

# The Austrian notariat's 2018 survey on the EU Succession Regulation

# Background

Austrian Chamber of Civil Law Notaries

=> was the first to make such survey;

=> For the first time a survey on an EU instrument;

=> Improving EU law based on data;

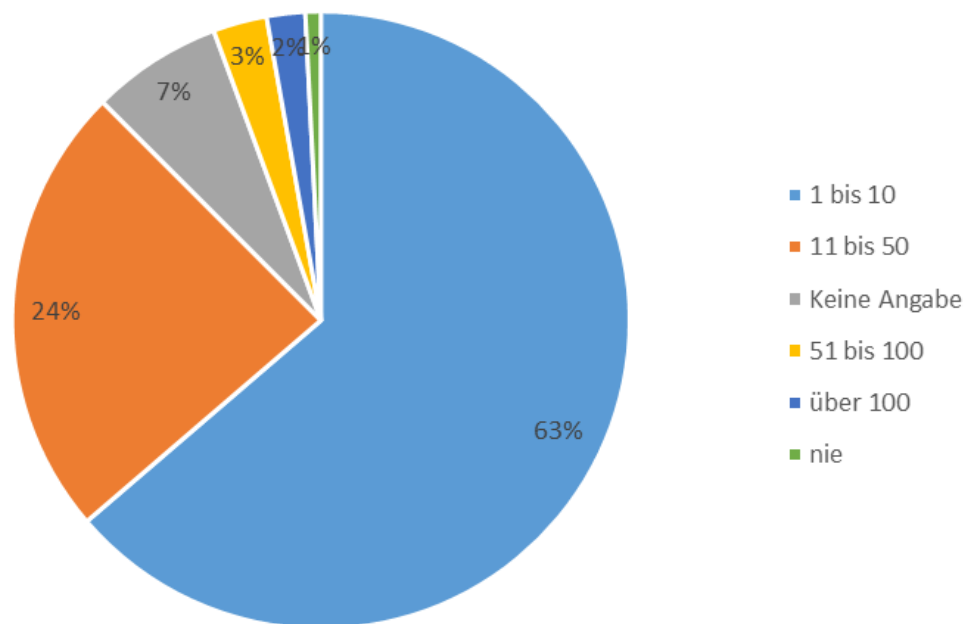
=> Useful information for EJN, ENN, CNUE;

# Statistics

- Timeframe of the survey 2 August – 7 September 2018
- 14 questions
- 23,2 % participation rate
- 248 replies
- 31% Notaries, 58% Candidate notaries, 11% n.a.

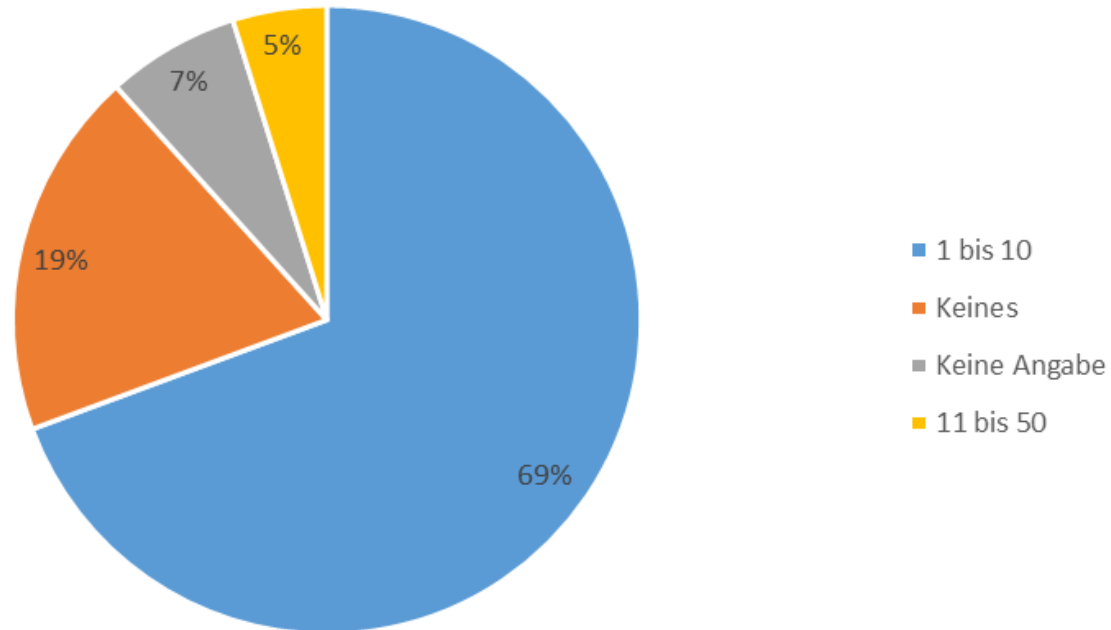
# Highlights

In wie vielen Fällen pro Jahr wenden Sie die EU-Erbrechtsverordnung an?



At least 92% of Austrian notaries apply the Regulation once/year.

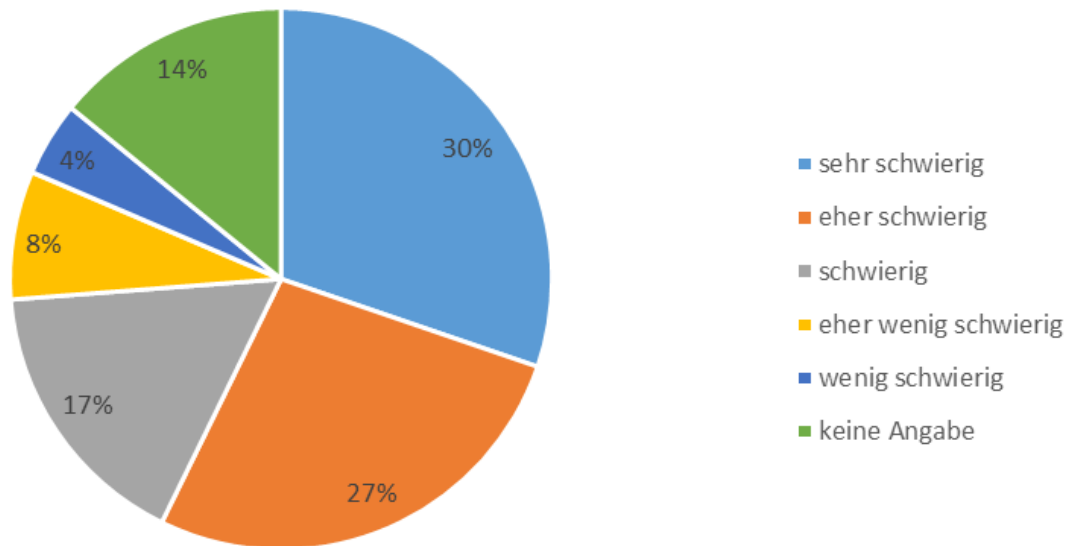
Wie viele Europäische Nachlasszeugnisse (ENZ) haben Sie seit der Anwendbarkeit der Verordnung (15.08.2015) ausgestellt?



Since 2015, 74% have already issued at least 1 ECS.

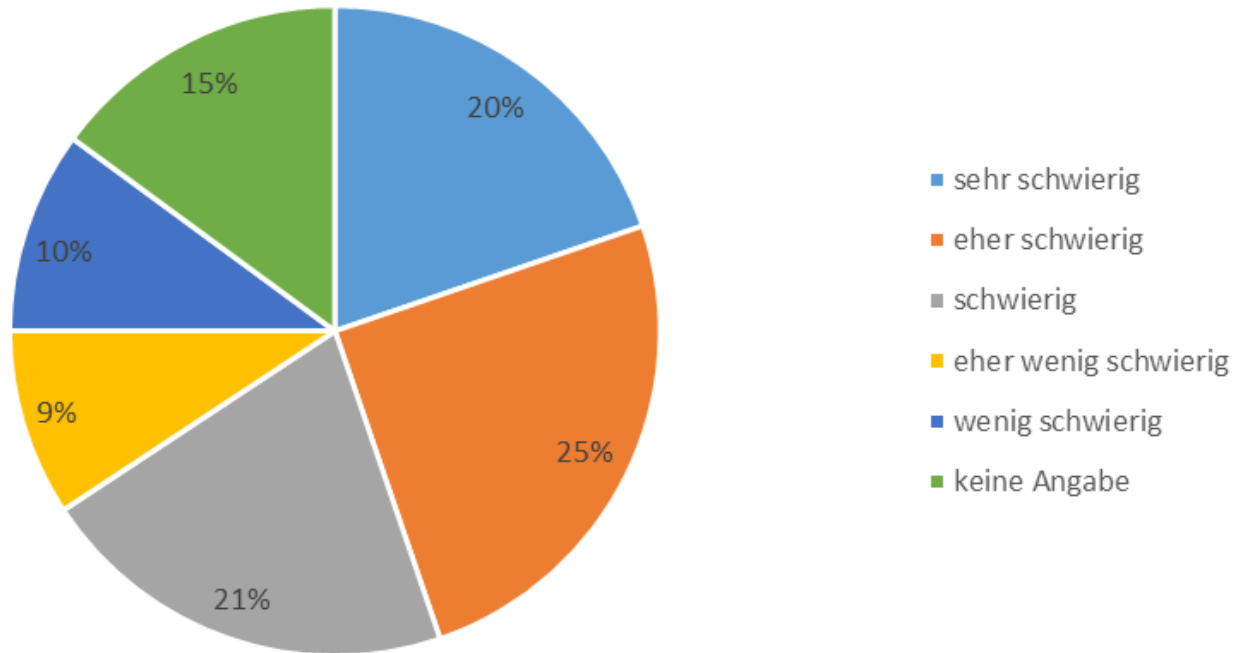
# Difficulties ...

Schwierigkeiten: Grenzüberschreitende Feststellung von  
Nachlassvermögen



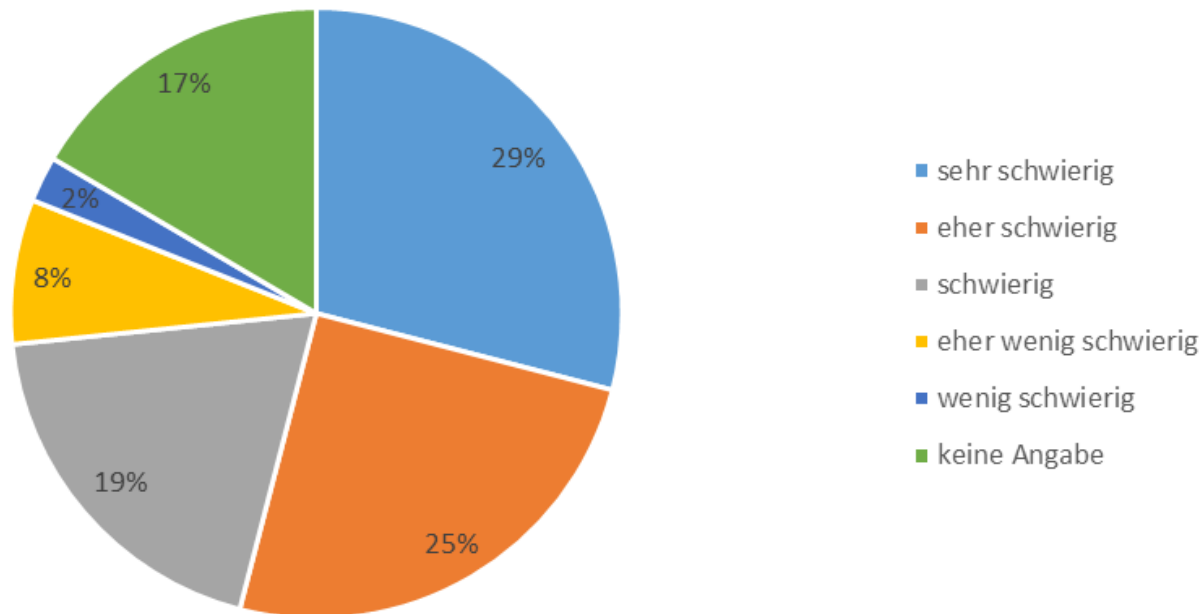
Topscore (74 % difficult) difficulties: cross-border identification of assets.

## Schwierigkeiten: Grundbuch



Land register: 66 % „difficult“.

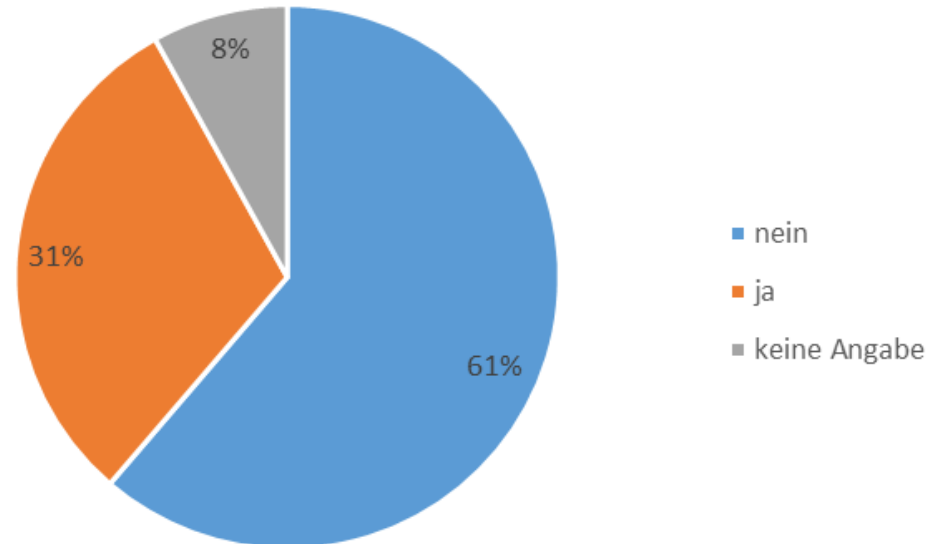
## Schwierigkeiten: (fiskalische) Bewertung des Nachlassvermögens oder Bewertung des Nachlassvermögens bei Errichtung des Inventars



(Fiscal) assessment of the value of the property: 73 % difficult.

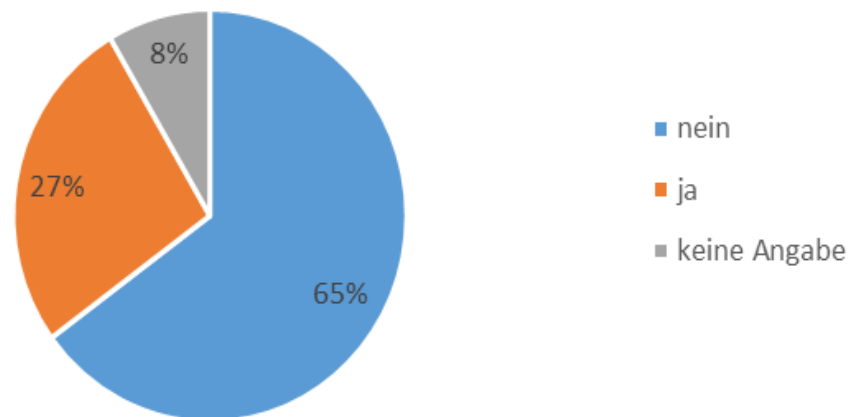


Sind Ihnen Fälle bekannt, in denen unzuständige Behörden eines anderen Mitgliedstaats entschieden haben, obwohl Österreich für die Abhandlung zuständig gewesen wäre?



31% are aware of cases in which non-competent authorities from another MS have decided, although Austria would have been competent.

Sind Ihnen Schwierigkeiten bei der Anerkennung eines österreichischen Einantwortungsbeschlusses/ einer österreichischen Amtsbestätigung iSd § 182 Abs 3 AußStrG im EU-Ausland (zB beim Grundbuch) bekannt?



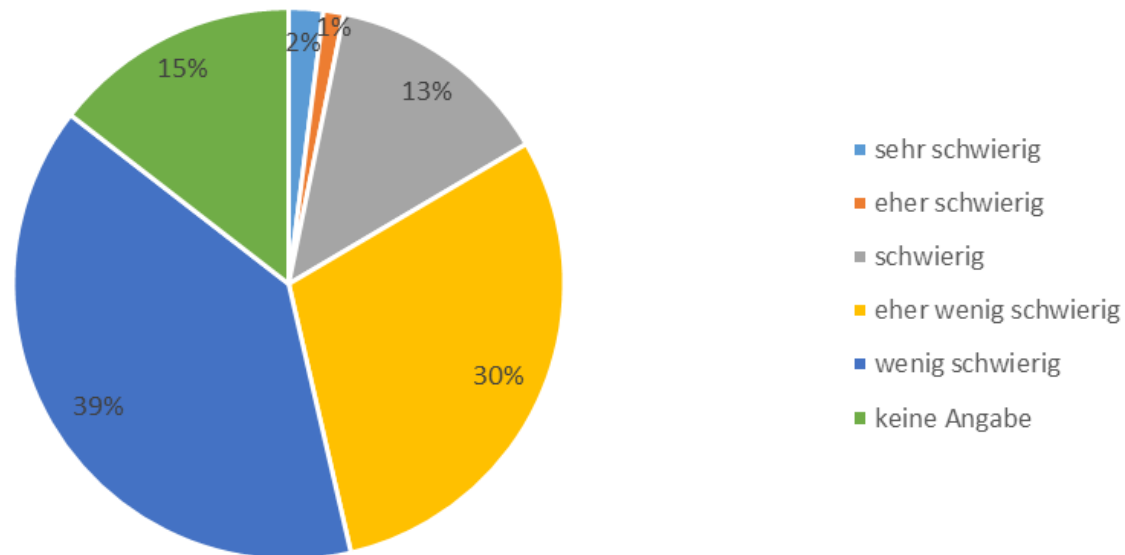
27 % report difficulties in getting an Austrian court decision recognised in another EU Member State.

# Top 10 difficulties

- 1. Cross border identification of assets
- 2. Assessment of the (fiscal) property value
- 3. Land register, including the use of the ECS at the foreign land register
- 4. Adaptaion of rights in rem (Art 31)
- 5. Identification of special rules (Art 30)
- 6. Application of foreign law
- 7. Exclusion of renvoi (Art 34 par 2)
- 8. Other
- 9. Identification of the matrimonial property regime of the deceased
- 10. Identification of the last habitual residence of the deceased

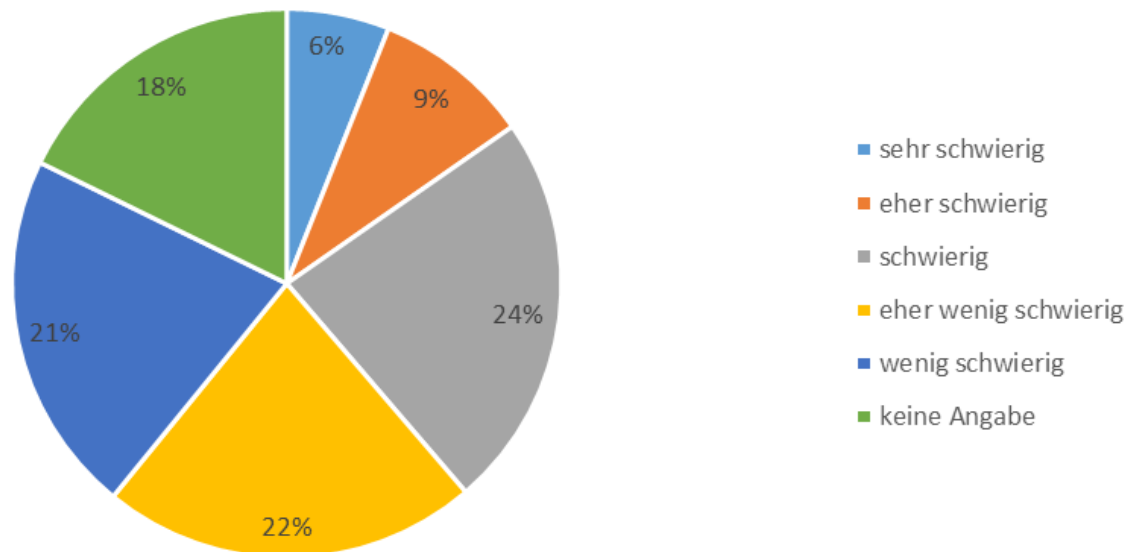
# Less difficult ...

Schwierigkeiten:  
Feststellung des letzten gewöhnlichen Aufenthalts



Last habitual residence: 39% not difficult, 30% rather not difficult

## Schwierigkeiten: Feststellung des Güterstands des Verstorbenen



Matrimonial property regime of the deceased:  
21% not difficult, 22% rather not difficult

# Mutual legal assistance instruments

- ENN (European Notarial Network)
- EJM-civil (European Judicial Network in civil and commercial matters)
- European Judicial Atlas in civil matters
- European e-Justice Portal => <https://e-justice.europa.eu>
- -----
- Notarial institutes