

# **BNotK** international



ENGLISH VERSION

**1/2021**

**02. LATEST NEWS**

**Notaries not included in EU Restrictiveness Indicator:** In recent months, the European Commission tried to include notaries – despite their function as holders of a public office – in the “EU Restrictiveness Indicator for Professional Services”. This could be prevented thanks to convincing arguments and strong alliances.

**03. WORKSHOP REPORT EUROPE**

**The CNUE IT Action Plan and the new “EUdoc”:** The Bundesnotarkammer and the Spanish Chamber of notaries (Consejo General del Notariado) are jointly developing a platform allowing notaries in different States to exchange notarial acts quickly and securely in the future.

**05. THE NOTARIAT IN ... LITHUANIA**

Lithuania was the first Baltic State to become a UINL member after the times of upheaval in the 1990s. German notaries were involved in the establishment of the Latin notariat in Lithuania.

**06. NOTARIES WORLDWIDE**

**UINL:** We will start our series dedicated to our work within different international organisations with the presentation of the UINL, which unites 89 Latin notariats from all over the world under its umbrella.

**07. A CUP OF COFFEE WITH ... RICHARD BOCK**

For 10 years now, Mr. Richard Bock has been supporting the BNotK at international level on an honorary basis, in particular in numerous transition countries in Europe and Central Asia. Today, he is BNotK’s Chief Representative for International Affairs and has a lot to share.

**08. AGENDA**

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# LATEST NEWS

## NOTARIES NOT INCLUDED IN EU RESTRICTIVENESS INDICATOR

The realisation of the internal market is one of the primary objectives of the European Union. The internal market is based on the four fundamental freedoms, with the freedom of establishment and the freedom to provide services being the most important ones for the notariat.

### Notaries excluded from numerous EU Directives

Both fundamental freedoms have in the meanwhile been concretised by EU secondary legislation. Not only the Services Directive (2006), but also the Professional Qualifications Directive (2013) and the Proportionality Directive (2018) are of particular importance for the notariat. These Directives specify under which conditions Member States may provide regulations for the liberal professions.

Due to their function as holders of a public office, notaries are excluded from the scope of application of these Directives, and rightly so. The EU legislator hereby recognises that a well-functioning notariat needs a special degree of regulation to be determined by the Member States. The fact that an office-holder appointed in one country may not validly authenticate documents in another is thus in line with European Union law. Most recently, the prominent role notaries play in the field of preventive administration of justice was explicitly recognised by the CJEU in the Piringer case in 2017.

However, the past has shown that exclusions of notaries from the scope of application of EU secondary legislation are not self-evident for the European Commission. There have been,

indeed, repeated attempts to deregulate the notariat.

A renewed push in this direction was successfully averted in Spring 2021.

### New EU Restrictiveness Indicator

But first things first: The European Commission published the "Restrictiveness Indicator for Regulated Professions" for the first time in 2017. It is a political instrument aiming to show how difficult cross-border access to some professions is due to national regulations. However, notaries were not included in this first edition of the indicator, covering solely tax advisors, architects and auditors, among others.

## "A well-functioning notariat needs a special degree of regulation to be determined by the Member States."

However, at the end of 2020, the Directorate-General Internal Market announced plans to include notaries in the new edition of the indicator planned for 2021. The question as to whether notaries should be included in a restrictiveness indicator of the Commission or not may seem meaningless at first glance; however, this could not be further from the truth. In the context of a future revision of one of the aforementioned directives on professional regulation, the Commission could have demonstrated how high the level of regulation of the notarial profession is and thus signalled that there is a strong need for action.

Therefore, it was important to find good arguments against this initiative of the Commission, which was publicly announced in March 2021 by means of a roadmap.

### BNotK's position was convincing

Fortunately, BNotK could count on the firm support from the Ministry of Justice and Consumer Protection. As early as February 2021, the Federal Minister of Justice, Christine Lambrecht, sent a letter to the competent Commissioner, Thierry Breton, in which she clearly pointed out the methodological weaknesses of measuring the degree of regulation of public office-holders.

Following the German ministerial letter, the French Minister of Justice, Eric Dupond-Moretti, and the Italian EU Commissioner, Paolo Gentiloni, among others, approached Commissioner Breton to prevent the inclusion of notaries in the indicator. The European notariat also received significant support from prominent members of the European Parliament.

Even though the odds did not seem to be in our favour at the beginning, the result was a remarkable success. According to an official response of Commissioner Breton to the CNUE, notaries will finally not be included in the restrictiveness indicator. Convincing argumentation, the perseverance of all parties involved as well as the strong cohesion within the CNUE made this achievement possible. ✓

### >> About the author

*Dr. Peter Stelmaszczyk is a candidate notary in the district of the Rhenish Chamber of notaries and heads the Brussels Office of the Bundesnotarkammer as Director for International Affairs.*



# WORKSHOP REPORT EUROPE



*Prof. Dr. Jens Bormann, LL.M. (Harvard), María Jesús Mazo Venero, Dr. Nadja Danninger, Dr. Sebastian Löffler, Dr. Peter Stelmaszczyk*



## THE CNUE IT ACTION PLAN AND THE NEW "EUDOC"

With the project "EUdoc", the Bundesnotarkammer and the Consejo General del Notariado (CGN), represented by their presidents Prof. Dr. Jens Bormann and José Ángel Martínez Sanchiz, are making another huge step forward towards the digitalisation of the European notariat. The project is part of CNUE's new "IT Action Plan" and does not only include EUdoc, but also a register allowing to verify the validity of notarial powers of attorney.

### Two strong digital partners

Two Chambers of notaries that have

been developing digital projects for many years have joined forces to create the project "EUdoc":

BNotK keeps two major electronic registers, has its own IT-enterprise for electronic legal transactions and is developing the Electronic Archive of Authentic Acts as well as a platform for the online formation of private limited liability companies, to name just a few examples.

CGN operates the "Órgano Centralizado de Prevención" (OCP), a central database solution that has been providing considerable support to Spanish notaries in the fight against money laundering since 2005 and is constantly growing.

### Purely national solutions do not exploit their full potential

Accelerated by the Corona crisis and numerous funding programmes, we are currently experiencing a strong digitalisation boost that has encouraged many notariats in Europe to develop digital solutions in diverse notarial areas. There is, indeed, a whole panoply of interesting IT projects available at national level! However, BNotK and CGN have recognised that non-interoperable national tools cannot exploit the full potential that digital solutions have to offer for the European notariat.



Mario Abascal, Director-General of ANCERT, and Prof. Dr. Jens Bormann, LL.M. (Harvard)

### Three functions in one application

This is why BNotK and CGN have developed the platform “EUdoc”, within the framework of the CNUE IT Action Plan in the past months. ANCERT, the IT department of the Spanish notariat, has assumed the technical leadership of the project. The platform combines three functions that are of particular importance for the good functioning of cross-border electronic legal transactions:

- >> Secure electronic transmission: EUdoc allows for the easy and secure transmission of documents via VPN, comparable to a secure e-mail inbox.
- >> Verification of the authenticity of the qualified electronic signature: EUdoc allows for the verification of the signature of the communication partner, despite the different technical signature standards used in Europe.
- >> Verification of the notarial status: Furthermore, it can be reliably verified whether the communication partner is a notary. In the case of German signatures for instance, the notarial status can be checked via the notarial attribute contained in the electronic signature.

In the medium term, the project could be expanded to include a feature for an electronic apostille with functions equivalent to those of the paperbound apostille.

In a first test phase, the operability of the new platform will be tested. Further member notariats will probably be able to join the project in the second half of the year or, depending on the member notariat’s IT infrastructure, even within a few weeks. The project is being implemented in close cooperation with the CNUE, which already operates several cross-border digital tools.

This project has an enormous potential and also the European Commission will be pleased to see the notariat getting so strongly involved in the digital sphere. We will keep you updated! 🚀

### >> About the authors

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# THE NOTARIAT IN ...



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## LITHUANIA

After the restoration of independence in Lithuania and the transition to a free market economy, a reform was necessary to create an independent and modern notariat.

### A modern notariat for an independent country

From 1990 onwards, the main provisions and principles of the notarial reform of the Republic of Lithuania, which mostly focused on preventive administration of justice, were developed in cooperation with Mr. Hanns Dieter Lohnes, former notary in Mainz and vice president of the Chamber of notaries of Koblenz, and Mr. Hans-Joachim Massig, President of the Chamber of notaries of Koblenz. Finally, on 1 December 1992, the Law on the Notarial Profession entered into force. Due to the successful implementation of the Latin notariat, the Lithuanian notariat was the first notariat in the Baltic States to join the International Union of Notaries (UINL) on 11 February 1994.

### Organisation of the notarial profession

Today, 236 notaries (84 % of whom are women and 16 % are men) are per-

forming a professional notarial activity in 208 notary offices. Notaries are appointed after a public competition and dismissed by the Minister of Justice. The Minister of Justice also determines the number of notaries, their seat and territory, taking into account the citizens' needs for notarial services. Notarised documents have probative force. The reliability of a notarial document is ensured by the principles of independence, objectivity and confidentiality of notarial acts.

### Competence of notaries

Lithuanian notaries are entrusted with the main competences and functions of the Latin notariat in family law, succession law, transfer and pledge of real estate, purchase and sale of company shares, etc. In contrast to German notaries, they also have competences regarding the organisation of real estate auctions. Currently, an initiative to delegate the functions of divorce by mutual consent of the spouses to notaries is being considered.

The digitalisation of the Lithuanian notariat has been going on for several years now: Notaries have successfully joined the eNotaras system developed in 2017, which has interfaces with the main state-run registers. Moreover,

Lithuanian citizens have the opportunity to access the system via the e-Government gateway. As of 1 July 2021, following a recent legislative amendment, notaries will be able to perform all notarial acts remotely (except for certifications of wills and the fact that a natural person is alive and residing in a certain area), using remote personal identification procedures and secure information technologies.

### Lithuanian Chamber of notaries

The Lithuanian Chamber of notaries is the self-governing body of the notariat, focusing among other things on the coordination and unification of notarial practice, professional development, the representation of notaries' interests and the information of the public. ✓

>> *We thank Mr. Marius Stračkaitis, President of the Lithuanian Chamber of notaries, for his contribution.*





# NOTARIES WORLDWIDE

## UINL

BNotK is actively involved in numerous working groups, commissions and projects of different international organisations. In this section, we would like to take a closer look at some of them. Let's start with UINL, the International Union of Notaries.

UINL was founded in Argentina in 1948 in order to coordinate and further develop the function of the notariat and the activities of notaries at global scale. Today, UINL has 89 member notariats on all continents (except for Australia) and the number is growing. The UINL member notariats meet regularly in commissions and working groups to discuss current developments in the ambit of the notariat and elaborate common positions.

### The Latin notariat

Even though the notariats are organised differently in the various States, all member notariats follow the principles of the "Latin notariat". Accordingly, notaries are lawyers who have been endowed with public authority to draw up authentic acts ("actes authentiques"), which have a special probative force and enforceability. In the framework of their duties, notaries advise the parties impartially and independently. The notarial activity guarantees legal certainty and helps to prevent legal disputes. It is thus an essential instrument of preventive administration of justice.

The concept of the Latin notary is fundamentally different from the "no-

tary public" in common law States, who usually perform only formal tasks such as signature certifications and often are a legal layperson.

### Organisation of UINL

Not. Dra. Cristina Noemí Armella from Argentina is the acting President of UINL in the legislature 2020-2022. She heads UINL together with the Steering Committee, the governing body of UINL. Furthermore, UINL has a General Meeting, in which all member notariats are represented, as well as currently ten commissions and seven working groups. The German notariat is particularly active in the European Affairs



Prof. Dr. Jens Bormann

Dr. Peter Stelmaszczyk

BNotK's international coordinators for the UINL Congress

Commission (CAE), the International Notarial Cooperation Commission (CCNI), the Themes and Congresses Commission (CTC) as well as in the working groups "Partnership with International Organisations", "New technologies" and "Authentic act". Every three years, the International Congress of Notaries is organised, with the next Congress taking place in Mexico in 2022. BNotK will be responsible, under the leadership of Prof. Dr. Jens

Bormann and Dr. Peter Stelmaszczyk, for the conference topic "The exercise of the notarial public function and the recovery of national economies in the post-pandemic period."

### German involvement

Currently, the German notariat is particularly involved in the development of guidelines for remote authentications. Driven by the COVID-19 pandemic, many countries launched projects in this field last year, varying strongly with regard to their scale and legal certainty. The guidelines are to define common standards for the member notariats. BNotK works to ensure that the advantages of new technologies can be used and easily accessible solutions developed for the citizens while guaranteeing the highest possible degree of legal certainty, accuracy and reliability. From BNotK's point of view, these objectives have been satisfactorily implemented in the final draft of the guidelines. ✓

### >> About the authors

*Veronika Kormann, LL.M. is a fully qualified lawyer and works for the Bundesnotarkammer in Brussels as a legal adviser for International Affairs.*

*Dr. Andreas Bernert is a candidate notary in the district of the Bavarian Chamber of notaries and works for the Bundesnotarkammer in Brussels as a legal adviser for International Affairs.*



**“We are cooperating with more than 20 countries on a bilateral basis.”**

For a cup of coffee with Richard Bock, Judicial Counsel and Notary a. D. (non-practising), Chief Representative of the Bundesnotarkammer for International Affairs

*Interview: Veronika Kormann*

*Photo: Christina Czybik*

*When did you become involved in BNotK's international work and how did it happen?*

Until 2011, the BNotK was not involved internationally except within the CNUE and the UINL. Via my regional Chamber of notaries, I had contacts with the Lithuanian and Bulgarian Chambers of notaries and was listed as a so-called expert for the implementation of notarial systems in transition countries at the IRZ (Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit; German Foundation for International Legal Cooperation) and the GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit; German Corporation for International Cooperation). With this experience and the approval of the then president, I was mandated to represent BNotK abroad.

*What are the priorities of BNotK's international activities?*

Step by step, several committed colleagues joined our international work. With the active support from our offices in Berlin and Brussels, we are cooperating with more than 20 countries on a bilateral basis, partly in close cooperation with the IRZ and the GIZ. The regional focus is on the Western Balkans and the former CIS states. Our tasks include exchanging information on professional policy matters, commenting on legislative proposals, issuing statements on professional and substantive law issues and organising training.

Moreover, some of us are additionally involved in several UINL bodies.

*How has the Latin notariat evolved globally in recent years?*

In almost all transition countries, the continental civil law was maintained and further developed. Attempts were made to adapt the existing notarial systems to the changing circumstances. However, the situation is still somewhat difficult when it comes to the assignment of competences, the conditions of appointment and the provision of the entire country with notarial services. This does not come as a surprise given the great number of other players on the legal services markets and the partly fragile public institutions of these coun-

tries. However, in general, the systems function satisfactorily. Despite the ongoing efforts of Anglo-American jurisdictions, most of the States refrained from introducing common law structures and, hence, from marginalising the notariat.

*In your opinion, which global challenges will the notariat face in the coming years?*

The challenges are already visible and mainly a result of the digitalisation of our professional environments. New technologies are being used with diverging political objectives. Therefore, in many countries, a general tendency to standardise legal transactions and growing doubts as to whether secure legal procedures and trustworthy public institutions are necessary can be observed. Both aspects concern the core area of notarial activity. It is today one of our key missions to point out these developments and try to find appropriate solutions together with our partners. ✓

#### >> **About the interviewee**

*Richard Bock, Judicial Counsel and Notary a.D. (non-practising), is the Chief Representative of the Bundesnotarkammer for International Affairs. He represents the Bundesnotarkammer at numerous international events at global level.*



# AGENDA

The following overview presents a small selection of important recent and future events. It is subject to changes on short notice.



Photo: Nathan Dumlao | unsplash.com

**TASHKENT LAW SPRING**  
TASHKENT | UZBEKISTAN  
22 – 23 APRIL 2021

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**CONGRESS OF GERMAN CIVIL LAW NOTARIES**  
HAMBURG | GERMANY  
27 – 28 MAY 2021

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**LE NOTAIRE À DISTANCE DES PARTIES**  
QUÉBEC | CANADA  
23 APRIL 2021

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**CNUE GENERAL ASSEMBLY**  
VIRTUAL FORMAT  
04 JUNE 2021

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**VISIT OF ANCERT BY PRESIDENT BORMANN**  
BARCELONA | SPAIN  
19 MAY 2021

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**54<sup>TH</sup> SESSION OF THE UNCITRAL COMMISSION**  
VIENNA | AUSTRIA  
28 JUNE – 16 JULY 2021

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**INTERNATIONAL LEGAL FORUM**  
ST. PETERSBURG | RUSSIA  
18 – 22 MAY 2021

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**UINL GENERAL COUNCIL MEETING**  
VIRTUAL FORMAT  
02 JULY 2021

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# LEGAL NOTICE



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