

Council of the Notariats of the European Union

General Assembly

18 March 2009

Brussels

Draft Minutes

Austria: Prd Woschnak, Mr Kaindl, Mr Matyk;
Belgium: Prd van Opstal, Prd van Hoestenbergh, Mr Tobback, Ms Van Wymeersch, Ms Frissyn;
Bulgaria: Ms Kac-Boyadjieva;
Croatia: Mr Krajcar;
Czech Republic: Prd Foukal, Ms Horakova;
Estonia: Mr Pärna;
France: Prd Reynis, Mr Renaud, Mr Voisin, Ma Léouffre;
Germany: Prd Götte, Mr Kohler;
Greece: Prd Stassinopoulos;
Hungary: Prd Tóth, Mr Parti, Ms Horváth, Ms Meszaros;
Italy: Vice-Prd Barone, Mr Pasqualis, Mr Bechnini;
Latvia: Mr Virko;
Lithuania: Mr Strackaitis, Ms Majute;
Luxembourg: Mr Molitor, Mr Gloden;
Malta: Mr Saydon;
Netherlands: Prd Kortlang, Ms Dop;
Poland: Prd Wojdylo, Ms Stepniewicz;
Portugal: Prd Soares, Mr Marques Fernandes;
Romania: Mr Marin, Ms Olaru, Mr Radoi;
Slovakia: Prd Duris, Ms Valusova, Mr Gardon;
Slovenia: Prd Ticar Bester, Mr Sanca;
Spain: Vice-Prd Bolás, Prd Ojeda Escobar, Mr Guerrero Arias, Ms Rodriguez Spiteri;
CNUE office: Ms Martin, Ms González Zulaica, Ms Krämer, Mr Casanova.

- *Arrival of participants and words of welcome from President Reynis to the first Assembly under his presidency, and particularly to the new President of the Spanish notariat, Mr Ojeda Escobar.*
 - Approval of the agenda.
 - Approval of the minutes of the General Assembly held in Brussels on 12 December 2008.

- President Reynis suggested inviting the delegation from the Swiss notariat to the Plenary General Assembly in June, in Annecy. The Swiss delegation would have the opportunity to present its application to be an observing member of the CNUE. Although it considered the issue of the Swiss notariat's potential role as observer to be delicate, the General Assembly was in favour of inviting the Swiss delegation to Annecy, and particularly to the event's festive programme.
- As the General Assembly of the ENRWA had taken place in the morning, before the CNUE General Assembly, President Reynis took the opportunity to call for the member notariats to join the ENRWA now that the status of observing member had been created and following the commitments made by the member notariats at the Lisbon General Assembly.

I – EU Topics

...

1) Authentic Act

Revision of the Brussels I Regulation

As an introduction to this point, President Reynis quoted an article published in the Washington Legal Foundation on 13 February 2009 entitled 'Efforts to expand authentic acts in Europe imperils economic freedom'. According to President Reynis, the article demonstrates the 'dubious' British policies on the subject.

He then gave the floor to the Chair of the Slovakian notariat, Mr Duris, given his role as Executive Council rapporteur on the subject. Mr Duris insisted particularly on the important elements of the revision of the Brussels I Regulation, which have been raised and studied by the CNUE's European Authentic Act working group.

President Reynis then drew attention to the summary note on the revision of the Brussels I Regulation, drawn up by the French notariat and the CNUE office before the General Assembly. In order to 'facilitate discussions', this note suggested various alternatives for the aspects raised by the working group, namely the definition of authentic act, withdrawal of the exequatur, the real estate exclusion and the concept of recognition of authentic acts. The presidency decided to submit these alternatives for discussion and perhaps adoption during the General Assembly.

President Reynis insisted on the importance of forming an opinion on the principles proposed, whilst accepting that certain subjects require further debate but that making choices now could enable guidelines to be given for the CNUE's work in the future.

Definition of authentic act – general discussion

Based on the premise that it is necessary for the forthcoming Brussels I Regulation to contain a clear definition of the authentic act, President Reynis raised the question of whether the definition should be that used in the CNUE's draft regulation of March 2008

(option 1, proposed in the note) or the definition using the exact wording in the Community Acquis (option 2, proposed in the note). The main difference lies in the fact that option 2 provides that the act must have been “*established by a public authority or other authority empowered for that purpose*”, whereas option 1 provides for the establishment of the act only by a public authority. The wording “formally drawn up or registered” was also highlighted as it does not appear in all the known definitions of the authentic act.

President Reynis drew attention to the fact that option 2 could be dangerous for the European notariat. The Portuguese notariat also stated that it was in favour of option 1, explaining that in Portugal an ‘authenticated’ document has the same probative value as an ‘authentic’ document.

The German notariat made more general observations on the draft on the recognition of authentic acts. It considered it essential to be aware of the dangers linked to this draft, whether in the context of the revision of the Brussels I Regulation or in the context of a horizontal instrument. The dangers come above all from the Bars. ‘Distinguishing’ notaries through the recognition of authentic acts would result in the lawyers calling for a comparable product of lawyers at European level. For this reason, it would not be appropriate to ‘force’ the subject of authentic acts in Europe; the CNUE should not be perceived as being at the origin of this draft.

In practice, this would mean proposing as few modifications to the Brussels I Regulation as possible and ‘burying’ the concept of mutual recognition. As a consequence, compromises that could be reached between the member notariats could only relate to the definition of the authentic act, the withdrawal of the exequatur and the rejection of the concept of the recognition of authentic acts. According to the German notariat, the CNUE’s mistake was in giving the lawyers a platform on which they can compete with the CNUE.

The French and Spanish notariats also mentioned that both the lawyers and the British do not need to be provoked in order to act. It would be more dangerous to remain inert in the current situation. In France, the lawyers have been very aggressive for 40 years, and not only because of the Medina report. According to the French notariat, notaries do not yet recognise their strengths, i.e. authentic acts, hence the importance of the concept of recognition. It should be noted that Luxemburg was also in favour of calling for recognition.

The Czech notariat also reported on a tense situation between lawyers and notaries. The Spanish notariat informed the General Assembly that Mr Medina was always at the notariat’s disposal.

The Dutch notariat shared the German notariat’s concerns, suggesting standing back.

Finally, the Austrian notariat underlined the importance of reaching a compromise. The revision of the Brussels I Regulation would provide a good opportunity.

After this more general discussion, the notariats gave their opinions on the two options proposed.

With respect to the definition of the authentic act, most of the member notariats opted for the alternative using the exact wording of the Community Acquis.

Decision

Decision in favour of option 2 concerning the definition of the authentic act, as follows:

“An authentic instrument is a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which:

- 1) relates to the signature and the content of the instrument and
- 2) has been established by a public authority or other authority empowered for that purpose.”

http://www.wlf.org/upload/2-13-09Kogan_LegalBackgrounder.pdf

**Effort to Expand ‘Authentic Acts’ in Europe Imperils Economic Freedom
(LA Kogan – WLF – Feb. 2009)**

http://www.notaries.org.uk/eu_authentic_acts/eu_authentic_acts.html

**The Creeping 'Authenticity' of Europe's Intrusive Civil Law System
(LA Kogan, ITSSD – at NotaryTalk of England and Wales – Feb. 2009)**

French 'Authentic Acts' Proposal Jeopardizes Anglo-American Free Enterprise

http://www.breitbart.com/article.php?id=prnw.20090213.DC69966&show_article=1&catnum=3