



Press Release

Real Estate Transactions: ZERP report no basis for political discussion

Brussels, 29 January 2008

The Council of the Notariats of the European Union has taken note of the report by the University of Bremen's *Zentrum für Europäische Rechtspolitik* (ZERP) commissioned by the European Commission on the costs and methods used in real estate transactions in the European Union. It finds that the report lacks the necessary technical accuracy and scientific rigour. Contrary to its claims, the report does not manage to demonstrate the link between the level of regulation and the cost of real estate transactions. Worse still, faced with the example of Germany, the authors recognise that although the level of regulation is high, costs for consumers are low compared to the deregulated systems in England and the Netherlands that the study considers to be exemplary. The CNUE regrets that the opportunity to launch a real debate on the real estate market has been missed. This leads the CNUE to insist that this report cannot serve as a useful basis for political discussion.

The ZERP study apparently seeks to improve the functioning of the market of services provided by professionals in real estate transfers, reducing prices without affecting the quality of the service. The notarial service is specifically targeted in the study, which recommends its withdrawal or deregulation. Curiously, the real estate agents' fees – a little-regulated profession – which, according to the study represent 70% of professional costs in real estate transactions, are not the subject of any specific attention.

A theoretical and empirical analysis of the real estate transactions market shows that it is not possible to establish a causality link between the degree of regulation and the level of costs. A study conducted by Professor Murray of the University of Harvard, published last October, demonstrates the absurdity of this premise and concludes that there is *"no evidence that deregulation of conveyancing services leads to lower cost or higher efficiency among the countries under consideration. The contrary appears to be true."* Prof. Murray's study is available at the following address:

<http://www.cnue.eu/fr/000/actualites/murray-report-final.pdf>.

The CNUE recalls that the notariat has to adhere to considerable obligations, including a duty to provide impartial advice, the verification of ownership, respect of environmental and urban planning rules, the fight against money laundering, etc. In mid sub-prime crisis, the CNUE rejects the idea of passing on to consumers the considerable risk of industrialising or standardising the multiple and complex steps involved. The legal systems with a notariat have withstood the test of time. Civil law notaries represent a real regulatory authority. Thanks to authentic instruments, they provide incontestable documents and thus the legal certainty that is a major asset for the confidence and therefore the fluidity of economic relations.

The reason the authors arrive at mistaken conclusions lies in the use of dubious methodology. In its assessment of the quality of services offered, the ZERP report is not based on real data but on the results of a survey of an unrepresentative group. For all 21 countries concerned, the report is founded on 681



replies, which is insufficient. And these replies come mainly from people likely to have considerable conflicts of interests. In at least one country, it can be noted that more than two thirds of the responses to the questionnaires come from real estate agents themselves (*see analytical note*). On a legal level, the study is based on an unfounded hypothesis. Indeed, as in many Member States civil law notaries function as delegates of public authority, they are excluded from Community principles in accordance with Article 45 EC.

Finally, confronted with the tone used in the report, it would be legitimate to wonder whether the authors of the ZERP study have not demonstrated a certain dogmatism. Civil law notaries work closely with national authorities, and also with the European Commission, to improve the law and the quality of services offered to citizens. The e-justice initiative shows that civil law notaries are fully committed to new technologies, a factor in growth and employment, as underlined in the Lisbon strategy. This proves that a 'traditional' system can also adapt to the requirements of the times.

The CNUE in brief:

The Council of the Notariats of the European Union (CNUE) is an official body representing the notarial profession in dealings with European institutions. Speaking for the profession, it expresses the joint decisions of its members to the institutions of the European Union.

As of 1 January 2007, the CNUE includes 21 notarial organisations in the European Union: Austria, Belgium, Bulgaria, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain. Croatia has observing member status.

The European notariats are represented in the CNUE by the presidents of the national notariats. The CNUE operates under the authority of a President, the CNUE's spokesperson, who has tenure for one year. The CNUE, based in Brussels, is an ASBL (non-profit organisation) under Belgian law.

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