



## Position of the Council of the Notariats of the European Union concerning the e-Justice Action Plan 2014-2018

The Notaries of Europe welcome the European institutions' initiatives to develop e-Justice, a key area for citizens and legal practitioners that is particularly close to our hearts.

First, the notaries support the suggestion to associate legal practitioners, including notaries, in future discussions in the area of online justice and, in this context, confirm the CUNE's offer of cooperation.

The CNUE attaches great importance to policies relating to online justice. For a long time now, notaries have been using tools offered by e-Justice, both at national and European level. In many Member States, in close cooperation with the ministries of justice and their other State or institutional partners, the notaries have already successfully developed tangible solutions with a view to gradually adapting the administration of preventive justice to the challenges brought by new technologies. Thanks to this work, they have acquired practical skills in the area of e-Justice. The notaries' experience in digitalisation needs no further proof.

At European level, the Notaries of Europe commit to the implementation of interoperability solutions respecting appropriate security standards, for the benefit of all users of these solutions. The importance the European notariat attaches to e-Justice is reflected by its participation as an observer in the e-CODEX project and by tools such as the [ENRW](#) and [EUFides](#). The Notaries of Europe plan to get even more involved in the e-CODEX project and, by extension, in the e-SENS project.

With regard to the electronic signature, the Notaries of Europe point out that for many years they have been among the pioneers and most active actors in electronic legal transactions. Meanwhile, the qualified electronic signature has become an unavoidable tool in daily use. Only this signature guarantees a sufficiently high level of authenticity and integrity of electronic documents in relation to notaries' needs. During negotiations on the EU regulation on electronic signatures and identification, the Notaries of Europe worked to defend this high level of security. In this context, the Notaries of Europe congratulate the co-legislators for the compromise find, which allows the 'attributes', the specific qualities attributed to professionals, including notaries, to be maintained in electronic signature certificates. These certificates are essential to justify the professional's capacity as such and they help to guarantee legal certainty. The circulation of the authentic instrument in electronic form should be encouraged. In several Member States, the electronic authentic instrument is already used and the Notaries of Europe encourage the pursuit of this trend. This is the final stage of a full dematerialisation process.

The notaries of Europe support any initiative that allows European citizens and legal practitioners to have easy access to certain information that they need in their daily lives, such as having available archives or registers. But they recall that this information can only



be used if it completely reliable and accurate, as the opposite would lead to an increase in disputes following the false and doubtful appearances and perspectives that would be created.

Finally, the Notaries of Europe would also like to make some more technical remarks regarding certain projects included in the draft e-Justice Action Plan 2014-2018 currently being examined at the Council.

The Notaries of Europe welcome the following proposals:

### **Register of representation rights and powers of attorney**

As legal practitioners specialised in matters relating to families and individuals, notaries are often confronted with problems linked to the capacity of minors or vulnerable adults. These problems may arise owing to the person's old age or bad health or their personal, social and economic conditions.

The Notaries of Europe welcome the idea of beginning reflections on the interconnection of archives of representation rights and lasting powers of attorney. They stress that the possibility to register documents relating to future protection is already provided for in seven Member States. They consider it particularly appropriate to reflect on developing a mechanism to alert the registered contact person by consulting the archives.

### **Matrimonial property register**

The Notaries of Europe consider that it is necessary and essential to know the matrimonial property regime of each couple, whether legal or agreed. They support the creation in each Member State of a register where information on the matrimonial property regimes is recorded that must be published in accordance with the law of each Member State with a common minimum content. The future interconnection of the national registers should be examined in the context of the free movement of citizens.

### **European register of interpreters and translators**

The European notariat very much welcomes the creation of a European register of interpreters and translators. There is a fast-increasing number of cross-border cases to deal with. Recourse to these professionals is often necessary in order to provide parties with the best advice. Nevertheless, it is important for the registration of a professional in such a register to be subject to controls. In this context, the Notaries of Europe stress the importance of certified translations in the context of legal transactions, particularly with respect to legal certainty. Furthermore, in order to simplify matters for European citizens, a Member State should accept certified translations from another Member State.



## Mediation

The Notaries of Europe welcome the European institutions' initiatives to digitalise, to a certain extent, judicial and extrajudicial proceedings.

Notaries, owing to their social role and hybrid profile as public office-holders and trusted third parties, involved in private relations, have an important role to play in mediation. This is the case above all in the notary's 'traditional' areas of competence, i.e. family law, succession law, real estate law and company law.

In this context, the Notaries of Europe would nevertheless like to underline that, in the mediation process, human relations are essential. It is therefore necessary to encourage and support places for mediation, whether by organising Mediation Centres or by implementing a digitalised infrastructure (video-conferencing, etc.).

E-Justice could be of particular importance when setting up a system to organise and prepare online mediation (file containing the specific information on a case accessible electronically and by all the parties, etc.).

In our view, developing cross-border mediation would require common training of mediators from the different EU countries so that they are part of a common mediation culture, a major asset for the cross-border practice of mediation. From this point, a list of 'European' mediators who have followed such training could be included on the European e-Justice portal.

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Finally, the Notaries of Europe also consider that an **interconnection of insolvency registers** may respond to a certain practical need, both on the part of citizens and businesses and on the part of legal practitioners. It seems appropriate to begin a reflection on this subject.

### Interconnection of registers of wills

The Notaries of Europe have taken note of the fact that the interconnection of registers of wills is mentioned among the specific projects as a 'pilot project' underway in the notariat. The European notariat would nevertheless like to stress that the interconnection of registers of wills is already a reality. Indeed, among the 19 members and partners of the ENRWA, eight national registers are already interconnected. Several other countries plan to join the network in the coming years.

### Electronic European Certificate of Succession

The Notaries of Europe take note of the fact that the Electronic European Certificate of Succession (EECS) is one of the specific projects mentioned in the e-Justice Action Plan. The Notaries of Europe are ready to make their expertise available to the European institutions and offer our cooperation in future work. However, a fully electronic ECS should not replace the paper version of the ECS.

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The Notaries of Europe also wish to express some reservations about certain specific proposals mentioned in the e-Justice Action Plan.

### **Possible interconnection of land registers**

For the European notariat, it is important to recall that before undertaking a new project, it is essential to look at the utility, feasibility and potential risks that would be linked to the project.

As regards the utility of interconnecting the land registers, the Notaries of Europe are of the opinion that although this is clear for certain registers in order to make life easier for citizens and businesses, it is more difficult to prove for an interconnection of land registers. Indeed, today, many national and registers/cadastrals can already be consulted online according to the substantive law in force in the Member States concerned. Pilot projects for the interconnection of land registers, such as EULIS, have not proved their benefit to date, particularly given the low number of consultations. Raw information provided by means of an interconnection is of little interest to a professional who needs to put the information in the context of the national substantive law in force.

As regards the actual realisation of the interconnection of land registers, the Notaries of Europe underline that it will have to face fundamental differences between the register systems currently in place in the Member States (registration of incorporation or publication for the purposes of third-party effectiveness; difference between one-tier and two-tier systems).

Furthermore, aside from the differences in substantive law, the organisation of the land registers and cadastrals varied considerably from one Member State to another: a single centralised register, two registers (land register – cadastre) that are interconnected or completely independent, national or local registers, etc. In addition, access to the register differs from one Member State to another (access for private individuals, professionals, legitimate interest to justify, etc.).

Finally, particular attention must be paid to the risk of breach of privacy of the holders of rights in Europe ('massive' search by surname of all the properties belonging to a person) and to the protection of their personal data held in the registers.

The Notaries of Europe wish to underline that a possible interconnection of the land registers would carry many risks for citizens, businesses and professionals.

Providing different types of information without including legal details that can only be provided by experts from the national legislations would be a source of legal uncertainty and confusion for all (risk of confusion between the notions of 'owner' and 'buyer' of a property, etc.).

Let us also note the danger that future readers will believe that the information held by the



national register is exhaustive whereas other information may be recorded elsewhere (influence of the matrimonial property regime, regimes of expropriation or the protection of the coast/nature, regimes involving special privileges, etc.).

In the light of what precedes, it may be observed that the benefit of interconnecting the land registers for consultation only – and even more for the possible purposes of interoperability – would be extremely limited and even prejudicial to citizens and businesses seeking information and to professionals in their daily practice.

### **Automated translations**

The European notariat expresses serious doubts about the proposal to intensify the use of automated translations. In the area of law, accuracy is essential in order to guarantee legal certainty and automated translation tools provide very variable results.

The European notariat would prefer for work to be carried out quickly on the transliteration of proper nouns. Indeed, surnames can be spelled differently from one language to the next and the absence of a standard conversion rule sometimes leads to mistakes. A wrongly spelled name is potentially that of someone who cannot be found.

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Finally, the Notaries of Europe are available to the European institutions to offer their legal and technical expertise on the different subjects connected with e-Justice, so that online justice becomes a reality for legal professionals and citizens, respecting the highest levels of security and in the respect of the rules governing the protection of personal data.

*Council of the Notariats of the European Union  
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