

**KOBER-SMITH & ASSOCIATES**  
NOTARY PUBLIC

6 CARLOS PLACE LONDON W1K 3AP  
TELEPHONE/FAX: 020 7499 2605  
E-MAIL: notary@notarypublicinlondon.com  
WEBSITE: www.notarypublicinlondon.com

Mr Neil McMillian  
Director, Europe  
DTI  
1 Victoria Street  
London SW1H 0ET

10th March 2006

Dear Mr McMillian,

**Notaries    Illegal barriers to work in Europe**

Thank you for your letter of 27<sup>th</sup> February and I am grateful that Celia Kissoon is using the SOLVIT procedure. This will at least get a reply from the French authorities, who have decided, it seems, simply to ignore my two letters to them asking to work there.

However, I am prepared to bet my house that the French will not agree to let me work in France, and I think SOLVIT will prove an inadequate forum. As Celia has informed me, if the French claim the activity is covered by Article 45, the matter will close, with a complaint or note to the Commission.

Since the Commission has been investigating the case already for 9 years, it is unlikely to do anything. Thus, SOLVIT will not really achieve anything.

The problem for the French authorities is that they believe that, if the monopoly ends, they will have to compensate the French notaries, who pay (in most cases) a lot of money to practise as notaries. (On entry into office, the fee paid to the departing notary is huge, and the French think this will all have to be paid back, by the State).

The French state compensated the *commissaires-priseurs* - a case your Action Europe team won some time back. These were auctioneers in Paris (who had a monopoly of such activity) and Christies and Sothebys wanted to work there. Curiously, one of the defences used was that the minutes of a French auctioneer are *actes authentiques*, just like those of notaries.

That case cost the French state a lot of money, and they do not want to repeat the experience.

That said, I am really not worried about what this might cost France. There are those in France who argue that the notaries would have to mitigate their loss in any event, so that there would not really be a damages bill anyway. Of course, since the

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exclusion of foreign notaries is illegal, and the French notaires claim to be great lawyers, they should have understood the likelihood that the monopoly would end before they took up their job!

Of course, the French are not the only ones who can claim damages, and I reserve my rights to claim them, not only from France, but also from the U.K., for failure to defend my right to work in Europe.

These will be considerable, since the work of a notaire is basically one of the best paid in France, with average earnings being 4 times that of avocats.

What next – after the refusal from France?

We come back, I am afraid, to the question of the U.K. government supporting me and those of us who want to work abroad. Warm words will do nothing, we have here a group of notaries who are desperate to maintain their absolute control of the market.

The desperation is so strong that they are prepared to even refuse to supply evidence to the Commission, and wilfully misinterpret French law. The Cour de Cassation case I quoted, showing that notaries are only private lawyers, has been confirmed since, and there is really no argument that French notaries fall within the exemption of Article 45, since that requires a direct exercise of state power by the person seeking the exemption. The French Ministry of Justice has always known of this case, but “forgot” to mention it to the Commission in its investigation into notaries.

If additional points were needed, here they are:

1. Notaries have only an indirect delegation of one power, the power to authenticate. They have no direct power.
2. They do not have a power of decision, a necessary condition to exercise official authority. (This point, again, has been made by the French Cour de Cassation, recently).
3. Lastly, they are also keen to claim they are independent professionals, something incompatible with exercising official authority.

**I am proposing that the UK government sue, either directly against France, or indirectly by funding a trade association run by interested notaries, who will litigate against France for the condition of nationality and against Spain for non-implementation of the Qualifications Directive. (Spain has dropped the nationality condition, but insists that Article 45 still applies, a logical nonsense).**

**As mentioned above, the current situation is one in which French notaries claim the exemption of Article 45, but are unprepared and completely unwilling to set out these arguments in print. I have talked to a number of French lawyers, and not one of them thinks there is any basis for this claim. Since it is clear from EU law that it is not up to the state to define what official authority is (as this is a Community concept), it seems to me that unless and until the French authorities have a decided case from the ECJ definitely proving that French notaries are exempt, they have to drop their nationality bar.**

As it is, they want the reverse situation to apply, and for me to wait forever, fighting my way through every French court on my own, and then through the ECJ, proving that they do not have this exemption. I cannot see how anyone can see this as justified, particularly when they have no intention of revealing their arguments (if any).

Another possibility, which would certainly draw out the French, is to allow me to work on UK soil in France, say in an office of the British consulate in Paris. There, of course, I would technically not be in France, and so capable of opening my office without being arrested. I make the suggestion seriously, since I have already waited many years to work in France, and do not think it fair that I be made to wait any longer. I am not sure what the situation would be with a UK registered boat on the Seine, would that too be UK soil for this purpose?

Where will the U.K. government stand? Will it support us, or effectively leave us to fight all the battle ourselves?

#### Beyond the end of the nationality requirement

I have no doubt that the nationality requirement will eventually be abolished, though the key point is when. As Keynes noted, in the long run we are all dead, and I intend to be working in France well before that date.

However, the example of Spain, and the interpretation of the Qualifications Directive, indicate that ending the nationality requirement will not be the end of the matter. A second case is needed against Spain to ensure the Qualifications Directive is applied to notaries, not denied or ignored.

As you may know, that Directive provided, in preamble 41, that the Directive was without prejudice to the activities protected by Articles 39(4) and 45 of the EU Treaty, particularly with regard to notaries. Charlie McCreevy thinks the Directive therefore applies to notaries, as do I, since I consider that the “without prejudice” formula simply means if notaries can prove they are exempt from the provisions of the Treaty, they will be exempt. However, until they can do so, they are not.

I have had specific rejections from Germany and Spain to my application to work there. Both countries deny the Qualifications Directive applies to notaries. Spain is particularly interesting because it dropped the nationality condition and hence any EU national can, in theory, work in Spain.

However, Spain denies that the Directive applies, since it claims that notaries must be outside the field of application of the Directive since they exercise official authority.

Spain has also confirmed that the only way you can do any kind of notarial act in Spain is as a Spanish notary and that therefore you must pass every exam set for Spanish notaries, with no allowance being made either for experience in doing Spanish work, or notarial experience or study at all.

Such an attitude is completely against all the case law on this question of recognition of qualifications. That case law, as you know, provides that credit must be given for

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all the knowledge and experience the candidate has, and that must be weighed against the knowledge that is actually needed to do the work.

Additionally, the Spanish even to recognise our right to work in Spain as English and international notaries. This is refused point blank, even if we simply went there for one day a year to give advice. As you can see, this will fail any test of proportionality

#### Legal nonsense

The curious point with Spain is that, even after having dropped the nationality condition, it insists that Article 45 applies. Again, a few but telling points can be made:

1. The case law of the ECJ clearly states that the defence under Article 45 can only be used if it is essential that a national do the job.
2. Since Spain has now said that it does not matter whether one of its own nationals do the job, the Article 45 defence is logically impossible
3. ECJ cases show that this defence requires that the general interests of the State itself be at stake. It is, I submit, impossible to see this is the case with regard to the sale of my bungalow in the suburbs of Madrid, or my donation of money in my will to Battersea Cats Home (typical notarial activities).
4. The Spanish authorities are clearly not keen to enter into any discussions, and their arguments are decidedly weak, though drafted for them by notaries.
5. Spanish nationals working here and qualified as English notaries, notably Mr Manuel Martin, Mr Esteban Pinto, and Mr Valcarcel, have been doing Spanish conveyancing from the UK for many years. This has been done well, and I have a book from a Spanish land registrar which states that there is no problem with this, in the opinion of the author. It is clear that, in practice, English notaries can do the work, which in Spain is in practice usually done by clerks, not the notaries themselves.

I attach the correspondence I have had with Spain, and translations of it into English. I ask that Spain also be entered into the SOLVIT procedure, if it is worth doing so, and that you take more effective action to remove this barrier to our working abroad.

It is quite peculiar that there is such a deafening silence with regard to notaries. They are blatantly denying the freedom of movement guaranteed by the EU Treaties, and without even the decency of presenting an argued case. This has been going on for 50 years, and the assembled might of the Commission, the Parliament and the U.K.'s own representatives stands to one side, doing nothing whatever about it.

That silence is ending now, and I have to say that I will not rest until I get definite written support and action from the U.K. government, or a refusal to act. If a refusal, I think the newspapers will have a field day, since it is absurd that the U.K. faithfully complies with every jot and tittle of EU law, but other countries not only do not comply, for 50 years, but refuse even to explain themselves. Even the bright 10 year old can see that there are double standards here, and that they are working against us.

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I suggest that the continental notaries' spurious evasion of EU law will come to an end. **The question is, will the UK be standing up for its own citizens, and opening up enormous export earnings, by taking up this case, and be a leader in this process? Or will it, by silence, delay, and leaving us to sink or swim, be complicit with this fundamental, and I have to say outrageous, flouting of the key principles of EU law, without debate, discussion or indeed anything?**

Please let me know who is best placed to speak for your department to the press on this issue.

I appreciate that opening this issue will not be popular and will lead to strong opposition to the UK from the EU governments determined to pacify their notaries. But there are no half measures. Either we win, or we lose, and at present we have lost.

I am asking you to make sure that we move this out of the arena of skirmishing and unanswered letters to the only arena which will count, the ECJ.

Yours sincerely,

Mark Kober-Smith

Enclosures

1. Application to work in Spain – Spanish letter and English translation
2. Refusal by Spain
3. Further letter from me asking for clarification and English translation
4. Refusal from Spain and translation

1. Application to work in Spain – 21<sup>st</sup> December 2005 – Spanish version

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TELEPHONE: 020 7499 2605 FAX: 020 7907 9939  
E-MAIL: notary@notarypublicinlondon.com  
WEBSITE: www.notarypublicinlondon.com

**A la atención del Excmo. Sr. Ministro de Justicia**

Principal: Mark Kober-Smith

Registro General del Ministerio de Justicia  
San Bernardo, 45  
28015 Madrid  
ESPAÑA

21 diciembre 2005

**DON MARK KOBER-SMITH**, Británico, con Pasaporte Británico número 300158854 con despacho profesional en el número 6 Carlos Place, Londres W1K 3AP, Inglaterra con teléfono 00-44-20-7499 2605; Fax: 00 34 20 7907 9939 y correo electrónico: notary@notarypublicinlondon.com

**SOLICITA** el reconocimiento de su Facultad de Notario Público Inglés y Solicitor (Abogado) Inglés para ejercer como tal en Madrid, España a partir de Febrero del año 2006 y con relación a asuntos notariales y legales ingleses e internacionales. No deseo trabajar ni dar consejo en o de Derecho Español. También deseo registrar mi firma y sello de Notario con la autoridad competente con el fin de obtener la legalización con la Apostille con los clientes que lo necesiten. Le agradecería informarme si necesito demostrar u obtener una cobertura de seguros para dichos efectos. Gracias.

En Londres, Inglaterra, 21 de Diciembre 2005

Firmado:

1. Application to work – English translation

Dear Sirs,

I am a qualified English solicitor (practising since 1990) and also a qualified English Notary Public (practising since 1998). I want to work in Spain as an English and international notary, authenticating documents for clients. I do not wish to give advice on Spanish law. I will also wish to register my signature and seal with the relevant authority, so that I can get an apostille for those clients who need this.

I would be grateful if you could let me know your views on the issue and what requirements (if any) you may have for my insurance cover.

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Yours sincerely,  
Mark Kober-Smith

2. First Reply from Spain – 25<sup>th</sup> January 2006 - Spanish version

Please see photocopy attached

2. First Reply from Spain – 25<sup>th</sup> January 2006 – translation into English

In reply to your letter applying for your English Public Notary qualification being recognised, in order to practise as such in Spain, I inform you that:

As you may know, the Eighteenth Additional Disposition to Act 24/2001, dated 27<sup>th</sup> December, on Fiscal, Administrative and Social Measures, amends to an extent the Notariat Act, dated 28<sup>th</sup> May 1862, regarding applicants' nationality, which is no longer an obstacle to become a Notary in Spain, provided that such nationality is one of a Member State of the European Union. Section 10 of the aforesaid Act is amended. In this sense, Spain is a pioneer in this matter, in comparison to other countries.

Section 10.

“Those who aim to pass the competitive tests to become a Notary must meet, by the date set as deadline for the submission of applications, the following requirements:

1. Being Spanish or a national of any member state of the European Union.
2. Being of full age.
3. Not being in any of the circumstances which disable or disqualify from being a Notary.
4. Hold a Ph.D. or a B.A. in Law, or having completed the studies leading to that degree. If the degree has been issued by a Member State of the European Union, the degree recognition or validation certificate must be produced, in compliance with Directive 89/48, dated 21<sup>st</sup> December 1988, Royal Decree 1665/1991, dated 24<sup>th</sup> October and other transposal and development rules.”

Pursuant to the above transcribed text, you can be recognised as a Notary in Spain, provided that you meet the requirements established by Spanish Legislation, which are, among others, passing the selection tests, regulated by the Spanish State, to qualify as a Notary in Spain, consisting of a number of both oral and written tests, as described in the Spanish Notariat Rules in force.

In your case, since you are Spanish, there is not any problem, there would not be even if you were not, since, as we have just said, other Member States of the European Union are accepted.

In order to certify that you hold a Ph.D. or a B.A. in Law, or that you have completed the studies leading to that degree, the aforesaid Spanish rule lays down the possibility

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of having a degree equivalent to our B.A. in Law recognised or validated in pursuant to Directive 2005/36/EC passed by the Parliament and the Council on professional qualifications recognition.

Under no circumstances, the Directive applies or may apply with regard to notarial profession. In this connection, preamble 41 of the said Directive states:

“This Directive does not foresee the application of paragraph 4 section 39 nor of section 45 of the Treaty regarding specifically notaries.”

We must indicate that the notarial profession does not fall within the scope of this Directive because, since the notarial profession is included in section 45 of the Treaty, and therefore notaries have no freedom of movement, a Directive that involves such freedom shall not apply to them. Furthermore, there are additional reasons of importance not to apply this Directive: “The Directive refers to high education degrees or certificates related to professional training and, even if a degree in Law is a requirement to become a Notary under European legislations, such academic degree does not suffice, since these legislations require other elements such as competitions, competitive examinations, training...etc.; as well as being appointed as such by the Ministry of Justice and conferred power to exercise official authority in a certain area. It is by this State intervention that a notary is granted the authority to attest documents, to authenticate them, which is the base of his or her function and which has nothing to do with the Directive’s subject, this is, high education degrees... Governments have not included Notaries in the list of professionals to whom the Directive applies in each country ...”

In this connection, this is the position taken by the General Directorate of Registries and Notaries in its report on the Spanish nationality requirement to enter the notarial profession, in reply to the question asked by the Commission. In this regard, it indicates that “the application of Directive 89/48/CEE, currently Directive 2005/36/EC, on qualifications recognition, is not an obstacle, since, apart from the compensation measures foreseen in the said Directive in order to guarantee the high standards of professional qualification necessary to enter that profession, it is not degrees or qualifications what a State has deemed a suitable requirement, but delegated authority powers granted by that same State to those persons with proven professional capacity...”

For all these reasons, your application, in the sense that you indicate, can not be accepted, since in order to practise as a Notary in Spain you need, as all Spanish residents do, to meet all the requirements made by the Spanish legislation, since a notary is a civil servant, who executes his or her activities upon delegation of the State’s sovereignty, which regards the exclusive competence of the Spanish State, in relation to the requirements and selection tests, to enter the notarial profession on conditions which are equal to any national of Spain or any other EU member state.

Do not hesitate in contacting me with regards to any further subject in relation to the General Directorate.

General Director  
[signature]

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3. Further letter from me dated 6<sup>th</sup> February – Spanish version

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TELEPHONE/FAX: 020 7499 2605  
E-MAIL: notary@notarypublicinlondon.com  
WEBSITE: www.notarypublicinlondon.com

Sección 3N  
Dirección General de  
Los Registros y del Notariado  
Rios Rosas, 24  
28071 Madrid  
España

6 de febrero de 2006

Estimada Sra. Blanco-Morales:

Gracias por su carta de 25 de enero de 2006. En ésta no respondía a una de mis dos preguntas, que era la que sigue:

¿Cómo puedo trabajar como notario inglés en España, y no como notario español? Como usted sabrá, el derecho a ejercer en otro estado miembro de la Unión Europea en virtud de un título emitido en el país de origen está garantizado por la legislación europea, y es totalmente independiente del derecho a obtener las cualificaciones correspondientes en virtud de las Directivas relativas al Reconocimiento Mutuo de Títulos (Véase Säger v. Denmeyer and Co. Ltd. (procedimiento C-76/90)).

Le rogaría que contestara a la pregunta referente a la posibilidad de que yo

- (a) me establezca en España en calidad de notario inglés, abriendo allí un despacho permanente y**
- (b) ofrezca mis servicios de manera ocasional hasta un máximo de (i) dos meses al año o (ii) un mes al año (iii) una semana al año (iv) únicamente un día al año (v) acuda allí simplemente para formalizar un acto notarial (vi) no formalice ningún acto notarial pero ofrezca asesoramiento legal a clientes**

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De hecho, su carta hace referencia únicamente a la cuestión de si, en su opinión, los notarios españoles están incluidos en las disposiciones de las Directivas sobre Reconocimiento de Títulos.

Lo que usted argumenta es, en pocas palabras, que:

1. Dado que soy nacional de un estado miembro de la UE, puedo solicitar que se reconozca mi título universitario en Derecho.
2. Tendría sin embargo que cumplir todos aquellos requisitos exigidos a los españoles que aspiran a tomar posesión como notarios, incluyendo las pruebas selectivas, ya que las Directivas sobre Reconocimiento Mútuo de Títulos no son de aplicación a los notarios puesto que

(a) Dichas Directivas se refieren únicamente a los títulos académicos, mientras que acceder a la profesión de Notario implica más elementos, entre otros, la delegación por parte del Estado de la potestad de certificar documentación en un lugar determinado

(b) La Directiva 2005/36/EC especifica en el considerando 41 que las disposiciones de la Directiva no prejuzgan la aplicación del apartado 4 del artículo 39 ni del art. 45 del Tratado, particularmente en relación a los Notarios.

Mi réplica a lo anteriormente expuesto es la que sigue:

1. La legislación europea establece claramente que la consideración de los exámenes por parte del Estado español, así como si se trata de oposición u otra naturaleza, es irrelevante. La cuestión es que son la vía de acceso a una profesión regulada. Por tanto, cualquier solicitante, como es mi caso, tiene derecho a que no únicamente sus conocimientos académicos sean objeto de consideración para determinar la necesidad de someterse a cualquier tipo de evaluación en España, sino también su experiencia práctica.

Su deber no es aplicarme ciegamente las mismas normas que a cualquier español, sino tomar en consideración mi capacidad de ejercer la profesión – incluyendo tanto mis estudios de Derecho y mi ejercicio como abogado como mi cualificación como notario y mis años de experiencia ejerciendo como tal (Véase *Vlassopoulou v. Ministerium für Justiz* (procedimiento C-340/89))

2. Al mismo tiempo, es el Estado quién autoriza al fin y al cabo todas las profesiones, puesto que ninguna otra autoridad podría hacerlo. Esto es cierto respecto de médicos, profesores, abogados y personal de limpieza urbana, y el hecho de que sean nombrados o cómo quiera decirse por el Estado es totalmente irrelevante. Véase *Lawrie-Blum v. Land Baden-Württemberg* (procedimiento 66/85).

3. Invocar el artículo 45 o el apartado 4 del artículo 39 sólo es pertinente si de hecho está prohibiendo a los extranjeros que desempeñen esta actividad. Tal y

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como establece el Derecho Jurisprudencial, dicha alegación equivale a afirmar no sólo que la actividad conlleva una autoridad oficial, sino que también la persona que ejerce dicha autoridad lo hace con objeto de salvaguardar los intereses generales del Estado. El Tribunal de Justicia considera que ello “presupone la existencia por parte de aquellos que ocupan tales puestos de una especial relación de fidelidad al Estado y una reciprocidad de derechos y deberes que configuran el fundamento del vínculo de nacionalidad” *Bleis v. Ministère de l'Education Nationale* (Procedimiento C-4/91).

**La interesante paradoja del asunto que nos ocupa es que una vez que usted, que España, reconoce que la nacionalidad española no es criterio para la admisión de alguien como notario, admite que dicho vínculo no debe existir y que, por tanto, y usted misma lo ha admitido, no puede negar que el apartado 4 del art. 39 y el art. 45 no son de aplicación.**

4. Evidentemente, la expresión “autoridad oficial” tiene otro significado en Derecho Jurisprudencial, en virtud del cual el poder ejercido debe ser la facultad de coacción sobre los ciudadanos. Como bien sabe, los notarios españoles no ostentan tal facultad. Tal pretensión, en el caso de ejecución extrajudicial, fue declarada inconstitucional por los propios tribunales españoles.

5. Además, los actos ejercidos por ciudadanos ante notarios persiguen intereses privados: compraventa de propiedades, firma de poderes notariales, emisión de acciones. No tienen relación alguna con razones de estado, y por tanto no puede estar comprendidas en las excepciones establecidas por el apartado 4 del art. 39 y el art. 45.

6. Por último, respecto del considerando 41 del preámbulo de la Directiva 2005/36/EC, la cuestión es que la Directiva es aplicable sin perjuicio del Tratado, tal y como debe ser en aplicación de la ley. No significa que los notarios no estén incluidos en la Directiva, simplemente que en caso de que en aplicación del artículo 45 tengan un argumento válido, entonces estarán exentos. Y al revés, a menos que dicho argumento sea admisible, deben estar comprendidos en la Directiva.

7. Considerando que ninguno de sus argumentos constituyen el fundamento jurídico necesario para denegar a los notarios la inclusión, y dado que, al admitir a extranjeros, ha renunciado a su derecho a argüir la autoridad oficial como justificación, quedo a su disposición para cuando tenga a bien comunicarme la fecha en que puedo comenzar a ejercer como notario inglés en España así como sus respuestas a los demás puntos señalados anteriormente.

Reciba un cordial saludo,

Mark Kober-Smith

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3. Further letter from me dated 6th February – English version

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Sección 3N  
Dirección General de  
Los Registros y del Notariado  
Rios Rosas, 24  
28071 Madrid  
Spain

6th February 2006

Dear Señora Pilar Blanco-Morales Limones,

Thank you for your letter of 25th January 2006. It did not answer one of my two questions.

That was: How can I work in Spain as an English notary, i.e. not as a Spanish notary? As you know, this right, to practise in another EU state under home title, is one which is guaranteed by EU law, and is totally separate from the right to qualify under the Directives concerning Mutual Recognition of Qualifications. (See *Säger v. Dennemeyer and Co. Ltd.* (case C-76/90).

Please answer the above question.

**Please answer it with regard to the question of my becoming**

- (c) established in Spain as an English notary i.e. opening a permanent office there and**
- (d) providing occasional services there for either (i) up to 2 months in a year or (ii) up to one month in a year or (iii) up to a week in a year or (iv) for only one day a year or (v) to go there simply to do one notarial act or (vi) to do no notarial act at all but simply to advise clients on legal problems**

Your letter in fact only addressed the question as to whether, in your view, Spanish notaries fell within the provisions of the Directives on Recognition of Qualifications.

To summarise - you argue that:

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3. Since I am an EU national I can now apply to have my degree in law recognized
4. I would still have to fulfil every other criteria required of Spanish nationals who wish to be notaries, including the competitive exam, since the Directives on Mutual Recognition of Qualifications do not apply to notaries because

(a) These Directives only refer to academic qualifications whereas becoming a notary involves something else, i.e. the delegation by the State of the power to authenticate documents in a specific area and

(b) Directive 2005/36/EC specified in preamble 41 that the provisions of the Directive are without prejudice to Articles 39(4) and 45 of the Treaty, particularly with regard to notaries.

To reply I would state that :

1. EU law clearly indicates that it does not matter how the Spanish state regards the exams, or whether they are competitive or otherwise. The point is that they are the gateway to a regulated profession. As such any applicant, such as myself, has the right to have not only his academic knowledge taken into account in assessing whether he has to undergo any further examination in Spain, but also his practical experience.

It is your duty, not to blindly apply the same rules to me as you would to any Spaniard, but to take into account my readiness to do the job - including both my law studies, my practice as a lawyer and my qualification as a notary and my many years' work as a notary (see *Vlassopoulou v. Ministerium für Justiz* (case C-340/89))

2. Likewise, all professions are ultimately licensed by the State, since there is no other power that could do this. Doctors, teachers, other lawyers and road sweepers are alike in this, and the fact of nomination or otherwise by the state is entirely irrelevant. See *Lawrie-Blum v. Land Baden-Württemberg* (Case 66/85)
3. The defence under Article 45 or 39(4) only makes sense if you are in fact forbidding foreigners to work at all in the specified activity. As the case law makes clear, the defence involves asserting not only that the activity is one involving official authority, but that the person exercising it is doing so with the aim of safeguarding the general interests of the state. The Court of Justice has specified that this "presumes on the part of those occupying such posts the existence of a special relationship of allegiance to the State and reciprocity of rights and duties which form the foundation of the bond of nationality" *Bleis v. Ministère de l'Éducation Nationale* (Case C-4/91)

**The interesting paradox here is that once, (as Spain has), you have admitted that Spanish nationality is not a criterion for acceptance as a notary, you have**

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**admitted that this special bond does not have to exist and that therefore, by your own admission, you cannot argue that articles 39(4) or article 45 apply.**

4. Of course, official authority also has a special meaning in the case law, which has specified that the power exercised must be the power of coercion over citizens. As you know, no such power exists with Spanish notaries. Their only claim to this, in the case of extra judicial enforcement, was declared unconstitutional by your own courts.
5. Furthermore, the acts done by citizens in front of notaries are acts in pursuit of private interests :the buying and selling of houses, the signing of powers of attorney, the issuing of shares. They have nothing whatever to do with reasons of State, and so cannot fall under the Article 39(4) or Article 45 exemptions.
6. Lastly with regard to point 41 of the preamble to Directive 2005/36/EC the point is that the Directive is without prejudice to the Treaty, as indeed, legally it must be. It does not mean that notaries are not included within the Directive, simply that if they do have a valid defence under article 45, they will be exempt. Conversely, if they do not have a valid defence, they must fall within the Directive.
7. Since none of your arguments demonstrate any of the necessary grounds to exclude notaries from inclusion, and since, by admitting foreigners you have waived your right to use official authority as a defence, I await hearing from you with regard to my start date as a English notary in Spain, and the other points raised above.

Yours sincerely,

Mark Kober-Smith

4. Second reply from Spain – Spanish letter - 17<sup>th</sup> February 2006

Please see attached photocopy

4. Second reply from Spain – English translation

SPANISH MINISTRY OF JUSTICE  
GENERAL HEADQUARTERS OF REGISTRARS AND NOTARIES  
VICE HEADQUARTERS GENERAL

Principal: Mark Kober-Smith

17<sup>th</sup> February 2006

**Mr. MARK KOBER-SMITH**

6 Carlos Place  
London W1K 3AP  
ENGLAND

<p><u>Stamp:</u> Ministry of Justice 22 FEB. 2006 EXIT</p>
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As a reply of your letter dated 6<sup>th</sup> February 2006 this General Headquarters confirm wholly our letter send to you the 25<sup>th</sup> January 2006.

From that reply it is very clearly deduced the questions which you made in this new letter because here you can not practice in your condition as English Notary for the purpose to practice the notary public function, that (the notarial practice function) only can be practised in Spain those persons which are notaries base upon the Spanish legislation with the requirements therein contained.

Another different matter is that you can establish yourself in Spain in your condition as a lawyer, for that you have to analyse the European regulations over the recognition of degrees as well as the Spanish regulations about the practice in Spain pf the law profession, these matters are out of the scope of this General Headquarters.

With regard the to the other considerations which you ask for in your letter dated 6<sup>th</sup> February 2006 they are within our letter of 25<sup>th</sup> January 2006 which we sent you.

This General Headquarters ratify again wholly all the arguments which were expressed in its time and of which you have knowledge of.

**THE GENERAL DIRECTOR**

Stamp: Ministry of Justice. ....

Signature: Not legible

Pilar Blanco-Morales Limones

Principal: Mark Kober-Smith