

Digitalization of Public Registers and the Role of Legal Professionals – A Connection for the Future

Abstract: Public registers such as land registries and registries of commercial entities are an essential element in the legal systems of most developed economies. According to the tradition of the civil law, their content is typically policed by requirements of public (notarial) authentication, whose main purpose is to ensure full legal validity and transparency of the registered data and to advise and protect all parties, including disadvantaged and vulnerable individuals and groups, such as consumers or minorities. In the digital age, registers are kept electronically and there is a strong desire to allow electronic access to the registers. However, it can be very challenging to maintain the positive effects of public authentication in a digital context, in particular in transformation states with evolving legal and economic traditions and limited digital literacy. A project initiated by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in 2017 in cooperation with the German Federal Chamber of Notaries (BNotK) is currently developing practical, locally applicable solutions for the countries of the Western Balkans focusing on a regional exchange of experiences. The project “Electronic Communication of Notaries with Public Registers“ is part of the larger GIZ project “Open Regional Fund for South East Europe – Legal Reform“.

The project “Electronic Communication of Notaries with Public Registers“ mainly aims at strengthening the rule of law within the framework of the preventive administration of justice in these countries by setting up reliable registers that allow property rights in real estate and the status of companies to be determined with greater certainty. A functioning rule of law system is a prerequisite for the future accession of these countries to the European Union as well as for catalyzing investments in this economic area, including foreign direct investments. The certainty and reliability of the registers is ensured by preventive legal control and advice provided by notaries prior to registration. Thanks to the in-depth legal verification of the registrations by holders of a public office, all citizens and business can rely on the accuracy of the registered data. Only registers with such high standards of validity and accuracy can be bestowed with the privilege of public faith which facilitates and accelerates transactions reducing the costs of due diligence significantly and contributing to an attractive legal environment for business transactions. A reliable and transparent legal framework is an incentive for increased investments and thus a catalyst for much-needed sound economic growth. Notarial authentication ensures the accuracy of the registers and the protection of more vulnerable or disadvantaged parties (such as consumers, women or minorities).

The digitalization of the justice systems is a current challenge for all Member States of the European Union as well as for the countries of the Western Balkans. Whereas for most of the EU-Member States it is a priority to transfer the well proven structures of preventive administration of justice to the digital age, such reliable and well performing rule-of-law structures that are suitable for a free market economy have often not been completely developed in the countries of the Western Balkans. The specific challenge here is to not endanger the legal environment, but to embrace digitalization and – at the same time – to consolidate the rule of law and the function of preventive justice in these countries.

It is the goal of the project to assist the ministries of justice and the notary chambers to preserve these fundamental achievements through digitalization. The project “Electronic Communication of Notaries and Public Registers“ was conceived jointly by the GIZ, the BNotK, and all chambers of notaries of the participating countries (Albania, Bosnia and Herzegovina, Serbia, Montenegro, Kosovo and FYR Macedonia), then officially launched and further developed during subsequent events, including a study visit to public registry and notary offices in Germany.

A larger exchange on electronic legal communication in real estate and commercial matters in the region was initiated between representatives of the competent ministries, university professors (namely of the university of Mostar), notaries and IT experts; the current state of electronic communication was presented by representatives of the ministry of justice and individual notaries for each participating country. Moreover, legislative proposals as well as technical steps to implement electronic communication in practice were developed.

With its regional focus, the project fostered a strong cooperation and mutual learning between various stakeholders within individual countries as well as between stakeholders from different countries. The ministries of justice, register authorities, chambers of notaries and other relevant institutions committed themselves to the same strategy and to implementing the same objectives – the realization of legal reforms in order to further develop electronic communication while strengthening preventive administration of justice. As a first element, a strategic declaration on electronic communication of notaries and registers was signed. As a second element, the current legal situation was analyzed and necessary legal amendments were drafted for individual jurisdictions. As a third element, on a technical level, conditions for and a model software solution that implements the objectives have been developed. And, as a fourth element, on an organizational level, the partners appointed national experts or bodies to accompany and support the aims and challenges of digitalization for the individual stakeholders. The project thus managed to create a significant alliance of various stakeholders that all act together to create a modern, technically progressive but yet reliable and fair environment for transactions in the countries of the Western Balkans.

Based on the excellent cooperation of the public and the private sector in the individual countries participating in the project, considerable achievements have already been made within a relatively short period of time. In some cases, the initiative was taken up by the chambers of notaries. The notary chamber of Albania has presented an ambitious project for an integrated notarial software system. The notariats of Bosnia-Herzegovina, as a pilot country for the project, have developed a draft law and model technical solution preparing all prerequisites for the electronic connection of the notarial offices to the public registers.

In other cases, the ministry of justice has initiated the development of electronic communication. In FYR Macedonia, notaries have been part of an integrated digital real-estate service for many years. In Serbia, laws on electronic documents and trust services in electronic business transactions were adopted and registrations are now made on the basis of a notarial instrument whose legal accuracy is verified by the notary; applications to the land register are communicated and signed electronically.

Dr. Lovro Tomasic, a German civil-law notary, legal scholar and expert on the region, manages the project on behalf of the BNotK and will present the project. He will give detailed insight into the work of the project, and report on the achievements of the partners. The presentation will focus on the challenges and chances encountered but also on the ideas about how to adapt the project so that it can be implemented in other regions of the world, for instance in the Caucasus. With Georgia, know-how exchange and regular meetings with the German Federal Chamber of Notaries have been organized in the last months and may have already opened a path here.

In addition, a legal practitioner from one of the beneficiary countries will give more insight on how the project “Electronic Communication of Notaries with Public Registers“ is perceived in practice and how it has managed to contribute to improving concretely the situation in the field of digitalization as an example for the region of the Western Balkans.