

Editorial



In its report on EU citizenship, the Commission expressed its wish for tangible measures to simplify the life of EU citizens when they are exercising their rights in another Member State. While individuals can move freely thanks to the Single Market, their rights often stop at borders. The Notaries of Europe have taken note of this message and are working to build a legal Europe.

Through the CNUE, we are currently working on several fronts. That of the European Commission's proposals for regulations first of all: one seeking to introduce rules for married couples, the other for registered partnerships. On 17 October 2011 we are organising a conference on the subject in partnership with the Commission. New contributions will fuel the work underway and, I hope,

enable solutions adapted to the needs of international couples in Europe to be found quickly.

On this occasion, we will also present two projects developed by the notariat to help citizens and their families in their cross-border procedures. One is still being developed and is a portal on matrimonial property regimes that will complement the portal on successions. The project involves the drafting of topical factsheets on the Member States' laws on matrimonial property regimes, available in the 22 languages of the EU.

We will also present the European Directory of Notaries, which will be launched officially at the conference. Thanks to this directory, EU citizens will be able to find a notary who speaks their language anywhere in Europe. The directory will be very useful for people facing cross-border questions when purchasing a property, for example, or in an international succession.

Finally, we will respond to the Commission's recent call regarding the training of the legal professions. The European Commission aims to train 700 000 legal professionals by 2020. At the CNUE, we are already working on a programme of seminars for the notaries of Europe, which should begin during 2012. ■

*Rudolf Kaindl,
President of the CNUE*

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Clearer property regimes for international couples: the CNUE's position



Pedro Carrión García de Parada, Chair of the CNUE's Family Law working group

Two new proposals are being developed by the European Commission in the field of family law. They follow the same guidelines laid down in previous regulations, such as Regulations 2201/2003 and 1259/2010 on matrimonial matters and Regulation 4/2009 relating to maintenance requirements. They all aspire to make the lives of EU citizens easier and to make the three pillars of Legal Europe a reality: freedom, justice and security.

The first of the proposals is designed to clarify the matrimonial property regimes of spouses who, due to differing nationality or place of residence, are subject to different laws. It is important to know precisely which legal system prevails, not just for the spouses themselves, but also for the third parties associated with them. This has implications for the certainty of matters passing through the legal system.

The second of the proposals is concerned with stable unions between individuals who wish to share a life together without actually getting married. The regulations governing this situation, where they exist, differ greatly from one state to another, and even within the same state between the various legislative systems which coexist. The European legislator seeks to establish a law which will govern such a relationship. It may be a good thing that the proposal is not restricted to registered partnerships, that is, partnerships which must be recorded in a public register in order to be

recognised as such, as it also addresses de facto relationships, which are widely recognised although with no constitutional basis. Indeed, there are many situations involving two individuals, of the same or different sex, who live together in a stable manner and who observe that while one state grants special rights to them, other states ignore them completely.

From the point of view of private international law, three matters are at issue: finding out what law governs a given institution, relationship, business or legal deed; finding out which court has jurisdiction in case of dispute (justice is only just if it is fast, which requires certainty as to which court shall decide); and that the legal decisions, agreements and pacts adopted should be effective, that is, that they should be recognised and express all their effects, at least within the European Union, and if possible, beyond it, too.

While establishing jurisdictional competence is important, its importance is not overwhelming, since it is the same law which the judges must apply, knowing with certainty what it will be. The interested parties, be they spouses (in matters relating to matrimonial property regimes), or members of civil unions (for registered partnerships), will have no reason to set off on the frantic quest for the court which will look most kindly on them in the hope that it will implement the national law of the state in which it is located. Forum shopping will be discarded and, when it comes to selecting the competent legal entity, convenience and proximity will prevail.

As with judgements, the recognition of agreements, of legal negotiations, must be quick, immediate and straightforward, without, nevertheless, losing legal certainty. For agreements and pacts to be recognised, there must be no doubt as to their existence or validity, since they can

only be completely effective if this is the case. Hence we see the advantages of the authentic instrument.

Only pacts and agreements expressed in an authentic instrument objectively deserve the absolute credibility and trust which derive from a cast-iron legal and social assumption of validity, legality and integrity. They may be challenged, but we know that it is highly unlikely that such a challenge will prosper, precisely because of the guarantees which accompanied their adoption, which shield them and discourage any contestation.

Thus we learn that comparisons have been made between authentic instruments and judgements, that the case has been made that neither needs to be subjected to special recognition procedures, and that a defence has been raised for the suppression of external formalities, such as authentication or certification procedures.

The figures stand as evidence. The number of authentic documents challenged is notoriously small, and successful challenges are even fewer.

Another important question which should be addressed by both proposals, as well as by others in the making, such as that on succession, and the fact that they have already settled those mentioned above, is that of their scope, and within it, the areas to be excluded, including specifically that of property law, given the significant differences which currently exist between the various systems for transferring property and other rights in rem and the way in which they are registered.

On the matter of applicable law, the European legislator declares, like the majority of national legal systems, that it should be the partners themselves who choose the law which shall govern their matrimonial property regime. They

may also choose in the area of civil unions. Although the legislator does not specifically state this, when the union is governed by the law of the state in which it is registered, it is understood that this is the choice that has been made.

In choosing the law, they are also deciding upon a matrimonial property regime, and unless they declare to the contrary and assuming that the law permits it, this will be the corresponding system in the absence of an agreement which decides this. What usually happens is for the couple to choose both the applicable law and, within that legal system, its matrimonial property regime.

Only a choice made by people with the capacity to act, duly informed and aware of the importance and legal scope of their decision, one which they can trust because it is known that it will be respected by the spouses but also by the third parties associated with them, will enjoy true recognition and will fully deploy its effects. There is no need for me to insist further on the importance accorded to the authentic instrument, by which I mean the notarial document, by many legislative systems in this area.

Recognition will be enhanced if the agreement is endowed with reliable disclosure thanks to the quality of the data entered in the register and the document which provides those data, and if a system is set up giving easy access to this information.

The conference on 17 October will illuminate us regarding these two important proposals and the decisive role which notaries have played and will continue to play, as is demonstrated by the majority of the legal systems currently in existence in the European Union. ■

Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes:
<http://notaries-of-europe.eu/conference-2011/files/matrimonial-property-regimes.pdf>

Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships:
<http://notaries-of-europe.eu/conference-2011/files/partnerships.pdf>

L'Annuaire européen des notaires est en ligne

Les citoyens de l'Union européenne ont désormais la possibilité de trouver un notaire qui parle leur langue partout en Europe. Fruit du travail des Notaires d'Europe et du soutien de la Commission européenne, le site Internet www.annuaire-des-notaires.eu est désormais en ligne. Grâce à l'annuaire des notaires d'Europe, le citoyen sera désormais en mesure, par exemple, de trouver un notaire à Prague qui parle le français et pourra l'aider dans ses démarches transfrontalières (acquisition d'un bien immobilier, règlement d'une succession, etc.).



L'infrastructure technique d'une grande simplicité d'utilisation permet à l'utilisateur de trouver facilement et rapidement les informations recherchées, et ceci dans les 23 langues de l'Union européenne. Dans un premier temps, il est demandé de choisir le pays dans lequel la requête sera effectuée. Il est ensuite possible d'introduire des critères supplémentaires : la ville, le nom d'un notaire et/ou une langue parlée par le notaire. L'utilisateur aura alors la possibilité de consulter les profils personnels des notaires correspondants à sa recherche. Il aura accès notamment aux coordonnées de contact du notaire (adresse postale, téléphone, courriel, site web, etc.), ainsi qu'à la localisation de l'étude du notaire sur un plan de la ville.

Pour Me Rudolf Kaindl, Président du Conseil des Notariats de l'Union européenne, ce projet part d'un constat simple : « *le nombre de citoyens qui tissent des liens avec les citoyens d'un autre Etat pour des raisons professionnelles ou privées ne cesse de croître. Cette initiative est une première du genre, qui répond à la volonté des institutions européennes de contribuer à un meilleur accès au droit des citoyens européens et de répondre à leur besoin de sécurité juridique. Les Notaires d'Europe se réjouissent d'avoir pu travailler sur ce projet avec le soutien de la Commission et apporter ainsi leur pierre à la construction de l'Europe de la justice* ».

Gageons que ce nouveau service des Notaires d'Europe rencontrera un grand succès auprès des citoyens européens, à l'instar du portail web « Successions Europe » (www.successions-europe.eu) qui a drainé quelque 300 000 visiteurs en une année d'existence. ■

Bonne navigation sur www.annuaire-des-notaires.eu

EU News

CNUE: beginning work to create a Matrimonial Property Regimes web portal

Following the success of the Successions Europe website (www.successions-europe.eu), the Notaries of Europe are setting out on a new and ambitious project. Thanks to co-funding from the European institutions and with the academic support of the University of Graz, the CNUE is working to create a new Matrimonial Property Regimes web portal for European citizens.

Topical factsheets on the law on matrimonial property regimes in the Member States will be drawn up and translated into the EU's 22 languages. They will answer the legal questions that European citizens and legal practitioners can ask. There are approximately 16 million international couples in Europe who can be confronted with thorny legal questions about the applicable law and competent jurisdiction if their marriage or partnership comes to an end. The portal, which will be very easy to use, will enable citizens to find the information they are looking for quickly and easily.

The project will involve 18 months of work and should be finished for 31 October 2012. Our project partner, the University



Prof. Brigitta Lurger will coordinate the drafting of the portal's factsheets on matrimonial property regimes

of Graz (Austria), and more specifically Prof. Brigitta Lurger, is responsible for coordinating the factsheets. National experts from the CNUE will also work on the project, bringing their legal contribution.

This project reflects the two proposals for regulations presented recently by the European Commission in order to lift the legal uncertainty surrounding the property rights of couples who have concluded a marriage or a registered partnership with an international dimension. Both proposals

for regulations would make it possible to determine the legislation applicable to couples' property rights, in addition to the competent jurisdiction. They would also set down the rules for the recognition and enforcement of judicial decisions relating to the assets of the couples concerned in all the EU Member States thanks to a single procedure. ■

Context

At present, marriage is a legal institution recognised in all 27 EU Member States. In five countries, marriage is possible between members of the opposite sex or of the same sex (in the Netherlands since 2001; in Belgium since 2003; in Spain since 2005; in Sweden since 2009 and in Portugal since 2010). Registered partnerships are a more recent legal institution, recognised in 14 EU Member States (Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Luxembourg, Netherlands, Slovenia, Sweden and United Kingdom). These 14 countries allow two people of the same sex to register a partnership and Belgium, France, Luxembourg and the Netherlands authorise the registration of partnerships between people of the same sex and of the opposite sex.

Parlement européen – Adoption du rapport sur la transposition de la directive médiation

Mardi 13 septembre à Strasbourg, les députés européens ont adopté à 633 voix contre 20 et 10 abstentions le rapport préparé par la députée britannique Arlène McCarthy sur la transposition de la directive médiation du 23 avril 2008. Le rapport souligne qu'un grand nombre d'Etats membres ont choisi l'acte notarié et la décision judiciaire comme possibilités pour donner force exécutoire à un accord issu de la médiation.

Dans ce rapport, les eurodéputés demandent aux autorités nationales d'élaborer des programmes visant à promouvoir une connaissance adéquate

des modes alternatifs de résolution des conflits. Ils estiment que « ces actions devraient porter sur les principaux avantages de la médiation, à savoir le coût, la réussite et le rendement temporel, et cibler les avocats, les notaires et les entreprises, tout particulièrement les PME, ainsi que le milieu universitaire. »

La directive médiation est entrée en vigueur le 21 mai dernier. Le 22 juillet 2011, la Commission européenne a adressé une lettre de mise en demeure à neuf pays (Chypre, l'Espagne, la Finlande, la France, le Luxembourg, les Pays Bas, le Royaume-Uni, la République tchèque et



Arlène McCarthy, eurodéputée britannique, a rédigé le rapport du Parlement sur la transposition de la directive médiation

la Slovaquie) qui n'ont pas encore notifié toutes les mesures nationales requises pour la transposition. ■

EU News



Dans une communication présentée le 13 septembre dernier, la Commission européenne s'est fixé des objectifs ambitieux en matière de formation des praticiens du droit. Aujourd'hui, l'Union compte quelque 1,4 million de professionnels qui sont notamment juges, procureurs, notaires, avocats, huissiers de justice ou membres du personnel des tribunaux. La Commission veut permettre à la moitié d'entre eux au moins de recevoir une formation judiciaire à l'échelle locale, nationale ou européenne d'ici à 2020. Elle souhaite également que les praticiens du droit bénéficient tous d'au moins une

La Commission européenne se fixe pour objectif de former 700 000 professionnels du droit d'ici à 2020

semaine de formation en droit de l'Union pendant leur carrière.

Pour y parvenir, la Commission a invité les gouvernements nationaux, les conseils supérieurs de la magistrature, les organes professionnels dont le CNUE et les instituts de formation judiciaire au niveau tant européen que national à s'engager à intégrer le droit de l'Union dans leurs programmes de formation et à augmenter le volume des cours et des participants.

A terme, cela contribuera à instaurer une confiance mutuelle entre les différents systèmes juridiques en présence au sein de l'Union et à améliorer la mise en œuvre de la législation européenne. Cette démarche sera bénéfique aux citoyens et aux entreprises en Europe qui pourront compter sur des décisions rapides et un

respect véritable des règles.

Le CNUE et sa présidence autrichienne ont placé la formation des notaires au cœur de leurs priorités pour l'année 2011. C'est pourquoi une réflexion a été entamée sur la mise en œuvre d'un programme de séminaires de formation à l'attention des notaires d'Europe. Une demande de cofinancement sera adressée aux institutions européennes d'ici à la fin de l'année 2011. Si jamais cette demande devait être acceptée, le CNUE pourrait commencer son programme de formation dès l'année 2012. ■

Communication de la Commission européenne sur la formation judiciaire : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0551:FIN:FR:PDF>

Best practice

Austria – SME Week, 3–9 October 2011

On the European Commission's initiative, SME Week will take place from 3 to 9 October 2011. This campaign, which encourages entrepreneurship across Europe, is being held in 37 countries so that the events and activities proposed at local, regional and national level are closer to potential and established entrepreneurs.

As part of SME Week, events will be organised by professional associations, company support services and local, regional and national public authorities. They will enable existing companies to share their experience and enhance their activities. In 2010, nearly 1500 events were organised throughout Europe.

This year the notariat will also be present, on the Austrian notariat's initiative, which is organising a seminar on 4 October in Vienna on company transfers. Small and medium-sized companies are the backbone of the economy. Ensuring the future existence of

these SMEs by successful transfers secures Austria as a business location.

Many factors contribute to a positive outcome of the business transfer for the transferor and the transferee as well as to the company's future existence. In this field, legal questions, financing and the economic and European environment are to be considered. During the event, highly qualified speakers will discuss the transfer of companies from different perspectives with a view to European developments.

Corporate and company law are part of the core competencies of Austria's 494 notaries. Due to the great importance of company succession for Austria as a business location, the Austrian notariat has developed its own range of services – known as the CORPORATE PRECAUTION. Indeed, one of the most important aspects of a successful company transfer is comprehensive and timely advice. ■



Event website: <http://www.notar.at>

For further information on SME Week: http://ec.europa.eu/enterprise/initiatives/sme-week/index_en.htm

Best practice

France – 28^{ème} édition de l'université du notariat à Poitiers



Durant la semaine du 5 au 9 septembre 2011, le notariat français a organisé la 28^{ème} édition de son université du notariat. Cette année, celle-ci s'est

tenue au Palais des congrès de Poitiers et a accueilli près de 900 notaires et collaborateurs. Ceux-ci ont eu le choix

entre 44 stages différents, d'une durée d'un à trois jours et ciblant l'ensemble des activités notariales. Droit international privé, droit des sociétés, droit rural, droit de la famille, droit immobilier, dématérialisation, médiation mais aussi gestion quotidienne de l'office : aucun domaine n'a été oublié.

Comme chaque année, une centaine de notaires étrangers ont suivi les formations proposées. Il s'agissait principalement des notaires issus des notariats bulgare, chinois, roumain, russe, polonais et d'Afrique francophone avec lesquels le Conseil Supérieur du Notariat entretient des accords de coopération.

L'université du notariat permet aux notaires d'ajuster leurs connaissances suite aux diverses évolutions législatives et de procéder également à des échanges de bonnes pratiques entre confrères. Pour les notaires étrangers, elle est l'occasion de découvrir le droit français et sa pratique.

Enfin, l'université du notariat fut l'occasion, pour les notaires désireux de s'équiper prochainement des technologies, d'assister à une démonstration de signature d'acte virtuel en direct. Cette démonstration traduit une tendance de fond : l'acte authentique électronique suscite l'intérêt des notaires, qui introduisent petit à petit ce nouvel outil au sein de leurs études. ■

Event

France – Conférence-débat « Justice civile et citoyens en Europe », 15 septembre 2011

Le 15 septembre, le Conseil Supérieur du Notariat, en collaboration avec l'association Trans Europe Experts, a reçu Madame Viviane Reding, Vice-présidente de la Commission européenne et commissaire en charge de la Justice, des Droits fondamentaux et de la Citoyenneté pour une conférence-débat sur les divers projets de son institution touchant à la justice civile.

Mme Reding est notamment revenue sur la définition de la citoyenneté européenne, expliquant qu'elle était en train de la traduire en « *réalité tangible* ». 2013 sera l'année européenne de la citoyenneté. Pour cette année particulière, la commissaire compte sur l'investissement de tous les décideurs politiques et des professionnels du droit. Elle invite les notaires à participer activement aux manifestations.

La commissaire a salué les nombreuses initiatives des notaires au service des citoyens ; citant l'annuaire des notaires d'Europe, le site Internet sur le droit des successions, le projet de site Internet sur les régimes matrimoniaux. Elle a qualifié



La Commissaire Viviane Reding entourée du Président du CSN, Me Benoît Renaud, et de son Vice-président, Me Jean Tarrade

les notaires de « *maillon indispensable dans une Europe évoluant massivement et rapidement* ».

Profondément attachée au principe européen de reconnaissance mutuelle, la Commissaire a demandé aux professionnels du droit de « *participer à la construction de ponts entre les systèmes* ». A ce sujet, elle a précisé que « *la reconnaissance mutuelle présuppose de savoir ce qui est fait par l'autre et d'être sûr qu'il le fait bien* » et exprimé son profond

désir de donner un coup d'accélérateur à la formation judiciaire européenne.

Remerciant le président du notariat français, Me Benoît Renaud, qui avait précédemment loué son sens de l'écoute, la commissaire a rappelé à l'auditoire que son action était centrée sur les attentes des citoyens. Aux nombreux universitaires présents dans la salle, elle a souligné qu'elle comptait toujours sur leurs apports pour simplifier le droit ; démarche à laquelle la Commissaire est très attachée. ■