Possibilities, means and methods of executing urgent measures in the field of family law);"
- (1981) "Protection of the interests of mentally handicapped in private law;"
- (1983) "The equality of husband and wife in family law;"
- (1985) "What legal rules should apply to the couples living together not being married, both between themselves and towards their common children;"
- (1989) "The judge and the co-operation of other Justice-related professions: Lawyers, Law-Professors, Public Notaries, professional experts, and other State officials;"
- (1992) "The Legal Status of Children after a) Divorce, b) Separation, c) Annulment of Marriage and d) Separation of Parents Having Cohabited Without Being Married;"
- (2004) "The powers of the judge in family matters;"
- (2005) "Alternative Dispute Resolution as a means of improving the delivery of justice and reducing the delays in civil procedure;"
- (2006) "Legal rules regarding patrimonial interests, succession and duties of couples living together but not being married;"
- (2011) "Cross-border issues in the face of increasing globalization – as reflected in a series of individual fact scenarios".

As far as relations between Notaries and Judges are concerned, let me point out that already many years ago, during our Congress in Macau held on 23rd-27th October 1989, the IAJ approved, among other things, following conclusions on the subject of "The Judge and the Co-operation of Other Justice-Related Professions: Lawyers, Law-Professors, Public Notaries, Professional Experts, And Other State Officials":

"In the civil law countries which know the Latin Notary

- the Notary is a public official who advises the parties impartially and points out to them the legal implications of such deeds as they might wish to make, thereby preventing conflict between the parties,
- authenticated deeds drawn up by the Notary simplify evidence proceedings;
- the Notary represents the parties in Court in matters of voluntary jurisdiction;
- the Notary is further required by the Court to perform judicial acts such as inventories, divisions of property and affixing of seals;
- it is desirable that the functions of the Notary be consolidated and that resort to the notary's services in the administration of Justice be recognised and encouraged."

The IAJ and the International Union of Notaries (*UIN*) have signed almost thirty years ago (on 29th September, 1994) a cooperation agreement.

Coming to present times, our two organisations have successfully co-operated in the framework of EU law training in English language for European Notaries and Judges, involving judges and Notaries from Bulgaria, Hungary and Italy. The IAJ was also involved in the programme called "EU Cross-border Matrimonial and Registered Partnerships Proceedings: EU Regulations and E-Learning," developed by the Italian Notarial Foundation.

More precisely, a project financed by the European commission was launched in 2019 in co-operation with the Italian National Notarial Council and the Italian Notarial Foundation on "Action grants to support transnational projects on judicial training covering civil law, criminal law or fundamental rights" (JUST-JTRA-EJTR-AG-2017). Further information on this activity is available here: https://eventi.nservizi.it/evento.asp?evid=223.

The above-mentioned co-operation has as well produced a handbook on EU civil law. The document is available at the following URL: https://eventi.nservizi.it/upload/223/altro/handbook%20def.pdf.

4. Ideas for Future Co-operation between Judges and Notaries: An Italian Example.

The best way of illustrating the possible future of the co-operation between Judges and Notaries can be inspired by a recent Italian reform of the "voluntary jurisdiction." It must be said here that by these words we mean in Italy all those activities which, albeit generally performed by judges, do not consist in the issuing of a decision on a conflict between two or more parties over one or more rights claimed by the litigants. In other words, we are talking of non-litigious, non-contentious activities, in which the judge is usually called to express an evaluation of convenience, rather than resolving litigation.

Now, due to a recent Italian reform, all authorizations to make public or private notarized deeds concerning person who do not have the full exercise of their rights (minors, interdicted or incapacitated persons) may be given directly by the Notary public, although they must then be served on the clerk of the competent court to fulfil the publicity formalities. Authorizations take effect 20 days after service without a complaint. The only exception, for which the exclusive jurisdiction of the court remains, is for the purpose of promoting, waiving, settling or compromising in arbitration of judgments and, especially, for the continuation of a commercial enterprise. The result of such a new law is, as just said, the attribution to Notaries of competence in matters of authorizations relating to affairs of "voluntary jurisdiction."

Therefore, authorizations for the making of public deeds and notarized private deeds in which a minor, an interdict, an incapacitated person or a person benefiting from the measure of support administration intervenes, or concerning hereditary property deferred to such people, may be issued, upon the written request of the parties, personally or through a legal attorney, by the Notary Public him/herself.

The Notary may be assisted by consultants, and take information, without formalities, from the spouse, relatives within the third degree and from relatives-in-law

within the second degree of the minor or the person subjected to a protective measure, or in the case of hereditary property, from the other involved parties and creditors resulting from the inventory, if this latter is drawn up.

In all cases in which, as a result of the execution of the deed, consideration is to be collected in the interest of the minor or a person subject to a protective measure, the Notary, in the act of authorization, shall determine the necessary precautions for the reuse of the same.

As said, the authorization shall be communicated, by the Notary, including for the purpose of fulfilling publicity formalities, to the clerk's office of the court that would have been competent to issue the corresponding judicial authorization and to the prosecutor's office in the same court. The authorization may be challenged before the court in accordance with the rules of the Code of Civil Procedure applicable to the corresponding court order.

The authorizations, as already said, take effect twenty days after the notifications and communications provided for in the preceding paragraphs without a complaint being filed. They may at any time be modified or revoked by the tutelary judge, but the rights acquired in good faith by third parties under agreements prior to the modification or revocation shall remain unaffected.

Authorizations to promote, waive, settle or compromise in arbitration judgments, as well as for the continuation of the commercial enterprise, remain reserved exclusively to the judicial authority.

Legislative Decree No. 149 of October 10th, 2022, effective October 18th, 2022, then repeals Article 375 of the Civil Code, providing that the relevant authorizations are the responsibility of the Tutelary Judge and no longer of the Court, as well as the authorization for the continuation of the business activity (Article 320 paragraph V of the Civil Code). Thus, the authorizations of Article 374 of the Civil Code can be issued, as already said, by the Notary (i.e., the one in charge of drawing up the deed), whose jurisdiction is flanked by that of the Tutelary Judge, who remains the *dominus* of the matter (instead of the Court in collegial composition, as it was sometimes the case before the said reform).

The authorization is issued upon written request of the parties, either personally or through a lawyer and is communicated by the Notary Public to the clerk of the Tutelary Judge who would be competent for the homologation court order, as well as to the Public Prosecutor at the same court.

If I may add a personal remark on this reform, I have to say that it is a piece of legislation which was long-time due. The judicial "attitude" towards such kind of "affairs" was indeed always rather circumspect. The mentality (but sometimes the prejudices and the special love for complications) of many Italian judges brought them to try to always find "what was behind" a request of that kind, whereas all that "was behind" was the desperate and urgent need of a family to sell some goods belonging to an aged person, in order to provide to his/her maintenance. The final result was the creation of unbearable delays, with the bad result that the contractual counterpart in the meantime often changed his/her mind and/or the concerned person passed meanwhile away… This is why we must salute this new law as a modernizing legal asset of our system, which will remarkably contribute to the approximation of Italian cumbersome and outdated procedural legislation to the legal system of a civilized country.

This legislative solution had been preceded, many years ago, by the abolition, in the year 2000, of the so-called "homologation" review by the courts and the subsequent assumption by the Notary of the responsibility for the establishment of new companies and corporations. Just to give an idea, it will be enough to say that until 2000 the process of homologation of company deeds needed about 150 days from their creation to their effective operation and now can be operating on the day of the deed, or at most in a few days.

5. Co-operation between Judges and Notaries in the Activity and Official Documents of the CEPEJ of the Council of Europe.

Another inspiring document on this subject could be a very recent proposal by the *CEPEJ* (*Commission Européenne pour l'efficacité de la justice*, European Commission for the Efficiency of Justice, created within the Council of Europe), which, on June 16th 2023, approved the draft prepared by the *CEPEJ-SATURN* Working Group (which I have the honour to preside over), aiming at the updating the Recommendation(86)12 of the Committee of Ministers to member states concerning "Measures to prevent and reduce the excessive workload in the courts."

We must say that *CEPEJ-SATURN* has been working on this document since its March 2022 meeting, based on two draft proposals submitted, respectively, by myself and by Prof. Marco Fabri (Italy). In the course of the discussion, we consulted other *CEPEJ* Working Groups, as well as the (European Union of *Rechtspfleger*), the Pilot Courts Network of the *CEPEJ*. An important contribution was given by the International Union of Notaries, from which we received valuable comments and we thank them for it.

Once the proposal adopted, it has been sent to the European Committee on Legal Co-operation (*CDCJ*), which is the official "engine" of any initiative of that kind in the Council of Europe, especially when official recommendations of the Council of Ministers are concerned.

In a nutshell, I must say that the new draft Opinion refers to the necessity, in particular: (a) to redraft the provisions of the current Recommendation regarding alternative dispute resolution (ADR), while highlighting the need for raising awareness on the ADR methods among justice professionals; (b) to have the new Recommendation include new provisions related to the use of information and communication technologies (ICT) and the necessity to equip courts with adequate technical equipment (c) to refurbish the list of non-judicial tasks of which judges could be relieved from.

As far as this final point is concerned, I would like to compare, as follows, the current provisions of the Recommendation (dating back to the year 1986) and the new proposed list of tasks which could be given to other professionals, among which of course in the first place the Notaries.

Annex to the Original Rec. (86) 12	CEPEJ-SATURN Draft Opinion on the Updating of Rec. (86) 12 – Proposed new Annex –
Appendix to Recommendation No. R (86) 12 *Examples of non-judicial tasks* *of which judges in some states could be relieved* *according to the particular circumstances of each country* Celebration of marriage Establishment of family property agreements Dispensing with the publication of marriage bans Authorising one spouse to represent the other: replacing the consent of the spouse prevented from giving consent Change of family name—change of first name Recognition of paternity Administration of the property of those lacking legal capacity Appointment of a legal representative for legally incapacitated adults and for absent persons Approval of acquisition of property by legal persons Supervision of traders' books of account Commercial registers: traders companies trademarks motor vehicles ships, boats and aircraft Granting of licences for the exercise of commercial activities Judicial intervention in elections and referenda other than provided for in the Constitution Appointment of a judge as chairman or member of committees in which his presence is merely required to strengthen the committee's impartiality Collection of taxes and customs duties Collection of judicial fees Acting as a notary public Measures relating to estates of deceased persons Civil status documents and registers Land registry (control over registration of transfer of property, of charges over immovable property…) Appointment of arbitrators when such appointment is required by law.	***Proposal for the update: examples of non-judicial tasks that judges in some States could be relieved of, depending on each country's specific circumstances*** ***1. Law of persons*** - *Declaration of absence and death* - *Decision to authorise or record consent for organ donation* - *Decision to authorise the protection to safeguarding the rights of children and people with incapacities* - *Court approval or authorisation for the performance of acts of disposal, encumbrance or other acts relating to the property and rights of children or adults with incapacity* - *Granting powers of representation, such as "future protection mandate"* - *Judicial grant of emancipation and of the benefit of legal age* - *Gender reassignment* - *Non-litigious cases concerning the status of physical persons:* • *Appointment of tutors, curators, and other administrators* • *Administration of the property of those lacking legal capacity* ***2. Family law*** - *Divorce and legal separation by mutual consent for couples without children or with adult children only* - *Change of matrimonial regime* - *Conclusion and registration of civil partnerships* - *Granting alimony and determining issues arising from it* - *Adoption / consent to adoption of people over the age of majority* - *Approval or authorisation in non-litigious proceedings of the declaration of parenthood* *in respect of children born out of wedlock* - *Collection of consents in the context of medically assisted procreation* - *Handling non-litigious proceedings for the administration of common property when one of the spouses is unable to act* ***3. Real estate, property and succession law*** - *Supervision of real estate records* - *Supervision of property records relating motor vehicles, ships, boats, and aircrafts* - *Non-litigious proceedings in the field of succession law:* • *Presentation and publication of secret wills* • *Declaration of an opening of succession* • *Setting up of inventories* • *Issuance of a national or European certificate of succession* • *Acceptance of an inheritance with the benefit of inventory* • *Issuance of an authorisation for accepting or waiving an inheritance or a legacy, when such acts are submitted for authorisation* • *Submission of executors' accounts and removal of executors, authorisation of acts of disposition by executors (except for children and people with incapacity)* • *Authorisation of the sale and purchase inheritance goods* • *Liquidation and property division in the context of non-litigious and litigious cases* ***4. Commercial and contract law*** - *Issuing payment and injunction orders* - *Decision to authorise the establishment and registration*

	of legal persons - *Production of accounts by persons required to keep accounting records, or otherwise bound to produce accounts* - *Small claims relating to consumer disputes* - *Non-litigious proceedings concerning trusts:* • *Approval of particular "arrangements" on behalf of any person who may have an actual or contingent interest in a trust (including unborn children)* • *Varying or revoking all or any of the terms of the trust* • *Approval of transactions considered expedient but cannot otherwise take place for lack of power of the trustee or for any other reason* • *Issuance of declarations as to the validity or enforcement of a trust, the existence of any resulting or constructive trust, breach of trust or failure of a trust, etc.* • *Non-litigious proceedings concerning debt relief or debt settlement for natural persons* ***5. Criminal law*** - *Authorisation of payment or delayed payment of fines* - *Transcription of testimonies or depositions given during hearings and subsequently proofreading of related court documents* ***6. Procedural law*** - *Control of payment of judicial fees* - *Participation in out-of-court settlement disputes/conducting mediation/conciliation processes* ***7. Enforcement procedures*** - *Judicial sales by auction* - *Declaration of enforceability of court decisions* ***8. Others*** - *Appointment and participation of judges as members or presidents of disciplinary or selection boards/committees regarding persons who are not members of the judiciary (e.g. notaries, lawyers accountants)* - *Administering oaths for non-judiciary professionals (auditors, notaries), collection of testimonies and written evidence* - *Legalisation or apostille of documents*

I join herewith, as attachement to this presentation, the official document of the CEPEJ's "Opinion aimed at proposing to the European Committee on Legal Co-Operation (CDCJ) and An update of the Recommendation CM/REC(86)12 of the Committee of Ministers to Member States concerning measures to prevent and reduce the excessive workload in the courts"—Document adopted by the CEPEJ at its 40th plenary meeting (Strasbourg, on 15 and 16 June 2023).

6. Conclusions.

We know very well that, on the international level, we already have a whole array of instruments and declarations issued by international bodies, such as the U.N. (see the so-called "Basic Principles on the Independence of the Judiciary") and the Council of Europe (I am referring especially to Recommendation No.12/2010 and to several opinions of the Consultative Council of European Judges), which are stressing the need to safeguard the autonomy, independence and impartiality of Judges.

However, if we reflect attentively on the fundamental issues at stake, we can easily discover that these very requirements are basically the same which can be relevant for the selection and training of Notaries.

In performing his function, the Notary must, by law, be independent and impartial: he must protect the interests of all parties equally, regardless of who has appointed him. He must, therefore, decline to act whenever there is a conflict of interest (for example, when his own relatives are parties to a transaction). He performs a function of prior control of legality: he has a duty to abide by the law and cannot and must not accept transactions prohibited by law. Just to give an example, thanks to the checks carried out by notaries, in Italy there are essentially no disputes regarding real estate transactions (only 0.003% give rise to disputes).

Also at European level, as stated by the EctHR in its famous decision *Ana Ionita v. Romania* of March 21st, 2017, Notaries enjoy a role that could be defined as that of "out-of-court magistrates": an expression in inverted commas, but explicit and completely reflecting their hybrid nature as independent professionals and public officers, closely linked with the requirements of the preservation of the public confidence in their functions.

Now, specifically referred to as "out-of-court magistrate," by the European human rights judge, the Notary has a different status from that of the lawyer and of the bailiff. Unlike Notaries, lawyers are not public officers, they do not have official powers as a public authority received from the State and no jurists would declare them judge of anything. The bailiffs are indeed public officers, but they only take action to enforce the judgment of the Courts in general and the notarial deeds in particular (both are enforceable titles).

Also, the Court of Justice of the European Union (CJEU) has underlined, in its *Leopoldine Gertraud Piringer* judgment of 9th March 2017, that Notaries constitute "a particular category of professionals in which there is public confidence and over which the State exercises particular control." The CJEU does not state notaries are judges, nor "out-of-court magistrates," because it thinks in terms of activities much more than status. But, by characterizing their activities from the point of view of public confidence, which it linked before to the impartiality of the Notary, and the preventive administration of justice, which is not conceivable without a guarantee of its authenticity, the CJEU used the main components which permitted the ECtHR to qualify notaries as "out-of-court magistrates."

Therefore, I think that, having in mind the highlights of those above-mentioned international principles, we could try to benefit from the experience of those legal systems in which qualified, objective and effective selection of legal professionals has been successfully developed for many years.

Actually, we know very well that recruitment of legal professionals differs enormously in Common Law countries, when compared to Civil Law ones.

In this framework I would like particularly to emphasize the German experience of a common initial training based on two phases (*zweiphasige Ausbildung*): one more theoretical and the other one more practical, marked by two severe and very selective examinations (*erste Juristische Staatsprüfung*, *zweite Juristische Staatsprüfung*), between which a "Preparatory Service" (*Vorbereitungsdienst*) helps prospective

Judges, Notaries and Lawyers with getting acquainted with the specific issues of each legal profession.

Another worth considering option is the experience of the French *Ecole Nationale de la Magistrature*, which since 1958 has been preparing young French law graduated to become Judges and Prosecutors. A model which helped during these decades training thousands and thousands of judges of the French speaking world and which was successfully exported in many other countries of Europe and of other continents. Other positive experiences are those of Spain, Portugal and of the Netherlands.

I am personally convinced that, as far as the judicial side is concerned, we should try to start a comparison among such systems in order to see what kind of "input" we can find for a prospective new system of selection and training of Judges and Notaries in a perspective which emphasises common aspects.

Let me also point out that, as already said, international bodies have been developing in these last years several legal instruments which could serve as a guide for singling out common denominators for judicial and notarial selection and training, so many are the aspect of our professions we share.

Both our professions need people who are not only legal experts, but who are able to cope with the awkward challenges of present times. Rather than people who know by heart thousands of legal provisions, which very often are bound to stay in force for a period no longer than… *l'espace d'un matin*, we need young men and women who are able to find solutions to—on one side—unexpected problems raised by the dazzling and increasingly complex legal framework resulting from internal, international, supra-national, transnational and foreign legal provisions and—on the other side—the huge practical problems very often uselessly created by a class of lawyers every day more and more aggressive (and many times also incompetent).

We also need honest, independent minded and courageous people, who are able to defend and protect day by day their own autonomy vis-à-vis possible external undue influences of any kind. New ways of selection and training must encourage and foster such spirits among young jurists. At this level too a co-operation among Judges and Notaries is nowadays more and more needed. I am sure both our organisations will be able to find out common denominators for Judges and Notaries of the 21st century.

7. Attachement.

CEPEJ's "Opinion aimed at proposing to the European Committee on Legal Co-Operation (CDCJ) and An update of the Recommendation CM/REC(86)12 of the Committee of Ministers to Member States concerning measures to prevent and reduce the excessive workload in the courts"—Document adopted by the CEPEJ at its 40th plenary meeting (Strasbourg, on 15 and 16 June 2023).

Strasbourg, 16 June 2023

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EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
COMMISSION EUROPÉENNE POUR L'EFFICACITÉ DE LA JUSTICE
(CEPEJ)

OPINION AIMED AT PROPOSING TO THE EUROPEAN COMMITTEE ON LEGAL CO-OPERATION (CDCJ) AN UPDATE OF THE RECOMMENDATION CM/REC(86)12 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING MEASURES TO PREVENT AND REDUCE THE EXCESSIVE WORKLOAD IN THE COURTS

Document adopted by the CEPEJ at its 40th plenary meeting
(Strasbourg, on 15 and 16 June 2023)

OPINION OF THE EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)
AIMED AT PROPOSING TO THE EUROPEAN COMMITTEE ON LEGAL CO-OPERATION (CDCJ)
AN UPDATE OF THE RECOMMENDATION CM/REC(86)12 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING MEASURES TO PREVENT AND REDUCE THE EXCESSIVE WORKLOAD IN THE COURTS

1. In line with its terms of reference for 2022 – 2023, the CEPEJ-SATURN reflected on a possible update of Recommendation CM/Rec(86)12 *concerning measures to prevent and reduce the excessive workload in the courts* (hereinafter "Recommendation (86)12"). This reflection was prompted several years ago by the European Union of Rechtspfleger and court clerks (EUR), observer to the CEPEJ. The CEPEJ-SATURN has drafted an Opinion for adoption by the CEPEJ. The draft Opinion is the result of consultations with all other working groups of the CEPEJ and the CEPEJ Network of pilot courts and EUR. The CEPEJ-SATURN has also received contributions from the International Union of Notaries (UINL) and the Association of European Administrative Judges (AEAJ).

2. The CEPEJ examined and adopted this opinion at its 40th plenary meeting (Strasbourg, on 15 and 16 June 2023). In accordance with Article 2.1.e. of the Appendix 1 to Resolution (Res(2002)12 establishing the European Commission for the Efficiency of Justice (CEPEJ)[1], it decided to submit it to the European Committee on Legal Co-operation (CDCJ).

3. In this regard, the CEPEJ considers it beneficial to share the following points with the CDCJ:

A. General considerations

4. Since its adoption, Recommendation (86)12 has proven to be a highly valuable resource in many member States for implementing measures to reduce and prevent the excessive workload in the courts, as well as for determining the division of tasks between judges, clerks, and other institutions.

5. Several aspects of the approach adopted at the time now appear outdated, however. It is therefore suggested to update this important document, taking into account new approaches, developments in key areas of justice, the numerous instruments adopted by the Council of Europe since the document's publication, as well as the tools developed by the CEPEJ to improve the functioning of judicial systems. The CEPEJ is willing to collaborate with the CDCJ if it decides to prepare a new Recommendation or update Recommendation (86)12.

6. National justice sector strategies play an important role in providing a clear vision for justice on-going and planned reforms in States. An updated Recommendation could also be of assistance in formulating such strategies.

B. Alternative Dispute Resolution

7. Recommendation (86)12 remains relevant in its encouragement of friendly settlement of disputes. However, the situation has evolved since 1986, notably resulting in an increase in the use of alternative dispute resolution (ADR) in many countries. The methods for achieving such a settlement could be further developed in the Recommendation.

8. For this purpose, a thorough review of the provisions relating to ADR would be necessary. While ADR is generally regarded as a means of alleviating the workload of judges, its effectiveness

[1] The CEPEJ shall have the task: "*e.* to suggest, if appropriate, areas in which the relevant steering committees of the Council of Europe, in particular the European Committee on Legal Co-operation (CDCJ), may, if they consider it necessary, draft new international legal instruments or amendments to existing ones, for adoption by the Committee of Ministers."

relies on the implementation of appropriate policies and actions to promote its use in practice. For this, training for justice professionals and raising awareness among parties and court users about ADR are crucial factors in promoting its use and enhancing its effectiveness.

C. Information and Communication Technologies

9. Judicial systems have experienced a digital revolution since 1986. The introduction of information and communication technologies (ICT) has transformed the way courts work, offering the potential to enhance efficiency, timeliness, and transparency in court proceedings. States should actively promote the comprehensive use of ICT in the courts. To support a comprehensive transformation towards e-justice, specific e-justice related legislation and/or strategies maybe encouraged. The dematerialisation of court proceedings can encompass various processes, such as the introduction of "digital by default" and an "online first" approach for new cases, digitalising archives, and providing online information, tutorials, and chatbots for court users to facilitate access justice.

10. The courts must be equipped with the necessary ICT equipment and applications essential for dematerialisation of judicial proceedings[2] Whatever ICT is used, judges and court staff should be proficient and stay updated with developments in computer systems, programs, and their functionalities. Where appropriate, they should be provided with ICT training[3] These aspects could be mentioned in the update of the Recommendation (86)12.

D. Non-judicial tasks that judges could be relieved of

11. It also appears necessary to review the examples of non-judicial tasks that judges could be relieved of, as included in the appendix to Recommendation (86)12. While the Recommendation's distinction between judicial tasks and non-judicial tasks, which can be delegated to others to alleviate judges' workload, remains relevant, some of these tasks have evolved and warrant review. There are also functions that belong to the judiciary, but that can be assigned to individuals or institutions other than judges.

12. Some States introduced *Rechtspfleger* (or similar bodies) in their judicial systems who can play an important role in relieving judges' workload and allowing them to focus on complex cases. *Rechtspfleger* is an independent judicial officer, performing the tasks assigned by law, who is not a judicial assistant but works within the court and may carry out legal tasks in various areas. In some states, they may also have competence to make judicial decisions independently and/or to undertake administrative judicial tasks. 15 member States have set up *Rechtspfleger* (or similar bodies) with judicial or quasi-judicial tasks, who have autonomous competence and whose decisions are subject to appeal. The CEPEJ Evaluation Reports (2020 and 2022) reveal that the tasks entrusted to *Rechtspfleger* (or similar bodies) in these countries include: legal aid (6 member States), family cases (8), payment orders (9), registry cases (land and/or business registry cases) (10), enforcement of civil cases (10), enforcement of criminal cases (6), or non-litigious cases (11). They can also deal with matters such as insolvency, mutual legal assistance, non-judicial decisions in civil, family and criminal matters, or proceedings on judicial costs and lawyer fees.

13. Furthermore, some States have delegated non-judicial competences to other public institutions, such as notaries, in order to reduce judges' workloads. This approach is particularly observed in family matters, such as divorce by mutual consent, which has been implemented in several member States (e.g. Estonia, Greece, Latvia, Spain, Slovenia, and Romania). Succession law is

[2] Examples of such tools are modern computers and scanners, appropriate and up to date software, fast, reliable, and secure network and internet broadband connections, videoconferencing facilities, and digital video and audio recording devices. Other ICT, such as electronic filing and case management systems, encryption and other security and privacy software, e-authentication and e-signatures to ensure authenticity and integrity of legal acts, electronic case-law databases, and artificial intelligence tools, can also enhance the efficiency of courts.

[3] Examples of required ICT skills for judges are knowledge of digitalisation systems and tools, general and specific software requirements and most common programs, awareness of the digital divide and available mitigating measures, risks and opportunities of Artificial Intelligence (AI), and online etiquette.

another area where transferring competences to other institutions, like notaries, could be explored (in several countries, notaries can receive a waiver of inheritance, draw up protocols for the opening of a will, or carry out liquidation and property division in non-litigious and litigious cases). The transfer of non-judicial competences may also apply to matters involving the rights of vulnerable persons. For example, establishing powers of representation, such as a “future protection mandate”, in advance before a notary has been incorporated into legislation in France, Germany, Spain, and Switzerland. As regards non-litigious procedures, notaries could also issue authorisations in the interest of minors and vulnerable adults, as observed in Italy.

14. The CEPEJ has developed a proposal below with suggestions to enhance the current appendix to Recommendation (86)12 that would serve as a basis for potential discussions within the CDCJ. According to the CEPEJ, if the transfer of tasks from judges to other individuals or institutions can significantly alleviate the burden on courts and reduce the length of procedures, this transfer must be implemented with caution to ensure the preservation of judicial control and guarantee access to justice. This is particularly crucial in safeguarding the rights of children and persons with disabilities. Furthermore, it is essential to emphasise that each member State has the prerogative to determine the allocation of tasks within its justice system.

Proposal for the update: examples of non-judicial tasks that judges in some States could be relieved of, depending on each country's specific circumstances

1. Law of persons

- *Declaration of absence and death*
- *Decision to authorise or record consent for organ donation*
- *Decision to authorise the protection to safeguarding the rights of children and persons with disabilities*
- *Court approval or authorisation for the performance of acts of disposal, encumbrance or other acts relating to the property and rights of children or adults subject to legal protection measures*
- *Granting powers of representation, such as "future protection mandate"*
- *Judicial grant of emancipation and of the benefit of legal age*
- *Gender reassignment*
- *Non-litigious cases concerning the status of physical persons:*
    - *Appointment of tutors, curators, and other administrators*
    - *Administration of the property of those lacking legal capacity*

2. Family law

- *Divorce and legal separation by mutual consent for couples without children or with adult children only*
- *Change of matrimonial regime*
- *Conclusion and registration of civil partnerships*
- *Granting alimony and determining issues arising from it*
- *Adoption / consent to adoption of persons over the age of majority*
- *Approval or authorisation in non-litigious proceedings of the declaration of parenthood in respect of children born out of wedlock*
- *Collection of consents in the context of medically assisted procreation*
- *Handling non-litigious proceedings for the administration of common property when one of the spouses is unable to act*

3. Real estate, property and succession law

- *Supervision of real estate records*
- *Supervision of property records relating to motor vehicles, ships, boats, and aircrafts*
- *Non-litigious proceedings in the field of succession law:*
    - *Presentation and publication of secret wills*
    - *Declaration of an opening of succession*
    - *Setting up of inventories*
    - *Issuance of a national or European certificate of succession*
    - *Acceptance of an inheritance with the benefit of inventory*
    - *Issuance of an authorisation for accepting or waiving an inheritance or a legacy, when such acts are submitted for authorisation*
    - *Submission of executors' accounts and removal of executors, authorisation of acts of disposition by executors (except for children and persons with disabilities)*
    - *Authorisation of the sale and purchase inheritance goods*
    - *Liquidation and property division in the context of non-litigious and litigious cases*

4. Commercial and contract law

- *Issuing payment and injunction orders*
- *Decision to authorise the establishment and registration of legal persons*
- *Production of accounts by persons required to keep accounting records, or otherwise bound to produce accounts*
- *Consumer disputes (small claims)*
- *Non-litigious proceedings concerning trusts:*
    - *Approval of particular "arrangements" on behalf of any person who may have an actual or contingent interest in a trust (including unborn children)*
    - *Varying or revoking all or any of the terms of the trust*
    - *Approval of transactions considered expedient but cannot otherwise take place for lack of power of the trustee or for any other reason*
    - *Issuance of declarations as to the validity or enforcement of a trust, the existence of any resulting or constructive trust, breach of trust or failure of a trust, etc.*
    - *Non-litigious proceedings concerning debt relief or debt settlement for natural persons*

5. Criminal law

- *Authorisation of payment or delayed payment of fines*
- *Transcription of testimonies or depositions given during hearings and subsequently proofreading of related court documents*

6. Procedural law

- *Control of payment of judicial fees*
- *Participation in out-of-court settlement disputes/conducting mediation/conciliation processes*

7. Enforcement procedures

- *Judicial sales by auction*
- *Declaration of enforceability of court decisions*

8. Others

- *Appointment and participation of judges as members or presidents of disciplinary or selection boards/committees regarding persons who are not members of the judiciary (for example notaries, lawyers or accountants)*
- *Administering oaths for non-judiciary professionals (auditors, notaries),*
- *Collection of testimonies and written evidence*
- *Legalisation or apostille of documents*