



*"Notaries are not like any other lawyer in situations that have a foreign element.
They are the operators of amicable private international law.
They are the ones who determine under which legal configuration a case falls.
They are the ones who draft instruments that can cross borders to secure families and assets."
Marc Cagniard, President*

Family and capital abroad, the notary public profession faced with the challenges of international mobility

A French congress open to notaries from around the world

Although borders still exist, they are easily crossed nowadays. Nonetheless, any legal position is necessarily linked to a territory governed by its own legal system.

You can see this by simply asking yourself: *"Looking around me, is there at least one international factor in my family, capital or profession?"* We undoubtedly all find one foreign aspect, whether it be a non-French spouse or partner, a child or relative living outside France, a second home outside France, or quite simply a non-resident contracting partner who also travels with his or her national legal baggage.

Modern mobility generates a variety of situations that are a challenge for lawyers, especially for notaries, who assist citizens at key stages of their lives and whose clients do not always measure the consequences of their choices.

Notaries have to thoroughly assess and understand the internationalisation of the cases they are faced with on a daily basis, to make them more secure. The French Notaries' Congress Organization (Association Congrès Notaires de France) will be doing some original and virtually unprecedented thinking about the consequences of this internationalisation throughout 2019. More generally, this is an invitation to rediscover a theme as old as humanity, namely that of 'otherness'.

International issues: a reflection intended for institutions, policy makers, lawyers, and citizens.

The widespread networking of economic, cultural and legal areas is impacting all levels of our societies' organisation.

The spotlight focuses on three approaches:

1. Giving lawyers and notaries in particular the means to better understand private international law when faced with international situations pertaining to family, capital, and private or professional concerns.
2. Dialoguing with policy-makers and national and European institutions on what is at stake in the competition between continental and Anglo-Saxon legal systems.

3. Informing fellow citizens about the often little-known or unknown legal and tax consequences of their actions involving a foreign element.

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1. A theme shared by notaries from all backgrounds

The notarial practice of private international law is of direct relevance to notaries, whether they operate in France, a country of the European Union or on another continent. The issues that arise are identical.

**2019 = BREXIT / MATRIMONIAL AND PROPERTY REGULATIONS / EUROPEAN ELECTIONS
The 115th in Brussels will be a place for sharing international notarial practices.**

2. A Congress where the language barrier will be overcome.

The report: published in April 2019 - French and English Version

Work in plenary meetings and master classes translated into English, German and Spanish

3. A living space for twinning and networking

The Brussels Congress aims to be a focus for the different notarial, national, regional and international institutions to support their twinning with other institutions, and even create new ones. Notaries will be able to forge professional links with their peers from other countries.

4. A meeting and observation point bringing together 150 players

Notaries from around the world will be able to walk through the alleys of exhibitors at the Centre and discover the "profession" solutions offered to French notaries (banking and IT solutions, computerised deeds, etc.).

A reflection structured around four areas

Commission 1:

Finding one's bearings Finding one's bearings in an international context

Notaries are actors in the European Union, and ensure that European law is properly enforced and explained. They are among the guarantors of secure movement for European citizens. The international actions taken by the French notary public profession show its commitment to this search for legal and financial security.

The reasoning applying to French private international law differs from that of other matters of law. The rules of private international law stem from many sources, be they national, European or international. In this instance, it is a matter of helping the lawyer find his or her bearings to know the various sources, their different interpretations, and their hierarchy. We will be considering all scenarios within and outside European countries, such as in Switzerland, Maghreb countries, England, Russia, the United States, etc.

The method adopted:

- will help us to determine the applicable laws of the various legal systems; and
- lists and presents the tools, websites and collaborative platforms available at French, European and global level.

Commission 2:

Drafting Drafting a notarial instrument abroad

The notary public profession first originated abroad.

This assertion may seem surprising, but the public notary profession came into being in Lombardy during the Middle Ages, at the same time as banks, to address a need for security in "cross-border" trade.

And notaries have been drafting instruments that cross borders for centuries. In a globalised world, this flow has greatly increased to the point where it is now almost routine and no longer exceptional.

Two broad guidelines for this commission from an original and virtually unprecedented angle:

1. Drafting an authentic instrument notarised abroad.
Drafting means anticipating the instrument's circulation and effectiveness beyond borders. An analysis and choices are essential at each stage of drafting: choice of language, nationality, vetting of identities, channels, date, court appearance, capacity, expression of a price, service of notice to someone who does not reside in France, jurisdiction clauses, etc.
2. Adopting good habits when dealing with international aspects.
The tax consequences of mobility will be examined in turn. Proper circulation of an instrument is as important as its wording. How do you guarantee proper transmission to foreign authorities, lawyers and notaries? Its recognition? Its enforcement?

In this way, our commission will provide an overview of all the issues and then propose clauses for drafting notarised instruments.

Commission 3: **Living Families abroad**

Partnerships, marriages, separations and inheritance can all place families under great stress in today's globalised world. Living abroad means creating a family life and a global estate.

Notaries can follow their clients through all the important stages of their lives. Assets should be organised as soon as a couple become partners or marry. Notaries advise couples through their knowledge of the international rules governing partnerships and matrimonial property regimes. The tie that exists between a parent and child is sometimes a filiation that is created, rather than a natural one. Should new methods of filiation by medically-assisted procreation or surrogate motherhood be acknowledged in our law?

How do you reconcile the Hague Convention of March 1978 with the EU regulation on matters of succession, or the regulations on matrimonial property and inheritance regimes that will soon come into effect on 29 January 2019?

How do you manage foreign elements in cases of divorce by mutual consent without a judge?

Advising well also means admitting the existence of legal options unknown in France, such as a trust or Kafala for instance.

Expatriation should be anticipated and prepared. This is also true of international succession. To ensure the smooth transfer of assets, the notary analyses the assets' location and anticipates the consequences of any referral to a judge, possibly a foreign judge.

Commission 4: **Contracting Acquiring and financing abroad**

The freedom to designate the law governing your contract is broad, and notaries guarantee a free, well-informed choice. Their function as impartial advisers and magistrates for private agreement is of particular importance.

Citizens sign contracts every day. In this globalised world, over 6% of sales in France were made with foreign nationals between 2006 and 2016. Notaries assist their French or foreign clients in order to safeguard transactions and their legal and tax consequences.

The law does not specify and settle everything. Notaries are there to clarify contracts.

Financing a foreign purchase can sometimes be an uphill struggle. The lending institution requires security and freedom of establishment should be encouraged. This depends on proper contractualisation of the parties' rights and obligations. There is increased vigilance in matters of money laundering when there is a foreign element.

Land registration secures transactions in national law. The existence of a factor outside the French sphere should not lessen that security. Each country has its own land ownership system. A French citizen expects the same legal safeguards that he or she is familiar with when purchasing abroad. That is not always the case. Notaries advising on international matters seek optimal security for their clients.

The notary is a lawyer unlike any other

Under European Union law, notaries are an authority and can sometimes even be a jurisdiction. They provide with authenticity and the security expected in the European and global environment. They become diplomats, coming to terms with their national law and foreign law. They are not a foreign ministers, but perhaps officers of the court for foreign law.

And since it is a matter of reconciling cross-border factors and the persistence of territories, the thirst for freedom and security (its corollary), this vast reflection aims to safeguard families and capital in their global reach.

Keywords

Welcome - Authentic instrument – Purchase abroad - International adoption - Embassy- Apostille certificate - Authenticate - Brexit - Free movement - CNUE - Jurisdiction dispute - Conflict of laws - Mobility dispute - Consul - Hague Convention - European Convention on Human Rights - Greater cooperation - Court of Justice of the European Union - European Court of Human Rights - Divorce by mutual consent without judge - Continental law – Eufides - Examples of contract clauses - Expatriation - International filiation - International taxation - French Citizens abroad - Fraud - Border - Law shopping – Authentication - Freedom to contract - Law of the place of jurisdiction - Scrivener law - Mixed marriage - Nationality - Non-resident - European notary public profession - International public policy - Petrification - Prenuptial agreement - Qualification - Secondment - Recognition - Regulations on matrimonial property and inheritance regimes - Residence - Sovereignty - Matrimonial status - International inheritance - Supranational - European writ of execution - Trust - UINL - International sale.

The international market in statistics

14% of marriages celebrated in France are international marriages.

In 2015, 236,300 marriages were celebrated in France, 33,800 of which were between a person of French nationality and a person of foreign nationality. So 14% of the marriages celebrated in France in 2015 were between two people of different nationalities. (Source: Insee)

France tops the list of non-English speaking countries hosting the most foreign students.

78,758 French students studied abroad in 2014.

1 in 10 French pensioners lives abroad.

France had 14 million pensioners at 31 December 2017.

1 in 10 pensioners, in other words 1.2 million people receiving a French pension, were living abroad (Source: National Old-Age Insurance Fund - Caisse nationale d'assurance vieillesse (Cnav)).