POSITION OF THE NOTARIES OF EUROPE ON THE POST-STOCKHOLM PROGRAMME

In ever-increasing numbers, European citizens are living, studying, marrying, divorcing and dying in a Member State other than that in which they were born, a situation which is bound to lead to a range of legal complications.

It is for this reason that the CNUE applauded the approach adopted by the European Commission which took account of this situation and made the citizen the focus of Community activity in its communication dated 10 June 2009 with regard to the Stockholm Programme.

Although significant efforts have been made and many projects have been implemented (the regulation on international successions, the revision of the Brussels I regulation, etc.), the Notaries of Europe wish to publish their opinion on a variety of matters which they feel will be of priority interest to the citizens of Europe in the years to come.

✓ Notariat’s contribution to justice – role of authenticity

Notaries are an integral part of the legal order in the 22 Member States of the European Union that have a Latin civil law system. Their essential mission, that they carry out as delegates of the State that nominates them and accords them the status of public office holder, is to confer authenticity on the legal instruments and contracts they establish for their clients.

Having in many respects the same value as a judgement, authentic instruments cannot be contested, except through judicial proceedings. Unlike private agreements, they are endowed with greater probative value and are imposed on the courts, the administration and third parties. Like judicial decisions, they are enforceable, enabling the contracting parties to have their obligations enforced directly by the implementing bodies (judicial officers), without having to pass before the courts. By placing the State's seal next to the signatures of the parties on the instruments they draw up, notaries are responsible for the content and the form.

In some countries, notaries have been granted judicial missions in order to unburden the courts. The Notaries of Europe are therefore calling upon the European institutions to promote the values of authenticity within the European Union, in the interests of more effective justice that is closer to European citizens.
Matrimonial property regimes – registered partnerships

In their day-to-day work, the Notaries of Europe are regularly faced with questions and difficulties concerning the coordination of rules governing disputes in the field of marriage and partnership. Because of this, the CNUE has adopted a very positive attitude to the fact that the European Union has begun to tackle these questions, since they give rise to a very real problem scenario for families and society in general. European initiatives in these fields constitute a real need in legal practice.

The adoption of dispute standards which are uniform for all countries, clearly stating which legislative system is to be applied to marriage or partnerships, and defining the jurisdictional, if not actually legal, organisations called on to act in disputes arising from such legal situations, would be a huge step forward. European citizens should be granted the crucial power of being allowed to enter into agreements in which they would determine the competent court or law applicable to their marriage or partnership.

Lastly, the Notaries of Europe believe that, as in succession law, the harmonisation of dispute rules is a very appropriate approach, in that this is a measure which would guarantee unity in diversity.

The Notaries of Europe thus hope that the negotiations currently underway on matrimonial property regimes and registered partnerships will be finalised as soon as possible. Longer term, it would be desirable to deal with common-law unions, which have almost the same consequences as marriage, in the harmonised conflict-of-law rules; this is the case in Croatian and Slovenian law.

The possibility of establishing interconnection mechanisms between the various State registers of matrimonial regimes should be explored with a view to facilitating access to information. It is currently difficult in a cross-border context for legal practitioners such as notaries to know whether a marriage contract has been established and what choices have been made, and what the legal consequences are.

Facilitating the movement of public documents

The European notariat has always been in favour of facilitating the movement of public documents and withdrawing legalisation, the apostille and any other similar formalities. In principle, it therefore supports the European Commission’s initiatives.

However, facilitating movement should not come to the detriment of the requirement to maintain legal certainty, which is an essential value of the area of justice, freedom and security that the CNUE fully endorses. It is thus appropriate to identify carefully the legal areas in which formalities such as the apostille could be withdrawn without compromising legal certainty. Moreover, the Notaries of Europe oppose the European Commission’s proposal to withdraw certified translations.
✓ **Civil Status instruments**

When it comes to the specific matter of the status of the individual, considerable practical problems arise. Hence the importance of ensuring through an EU instrument that a civil status (marriage, registered partnership, name, adoption) is subject to the same rules of substantive law throughout the EU, by means of the harmonisation of conflict-of-law rules regarding civil status. The European notariat is prepared to contribute its expertise to the elaboration of draft legislation.

Each State possesses its own civil status system, and some States have not set up centralised civil status records and hence have no system of recording entries. Yet legal practitioners such as notaries need correct and reliable civil status information, this being an integral part of the documents they draw up. The European notariat supports any initiative seeking to simplify access to this information.

✓ **Protection of vulnerable adults**

The number of vulnerable people in Europe is on the increase.

Although some Member States have ratified the Hague Convention of 13 January 2000 on the International Protection of Adults, this convention will only have full effect once its geographical application is sufficiently broad, which means that as many States as possible need to ratify it.

The Notaries of Europe also feel that there is a need to harmonise the conflict of law rules applicable not only to lasting powers of attorney but also to advance decisions on medical treatment and to improve the cross-border effectiveness of those measures or decisions.

In this context, the CNUE suggests both that initiatives should be taken to set up centralised public registries under state responsibility to record such measures and decisions and that the centralised registers should be interconnected at a European level. Some notarial organisations have experience in this field and are already in charge of the administration of such registries.

✓ **Reinforcement of professional networks**

The European notariat has been actively involved in the European Judicial Network in civil and commercial matters (EJNCC) since it was opened up to the legal professions. The Notaries of Europe are convinced that this opening up of the EJNCC makes for the strengthening of legal cooperation between the States, and in particular for more effective application by the professionals of EU law, not to mention the development of all the potential capacities of the Network.
In order to facilitate the integration of the notarial profession in the EJNCC, the CNUE created the European Notarial Network (ENN) in 2007. Thanks to the support of European funding, the ENN has been able to evolve and to develop its tools for legal professionals and citizens: the European Directory of Notaries, information portals on succession law, matrimonial property regimes and registered partnerships in the Member States, vulnerable adults, a guide on implementing the European regulation on international successions, etc. The CNUE hopes that this support from the European institutions for professional networks will continue so that professionals can be more involved in creating a European area of Justice.

✔ **E-Justice**

The priorities in this area should include:
- The application of interoperable electronic procedures in legal and judicial matters.
- Online access to justice, for example by continuing to supply the e-Justice portal with useful information for citizens and legal professionals.
- Training legal professionals how to use e-Justice tools.
- The use of qualified electronic signature tools for all legal professionals in Europe. Such a generalisation of the qualified electronic signature could bring about trust in secure information exchanges between practitioners.
- Creating and supporting collaborative work tools between legal professionals.
- Computerisation of register systems, responding to society’s need and therefore in the general interest.

The CNUE attaches great importance to these areas. Notaries have long been dealing with issues relating to the use of e-Justice in practice, both at national and EU level (national electronic registers for archiving authentic instruments and/or authentic instruments in electronic form, qualified electronic signatures, a platform for the verification of electronic signatures by European notaries (European Validation Server), the EUFides document exchange platform, the linking of online registers of wills (European Network of Registers of Wills)). Public registers are increasingly being held in electronic form, e.g. the land register, the business register, the register of enforcements, the insolvency register and the register of wills.

But e-Justice will only be able to offer real added value to citizens, businesses and legal practitioners if the possibilities of modern communication technologies are combined with legal certainty requirements in respect of transactions as well as protection of the authenticity and integrity of the information transmitted.

✔ **Fight against money laundering**

The Notaries of Europe applaud the many initiatives taken in the past years with regard to the fight against money laundering and the traceability of bank operations.
The Notaries of Europe recommend remaining alert to new forms of financial crime.

✓ Training

The Notaries of Europe support the European Commission’s wish to provide at least half of legal professionals in Europe with the possibility to follow European judicial training locally, nationally or at European level by 2020. The notaries of Europe also support the objective of further intensifying the training of legal practitioners in EU law during their career.

For the 2013-2014 period, the Notaries of Europe benefit from EU funding for the organisation of 14 seminars on succession law in ten Member States on the new successions regulation. These seminars bring together 2000 notaries from different Member States and cover European law and its national application from a cross-border standpoint.

The Notaries of Europe are already envisaging other opportunities to continue in this way.

Council of the Notariats of the European Union,
Brussels, on 21 November 2013

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