SUMMARY

Notarial Academy of the Commission for European Affairs (CAE)

“Dejudicialisation”: new horizons for the protection of individuals and families

What role and what functions fall to the notary?

Chaired by Dr Valentina Rubertelli · Paris Chamber of Notaries, 5 June 2025 16 min read

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1 The Commission for European Affairs (CAE) of the UINL, made up of 41 European members, met in Paris on 5 and 6 June 2025 at the historic Paris Chamber of Notaries.

2 At this fifth meeting of the legislature, chaired by the Italian notary Valentina Rubertelli, the theme chosen for the Notarial Academy was “Dejudicialisation: new horizons for the protection of individuals and families”.

3 The subject of non-contentious jurisdiction and the transfer of powers to notaries in non-contentious matters is a “flagship” theme of the legislature of the President of the UINL, Lionel Galliez. The UINL Congress, to be held in Berlin, Germany, from 2 to 4 October 2025, will moreover devote its Theme No. 2 to this subject, under the title “Voluntary magistracy: new missions in the service of the public”.

4 The round table held in Paris therefore gave the President of the CAE, Valentina Rubertelli, who is also the coordinator of Theme No. 2 at the Berlin Congress, the opportunity to organise a major “dress rehearsal”.

5 The organisers of the round table decided to focus the discussions on four areas of the law of persons and family law that lend themselves to the transfer of powers from the judge to the notary:

- The protection of vulnerable persons
- Divorce
- Change of matrimonial property regime
- Mediation

6 After a presentation of the challenges and the relevance of the subject for the notarial profession by the Secretary General of the UINL, Thierry Vachon, seven countries spoke on the subject of the protection of vulnerable persons:

- France (the lawyer Mathilde Lodier), Poland (the lawyer Szymon Kołodziej), Belgium (Alain Deliège) and Andorra (the lawyer Joan-Carles Rodríguez Miñana) to explain the future protection mandate regime of their respective countries.
- Spain (Dr José Ignacio González) on the notary's assessment of the person's capacity and the notary's important role in Spain in the protection and care of vulnerable persons.
- Italy (Dr Sabrina Belloni) on a new and important function of non-contentious jurisdiction granted to notaries in Italy: the issuing of authorisations to conclude an act on behalf of a minor or of an adult under guardianship (sale, acceptance or renunciation of a succession, etc.).
- France (Dr Bertrand Basseville) on the scope of Article 507-1 of the Civil Code, as amended by the Act of 23 March 2019, which allows the representative of the protected person to accept the succession, without court intervention, if the assets manifestly exceed the liabilities, after obtaining a certificate from the notary in charge of settling the succession.

7 As regards divorce by mutual consent, the French divorce without a judge (presented by Mr Stéphane David, notary in France) was then compared with divorce before a notary in Romania (presented by Ms Oana Rosenberg, notary in Romania). Both France and Romania have the particular feature of allowing out-of-court divorce, even where there are minor children. In France, the judge will assess the best interests of the child only if the child, being capable of discernment, asks to be heard. The law does not give the notary the power to verify whether the best interests of the child have been respected. In Romania, by contrast, although spouses may choose between three different authorities in order to divorce by mutual consent (the civil registrar, the notary or the judge), where there are minor children the divorce must take place through the courts or before a notary. In the latter case, the notary is the guarantor of the best interests of the child.

8 As regards the change of matrimonial property regime, the lawyer Caroline Ginglinger-Poyard (notary in France) pointed out that the role of the French notary is much broader: in particular, the notary is responsible for assessing the interests of the family and of minors.

9 Next, the notary Bernhard Endl (from Austria) shared the Austrian notarial experience of mediation, which allows family conflicts to be resolved amicably before they reach the judge.

10 These enriching exchanges, which showed the full variety and broad scope of notarial functions in Europe in the law of persons and family law, were finally summarised by the legal adviser of the UINL, Sophie Potentier Rios.

11 That summary is reproduced below.

Summary of the proceedings

Sophie Potentier Rios, legal adviser of the UINL

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12 Protection of vulnerable persons, divorce, change of matrimonial property regime, mediation… This round table has undoubtedly shown new horizons for the protection of individuals and families, but also for the notarial profession.

13 Admittedly, this is only a sample and many other powers could have been mentioned: registered partnerships, the obtaining of consents to adoption and assisted reproduction, succession law… That will be for the Berlin Congress!

14 Be that as it may, this sample has revealed a whole range of possibilities, which are growing as regards the responsibility and trust that the State places in the notarial profession.

15 Context. — Before going into the detail of the themes, it is essential to recall that this movement of dejudicialisation forms part of a specific context.

16 A context of congested courts, of reduced public spending on justice, but also of contractualisation of the law of persons and family law, and of the increasingly important place given in our societies to the autonomy of the will.

17 Who better than myself to decide how and by whom my assets will be managed once I can no longer do so? Who better than the spouses, who freely chose to enter into the bonds of marriage, to decide the terms of their separation or of their change of matrimonial property regime?

18 The answer is no longer the judge, nor even the notary.

19 It is the person concerned.

20 Dejudicialisation means giving primacy to the will of the person.

21 While the will is paramount, few States have withdrawn completely from human relationships and fully privatised family law.

22 While judicial control is relaxed, another public authority, in this case the notary, is asked to continue to exercise a certain control.

23 The notary is asked to accompany the will; in other words, to make sure of the free and informed consent of the parties and to verify the legality of their agreement.

24 Objectives. — One of the objectives of this Academy was, first, to take stock of notarial powers and functions in the law of persons and family law in the various European countries.

25 But, since we are speaking of horizons, it was also necessary to ask the following question: how far is it possible to go? To what extent can matters be dejudicialised and new powers transferred to the notary?

26 A priori, there are two main limits to this transfer of powers:

27 1. Conflict. This transfer can take place only in non-contentious matters, that is, where there is no dispute to be resolved.

28 2. The impossibility for the notary to deliver a judgment or a decision: in principle, the notary has no judicial power over the parties. The notary may accompany and advise the parties, but cannot decide in their place.

29 However, after this round table, perhaps all of this is no longer so simple and the limits are no longer so clear:

30 - The notary may act as a “certified” mediator, as in Austria, which presupposes the existence of a prior conflict. Thanks to his or her qualities as a “magistrate of conciliation”, the notary resolves the conflict and prevents it from reaching the judge.

31 - The notary may be required to safeguard the best interests of the child and to refuse the spouses a divorce if those interests are not sufficiently respected, as in Romania.

32 - The notary may also, as in Italy, authorise or refuse acts on behalf of minors or of adults under guardianship.

33 Dejudicialisation therefore changes the rules of the game and alters the role of legal actors, and in particular of the notary.

34 Society evolves, the law evolves, judicial control with it and, no doubt, notarial functions too. This movement of dejudicialisation gives the notary the opportunity to occupy a place, perhaps a different one.

35 This is what we shall see as we go into the detail of the various themes.

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36 As was to be expected, we opened the Academy with the subject of the protection of vulnerable persons and, in particular, with the future protection mandate, an instrument already well known in notarial circles.

37 Half of the countries of the Commission for European Affairs (CAE) have incorporated this instrument into their legislation.

38 The regimes can vary considerably from one country to another.

39 In some, the mandate takes the form of a power of attorney that remains in force despite the principal’s loss of capacity (for example, in Germany); in others, the mandate takes effect only from the loss of capacity (as in France). In Andorra, Spain and Belgium, both forms are possible.

40 Poland will soon join the list of countries that have this type of mandate: a reform is being adopted there, and its regime has been inspired by the French mandate, although, it must be said, with some improvements.

41 - The Polish mandate will, first of all, have to be granted before a notary, as in 75% of the CAE countries that have this type of mandate.

42 [In France, the notarial form is not, in theory, mandatory, since the future protection mandate may also be granted by private instrument. In that case, however, the mandate has a very limited scope, as it will only allow the agent to carry out administrative formalities. In practice, therefore, the mandate is almost always granted before a notary; otherwise, it is of little use.]

43 - Another advantage of the Polish mandate over the French one is its publicity regime. Every mandate received by the notary will be entered in a specific register, created and administered by the Polish Notariat. This is also the case, for example, in Belgium, where registration of the mandate is even mandatory on pain of nullity.

44 - In the Polish reform bill, the role of the notary will not, moreover, be limited to the stage of drafting the mandate; it will also fall to the notary to establish that the mandate has taken effect, in the light of the medical certificates attesting to the impairment of the principal's faculties.

45 In France, dejudicialisation is not complete at this stage, since the medical certificate must be registered at the court registry.

46 In this respect the Polish mandate has drawn more on the Andorran mandate, or even on the Spanish one.

47 As Joan Carles Miñana explained to us, in Andorra the law provides that it is for the principal to determine the time and the circumstances in which the mandate takes effect. To that end, provision may be made for a notarial act to be issued which, in addition to the "notarial judgment" (that is, the notarial assessment), includes an expert report confirming the need to put the mandate into practice. The same is true in Spain, where the notary may also be entrusted with the task of activating the mandate himself or herself.

48 Is a first step not being taken here towards the "judicial" function of the notary?

49 Beyond advice on the drafting of the mandate, the framing of the regime, the verification of the free and informed consent of the parties and the legality of the agreement, the notary is asked to activate the mandate, once the loss of capacity has been established.

50 In fact, the Spanish or Andorran notary acts here in a manner similar to the justice of the peace in Belgium, since in that country this function may be entrusted to the justice of the peace.

51 Of course, the notary is not the only one to take on this task; the notary will act in accordance with the medical opinion, but, even so, the legislature here relies on the notary's assessment to establish and confirm the loss of capacity.

52 Spain appears to be particularly advanced in this respect already. In Spain, as Mr Ignacio González pointed out, the notary has become the main institution of support for the vulnerable person, even before the judge: the notary helps the person to express his or her will and to exercise his or her rights. The judicial authority intervenes on a subsidiary basis, as a last resort.

53 In line with the recommendations of the United Nations, Spain has thus managed to change paradigm: it is no longer a matter of depriving the vulnerable person of his or her rights, but of supporting and helping that person in decision-making. And it is the notary who is responsible for this.

54 With the example of Italy, the convergence between the judge and the notary is even more striking.

55 For a short time now, the notary has taken on a function that can truly be described as judicial, consisting in authorising or not authorising an act in the interests of a vulnerable person or of a minor. Sale of a property, acceptance or renunciation of a succession… The judge's authorisation is no longer mandatory; it may also be granted by the notary in charge of the main act (this is a "dual track", as the lawyer Sabrina Belloni pointed out).

56 The notary will assess, in the light of the reasons put forward by the parties, whether the act is in the interests of the vulnerable person or of the minor (the notary will examine the need for the act and its appropriateness, including from an economic point of view, for the vulnerable person or minor in question). Sabrina Belloni told us that, in this case, the notary has a "power of investigation". And the notary may refuse to authorise the act if he or she is not "convinced" of its usefulness or appropriateness for the protected person. If the notary refuses, he or she must give reasons for the decision, just as a judge would!

57 Perhaps the French legislature will draw inspiration from this Italian reform to extend the scope of Article 507-1 of the Civil Code to acts other than the acceptance of a succession and to other persons, such as minors.

58 This task would entail a much greater responsibility for the notary, an assessment of the appropriateness of the act and of the interests of the family and of the minor, but this would not be something entirely new:

59 With the reform of the change of matrimonial property regime and the almost systematic disappearance of court approval, it now seems to fall to the notary to assess the interests of the family and of minor children.

60 However, this function has not been given to the French notary in matters of divorce.

61 In the French divorce "without a judge", the notary ultimately only confirms, after a review of legality, an agreement freely negotiated by the spouses, but is not required to advise the spouses or to verify the balance of the agreement.

62 Yet this form of out-of-court divorce is permitted even where there are minor children. And the child will be heard by the judge only if he or she so requests. The lack of a systematic assessment of the best interests of the child by a public authority has, as Stéphane David showed, given rise to difficulties in having the divorce recognised abroad.

63 Romania has managed to overcome these difficulties by giving the notary a central role in matters of divorce and particularly broad functions. When entrusted with the divorce, the notary is in fact the only authority that guarantees the balance of the agreement: the notary replaces both the judge and the

lawyers! The presence of lawyers is not mandatory and, according to the lawyer Rosenberg, is not even necessary.

64 Above all, in Romania the notary is the guarantor of the best interests of the child. If the spouses' agreement is not in the best interests of the child, the notary will refuse to formalise it.

65 In conclusion, this round table demonstrates the confidence of the public authorities in the notarial profession, and that is a cause for satisfaction. For, although these new powers entail more risks for the notary, although they increase the notary's responsibility, although they complicate the notary's work, they are proof of the State's trust and a guarantee of the profession's continuity.

66 If the transfer of powers is frequently made to the notary, and not to another authority, it is because the notary combines the qualities sought by the public authorities for performing these non-contentious tasks:

- The notary is a public official, to whom public authority is delegated.
- The notary is a legal professional.
- The notary is impartial and independent.

67 It should also be stressed that this transfer of powers to the notary is not made "by default" or "for want of a better option". On the contrary, it is genuinely useful for the public service of justice and brings real advantages for the State and for citizens, as the speakers emphasised on several occasions.

68 Benefits for the citizen: the various experiences presented during the round table demonstrate them:

69 Advantages in terms of time and deadlines (the procedure before the notary is much shorter than before the judge).
And even advantages in terms of cost (the Romanian divorce shows this: no lawyer is needed, only one professional in charge of the procedure, the notary, whose cost is set by a fee scale — that is another subject, but the existence of a fee scale is undoubtedly an argument for obtaining new powers, since it guarantees the citizen access to the public service at a reasonable price —). The advantage of receiving impartial advice from a trusted third party. An advantage in terms of confidentiality. The advantage of having to turn to only one person for several formalities (for example, in Romania, the Romanian notary deals with the divorce agreement, the agreement on the exercise of parental authority, compensatory allowances, the liquidation of the matrimonial property regime and the division of property).

- Usefulness for the State: this transfer relieves the burden on the courts and guarantees social peace. "More notaries, fewer conflicts before the courts", as our President and moderator, Valentina Rubertelli, has often recalled.

RECOMMENDATIONS OF THE COMMISSION FOR EUROPEAN AFFAIRS OF THE UINL TO THE MEMBER NOTARIATS

70 Following the Notarial Academy held in Paris on 5 June 2025, on the theme “Dejudicialisation: new horizons for the protection of individuals and families”

71 In order to take on new powers in non-contentious matters, the President of the Commission for European Affairs of the UINL proposes the following recommendations to the member notariats:

- Highlight the notary’s status as a public official. Like the judge, the notary is appointed by the State, is under its supervision, and the acts the notary authenticates enjoy authenticity.
- Encourage the initial and continuing training of notaries so that they can take on new powers in all fields, in particular in the law of persons and family law.
- Use the existence of the notarial fee scale as an additional argument with political decision-makers for taking on new powers: it guarantees the citizen access to the public service at a reasonable price, set by the State.
- Highlight the importance and the need for advice to the parties: the autonomy granted to them to establish their agreements makes indispensable the intervention of a qualified professional who informs them of the legal rules, the options available to them and the consequences of those options.
- Recall the independence and impartiality of the notary: “The latitude granted to the will of the parties naturally falls within a framework free of disputes, and the advice to be given must not create difficulties; impartiality is therefore fundamental in the assistance given in drafting contracts, which replace judgments in dejudicialised fields”.
- Highlight the need to maintain the presence of a public authority for the review of legality: “The correct application of the law by the parties, on the one hand, and the review of compliance with that law in contracts, on the other, argue for a review and verification of these contracts from the moment they are signed (ex ante) and not through subsequent litigation (ex post) fed by a badly drafted contract or an incorrect application of the law”.

72 Beyond a review of legality, and in particular as regards agreements in the law of persons and family law, the notary is also in a position to assess the interests of the family, the interests of minors and even, more generally, those of vulnerable persons, where the law so provides.

- Highlight the characteristics and advantages of the notarial authentic instrument:

73 “Probative and enforceable force: Since the aim here is to propose a substitute for the judicial decision, unsurpassable probative force and enforceability, conceived in the image of judgments delivered at last instance, immediately appear as the perfect attributes for maintaining the quality of the act (instrumentum) that replaces the judgment.

74 Entry in public registers: Many judicial decisions are intended to be entered in public registers relating to the civil status of persons (adoption, recognition of filiation, divorce, registered partnerships, etc.), and admitting to those registers acts bearing only a private signature, in place of judgments, would only

greatly undermine the security expected of such registers. Here again, the notarial act appears able to replace the judicial decision with the same level of security.

75 Preservation: The security reasons inherent in these same acts make it indispensable that their preservation be guaranteed; the notarial act carries this legitimate requirement in its very essence".