Croatia

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1. Social perspective.

1.1. Provide the list of different types of living lifestyles/family formations (multi-generational families, nucleus families, couples without children, single-person household, families with one or more members are living separately such as in case of economic migrants, common household of two or more persons without *affectio maritalis*).

Multi-generational families are quite rare in Croatia, as in most part of Europe. Indeed, despite the ageing of the population in Europe and the necessity to care about older members of the society, the most common family formation is a nucleus family composed of parents (married or not) and their child or children, as well as single-parent families. There are also couples without children, which are commonly characterized by the *affectio maritalis*, even if sometimes it could be difficult to distinguish them from other possible types of living style as a common household of two persons who are not linked by an affective relationship. Both same-sex and opposite-sex unions are regulated under Croatian legislation. Recent trends of emigration of Croatians to other EU Member States probably will increase the manifestation of families where one member lives abroad, while the others stay in their own country, thus leading to the phenomenon of families that live separately, while being functional families. Stepfamilies as well represent a type of family formation which is known and in some aspects also legally regulated in Croatia.

1.2. Provide statistical and descriptive demographic and social data regarding the number of marriages and other formal/informal unions in your country.

Based on information retrieved from Eurostat, in 2017, 20 310 marriages have been concluded in Croatia. For previous years, the number of concluded marriages was: 20 467 in 2016; 19 834 in 2015; 19 501 in 2014; 19 169 in 2013; 20,323 in 2012.[1]
According to the 2011 Census in Croatia (the last official census), among 4 246 313 persons living in Croatia, 1 918 234 were married whereas 97 772 were in an extra-marital union. The number of single mothers is 174 517, while the number of single fathers is 33 345. The number of single person households is 373 120.[2] However, due to the fact that in Croatia de facto cohabitations initiate and end in an informal manner, it must be pointed out that numbers mentioned in 2011 Census are based on information given by the citizens. For this reason, it is not possible to verify this data. Often, for the research purposes, the number of de facto cohabitations is attempted to be linked to the number of children born out of wedlock. Nonetheless, this might not be a true indicator since parents of a certain number of children are not in any kind of relationship.

[1] Marriage indicators, Eurostat, https://ec.europa.eu/eurostat/web/products-datasets/-/demo_nind (21.5.2019).
[2] Census of Population, Household and Dwellings 2011, Household and Families, Statistical Reports, 2016, https://www.dzs.hr/Hrv_Eng/publication/2016/SI-1583.pdf (21.5.2019).

9. STANOVNIŠTVO PREMA STAROSTI, SPOLU, TIPU KUĆANSTVA I STATUSU U OBITELJI, PO ŽUPANIJAMA, POPIS 2011.
POPULATION, BY AGE, SEX, TYPE OF HOUSEHOLD AND FAMILY STATUS, BY COUNTIES, 2011 CENSUS

Županija *County of*	Starost *Age*	Spol *Sex*	Ukupno *Total*	Osobe u privatnim kućanstvima prema statusu u obitelji *Persons in private households, by family status*							ostali (nisu članovi obitelji) *Others (not family members)*	Osobe u institucionalnim kućanstvima *Persons in institutional households*
				svega *All*	dijete *Child*	suprug/ supruga *Spouse*	izvanbračni drug/ izvanbračna družica *Cohabiting partner*	majka s djecom *Lone mother*	otac s djecom *Lone father*	samac (samačko kućanstvo) *Single (one-person household)*		
Republika Hrvatska *Republic of Croatia*	Ukupno *Total*	sv./ *All*	4 284 889	4 246 313	1 450 210	1 918 234	97 772	174 517	33 345	373 120	199 115	38 576
		m/ *M*	2 066 335	2 050 166	804 192	959 117	48 886	-	33 345	143 769	60 857	16 169
		ž/ *W*	2 218 554	2 196 147	646 018	959 117	48 886	174 517	-	229 351	138 258	22 407

Retrieved from the Census of Population, Household and Dwellings 2011, Household and Families, Statistical Reports, 2016

Since the Same-Sex Life Partnership Act in Croatia entered into force until the 31.12.2018 there were 293 registered partnerships in total. In the period from 1.1.2018 to 31.12.2018 the number of registered partnerships was 55 in total.[3] From 1.1.2017. to 31.12.2017. the number of registered partnerships was 64 in total,[4] while from 1.1.2016. to 31.12.2016. the number of registered partnerships was 66 in total.[5] From the entry into force of the Same-Sex Life Partnership Act, until 31.12.2015 the number of registered partnerships was 108. 66 of them were concluded between two Croatian citizens, 39 of them between a Croatian citizen and non-Croatian citizen, and 3 between two non-Croatian citizens.[6]

1.3. Provide statistical and descriptive demographic and social data regarding the number of divorces and dissolution of other formal/informal unions in your country.

In 2017, there were 6 265 divorces in total. In the last five years, the number of divorces increased: in 2016, there were 7 036 divorces; in 2015, 6 010 divorces; in 2014, 6 570 divorces; in 2013, 5 992; in 2012, 5 659 divorces.[7] Concerning other informal unions, statistical data on this matter is not collected.

1.4. Provide statistical and descriptive demographic and social data regarding the percentage of these marriages/divorces and unions/dissolutions, which have cross-borders elements (if possible separately for those marriages and unions where the members are not of the same nationality and those which have moved abroad during their life).

Out of 20 310 marriages concluded in 2017, in 18 925 marriages the bride was a Croatian citizen and in 1 233 marriages, the bride was a foreign citizen. For 152 marriages, the citizenship of the bride was

[3] Javna uprava vama na usluzi, Statistički prikaz Ministarstva uprave, Broj 13, https://uprava.gov.hr/UserDocsImages//Statisti%C4%8Dki%20prikaz//Statisti%C4%8Dki%20prikaz%20%20Ministarstva%20uprave%20-%20broj%2013.pdf (21.5.2019).

[4] Javna uprava vama na usluzi, Statistički prikaz Ministarstva uprave, Broj 9, https://uprava.gov.hr/UserDocsImages/Statisti%C4%8Dki%20prikaz/Statisti%C4%8Dki%20prikaz%20%20Ministarstva%20uprave%20-%20broj%209.pdf (21.5.2019).

[5] Javna uprava vama na usluzi, Statistički prikaz Ministarstva uprave, Broj 5, https://uprava.gov.hr/UserDocsImages/Statisti%C4%8Dki%20prikaz/Statisti%C4%8Dki%20prikaz%20br%205%20(24.01.2017.).pdf (21.5.2019).

[6] Javna uprava vama na usluzi, Statistički prikaz Ministarstva uprave, Broj 1, https://uprava.gov.hr/UserDocsImages/Statisti%C4%8Dki%20prikaz/FINAL-Statisti%C4%8Dki%20prikaz%20-24.02.2016..pdf (21.5.2019).

[7] Statistical Yearbook of the Republic of Croatia, 2018, 2017, 2016, 2015, and 2014 https://www.dzs.hr/Hrv/Publication/stat_year.htm (21.5.2019).

unknown. Out of 1 233 marriages in which the bride had foreign citizenship, the bride had an citizenship on an EU MS (different from Croatia) in 210, and in 1 023, the bride had a citizenship of a non-EU MS.[8]
Among 293 registered partnerships concluded in Croatia from the date of entry into force of the Act on registered partnership of same-sex persons until the 31.12.2018, 158 of them are concluded between Croatian citizens, 111 between a Croatian and non-Croatian citizen and 24 between non-Croatian citizens.
In the period from 1.1.2018 to 31.12.2018 the number of registered partnerships was 55 in total: 25 of them were concluded between Croatian citizens; 24 of them between a Croatian and non-Croatian citizens; and 6 between non-Croatian citizens.[9] The number of registered partnerships from 1.1.2017 to 31.12.2017 was 64 in total: 31 of them were concluded between Croatian citizens; 24 of them between a Croatian citizen and non-Croatian citizen; and 9 between non-Croatian citizens.[10] From 1.1.2016 to 31.12.2016 the number of registered partnerships was 66 in total: 36 of them were concluded between two Croatian citizens; 24 of them between a Croatian citizen and non-Croatian citizen; and 6 between two non-Croatian citizens.[11] Since the Same-Sex Life Partnership Act entered into force, until 31.12.2015 the number of registered partnerships was 108: 66 of them were concluded between Croatian citizens; 39 of them between a Croatian citizen and non-Croatian citizen; and 3 between non-Croatian citizens.[12]

2. Family law.

2.1. General.

2.1.1. What is the main source of Family Law (FL) in your country? What are the additional legal sources of FL?

The highest source of Family Law in Croatia is The Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*).[13] Provisions establishing the basis for regulation of Family Law can be found in the articles from 61 to 64 which are included in the section dedicated to the economic, social and cultural rights. First of all, art. 61 prescribes that "the family shall enjoy special protection of the state". In the second paragraph it is stated that "marriage is a living union between a woman and a man".[14] Furthermore, this article stipulates that marriage and the legal relations within it, as well as *de facto* union and family shall be regulated by law.

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[8] Marriages by citizenship of bride (CITIZEN) and groom (PARTNER), Eurostat, https://ec.europa.eu/eurostat/web/products-datasets/-/demo_marcz (21.5.2019).
[9] Javna uprava vama na usluzi, Statistički prikaz Ministarstva uprave, Broj 13, https://uprava.gov.hr/UserDocsImages//Statisti%C4%8Dki%20prikaz//Statisti%C4%8Dki%20prikaz%20%20Ministarstva%20uprave%20-%20broj%2013.pdf (21.5.2019).
[10] Javna uprava vama na usluzi, Statistički prikaz Ministarstva uprave, Broj 9, https://uprava.gov.hr/UserDocsImages/Statisti%C4%8Dki%20prikaz/Statisti%C4%8Dki%20prikaz%20%20Ministarstva%20uprave%20-%20broj%209.pdf (21.5.2019).
[11] Javna uprava vama na usluzi, Statistički prikaz Ministarstva uprave,Broj 5, https://uprava.gov.hr/UserDocsImages/Statisti%C4%8Dki%20prikaz/Statisti%C4%8Dki%20prikaz%20br%205%20(24.01.2017.).pdf (21.5.2019).
[12] Javna uprava vama na usluzi, Statistički prikaz Ministarstva uprave, Broj 1, https://uprava.gov.hr/UserDocsImages/Statisti%C4%8Dki%20prikaz/FINAL-Statisti%C4%8Dki%20prikaz%20-24.02.2016..pdf (21.5.2019).
[13] Ustav Republike Hrvatske, NN, br. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010, 05/2014.
[14] The amandment followed the results of the popular constitutional initiative of 1 December 2013, OG 5/14, Decision of the Constitutional Court No. SuP-O-1/2014 of 14 January 2014.

The above mentioned articles determinate that the state shall protect the family, motherhood, fatherhood, children and young people and shall create the necessary conditions for such protection. As the Croatian Constitution states the family relationships shall be regulated by law. On this regard the main source of Family Law in Croatia is the Family Act (FA) – *Obiteljski zakon*.[15] Due to the absence of a civil code, beyond the Family Act there are many other legal sources which regulate some peculiar aspects of the family law. For the purpose of this questionnaire it is relevant to mention some of these legal sources. First, it has to be pointed out that registered and *de facto* same-sex partnerships are not included in the Family Act. From 2014, they are regulated by the Same-sSex Life Partnership Act (*Zakon o životnom partnerstvu osoba stog spola)*.[16] Besides the above mentioned source, there are also several additional legal sources of family law. For instance, Protection against Domestic Violence Act (*Zakon o zaštiti od nasilja u obitelji)* defines the notion of domestic violence and the role of authorities in dealing with domestic violence, laying also down the measures for protecting victims of domestic violence.[17] Medically Assisted Procreation Act (*Zakon o medicinski pomognutoj oplodnji*) regulates health measures to assist a woman and a man in conceiving a child, regulating the requisites, conditions and limitations.[18] Social Welfare Act (*Zakon o socijalnoj skrbi*) regulates family social benefits.[19] Aliens Act (*Zakon o strancima*) deals with some aspects of family law deriving from the right to the family reunification.[20] State Registries Act (*Zakon o državnim maticama*) governs the registration of personal and familial status.[21]
In addition, it must be pointed out that for the regulation of some aspects of family property rights, which are not prescribed in the Family Act or in the Same-Sex Life Partnership Act, the legislator refers to the law governing obligations and property.[22]

2.1.2. Provide a short description of the main historical developments in FL in your country.

After the Second World War several new acts, based on the new constitution of Federal People's Republic of Yugoslavia were adopted in the field of family law. Due to the absence of a unique civil code, family law was regulated under several different Acts. The most important ones were the Basic Act on Marriage from 1946 (*Osnovni zakon o braku*), the Basic Act on Relationships between Parents and Children from 1947 (*Osnovni zakon o odnosima roditelja i djece*) and the Basic Act on Guardianship from 1947 (*Osnovni zakon o starateljstvu*). With the enactment of Amendments to the Federal Constitution of 1971 and the new Constitution of the Socialist Federal Republic of Yugoslavia from 1974, some important changes occurred; *inter alia*, the possibility for every single republic to legislate independently in some fields of law, as family law.[23] Thus, the new Constitution represented the basis for a new and very modern act in that historical context (seventies of the last century). Precisely, the Marriage and Family Relations Act from 1978 (*Zakon o braku i porodičnim odnosima*) remained in force in Croatia for two decades. After the independency, the sovereign Republic of Croatia issued in 1998 the first Family Act, which entered into force in 1999.[24] Few years later, in 2003 another (the second) Family Act entered into force, replacing the first one.[25] In the same year

[15] Obiteljski zakon NN, br. 103/2015.
[16] Zakon o životnom partnerstvu osoba istog spola, NN, br. 92/2014.
[17] Zakon o zaštiti od nasilja u obitelji, NN, br. 70/2017.
[18] Zakon o medicinski pomognutoj oplodnji, NN, br. 86/2012.
[19] Zakon o socijalnoj skrbi, NN., br. 157/2013, 152/2014, 99/2015, 52/2016, 16/2017, 130/2017.
[20] Zakon o strancima, NN., br. 130/2011, 74/2013, 69/2017, 46/2018.
[21] Zakon o državnim maticama, NN, br. 96/1993, 76/2013.
[22] Zakon o obveznim odnosima, NN, br. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018. Zakon o vlasništvu i drugim stvarnim pravima, NN, br. 91/1996, 68/1998, 137/1999, 22/2000, 73/2000, 129/2000, 114/2001, 79/2006, 141/2006, 146/2008, 38/2009, 153/2009, 143/2012, 152/2014. Hrabar, D., 2002, 46.
[23] Šarčević, P., 2011, 25.
[24] Obiteljski zakon, NN, br. 162/1998.
[25] Obiteljski zakon, NN, br. 116/2003, 17/2004, 136/2004, 107/2007, 57/2011, 61/ 2011, 25/2013 i 5/2015.

(2003) for the very first time, it was issued an Act (independent from the Family Act), which regulated the unions between persons of the same sex, i.e. Same-Sex Partnership Act (*Zakon istospolnim zajednicama)*.[26] The (second) Family Act, although amended on several occasions, remained in force until 2014, when a new Family Act (the third one) entered into force. Nonetheless, the third Family Act endured just a couple of months: the issue of constitutionality in relation to many provisions was raised.[27] Therefore, a new Family Act entered into force in November 2015.[28] It represents the fourth Family Act in twenty years and it is the Family Act, which today regulates the family law in Croatia. As to the unions of same-sex partners, in 2014 the new Same-Sex Life Partnership Act replaced the previous Act from 2003, introducing the possibility of the registration of the partnerships of persons of the same sex.

2.1.3. What are the general principles of FL in your country?

The general principles of family law in Croatia descends from the Constitution, as well as from several provisions of the very first part of the current Family Act.
These general principles, gathered from the Croatian Constitution and from the ratified International Conventions, proclaim the equality of women and men (Art. 3 FA); the family solidarity and the reciprocal respect and support of all the family's members (Art. 4 FA) as well as the respect of the best interest of the child (Art. 5 FA). There are also other principles declared by the new Family Act, but for the purpose of this report it is relevant to pinpoint mentioned ones.
Although the principle of the equality of women and men is expressly mentioned, it can be also inferred from many other provisions of the Family Act. For instance, it is evident in provisions, which stipulate that parental rights pertain jointly to both parents and provide for equal rights and duties of parents towards children, consensual decision making in joint matters and a presumption of equal shares on common property. The same remark can be referred to the principle of family solidarity and the reciprocal respect and support of all the family's members, which is on the basis of the personal and patrimonial rights and duties between family members (i.e. the right to maintenance). Moreover, this principle governs also the family law provisions regarding the property issues between spouses, registered partners and *de facto* cohabitants. Finally, the Croatian family law about the rights of the child is totally in line with the pedocentric concept of the UN Convention on the Rights of the Child from 1989.

2.1.4. Define "family" and "family member" in your country. Is a single definition valid for the entire legal system or are there different definitions for different purposes (family law, succession law, tax law, etc.)?

As already mentioned, the Croatian Constitution states that "the family shall enjoy special protection of the state". Furthermore, Article 61 of the Constitution stipulates that marriage and the legal relations within it, as well as *de facto* cohabitation and family shall be regulated by law.
As to the marriage and the relationships deriving from it, the status of spouse with all the rights and duties arising from it is valid for the entire legal system. The same can be concluded as to the position of the registered partner. Conversely, the definition of the *de facto* cohabitant (with specific reference to the *de facto* cohabitations of person of opposite sex) often differs from one field of law to another. Even if many examples can be offered on this regard, for sure the most important one concerns succession law. Indeed, the definition of the *de facto* cohabitation in the Succession Act is different than the one prescribed by the Family Act.[29] The risk is that a person can be considered *de facto* cohabitant under the family law, while under certain other, such as succession law, he or she

[26] Zakon o istospolnim zajednicama, NN, br. 116/2003.
[27] Obiteljski zakon, NN, br. 75/2014, 5/2015.
[28] Obiteljski zakon, NN, br. 103/2015.
[29] Hrabar, D., 2010, 41-48.

will not be recognised as such. Therefore, it may be concluded that the legal consequences of the *de facto* cohabitations vary depending on which corpus of rues is applied.

2.1.5. Family formations.

2.1.5.3. Define the "spouse" in your country and describe briefly the marriage requirements (in particular as to the sex/gender). Is a single definition valid for the entire legal system or are there different definitions for different purposes (family law, succession law, tax law, etc.)?

The Croatian Constitution, as well as the Family Act define marriage as a living union between one man and one woman.[30] Preconditions for marriage, its formalisation, legal consequences and termination are regulated by the Family Act. Same-sex marriage does not exist in Croatia.
Preconditions for marriage are composed of two sets of requisites: 1. the preconditions for existence of marriage; 2. the preconditions for the validity of marriage. In order to conclude a marriage all these preconditions must to be fulfilled.
Under the Family Act the preconditions for existence of marriage (art. 23) are:

- persons concluding a marriage must be of opposite sex;
- consent to conclude marriage needs to exist;
- consent needs to be expressed for a civil marriage before a registrar or for a religious marriage before an official of a religious community that has a regulated legal relationship thereof with the Republic of Croatia.

If the preconditions for existence are not fulfilled, the marriage is considered non-existent and has no legal consequences (Art. 23, para 2).
Under the Family Act the preconditions for the validity of marriage (from Art. 25 to Art. 29) are:
- a person concluding marriage may not be a child (person under 18 years). A court may, however, on justifiable grounds, allow the conclusion of a marriage to a child aged 16 (or more), who has appropriate physical and mental maturity, which enable him/her to understand the meaning and consequences of the rights and obligation arising from marriage (Art. 25);
- a person incapable of discernment may not enter into marriage. A person partially deprived of legal capacity may conclude a marriage on the conditions stated by the law (Art. 26).
- marriage may not be concluded by persons who are direct blood relatives or between persons of collateral consanguinity between a sister and a brother, a stepsister and a stepbrother, the child and its parent's sister or stepsister or brother or stepbrother, or between the children of sisters and brothers or stepsisters and stepbrothers (Art. 27). The same ban concerns persons who are connected by adoption (Art. 27, para 2).
- a new marriage may not be concluded in case of the existence of a previous marriage or a same-sex life partnership (Art. 28).
Marriage concluded contrary to the abovementioned conditions is not valid and it can be annulled (Art. 29).
The definition of marriage and spouse is valid also in other legal fields (successions, tax law etc...).

[30] In the Constitution since 2013. In the Family Act this definition existed even before the Constitutional amendment.

2.1.5.4. What types of relationships/unions between persons are recognised in FL of your country? In particular, formal (registered) and informal (*de facto*) unions, heterosexual and same-sex unions, unions with and without *affectio maritalis*. Please define and explain. Is a single definition valid for the entire legal system or are there different definitions for different purposes (family law, succession law, tax law, etc.)?

Croatian family law distinguishes between the following types of relationships:
- marriage between persons of opposite sex;
- life partnership ("registered" and "*de facto*") of same-sex persons; and
- *de facto* cohabitation of persons of opposite sex.

Marriage (*see question 2.1.5.1.*): the Croatian Constitution, as well as the Family Act, define marriage as a living union between one man and one woman. Preconditions for marriage, its formalisation, legal consequences and termination are regulated by the Family Act. Same-sex marriage does not exist in Croatia.

Registered life same-sex partnership union is regulated by the Same-Sex Life Partnership Act (*Zakon o životnom partnerstvu osoba istog spola*), which defines it as a community of family life between two persons of the same sex registered before a registrar, the formalisation, legal consequences and termination of which is regulated by the Same-Sex Life Partnership Act (Art. 2).

In addition to registered partnership, the Same-Sex Life Partnership Act also regulates "non-formal" partnership, which is a community of family life between two persons of the same sex, who have not registered a partnership before the registrar, if this union lasts at least three years and if it accomplishes the preconditions required for a valid registered partnership. Legal consequences and termination are regulated under the Same-Sex Life Partnership Act.

De facto cohabitation is a living union of a man and a woman, who are not married, which lasts at least three years or less if a common child is born or if it is followed by a marriage (Art. 11 FA). Between the cohabitants, *de facto* cohabitation has the same legal consequences provided for spouses by the Family Act (Art. 11). Regarding legal consequences, provisions concerning marriage from Family Act apply *mutatis mutandis* to *de facto* cohabitation (art. 11). Due to the totally unformal way of constitution and dissolution of the *de facto* cohabitations, the main problem is to determine its beginning and/or its termination. Whether the *de facto* cohabitations will be regulated under the law, will depend on its duration. [31]

In other areas, life partnerships and *de facto* cohabitation have the same legal consequences if it is provided by law.

2.1.8. What legal effects are attached to different family formations referred to in question 2.5.?

Generally speaking, as to the patrimonial aspects, the property rights and duties in the family law are the same regardless whether one lives in a marriage, life partnership or *de facto* cohabitation. Some differences can be found in the field of succession law (*see section 3*). As to the other fields, due to the heterogeneousness of the legal sources, it happens that some legal consequences could be regulated differently.

[31] Lucić, N., 2015, 101-132.

2.1.9. Have there been proposals to reform the present legislation in the context of marriage and formal/registered or informal/*de facto* family formations? Explain briefly.

There is an ongoing debate among the family lawyers and academics about the reform of the Croatian Family Act. One of the proposals aims to simplify the present legislation, which seems to be quite compressed and hyper-regulated.

2.7. Property relations.

2.2.1. List different family property regimes in your country.

Croatian family law differentiates between two matrimonial property regimes:
- legal (default) matrimonial property regime; and
- contractual matrimonial property regime.

Both regimes are applicable to marriage, life partnership and *de facto* cohabitation.

2.2.2. Define briefly the (default) legal regime under in your country. Which categories of assets are regulated under the legal regime (e.g. community of assets, community of accrued gains, deferred community and personal assets)? What property is included in community of assets, and what property is included in personal assets?

The legal (default) matrimonial property regime applies to spouses, unless they conclude a marital property agreement. It establishes a community of spouses' assets (*bračna stečevina*) as well as personal assets (*vlastita imovina*) of each spouse (from Art. 35 to Art. 39).
The assets included in the community property regime of spouses are those acquired by work and those, which arise from these assets during the (effective) marriage life.[32] Indeed, the Croatian legislator expressly uses the term "bračna zajednica" (marriage life) instead of "brak" (marriage). Hypothetically, a marriage can formally exist even if there is no longer a living union of the spouses. Thus, these rules concerning property do not apply in cases of "dead" marriages. This normative choice is an evident expression of above mentioned principles (see 2.1.3.). Article 36, para 3 of the Family Act expressly states that the spouses' shares are equal. This provision is a clear expression of the abovementioned principle of family solidarity: despite the real capacity to contribute with one's own work, every spouse co-owns a half of all assets, which are included in the community property regime of spouses. They may also define an alternative proportion of their shares. In any case the principles governing Croatian family law have to be respected also in the context of patrimonial rights. It means that any different settlements, even if it is an expression of the party autonomy, shall be respectful of the principle of equality of spouses and of the principle of the familial solidarity, as well as respectful of other eventual limitation stated by the law.
In the past, the co-owned property was not specified (it was co-owned to both spouses) and it would be specified in case the marriage was terminated. This scheme created legal uncertainty, in particular in relation to the position of third parties (creditors). Thus, it was substituted (many years ago) with the present one, which guarantees a faster and easier division, if necessary.
As already pointed out in the doctrine, "the Family Act does not expressly specify what constitutes acquired matrimonial property (…)".[33] Nonetheless, community of assets generally consist of the salary, property of movables and immovable acquired by work, property of a company, stocks, savings, and incomes arising from the community of assets. [34]

[32] Ruggeri, L., Winkler, S., 2019, 172.
[33] Šarčević, P., Kunda, I., 2011, 184.
[34] Rešetar, B., Josipović, U., 2013, 115-138.

The legislator expressly mentions two elements of the community of assets: gain on games of chance and royalties gained from copyright and similar rights, acquired during the marriage. On the contrary, author's work remains personal property of the spouse who authored it. Separate property of each spouse (*vlastita imovina*) is the property acquired before marriage or received by a spouse without consideration during marriage (Art. 39) – i.e. inheritance and gifts. Separate property is exclusively owned by the spouse who has acquired it.

2.2.3. Is it permissible to conclude a matrimonial/partnership property agreement or agreement related to property within another type of family formation? What are the conditions and permissible contents of these agreements? In particular, may the spouses only choose among offered matrimonial property regimes or can they create a "new regime just for them"?

Yes, it is.[35] The Croatian Family Act offers to the spouses, alternatively to the legal (default) regime, the possibility of concluding a matrimonial property agreement.[36]
As to the content of the marital property agreement, the spouses are free to determine their property regime in a manner that differs from the statutory property regime.[37] Precisely, spouses are not limited to any models that would be envisaged by law. Nonetheless, as already mentioned, the spouses are not allowed to contravene the Constitution, mandatory rules and moral principles. The agreement must be concluded in writing and the signatures of spouses must be verified by a notary public (Art. 40, para 3).
A matrimonial property agreement may determine property relations for the existing and future property (Art. 40, para 1). The Croatian Family Act prescribes that a matrimonial property agreement may not be used to stipulate the application of foreign law to property's relations (Art. 42). However, it must be underlined that this ban concerns the situations when no cross-border elements are involved in.[38]
Still, the spouses exercise the right to settle an agreement quite rarely. In absence of a Register that collects these matrimonial agreements, it is quite difficult to provide some concrete numbers or percentage. It arises from the spouses' attitudes: it is quite common that this type of agreement is considered to be disrespectful of the romantic idea of the marriage (or generally speaking of the affective relationship between two persons).[39]

2.2.4. Explain briefly the rules on the administration of family property and compare if there are difference for different property regimes.

Under the legal (default) matrimonial property regime, spouses jointly manage the assets included in the community of property (Art. 37). However, for cases of ordinary administration, a spouse is supposed to have the consent of the other spouse (presumption – Art. 37, para 1) in order to be able to manage by himself or herself. On the contrary, for the extraordinary administration the Family Act prescribes under the paragraph 2 that the spouses' shall manage the assets jointly. One spouse is allowed to undertake the administration autonomously if he or she has the written consent. This consent must be given in writing and the signature must be verified by a notary public. As to the third paragraph of this article, in case that one spouse manages without the presence or the consent of the other spouse, it will not compromise the position of the third party who is in *bona fide*.
Regarding separate property, each spouse can freely dispose and manage his/her assets.

[35] Majstorović, I., 2005.
[36] Čulo, A.; Radina, A., 2011, 140.
[37] Ivančić-Kačer, B.; Klasiček, D., 2008, 1-30.
[38] Korać, A., 2007, 517.
[39] Ruggeri, L., Winkler, S., 2019, 175-176.

The Croatian Family Act does not state specific provisions on administration of matrimonial property in case of contractual matrimonial property regime due to the fact that the spouses may freely define the contents of their agreement and this freedom relates also to the administration rules.

2.2.5. Is there a (public) register of such agreements established in your country? If yes, describe briefly the proceedings for registration and legal effects of registration.

The Croatian law does not provide any kind of legal solution regarding the registration of matrimonial property agreements. It must be pointed out that in several occasions the Croatian scholars tried to underline the necessity of the establishment of a matrimonial property agreements register. [40] Nonetheless, until now, the Croatian legislator has not recognised the need for the introduction of such a register, already established in many European legal systems, which would be very useful also in the context of the family cross-border property regimes.

2.2.6. What are the third party rights in relation to the matrimonial property regime, in particular if there is no public register? Which debts are considered community debts and which are considered personal debts?

Spouses may assume joint obligations, i.e. obligations binding both spouses under the general rules of obligations and obligations created in connection with their community of property. Each spouse can also assume autonomously obligations for the current living union needs of both, marriage or family.
Spouses are liable for joint obligations both jointly and severally with their community of assets as well as with their personal assets (art. 44, para 1). A spouse has a right of recourse for the sum paid in excess (Art. 44, para 2).

2.2.7. Describe allocation and division of property in case of divorce, separation or dissolution of the union.

The spouses' community of assets will be divided in the case of termination of marriage or already during marriage by an agreement. As to the government of their assets, after the termination of marriage or marriage life, the spouses can determine their mutual patrimonial relationship by an agreement or by starting proceedings. The division of the property will follow the rules on property law.

2.2.8. Are there special rules or limitations concerning property relationship between spouses or partners with reference to their culture, tradition, religion or other characteristics? For instance, is dowry regulated under your legislation?

No, there are no special rules or limitations regarding the property regimes between spouses, partners and *de facto* cohabitants in reference to their culture, tradition, religion or other characteristics. Likewise, the dowry is not regulated within Croatian legislation.

2.8. Cross-border issues.

2.2.1. Is your country participating in the enhanced cooperation with regard to the two Regulations (1103/2016 and 1104/2016)? If not, what is the reason? Is there a likelihood that your country will join in the future?

Yes, Croatia is participating in both couple's property regulations from the beginning.

[40] Čulo, A., Šimović, I., 2009., 1029-1068.

2.2.2. Are you expecting any problems with the application of the two Regulations? In particular, concerning their scope of application? Or, particular term, such as "marriage", "matrimonial property agreement", "partnership property agreement" etc.?

In situations which involve family property, one may expect that similar issues of delineation between different regulations may occur as in the recent CJEU case law in the context of the Succession Regulation.[41]
A particular situation may occur due to abovementioned non-recognition of same-sex marriages in Croatia,[42] as considered to be mandated by the amended provision of the Croatian Constitution. In situation in which a same-sex couple concluded the marriage abroad and wishes to rely this fact in the property-related proceedings before the Croatian courts, the courts will find themselves in the dilemma about the applicability of the two property regulations. It has been submitted that most likely the courts will not be able to apply the Matrimonial Property Regulation, but that they should characterise such marriage as a registered partnership for the purpose of application of the Registered Partnership Property Regulation.[43]

2.2.3. Are you expecting any problems with the application of the rules on jurisdiction?

The system of the rules in both regulations is very complex (there are several hierarchical levels of provisions on the jurisdiction and some exceptions) and hence certain problems might be expected before the courts familiarise themselves with the intended operation of the regulations. In particular, the jurisdiction rules are different from the previous rules of the Croatian private international law and the dependence of jurisdiction on the applicable law is a novelty.

2.2.4. Are you expecting any problems with determining the applicable law? In particular, regarding the choice of applicable law?

As in the case of jurisdiction rules, the system of conflict of law rules is also very complex and determining the applicable law might prove like a ride on a winding road due to several hierarchy levels, limitations, exceptions to the rules and applicable conditions.[44] It differs from the previous system in the Resolution of Conflict of Laws with the Laws of Other Countries in Specific Relations Act,[45] which ceased to be in force on 28 January 2019 to be replaced by the new Private International Law Act[46] whose entry into force was aligned with the two couple's property regulations. Until recently, applicable law to matrimonial property was common nationality of the spouses, or failing that spouses' common domicile, or failing that spouses' last common domicile, or failing that Croatian law (Art. 36). In case spouses exercised party autonomy and concluded a matrimonial property agreement, the Croatian courts would also respect their choice of applicable law provided that the law which would otherwise apply based on objective connecting factorm at the time of the conclusion of the agreement, allowed choice of law applicable to matrimonial property (Art. 37). Thus, a limited possibility to choose the applicable law depended on the applicable by objective connecting.
Thanks to Petar Šarčević's initiative, the former Resolution of Conflict of Laws with the Laws of Other Countries in Specific Relations Act, which dated back to 1982, was the first legislation in the world to

[41] See 3.3.5.2. in this report.
[42] See 2.1.5.1. and 2.1.5.2. in this report.
[43] Kunda, I., 2019., p. 27.
[44] Župan, M., 2012, pp. 629-666.
[45] *Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima*, NN 53/91 and 88/01.
[46] *Zakon o međunarodnom privatnom pravu*, NN 101/2017.

provide for special provisions on the law applicable to cohabitations. In Art. 39 thereof it was stated that property relations between cohabitees are governed by the law of their nationality, or failing that common domicile. Their contractual property relations were subject to the same law at the time the agreement was concluded.

2.2.5. What issues are expected regarding the recognition and enforcement? In particular, concerning the public policy?

In the absence of the court practice, it is difficult to predict the most important potential problems. However, these issues should not be that much different from what the Croatian courts have been faced with in the previous half of the century, only the frequency of cross-border cases and judgments from other Member States might be expected to rise. Nevertheless, there stands as a peculiarity a relatively recent decision of the Croatian court in which the court rejected public policy objection and ordered enforcement of a German decision on costs of the proceedings. This decision on costs followed previously rendered German decision on the merits in which Croatian national was denied succession right under the old German law because she was born out of wedlock. Although this is not as problematic from the point of view of the concept of public policy itself (which is usually the topic discussed in this context), it reveals lack of appreciation of the German system in which decisions on the costs are not necessarily included in the decision on the merits as is the case in Croatia. The position taken by the Croatian court that these are two different legal basis, merits and costs, is hardly acceptable from the perspective of pure logic. It would be interesting to see what the ruling would have had been if the ruling on costs was in the same judgment as the ruling on the merits.[47]

2.2.6. Are there any national rules on international jurisdiction and applicable (besides the Regulations) concerning the couple's property regime in your country?

Concerning the applicable law, the Croatian Private International Law Act[48] provides a special section 5 on extra-marital union and life partnership. Art. 38 states that establishing and terminating extra-marital (*de facto*) union is subject to the law of the State with which it is or was most closely connected. Art. 39 regulates registered life partnership which in relation to preconditions and procedure to establish and terminate such partnership in Croatia refers to the Croatian law. Registered partnership between same-sex partners registered abroad under the law of that State is recognised in Croatia as life partnership. Establishing and terminating *de facto* partnerships is subject to the law of the State with which it is or was most closely connected. Personal and property relations, including the maintenance is dealt with in Article 40. Personal relations are subject to the same rules as personal relations in marriage under Art. 34. Property relations between *de facto* partners are subject to the same rules as matrimonial ones, which are actually determined by the reference to the Matrimonial Property Regulation in Art. 35. Law applicable to property relations between registered partners is within the scope of the Registered Partnership Property Regulation. Law applicable to maintenance between *de facto* partners and registered life partners is determined by reference to the Hague Protocol on the Law Applicable to Maintenance Obligations of 2007.

[47] See Kunda, I., 2017, pp. 265-272.
[48] NN 101/2017.

3. Succession law.

3.1. General.

3.1.1. What are the main legal sources of Succession Law (SL) in your country? What are the additional legal sources of SL?

The Constitution of the Republic of Croatia[49] (Art. 48.4.) expressly guarantees the right of inheritance. Multilateral and bilateral international treaties, the Republic of Croatia has signed, constitute a part of the internal legal order and take precedence over the laws. For the succession law, the most important sources are multilateral international conventions containing provisions on conflict of laws (most of them entered into and acceded to by the former state) and bilateral international agreements on legal aid in civil matters.
The main legal source of the SL in the Republic of Croatia (RC) is the Succession Act of 2003 (SA).[50] The SA sets out the general rules on succession (Art. 1-7), the legal basis for succession (Art. 8-121), the legal position of heirs (Art. 122-145) and procedural succession law provisions (Art. 146-252).
Important additional legal sources of SL are the Notaries Public Act[51] (because the notaries public are competent for probate proceedings) and Civil Procedure Act[52] (unless otherwise provided for in the SA, provisions of that act apply in probate proceedings). Many other regulations are additional sources of SL, especially those regulating ownership, obligations, family relations, same-sex unions and private international law.

3.1.2. Provide a short description of the main historical developments in SL in your country.

After the Second World War, Croatia was one of six federal republic of Socialist Federal Republic of Yugoslavia. Although the right to inherit has not been abolished, application of inheritance rules of the General Civil Code[53] has been suspended, because those rules were considered to be contrary to the new social order. Some of them were used in combination with soviet general rules of succession for next few years. A new Federal Succession Act[54] entered into force in 1955, with the retroactive effect. That Act was largely influenced by Swiss and French and, in smaller extent, the Soviet inheritance rules. By constitutional changes in 1971, competence to regulate inheritance relations was given to republics and autonomous provinces. All of them, except Croatia,[55] have adopted their own succession laws. Croatia has opted to continue to apply the Succession Act. The same decision was made after the independence of Republic of Croatia, 1991.[56]
New Succession Act entered into force in 2003, and is still effective, with only few changes.
In the essence, the basic rules of succession in the Croatian law have not been changed since 1955.
Although the basic inheritance rules of previous act were maintained, some changes were introduced by SA 2003, particularly:

- The SA 2003 has provided for equal inheritance rights of spouses and extra–marital partners. The extra-marital union is understood as cohabitation of an unmarried woman and an unmarried man, which had lasted for a longer period and had ended at the time of

[49] OG 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014.
[50] OG 48/03, 163/03, 35/05, 127/13, 33/15.
[51] OG 78/1993, 29/1994, 162/1998, 16/2007, 75/2009, 120/2016.
[52] OG 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011, 25/2013, 89/2014.
[53] Austrian General Civil Code, 1853.
[54] OG 20/55
[55] The Socialistic Republic of Croatia.
[56] OG 53/91

decedent's death, in the case that all the prerequisites for a valid marriage had been fulfilled (Art. 8.2.).

- The succession rights of spouses and extramarital partners were increased in the second line of succession. The application of the principle of representation is excluded and decedent's consanguineous relatives are not legal heirs.
- The succession rights of decedent's brothers and sisters were reduced in the way they lost position of relative forced heirs.
- One special rule on the interpretation of a will has changed in the favour of testamentary heir (in the case of a dilemma concerning the real intention of the testator).
- Only one type of public will has been recognized, but the number of persons authorised to draw up a public will increased.
- The Croatian Register of Wills (CRW) has been established.
- In the procedural provisions, some of formalities have been reduced.
- Conduct of probate proceeding has been entrusted to a notary public, as a commissioners of court.

The SA (2003) has been changed four times, but none of the amendments affected general rules and main principles of inheritance. The first change took place in the year of its adoption, 2003, when Article 240 on the estimation of need of entrusting the conduct of probate proceedings to a notary public has been repealed.[57] In 2005, articles regulating the Lifetime Maintenance Agreement were abolished, because that agreement has been included in the new Law on Obligations.[58]
In 2013,[59] the rules on liability for deceased's debts in a case the municipality is intestate successor, have been changed in a way that creditors of the deceased can initiate enforcement proceedings only concerning the assets that are part of estate.
In 2015,[60] Article 245 on some principles of entrusting the conduct of probate proceedings to a notary public has been changed.

3.1.3. What are the general principles of succession in your country?

The general principles of succession in RC are:

- The principle of equality of all natural persons

All natural persons under the same conditions are equal in inheritance. Foreign nationals, subject to the presumed reciprocity, have the same inheritance rights as the citizens of the Republic of Croatia (Art. 2).

- The principle of *ipso jure*, but voluntary succession

Inheritance occurs due to the death and at the moment of the decedent's death, *ex lege* (Art. 3.), without any special modus of acquiring the subjective right to inherit or acceptance of estate. Despite of that fact, succession is voluntary. No one is obliged to inherit and an heir may renounce his or her inheritance rights. If he or she does so, it is considered as if he or she has never acquired the right to inherit (Art. 4. 4.). The principle of voluntary succession does not apply in the cases when municipality assumes legal position of heirs; it has no right to renounce the succession (Art. 6).

- The principle of universal succession

An heir is a universal successor of the decedent and upon decedent's death, all his rights and obligations are transferred to the heir, except those which because of their legal nature or pursuant to the law cannot be the object of inheriting (Art. 5.).

- The principle of the *numerus clausus* of the legal titles of succession

[57] OG 163/03
[58] OG 35/05
[59] OG 127/13
[60] OG 33/15

There are only two titles of succession in Croatian law, a will and a law. Succession contract is not title of succession, it is considered null and void (Art. 102.).

- The principle of cumulating of the legal titles of succession

Statutory succession takes place when there is no will or entire estate is not disposed of in a will. In second case, both legal titles of succession exist and it is possible for someone to inherit on the basic of the will and by operation of law.

- The principle of freedom of testamentary succession

Everybody is entitled to make a will and dispose of estate for the case of his death, to determine his heirs, limit and encumber their rights (Art. 7.1.). The freedom of testamentary succession is not absolute, the rights of certain close family members are protected by limitation of decedent's disposing (Art. 7.2.).

3.1.4. Describe briefly the probate proceedings, including competent authorities, commencement, deadlines, etc.

Probate proceedings in Croatia are non-contentious proceedings in the first instance conducted before a municipal court or before a notary public, as a commissioners of court (Art. 176.1.). Probate proceedings are initiated *ex officio* after the court receives a death certificate, an excerpt from a Register of Deaths or other equivalent document (final decision on proclamation of person's death), (Art. 210.). The court entrusts the conduct of probate proceedings to a notary public with office registered in its territory. When a notary public conducts actions in probate proceedings as a trustee of the court, he is authorised as a judge or court adviser of municipal court would be to take all actions in proceedings and make all decisions, except those for which SA prescribed otherwise (Art. 176.4.).

If, during the succession proceedings, a dispute arises between the parties concerning any of their inheritance rights, the probate court has to stay the proceedings and instruct the parties to settle a dispute in a civil or an administrative action (Art. 222.). Settling the inheritance disputes in the first instance are in the competence of municipal courts. Deciding on appeals against decisions of municipal courts are in the competence of county courts. In cases where the post-appellate legal remedies are available, they are decided before the Supreme Court of the Republic of Croatia.[61]

3.1.5. Describe the types (legal basis) of succession: intestate and testate. Explain the relation between different legal bases for succession and priority existing between them. Is cumulative application of legal titles possible?

In Croatian law, there are only two titles of succession: a will and a law. Inheritance rights are acquired only on the basic of a valid will (testate succession) or by operation of law (intestate succession). Testator's will is a stronger legal ground then statutory provisions and the testate succession has priority over the intestate one, which takes place only where there is no will. In the case that the entire estate is not included and disposed of in a will, the part of estate not distributed in the will is free for inheriting by operation of law. Because of that, it is possible that the both legal titles come into play in the same time and the same person can become an heir on the basic of both titles.

3.1.6. What happens with the estate of inheritance if the decedent has no heirs?

If the decedent has no heirs or they all renounce succession, then the right to inheritance is passed on to the municipality, which acquires the same position as the heir of the decedent but cannot renounce succession (Art. 6.).

[61] Courts Act, OG 28/13, 33/15, 82/15, 82/16, 67/18 (CA), Art. 18.-20.

3.1.7. Are there special rules or limitations concerning succession with reference to the deceased's (or heir's) culture, tradition, religion or other characteristics?

No, there are no limitations in that sense. As said in 3.1.3., all natural persons under the same conditions are equal in inheritance. Croatian law does not know discrimination rules based on culture, tradition, religion or other characteristics of that kind.

3.2. Intestate succession.

3.2.1. Are men and women equal in succession? Are domestic and foreign nationals equal in succession? Are decedent's children born in or out of wedlock equal in succession? Are adopted children equal in succession? Is a child conceived but not yet born at the time of entry of succession capable of inheriting? Are spouses and extra-marital (registered and unregistered) partners equal in succession? Are homosexual couples (married, registered and unregistered) equal in succession?

The general principle of SL is the principle of equality in succession. All natural persons are equal: men and women, domestic and foreign nationals, children born in or out of wedlock and adopted children. A child conceived at the time of entry of succession is considered as being already born under the condition it is born alive. If the child is born alive, it becomes an heir as if it had been born at the time of entry of succession (time of decedent's death).
Spouses and extramarital partners are equal in succession, registered and unregistered homosexual couples are equal in succession.

3.2.2. Are legal persons capable of inheriting? If yes, on which basis?

Legal persons are capable of inheriting only by a will; they are absolutely incapable of inheriting by operation of law. Exception is municipality as an heir in case where decedent has no heirs.

3.2.3. Is the institute of unworthiness of succession present in your legal system? If yes, explain the grounds for unworthiness.

A person who is unworthy of succeeding may not inherit on the statutory nor testamentary basis. Grounds for unworthiness are provided in Art. 125. SA and according to its provisions unworthy of succeeding is person who:
-intentionally murdered or attempted to murder the decedent
-with the use of fraud, threat or force induced the decedent to make or to revoke the will or any of its provisions, or prevented him or her from doing that
-destroyed or hid the will of the decedent with the intention to prevail the realisation of decedent's last will or forged a will
-seriously breached a statutory obligation to maintenance a decedent, did not provide the necessary assistance to the decedent or left the decedent without assistance on situation danger to his or her life or health.
Unworthiness of one heir does not prevent his or her descendants to inherit; they can succeed as if that unworthy heir had died before the decedent. A testator is authorised to grant pardon for any reason that would make an heir unworthy of inheriting in one of forms provided for a will. Unworthiness is considered by the court ex officio, except in the case of breach the duties to maintain or to assist the decedent (Art. 126. SA).

3.2.4. Who are the heirs *ex lege*? Are there different classes of heirs *ex lege*? If yes, is there priority in succession between different classes? Describe the relation between heirs within the same class of succession. How are the shares among them determined?

According to the Croatian law, heirs *ex lege* (intestate heirs) are persons entitled to acquire right to inherit on a statutory basic. The circle of potential intestate heirs is defined in Art. 8. 1. and 8.2. of SA, as well as in Art. 55. of Same-sex Life Partnership Act, according to which partner or informal life partner is equal to the spouse, so has a same position of intestate heir as spouse does.
The decedent's intestate heirs are his or her:

- descendants, adopted children and their descendants
- spouse, extra-marital partner, life partner, informal life partner
- parents, adopters
- siblings and their descendants
- grandparents and their descendants
- other ancestors

All mentioned persons are classified into classes (lines) of succession (Art. 8.3.). The relationship between those lines of succession is based on the principle of elimination. The heirs of closer line eliminate the heirs belonging to a more distant line of succession (Art. 8.4.). The intestate heirs from next line will inherit only when there is no heir from prior line.
The first line of succession according to the SA (and SLPA) includes the decedent's children and their descendants, adoptees and their descendants, spouse, extra-marital partner, life partner or informal life partner. The decedent is inherited, prior to all others, by his children and spouse (partner), who inherits in equal shares each (Art. 9). If the decedent's child has died before the decedent, the principle of representation applies and the portion of estate belonging to the deceased child is inherited by his or her children in equal shares (Art. 10). The principle of representation applies as long as there are any decedent's descendants. If there are no decedent's descendants, the spouse (partner) inherits in the second line. If all decedent's descendants renounce inheritance, the spouse (partner) remains in the first line of succession and inherits the whole estate.
The second line of succession according to the SA includes the decedent's parents and spouse (partner) (Art. 11.1.). Parents inherit one half of estate in equal shares (1/4 each parent) and spouse (partner) inherits the second half (Art. 11.2.). If both parents had died before the decedent, the spouse (partner) inherits the whole estate (Art. 11.3.). The spouse (partner) in the second line of succession prevents the application of the principle of representation so parent's descendants cannot represent them. If one parent had died before decedent, his or her share goes to the outlived parent (Art. 11.5.).
If there is no outlived spouse (partner) of the decedent, parents inherit the whole state in equal shares (one half each) (Art. 11.4.). If there is no outlived spouse (partner) of decedent and one of the parents had died before the decedent, the portion of deceased parent inherit his or her children (decedent's siblings), his or her grandchildren and further descendants (Art. 12.1.). If both parents had died before the decedent, the part of estate that would have belonged to each of them if they had outlived the decedent is inherited by parent's descendants (Art. 12.2.). If one parent of decedent had died before the decedent and principle of representation cannot be applied because that parent has no descendants, the portion of deceased parent goes to other parent, and if this other partner had also died before decedent, his descendants inherit what both parents would have inherited (Art. 13.).
The decedent's grandparents inherit in the third line of succession. They inherit in the cases where there are no heirs from first and second line of succession. One half of estate is inherited in equal portion by grandparents from the father's side and other half by grandparents from the mother's side of family (Art. 14). The principle of representation applies in that line of succession (Art. 15)

Decedent's great grandparents inherit in the fourth line of succession. Equal shares of estate go to the great grandparents from each side of family (Art. 17). In the fourth line of succession the principle of representation does not apply, only the principle of accrual. The same goes for the other lines of succession.

3.2.5. Are the heirs liable for deceased's debts and under which conditions?

The heirs are jointly and severally liable for deceased's debts. Every heir is liable only up to the value of the assets inherited (Art. 139. 4.). Among the heirs, debts are divided in proportion with their portions of inheritance, unless otherwise is stipulated in the will (Art. 139.5.). An heir who renounces inheritance, is not liable for deceased's debts (Art. 139.2.); he or she is considered never to have been an heir.
For the deceased's debts, an heir is liable with all his or her own property and with the inherited property. Deceased's creditors may request the separation of estate of inheritance and heir's own property within 3 months of the deceased's death, if show the probability of the existence of their claims and the danger of not being able to settle that claims without that separation (Art.140. 1.).

3.2.6. What is the manner of renouncing the succession rights?

Every heir, except the municipality, has the right to renounce the inheritance by giving a certified declaration or recorded statement prior to the first-instance decision in probate proceedings (Art. 130.1.). The statement on renunciation can be given only after the death of the decedent when succession is already entered, and cannot be revoked (Art. 135). Statements on renunciation of inheritance given before that moment have no legal effect (Art. 134.1.)

3.3. Disposition of property upon death.

3.3.1. Testate succession.

3.3.1.1. Explain the conditions for testate succession.

In the Croatian law, a will is the legal title of succession only if it meets some general characteristics and formal requirements for one of recognized types of wills. It has to be unilateral declaration of last will aimed at disposing of estate after the death of its maker, has to be in form prescribed by law and be valid. It is strictly personal manifestation of will and cannot be made through a representative.

3.3.1.2. Who has the testamentary capacity?

Testamentary capacity in Croatian law is acquired at the age of 16 (Art. 26.1.). A will is null and void if testator at the moment of disposing is under that age or is not capable of making judgments (Art. 26.2.). Capacity of making judgments is presumed and whoever holds that at the time of making the will testator was without that capacity, bears the burden of proving that fact (Art. 26.2.). Testator was without capacity of making judgments if at the time of making the will he was not able to understand the meaning and the consequences of his declaration or was not capable to control his will to the extend needed for behave according to that understanding (Art. 26.2.). A subsequent loss of capacity of making judgments does not have effect to the validity of the will (Art. 26.3.)

3.3.1.3. What are the conditions and permissible contents of the will?

By the will, testator is able to dispose with all that he was able to dispose of during his life, unless otherwise provided by the law (Art. 42.1.). He is able to produce the same legal effects he was able

to produce during his life, unless otherwise provided by the law (art. 42.2.), but can produce only those inheritance effects provided by SA (art. 42.3.).
All provisions of the will have to be able to be executed and legally admissible, otherwise are considered null and void and have no legal effect (as if they did not exist).
Determining heir(s) is the most common content of the will, but the will in the Croatian law does not have to contain the provision of such appointment. By the will, testator may determine one or more persons as his heir(s) (Art. 43.1.), but does not need to do so. A testator may also determine substitutes to the heir(s) for the case they die before the testator, renounce inheritance or become unworthy of succession (Art. 44.1.). Under the Croatian succession law, determination of heir to one's own heir is not allowed (Art. 44.2.).
A testator may nominate one or more persons as his legatees (Art. 45.). A legatee is person to whom the testator has assigned a specific thing or right, he is particular successor in title. Art. 43. 3. of the SL provides that such a person can be qualified as an heir (not a legatee) if, in accordance with the rules of interpretation of wills, it is founded that it was the testator's will that that person be the heir.
A testator may, by testamentary disposition, explicitly disinherit his legal heirs, wholly or partly. There is no need for a special reason for disinheritance, but testator's free will to disinherit is limited by the rules on legitimate succession.
A testator may dispose by will that his estate of inheritance or its part be used to achieve some permitted purpose (Art. 46.1.) If testator has ordered to set up foundation, and has allocated funds to accomplish its purpose, such foundation will come into existence when all prerequisites stipulated in special law on foundations will be met (Art. 46.2.).
By the will, testator may impose a duty (mandate) on heir(s) and other persons who benefit from his will (Art. 47.1.). Testamentary dispositions may be made under conditions or limited in time. Impossible, illegal or immoral conditions, as well as those that are unreasonable or contradictory, shall be considered non-existent (Art. 47.2-47.3.).
A failure to fulfil the mandate will result in termination of the inheritance right of the heir who failed to fulfil it (Art. 48.1.).
A testator may appoint one or more person(s) as the executor(s) of a will (Art. 60.1.). The appointed executor is not obliged to accept that position and obligation to act in accordance with the testator's provisions (Art. 60.3.)
A testator is authorised to grant pardon for any reason provided for in Art. 125. SA that would make an heir unworthy of inheriting. Valid pardon has to be made in one of forms provided for a will (Art. 126. 2.).

3.3.1.4. Describe the characteristics of will in your legal system. What types of wills are recognized? Are they divided into public and private? If yes, what public authorities took part in making a will?

A will is unilateral, strictly personal and strictly formal and revocable declaration of last will. Only a will declared by testator himself, made in the form prescribed by law and subject to the prerequisites provided for by law is valid. Revocability of the will is direct effect of testamentary freedom. The testator is fee to revoke a will at any moment during his lifetime. The right to revoke the will can be neither renounced, nor limited and any provision by which the testator obliges himself to revoke or not to revoke the will is considered null and void (Art. 104). The will may be revoked in any form of manifestation of will, also by conclusive acts (destruction of the will, making a subsequent will, disposing with assets that are the object of testation). The will become irrevocable only if the testator loose his capacity of making judgments and because of that is not capable to validly manifest his will.
The wills are divided into public and private and into ordinary and extraordinary ones. The first classification is based on the form of the wills, the second on the circumstances under which the will is made. Public wills are those in whose making the public authorities took part, private are those made without their participation. Legally authorised persons whose participation in making a public

will are prescribed by SA are a municipal court judge, a municipal court adviser, notary public and consular or diplomatic representative of RH abroad (Art. 32. 2.). Any person with the capacity of making the will can make a valid will in the form of public will. For testator who is not able to or not capable of writing, reading or signing a document, public will is the only possible form of ordinary testation (Art. 32. 1.).
Private wills are holographic will (a will written and signed by the testator's hand, Art. 30.1.), allographic will before witnesses (before two simultaneously present witnesses testator declare that document is his will and signs it and witnesses sign the document, Art. 31.) and oral will (a will made under extraordinary circumstances, Art. 37.-40.). Except of oral will, all mentioned types of wills are ordinary.

3.3.1.5. Is there a (public) register of wills established in your country? If yes, describe briefly the proceedings for registration and legal effects of registration.

The Croatian Register of Wills (CRW) is public register established and administered by the Croatian Chamber of Notaries Public according to the Art. 68. SA. It contains information about facts that a will has been made, deposited or announced (Art. 68.1.). Registration of will is not compulsory and does not have effect to its validity (Art 68.5.). On the testator's request information concerning drawing up, depositing and announcing of his will is submitted for registration by competent courts, notaries public, attorneys-at-law and the persons who made a will (Art. 68.3.) Prior to the testator's death, the data from the CRW are available only to the testator himself or to the person explicitly authorised by him for that purpose (Art. 68.4.). In probate proceedings, the court or a notary public which conduct those proceedings are obliged to request from CRW all data on possible wills of the deceased person (Art. 203.3.). The specific rules concerning registration of wills are laid down in Ordinance on Croatian Register of Wills.[62]

3.3.2. Succession agreement (*negotia mortis causa*). Is there another way to dispose of property upon death other than the will? If yes, explain the conditions for and permissible contents of succession agreements.

In the Croatian law, an agreement on succession is null and void (Art. 102.). It is considered as limitation of the principle of the testamentary disposition. Agreements on future inheritance or legacy and agreements on the contests of will are also null and void (Art. 103.-104.).
Although they are not agreements on succession, very important succession law effects have agreement on the transfer and distribution of property during lifetime (Art. 105.-115. SA) and lifetime maintenance agreement (Art. 579.-585. Law on Obligations).

3.3.3. Are conditions for validity of wills and other dispositions of property upon death governed by general civil law rules or by specific SL rules?

Croatian SA governs conditions for validity of wills and other dispositions of property upon death. Conditions for validity of wills are governed in art. 26.-29. SA. According to those provisions, a will is valid if testator has testamentary capacity (Art. 26., see: 3.3.1.2.), declares his will without vitiated consent (Art. 27.-28.) and in form prescribed by law (Art. 29.).
SA prescribes nullity of agreement on succession (Art. 102.), agreement on future inheritance or legacy (Art. 103.) and agreements on the contests of a will (Art. 104.).

[62] OG 135/03, 164/04.

3.3.4. Are succession interests of certain family member protected regardless of the deceased's disposition or other agreement? If so, who are those family members, against which dispositions and under what conditions?

The principle of freedom of testamentary dispositions are not absolute, some limitations are set in order to protect interests of certain family members. SA protects two categories of so called forced heirs, whose justified succession interests are expressed as a compulsory portion (legitimate share, reserved share) and cannot be diminished by deceased's dispositions: absolute and relative forced heirs.

The absolute forced heirs are the testator's descendants, adopted children and their descendants, the testator's spouse or extramarital partner, life partner or informal life partner being equal to the spouse (art. 69. 1., art. 55. Same-sex Life Partnership Act). The compulsory portion of an absolute forced heir is one-half of the value of the portion that he would have inherited in the case of intestate succession.

The relative forced heirs are the testator's parents and other ancestors, as well as his adopters (Art. 69. 2.). This category have to meet two additional prerequisites: they must be indigent and permanently incapable for work. The compulsory portion of a relative forced heir is one- third of the value of the portion that he would have inherited in the case of intestate succession.

Forced heirs are entitled to claim compulsory portion only if they are, considering all the principles of intestate succession, entitled to inherit as legal heirs in that specific case (Art. 69. 3.).

The right to compulsory portion does not come into play if potential forced heirs do not request the annulment of dispositions which infringe their portion.

Under the prerequisites prescribed by law, the decedent may disinherit forced heirs. He or she can do it only by an explicit provision in the case where reasons for justifiable exclusion (Art. 85.-87.) or deprivation (Art. 88.) exist.

Reasons for whole or partial exclusion are prescribed in Art. 85:

a. a more serious violation against the decedent by way of breaking a legal or moral obligation arising out of the family relations with the decedent

b. a more serious, intentionally committed criminal offence against the decedent, decedent's spouse, child of partner

c. criminal offence committed against the Republic of Croatia or the values protected by international law

d. idleness or dishonest life

The testator must explicitly declare his or her wish to exclude an heir, stating the grounds for that. The reason for exclusion must exist at the time of testation.

A forced heir, being the decedent's descendant, can be deprived of the compulsory portion in the favour of heir's descendants. The testator may, only by an express provision, entirely or partially, deprive the forced heir who is heavily indebted or has been a squander at the time of testation as well as at the time of decedent's death, and has an under-aged child or grandchild, or a child of grandchild incapable to work or indigent (Art. 88). The provision on deprivation has to satisfy all the prerequisites for the valid will.

3.3.5. Cross-border issues.

3.3.5.1. What are the experiences in application of the Succession Regulation 650/2012 in your country?

The Succession Regulation is applied by the Croatian competent authorities and quite debated especially in the notaries circles,[63] probably as a consequence of the CJEU judgments in *Pula*

[63] E.g. Milaković, G., pp. 25-33.

Parking[64] and *Zufikarpašić*,[65] where the notion of the "court" was interpreted in the context of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation Brussels I bis)[66] and 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,[67] respectively. Unlike in these cases, in the framework of the Succession Regulation, the notaries in Croatia as considered captured by the notion of the court or other competent authority.[68] There was also some experience with the European Certificate of Succession.[69]

3.3.5.2. Are there any problems with the scope of application?

There are no problems yet identified in practice, but judging by the experience in the other Member States such as in the CJEU case of *Kubicka*[70] and *Mahnkopf*,[71] the relationship between different regulations and determining their respective scopes of application *ratione materiae* will occasionally come up as an issue because of the profound differences in substantive laws in civil, family and succession laws.

3.3.5.3. How are the rules on jurisdiction applied? In particular, determining the habitual residence and applying the rules on prorogation of jurisdiction? Did the authorities in your country have experience with declining the jurisdiction under Article 6 or accepting jurisdiction based on Article 7?

It is difficult to assess this in the absence of case law, due to short period of time of the application of the Succession Regulation. However, more abundant case law on habitual residence is developed under the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels II bis Regulation),[72] which shows that despite certain confusions, the awareness and understanding on the part of the judges (at least, those deciding family cases) is satisfactory.[73] Despite the fact that determining habitual residence is becoming a routine job for the courts and competent authorities, it is true that, in comparison to the former connecting factors, nationality and domicile, habitual residence will be more time and effort consuming because it entails establishing and assessing all relevant facts of the case.[74]
Formerly applicable provision of Art. 71 of the Resolution of Conflict of Laws with the Laws of Other Countries in Specific Relations Act, provided for the exclusive jurisdiction of Croatian court if immoveable was located in the territory of Croatia. Therefore, the courts will have to appreciate the fact that this is no longer so. Likewise, because it is a novelty in the Croatian legal system (along with the same provision in the former Maintenance Regulation and later Matrimonial Property Regulation and Registered Partnership Property Regulation), applying the provision on the *forum necessitatis* may prove challenging in the future.

[64] CJEU Judgment of 9 March 2017, *Pula Parking d.o.o. v Sven Klaus Tederahn*, C-551/15, EU:C:2017:193.
[65] CJEU Judgment of 9 March 2017, *Ibrica Zulfikarpašić v Slaven Gajer*, C-484/15, EU:C:2017:199.
[66] OJ L 351, 20.12.2012, pp. 1–32.
[67] OJ L 143, 30.4.2004, pp. 15–39.
[68] See Rec. 20 of the Succession Regulation.
[69] See 3.3.5.6. in this report.
[70] CJEU Judgment of 12 October 2017, *proceedings brought by Aleksandra Kubicka*, C-218/16, EU:C:2017:755.
[71] CJEU Judgment of 1 March 2018, *proceedings brought by Doris Margret Lisette Mahnkopf*, C-558/16, EU:C:2018:138.
[72] OJ L 338, 23.12.2003, pp. 1–29.
[73] See examples of Croatian cases in Honorati, C. (ed.).
[74] This is also ponited out by Poretti, P., p. 571.

3.3.5.4. Are there any problems with determining the applicable law? In particular, regarding the intestate succession and wills and succession agreements? What are the experiences with choosing the applicable law?

It is not possible to assess this, due to lack of available case law. However, it is sharply in contrast to the previously applicable connecting factor – nationality of the deceased.[75]

3.3.5.5. What issues arise regarding the recognition and enforcement? Has there been any public policy invoked or relied on by the parties or the court?

It is not possible to assess this, due to lack of available case law.

3.3.5.6. How is issuing and relying on the European Certificate of Succession operating in your country?

The topic of ECS is very much in the focus of not only courts, but also notaries, which in the succession matters act as the courts' trustees and are competent to issue the ESC.[76] A landmark case concerns the proceedings for registration of the ownership right over the Croatian real estate into the Croatian Land Registry to the name of the Italian national, based on the ECS made by an Italian notary – in the Italian succession proceedings pursuant to Italian law. The Croatian notary made the Records on establishing the facts pursuant to Article 90 of the Notaries Act,[77] in which he confirmed all the facts and described the course of the proceedings before the Italian notary prior to issuing the ECS, and added the power of attorney and the application for registration of the ownership right, all officially translated to Croatian. Based on this the Croatian court entered the registration as applied for. This was considered an innovative approach receiving an award by the European professional association of notaries, because the Records on establishing the facts has been used as a "bridge" connecting the ECS issues in a foreign Member State to the Croatian Land Registry. [78]
Some notaries have expressed the need for the Register on the ESCs to improve legal certainty.[79]

3.3.5.7. Are there any national rules on international jurisdiction and applicable (besides the Succession Regulation) concerning the succession in your country?

No, the PIL Act only contains three provisions concerning the succession matters which refer to other legal sources. Art. 29 contains the general rule that the law applicable to succession is to be determined by applying the Succession Regulation. In addition, Art. 30 provides that the form of a will is governed by the law determined according to the 1961 Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. Final, Art. 54 states that jurisdiction of the court or other competent authority to carry on the succession proceedings or dispute or proceedings

[75] See Art. 30 of the Resolution of Conflict of Laws with the Laws of Other Countries in Specific Relations Act.
[76] Art. 6(1) of the Act Implementing the 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 (*Zakon o provedbi Uredbe (EU) br. 650/2012 Europskog Parlamenta i Vijeća od 4. srpnja 2012. o nadležnosti, mjerodavnom pravu, priznavanju i izvršavanju odluka i prihvaćanju i izvršavanju javnih isprava u nasljednim stvarima i o uspostavi europske potvrde o nasljeđivanju*), NN 152/14, in force as of 17 August 2015. On ECS see e.g. Hoško, T., Bolonja, B., pp. 13-22.
[77] NN 78/93, 29/94, 162/98, 16/07, 75/09 and 120/16.
[78] Krajcar, D., p. 104.
[79] Košir Skračič, R., Vodopija Čengić, Lj., p. 103.

related to claims against the estate is determined according to the Succession Regulation. There is also a relevant rule in Art. 14 about the legal capacity.[80]

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[80] On the succession in PIL see e.g. Ratković, T., pp. 8-32.

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