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Response from the European notariat to the Green Paper on the revision of the Brussels I Regulation

In the context of the CNUE's work, the free movement of acts has always been the subject of discussions by the member notariats. This movement has also been said to be a key principle in the policies of the Notaries of Europe. The authentic act is and remains a strength and a major asset of the notarial profession in the European Union. It is also a tool that can constitute a vector to strengthen the tangible nature for European citizens of the construction of the area of justice, freedom and security foreseen in the EC Treaties. The revision of the Brussels I Regulation provides an opportunity to reaffirm these principles and to facilitate the movement of authentic acts within the EU.

The CNUE is committed to making life easier for citizens and removing remaining obstacles to the free movement of acts, such as the exequatur (*see response to question 1*) and the apostille.

Question 1

The European notariat is convinced of the need to accelerate and simplify the enforcement procedure for authentic acts, as foreseen in Article 57 of the Brussels I Regulation, so that European citizens can exercise their rights more easily abroad.

To this end, withdrawal of the exequatur could be envisaged, on condition that it is accompanied by certain 'safeguards'.

1. Certification system

A certification system exists in Regulation (EC) No 44/2001 and Regulation (EC) No 805/2004. This system has already been proved to work well and it should be maintained. Thus, an act that has been certified as an authentic act by the official authority of origin should be enforced as if it had been issued in the Member State in which the enforcement was requested.

Such a procedure would make it possible to remove the need for the consent of the judicial authorities of a second Member State with the resulting delays and costs. It would thus be up to the official authority that issued the authentic act to certify that it is indeed an 'authentic act' and that it is enforceable in the Member State of origin.

The official authority of the Member State of origin should therefore check that the act in question is an 'authentic act' as defined by the Community Acquis, as resulting from the Unibank¹ case law and EC legislation (Regulation 4/2009, Regulation 805/2004, etc.), as follows:

¹ ECJ Judgement of 17 June 1999, Case C-260/97.



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

- a) relates to the signature and the content of the instrument; and
- b) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates;”

Thus, the authority issuing the act should certify:

- a) that it conducted a legality check when the act was issued; and
- b) that it benefits from a delegation by the State of a fraction of its own authority.

The CNUE insists that this is a necessary condition in order for an act to be considered as being essential.

2. Public order reservation

The parties concerned should be able to benefit from the possibility of testifying to any ‘manifest disrespect of the public order’ before the judicial bodies of the country of destination.

Question 8²

The CNUE is committed to making life easier for citizens and removing remaining obstacles to the free movement of acts.

Following the example of judgements, foreign authentic acts must be accepted in another Member State in order to improve the certainty of legal transactions for the benefit of citizens in Europe. In the light of the practical importance of authentic acts in citizens’ lives, it is indeed necessary to recognise in one Member State situations constituted and recorded in another Member State by authentic act, in order to guarantee the continuity of legal situations.

The Brussels I Regulation should guarantee the free movement of authentic acts so that authentic acts from another country in the European Union have the same probative value (with respect to the content of the act) as that with which domestic authentic acts are invested, in addition to the presumption of authenticity.

However, the authentic act should not be recognised in the Member State of destination:

- a) in case of serious or justified doubt regarding its authenticity, and
- b) in case of manifest disrespect of the public order of the Member State of destination.

² "In accordance with Article 15.1.8 of the CNUE Statutes, the German, Austrian, Hungarian and Slovenian notariats dissociated themselves from the resolution adopted by the Assembly by a majority of votes cast and asked to insert this reservation in the text of the resolution. These notariats justified this reservation by the fact that the essential objective of the revision of the Brussels I Regulation should withdraw the exequatur procedure and pursue discussions in the context of the publication of the Commission’s Green Paper on the recognition of authentic acts.”



Moreover, authentic acts cannot have greater effects in the Member State of destination than they would have in the Member State of origin. Likewise, a foreign authentic act could not have greater effects than a domestic authentic act.

Finally, the CNUE considers it necessary to exclude or limit the movement of acts for everything affecting the holding and functioning of land registers, which necessarily require the involvement of a notary or other competent authority from the country in which the immovable property is situated.

*Council of the Notariats of the European Union,
Brussels, 10 July 2009*