



30th International Congress of Notaries Cancun, Mexico – 1 - 3 December 2022

Theme II:

«The exercise of the notarial public function linked to the recovery of national economies in the post-pandemic period».

International coordinator: Not. Jens Bormann with the support of Not. Peter Stelmaszczyk (Germany)

CONCLUSIONS

1)Start up:

Notariat and entrepreneurship. Notarial involvement in the formation and development of micro enterprises.

- a. Micro enterprises are the backbone of the economy. Their business activity is therefore crucial for the economic recovery following the Covid-19 pandemic.
- b. In order to secure the families and livelihoods that are behind micro enterprises, most states provide company forms with limited liability for their owners.
- c. To enable citizens' access to micro enterprises, it is necessary to offer simple and low-cost formation options.
- d. A high level of legal certainty should always be ensured when pursuing these goals. Micro entrepreneurs in particular are usually lacking legal experience and need detailed and individual advice when forming their company. Their business is often the only source of livelihood for an entire family.
- e. Since the founders often wish to limit their liability, other market participants must be able to obtain reliable information about the company's capital structure and power of representation. This is why reliable registers vested with public faith are essential.

Proposal: The notariat should strive to be a reliable partner for micro entrepreneurs, helping them to set up their businesses.

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2) Scale up:

The notariat and small and medium-sized enterprises in the face of the economic crisis. Comprehensive advice. Possibilities of access to loans and collaterals. Reorganisation of loans and financing. Insolvency and bankruptcy.

- a. In the wake of the COVID-19 pandemic, the formation of new companies is an important step to promote economic recovery. In many countries, the foundation of their national economies is based on SMEs. Founders, and especially those starting up a company in economically uncertain times, need extensive consultation to make their businesses sustainable and resilient from the very beginning.
- b. Newly formed companies can only operate successfully on the market if they gain the trust of other market participants. This is why public registers containing reliable information for third parties play a significant role.
- c. Companies also need capital in order to finance their growth. Favourable and long-term funding is only accessible to companies that are able to provide high-quality collaterals. Rights in rem are particularly important in this respect. Specifically, rights in rem can only qualify as high-quality collaterals if their existence is guaranteed and if they can be clearly attributed to an economic agent. Therefore, land registers and the mandatory involvement of notaries in the registration of rights in rem are essential.
- d. In addition, rights in rem usually represent the largest part of a person's or company's assets. Therefore, precautions must be taken to ensure that rights in rem are not sold or encumbered without keeping the contract balanced, which is why notarial participation in such legal transactions is crucial.

Proposal: The notarial involvement in the fields of corporate and real estate law should be enhanced, as they render an important contribution to the in-depth advice of the parties involved and to the accuracy and reliability of registers. Reliable and high-quality registers are vital for access to funding on economic terms, which is urgently needed to overcome the economic crisis.

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3) Digitalisation:

Online formation of companies. The European Directive. Advantages and disadvantages.

- a. Digitalisation presents a great opportunity for founders to start up their business in an easy and fast way.
- b. The recent pandemic in particular has highlighted the importance of secure and reliable digital processes when in-person meetings cannot be held or are only possible to a limited extent.
- c. It is important to note that digitalisation cannot replace notarial involvement. Even with online procedures, the parties involved must receive extensive and individually tailored advice and must be clearly identified under the highest security standards. The transfer of established face-to-face procedures to a digital environment must under no circumstances lead to a lower level of legal certainty to the detriment of legal transactions.

Proposal: If notaries are able to deliver comprehensive and convincing concepts for secure online authentication procedures, not only can this ensure their competencies in the face of digitalisation, but it can also help them to gain new tasks.

Cancun, Mexico, 3rd December 2022.

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