

## **EUROPEAN NOTARIAT'S INTEGRATION IN THE EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS**

RALUCA NICOLITA DAVITOIU

Faculty of Juridical Sciences, University “Constantin Brancusi” of Targu-  
Jiu, Romania

### **Abstract**

The Council of the Notariats of the European Union confirms its intention to make a positive contribution to the construction of the European Judicial Area in civil matters. The main objective is to make procedures easier for citizens and businesses. The notariat's integration in the Network will help to achieve this objective and improve the functioning of the Network. Consequently, the Council of the Notariats of the European Union welcomes the European Commission's proposal to further integrate the legal professions in this network and, more specifically, the notariat as public officials, issuers of public documents that circulate in the European Union in the same way as judgements.

### **Key words**

European integration; European notariat's integration; liberal professions.

A European Judicial Network (hereafter 'Network') in civil and commercial matters was established following Council Decision No 2001/470/EC of 28 May 2001. Since its creation, this Network has been the subject of several assessment meetings. At the meetings of 13 December 2005 and 6 June 2006, the European Commission put on the agenda the possibility of integrating the professional services in the Network. The CNUE attended these meetings representing its 19 member notariats and wishes to respond to the European Commission's questions on the subject.

### **1. THE NOTARIAT'S PARTICIPATION IN THE NETWORK'S ACTIVITIES BRINGS ADDED VALUE FOR CITIZENS AND BUSINESSES.**

In line with the objectives of the Hague Programme for freedom, security and justice and improved access to the law for citizens – particularly with regard to cross-border legal relations – the CNUE would be pleased to see the Network gradually being opened up to the legal professions<sup>1</sup>, as initiated by the European Commission, and particularly to civil law notaries,

---

<sup>1</sup> Report on the application of Council Decision No 2001/470/EC establishing a European Judicial Network in civil and commercial matters, COM (2006)203 of 16 May 2006, point 4.2.

who are public officials, issuers of public documents that circulate in the European Union in the same way as judgements. Moreover, in his speech in Brussels on 26 April 2006, the Vice-President of the European Commission, Franco Frattini, specified that civil law notaries in particular could and should be further integrated into the activities of the Network to this end. The European notariat's participation in the Network can bring added value for citizens and businesses in Europe thanks to the delegation of judicial cooperation missions provided for by Community legislation. In accordance with the objectives cited in Recital 6 of Decision 2001/470/EC of 28 May 2001 on the improvement, simplification and acceleration of effective judicial cooperation between the Member States, the notariat's participation in the Network's activities is of practical use in legal practice in the EU and will help the Network achieve its goals.

1. The notariat can contribute to simplifying procedures within the Network by using not only significant IT tools but also through close cross-border cooperation and pre-existing contacts. The notariat can help accelerate procedures within the network by having few intermediaries in cross-border contacts and through the use of new technologies (already widespread within the notariat). Finally, the notariat's participation in the Network could result in an improvement in the network and in judicial cooperation. The notariat's participation supports the quality of judicial cooperation in the Network, notably through better transposition of Community instruments. Moreover, an improvement in notarial services provided for citizens can be anticipated.
2. Furthermore, positive effects could result for example from enhanced and structured cooperation between notarial organisations in cross-border affairs. This would also allow the creation of new possibilities to improve civil law notaries' cooperation with other members of the Network, such as judges.
3. Extrajudicial procedures figure amongst the EU institutions' policy priorities in civil justice matters. The civil law notary acts as a public official and helps lessen the courts' workload by offering preventive justice. The notariat's future membership of the Network can fill the gap that currently exists within the Network in dispute prevention procedures and, because of its specific role, it will be able to simplify effective judicial cooperation between Member States. Recourse to alternative dispute resolution and the role of the civil law notary therein is worth special attention.
4. The notariat already carries out important tasks such as those mentioned in Regulations 2001/44/EC ('Brussels I') and 2004/805/EC (European Enforcement Order). With the progressive integration of the EU's policy in justice matters, it is possible that other tasks will be delegated to civil law notaries in order to use up the potential available to speed up and enhance judicial cooperation between Member States.

## **2. EXAMPLES OF THE NOTARIAT'S FIELDS OF ACTIVITIES WITHIN THE NETWORK**

1. Article 3 of Decision 2001/470/EC of 28 May 2001 sets out the Network's missions and activities and states the activities in which the notariat's integration in the Network would be particularly beneficial, such as:
  - a. the smooth operation of procedures having a cross-border impact and the facilitation of request for judicial cooperation between the Member States, in particular where no Community or international instrument is applicable;
    - i. Settling successions
    - ii. The trade register and company law
    - iii. The land registers and real estate transfers
    - iv. Family law, notably in the area of divorce and matrimonial property regimes
    - v. Mediation procedures
  - b. The effective and practical application of Community instruments or conventions in force between two or more Member States, such as:
    - i. Regulation of 22 December 2000 concerning jurisdiction and the recognition and enforcement of judgements in civil and commercial matters ('Brussels I' Regulation No 2001/44/EC)
    - ii. Regulation of 21 April 2004 creating a European Enforcement Order for uncontested claims ('European Enforcement Order' Regulation No 2004/805/EC).

## **3. LEGAL BASIS**

1. Article 2 of Decision 2001/470/CE already offers two possibilities for the notariat's participation in the Network through identification or designation by the Member States:
  - a. Article 2 paragraph 1(b) states that the Network shall be composed of central bodies and central authorities provided for in Community instruments or instruments of international law;

- b. Article 2, paragraph 1(d) of Decision 2001/470/EC<sup>2</sup> is already a possible legal basis for the notariat's participation in the Network as a member.
2. As stated in the European Commission's report, the notariat and other legal professions have already been integrated into the Network by some Member States, such as:
  - a. in France where the notariat has been designated as a 'central authority' within the meaning of Article 2, paragraph 1(b) of Decision 2001/470/EC<sup>3</sup>
  - b. in the Czech Republic where the legal professions have been well integrated as members of the Network according to Article 2 paragraph 1(d). Through this creation, an 'interface' with the legal professions has been established within the national contact point.

#### **4. DETAILED CNUE PROPOSALS**

1. In practice, the notariat can contribute to the Network's activities in the following ways:
  - a. Suggestions with a view to integrating the notariat in the Network
    - i. Designate the notariat as a 'central authority' in the context of the competences of each notariat at national level in accordance with the Community instruments (e.g. 1972 Basel Convention; European Enforcement Order; Article 2 paragraph 1(b) of Decision 2001/470/EC);
    - ii. Designate the notariat as 'another legal or administrative authority' in order to participate in the Network (Article 2, paragraph 1(d) of Decision 2001/470/EC);
    - iii. Create direct access for the notariat to the Network's national contact points;

---

<sup>2</sup> The Network is composed of any other appropriate judicial or administrative authority with responsibilities for judicial cooperation in civil and commercial matters whose membership of the Network is considered to be useful by the Member State to which it belongs.

<sup>3</sup> The Conseil supérieur du notariat français is designated as a liaison body in the framework of the application of the Basel Convention of 16 May 1972 on the Establishment of a Scheme of Registration of Wills (see declaration relating to Article 3 of the abovementioned convention, deposited in the instrument of approval of 20 September 1974).

- iv. Ensure access to the CIRCA Intranet for the person responsible from the national notariat;

The notariat's participation in meetings of the Network's members;

- b. The notariat's commitment to implement the following measures:
  - i. The progressive setting up of a 'network of delegates for the Network' from national notarial organisations (interlocutors for the notariat) to begin coordinated cooperation and deal with cross-border legal questions; the beginning of a pilot project that could be extended progressively to all CNUE members;
  - ii. Add to the Network's website, for example European and national factsheets directly concerning the notariat;
  - iii. Ensure access to information on the national notarial organisations' websites in a language other than their respective national languages;
  - iv. Designate a contact person from the CNUE for cooperation with the European Commission.

## **5. CONCLUSIONS**

The CNUE confirms its intention to make a positive contribution to the construction of the European Judicial Area in civil matters. The main objective is to make procedures easier for citizens and businesses. The notariat's integration in the Network will help to achieve this objective and improve the functioning of the Network. Consequently, the CNUE welcomes the European Commission's proposal to further integrate the legal professions in this network and, more specifically, the notariat as public officials, issuers of public documents that circulate in the European Union in the same way as judgements.

### **Contact – email**

*bnp\_davitoiu@yahoo.com*