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Ms Clarisse Martin,  
Director, CNUE

Email: [info@cnue.be](mailto:info@cnue.be)

Dear Ms Martin,

**Notaries – A quick way to resolve the dispute over nationality barriers**

I was interested to see the Press Release from CNUE on 12<sup>th</sup> October. I would like to have a debate, published on the Internet, as to exactly why CNUE thinks that notaries should be exempt from the free movement provisions of the EU treaty. I am happy to publish my legal arguments in full, and trust that you are too.

As the articles on my website indicate, I see absolutely no evidence whatever that notaries in Europe ever do exercise “official authority” in the only sense which is relevant, i.e. as defined by the Court of Justice.

As you know, such an exemption could only apply to activities, not professions as a whole. Since CNUE represents a multitude of nations, it would be interesting to see exactly what notarial activities you claim do demonstrate the exercise of such coercive authority. I cannot think of one.

If you can - could you please provide details of exactly what notarial activities are supposed to show the use of official authority, how the coercive power is exercised, how the State's own power is involved, and what percentage of a notary's time and activity is spent in such acts?

Could you do this for each country, on a case by case basis?

I do not think such an exercise will take you very long, since I do not think there are any such acts. But if time is short, let us restrict the examples to France, Italy and Spain.

As you know, the case law specifying that only activities are covered by Article 45 has been established since the case of *Reyners*. You would have needed to prepare the statistics I am asking for years ago, to answer any case in the Court of Justice.

As it stands, you seem to be arguing that, since the European Parliament thinks that notaries are public officials this means they are exempt from free movement. As a matter of law, of course, the opinion of the European Parliament is irrelevant when it comes to deciding what the Treaty means. I trust you will welcome my invitation to a debate, and publish some reasons, if you have one, which have some legal weight.

I invite you to welcome with open arms the court case which will hopefully follow shortly. Evidently, if you are sure of your argument, this will be your chance to prove it. If CNUE is right, it will be proved so in Court, and will be entirely vindicated.

However, cases the Commission takes to court take longer to get to the Court of Justice than referrals from private cases and I have a suggestion which will save us all in the EU a lot of time and money.

Would you like to save the taxpayers money by agreeing that I sue France for not allowing me to practise there, and agreeing that I and the French government and the French notarial profession and any other interested party make a joint appeal to the judge at first instance in France to refer the matter to the Court of Justice immediately? CNUE would pay all costs, and the matter would then be heard relatively swiftly.

That would be quicker than a Commission case (which could drag on for years and might not get to the Court of Justice for a long while), and you would, if right, be vindicated earlier. If CNUE and the French government and other infringing States are wrong, on the other hand, it seems clear that the code of ethics your press release refers to must insist that the interests of the taxpayers in each country and the EU generally are best served by dropping the barriers to free movement and competition immediately.

Why is this so? Firstly, because otherwise would-be migrant notaries will be entitled to damages against each nation state which refuses to admit migrants for the migrants' loss of income and profits. This will amount to millions, since the number of migrants will be many. Secondly, there is also the cost in time and money of the court cases themselves. Thirdly, and much more importantly, the fact is that notaries are bound to uphold the law, and it is in everyone's interest to ensure that the court rules swiftly. I am sure you would not wish to condone law-breaking, especially by our profession. If the Commission is right, as I believe it is, the nationality bars are a breach of EU law, from which notaries are currently profiting.

Notaries, with their exalted ethical standards, would surely not wish to see the taxpayer pay damages for infringements caused by restrictive practices which essentially benefit only notaries, but are in any event illegal?

Of course, notaries or the CNUE or the notarial professions could undertake to pay any such damages personally. That would save the taxpayer paying directly, but the monies may have to be recouped from fees charged to clients, which could be equally unfair. Are you intending to pay any such damages?

You have the ear of the French notarial delegation to CNUE and would be grateful if you could put this suggestion to them, and if they in turn could put the matter to the French Minister of Justice. We could ask the French court to rule on Article 45, Directive 89/48, the right to work under home title, damages, and all the other relevant questions, and sort the matter out quickly, allowing other valuable cases to proceed.

I would be grateful for your reply to this as soon as possible, but in any event by the end of this month.

Yours faithfully,

Mark Kober-Smith