

# **BNotK** international



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# LATEST NEWS



*Dr Andreas Schwab, Tianyu Yuan, Prof Dr Jens Bormann, Ramón Franco Cerame, Simona Constantin, Dr Peter Stelmaszczyk (l.r.) / Photo: Louis David*

## THE GERMAN CNUE PRESIDENCY 2023

The Council of the Notariats of the European Union (CNUE) with its 22 EU member states is the European umbrella organisation of the national representations of the European notariat. It consolidates the standpoints of its members by developing common positions that it subsequently represents vis-à-vis the European institutions. The CNUE is therefore a decisive stakeholder for a total of 50.000 notaries in the European Union.

In 2023, the German notariat held the CNUE presidency. Dr Peter Stelmaszczyk, notary in Burscheid and former director of the Brussels office of the German Federal Chamber of Notaries served as the president. The German presidency was carried out in close cooperation with the Council of Sworn Notaries of Latvia, which had the right by rota to nominate the CNUE president. This shows the close bond and friendship between the two notariats.

As the presidential term preceding the 2024 European elections, 2023 was characterised by the intensive work on many important political dossiers. Accordingly, President Dr Peter Stelmaszczyk pronounced the following as his presidential priorities: the fight against money laundering, the digitalisation of company law, the protection of adults and the reconstruction of the Ukrainian notariat. A particular highlight of the 2023 presidency was the CNUE's 30th anniversary, which was celebrated with a ceremony in Brussels that was attended by representatives of the European institutions and the member notariats.

### Fight against money laundering

Notarial professional organisations such as the German Federal Chamber of Notaries and the CNUE have always emphasised the importance and significance of effectively combating money laundering and also the contribution that notaries themselves can make in this context. At the same time, adopting a risk-based approach is a fundamental prerequisite for a targeted and effective

fight against financial crime, as this is the only way to ensure the best possible and most efficient use of resources. For this reason, the European notariat has repeatedly advocated in favour of implementing the practice-oriented risk-based approach in the course of the legislative process.

In order to ensure a continuous education and training programme for notaries in this area with regard to the changes brought about by the EU money laundering package, in particular the Single Rulebook, the European Commission approved last year specific funds. These will be used to support the expansion of the already existing CNUE e-learning platform with regard to the new anti-money laundering rules.

### Digitalisation of company law

In March 2023, the European Commission published a proposal to further expand and upgrade the use of digital tools and processes in company law, the so-called Digital Tools Directive 2.0. Building on the first Digital Tools Directive, which introduced online notarial



Dr Peter Stelmaszczyk, Dr Ralf Sauer, Dr Corrado Malberti, Dr Sebastian Sick, Amanda Cohen Benchetrit, Maria Manuel Leitão Marques (l.r.) / Photo: Louis David

procedures for the formation of limited liability companies, this legislative proposal aims to simplify the cross-border use of certain register data. Its core elements are the creation of an EU Company Certificate and a digital EU power of attorney. As a prerequisite for the cross-border use of register data, the proposal provides for a public preventive control by courts, administrative authorities or notaries.

To shed more light on this important legislative proposal for notaries, the CNUE organised a conference on “Digitalisation and Company Law” in Brussels in September 2023. Ralf Sauer, Deputy Head of the Company Law Unit at the European Commission, and Ms Maria-Manuel Leitão-Marques, Member of the European Parliament and shadow rapporteur of the S&D Group for the proposed directive, among others, discussed the new legislative proposal. Mr Andreas Schwab, Member of the European Parliament and EPP Coordinator of the Committee on the Internal Market and Consumer Protection, notary Prof Dr Jens Bormann, President of the German Federal Chamber of No-

taries, Ms Simona Constantin, Deputy Head of Cabinet of the Vice-President of the European Commission Věra Jourová, among other experts from the field, discussed the opportunities and challenges of digitalisation in general in the joint panel.

**Protection of adults**

The Commission published its legislative package on the protection of adults in May 2023. It consists of a proposal for a regulation and a proposal for a Council decision. On the occasion of the European Day of Justice on 25 October 2023, these proposals were the focus of the conference on the protection of adults that was organised by the CNUE together with Greek MEP Stelios Kypourouopoulos in the European Parliament. International experts and representatives of the European institutions reported during the conference that there is currently no uniform EU legal framework on the competences of courts, the applicable law and the recognition of decisions concerning the personal and financial affairs of adults in need of support in cross-border situations. The introduction of a harmo-

nised regulatory framework would be a decisive step towards a more accessible and inclusive Europe.



Dr Peter Stelmaszczyk, MEP Stelios Kypourouopoulos, Georgios Rouskas, Eftychia Karastathi (l.r.)  
Photos: K-pture photography, Dorian Lohse and Grégory De Leeuw





### Reconstruction of the Ukrainian notariat

Shortly after the Russian invasion of Ukraine in February 2022, the CNUE assured its Ukrainian colleagues of its support by welcoming Ukraine as a CNUE observer member and by developing, among others, a handbook and information sheet on Ukrainian law. Building on this, notary Dr Peter Stelmazczyk continued the work of the CNUE in 2023 in this context: In an exchange with representatives of the European institutions, he discussed the various possibilities for notaries to provide support. This was done on the one hand with a view to the planned "Claims Register", in which war damages are to be entered so that reparation claims can be validated in the future. On the other hand, this dialogue focused also on maintaining or rebuilding the rule of law in particular by securing a functioning preventive administration of justice. These were also two of the major topics discussed with MEP Michael Gahler, the European Parliament's rapporteur for the Ukraine Facility, as part of the celebrations to mark the 30th anniversary of the CNUE.

### 30 years of CNUE

It was not only the political events that shaped the German CNUE presidency of 2023. The CNUE also celebrated its 30th anniversary, which provided an opportunity to take a look at the achievements of the past decades. One of these is the European Network of Registers of Wills Association, which was founded in 2005. This network simplifies the search for testamentary dispositions. Two years later, the CNUE established the European Notarial Network (ENN), enabling notaries to exchange information about legal issues across borders. However, the focus of the festivities was not only on the past, but also on the future. The Director General of the Directorate-General for Justice and Consumers, Ana Gallego Torres, discussed, among others, the opportunities and challenges of digitalisation. ✓

### >> About the author

*Monika Thull is a notary candidate in the district of the Koblenz Chamber of Notaries and works as a legal advisor in the Brussels office of the German Federal Chamber of Notaries.*



*Prof Dr Jens Bormann, Christopher Burns, MEP Michael Gahler (l.r.)  
Photo: K-pture photography, Dorian Lohse and Grégory De Leeuw*



*Ana Gallego Torres, Director General of the Directorate-General for Justice and Consumers  
Photo: K-pture photography, Dorian Lohse and Grégory De Leeuw*

# NOTARIES WORLD WIDE



Prof Dr Jens Bormann, Octavian Rogojanu / Photo: ENRWA / ARERT

## THE GERMAN FEDERAL CHAMBER OF NOTARIES AND THE EUROPEAN NETWORK OF REGISTERS OF WILLS ASSOCIATION ARE COOPERATING CLOSELY

On 8th December 2023, the President of the German Federal Chamber of Notaries, Prof Dr Jens Bormann, for the Central Register of Wills operated by the German Federal Chamber of Notaries, and the President of the European Network of Registers of Wills Associations, Octavian Rogojanu, signed a cooperation agreement.

The European Network of Registers of Wills Association (ENRWA), in French "Association du Réseau Européen des Registres Testamentaires (ARERT)", is an international non-profit organisation created under Belgium law in 2005. All EU member states that have established a register for the recording of testamentary dispositions can join ENRWA and, thus, make it possible to find testamentary dispositions of deceased persons, regardless of the country in which such were registered. Since 2015, au-

thorities that issue the European Certificate of Successions (ECS) can also connect to ENRWA in order to find out, if an ECS was already issued by another member state in a specific succession matter. Currently, thirteen registers of wills and three registers of European Certificates of Successions are interconnected through ENRWA. Thus, ENRWA makes an essential contribution to facilitate the settlement of succession matters in cross-border situations.

The German Federal Chamber of Notaries, which in Germany was given the legal mandate to operate the Central Register of Wills (Zentrales Testamentsregister; ZTR), has been a member of ENRWA since 2015. In Germany, the ZTR ensures that wills taken into official custody can be found reliably upon death. For this purpose, in the event of a person dying in Germany, the civil registry office issuing the death certificate submits an electronic notification about the death to the ZTR. If an entry concerning the deceased person is found, the authority which keeps the documents relating to succession under official safe custody - in Germany, a

notary or a probate court - is informed of the death. Furthermore, the competent probate court is informed. All these automated steps within the ZTR ensure that the dispositions upon death made by the deceased person are found in order to guarantee the regard for the testator's last will.

However, the ongoing trend of Europeanisation makes it all the more important to provide such information across borders. The cooperation agreement has therefore placed the already existing possibility for the ZTR to request information from foreign registers on a new contractual basis. Conversely, authorized foreign authorities can submit their inquiries directly to the ZTR and the colleagues of the ZTR will provide the necessary information. ✓

### >> **About the author**

*Monika Thull is a notary candidate in the district of the Koblenz Chamber of Notaries and works as a legal advisor in the Brussels office of the German Federal Chamber of Notaries.*



# WORKSHOP REPORT EUROPE



Photo: JohnnyGreig | Getty Images

## DEBRIEF FROM BRUSSELS

This summer, the European Union will elect a new parliament for the next five years. Therefore, the European institutions are currently running at full speed to finalise the still ongoing legislative initiatives before the end of the term. This offers the opportunity to take a look at the most important European legislative proposals from a notarial perspective.

### EU Anti-Money-Laundering Package

Four legislative proposals make up the EU AML package of which three are relevant to the notarial practice: The new Anti-Money Laundering Regulation (AMLR), the Sixth Anti-Money Laundering Directive (AMLD) and the new Regulation establishing the Anti-Money Laundering Authority (AMLA Regulation). After the European institutions reached a political agreement in December 2023 and January 2024, final compromise texts were published in February which still have to be formally adopted by the European Parliament and the Council.

The AMLR provides uniform rules for obliged entities, the risk assessment, the scope of the applicable customer due diligence requirements and beneficial ownership creating a full harmonisation within the European Union. Regarding the rules for the identification of clients and beneficial owners, the AMLR coincides with current German law. There will be a change, however, regarding the determination of beneficial ownership. While the threshold remains at 25%, a new calculation method will apply: Within a chain of entities, ownership interest is being multiplied and in case of various chains, the ownership interests are then being added up. In addition, the AMLR provides that when a new business relationship is entered into or a transaction is being performed, the source and destination of funds have to be obtained (but not verified). However, in low-risk cases, it is not mandatory to obtain such information.

The AMLD addresses the organisation of institutional AML systems at national level in the various member states. This includes, among others, the organ-

isation and interconnection of national transparency registers.

The AMLA Regulation will establish a new EU Anti-Money Laundering Authority ("AMLA") which will be based in Frankfurt. Regarding the non-financial sector, the AMLA will neither have direct supervision nor a right to directly intervene with national supervisory authorities. Nevertheless, the AMLA remains relevant for notaries as it can issue standards, guidelines and recommendations, both to supervisory authorities and to obliged entities including notaries.

### Digital Tools Directive 2.0

The first Digital Tools Directive from 2019 introduced notarial online procedures in company law. Last year, the Commission took the next step in digitalising company law by publishing its proposal for a new directive. The so-called Digital Tools Directive 2.0 aims to further expand and upgrade the use of digital tools and processes in European company law. On 13 March 2024 the European Parliament announced that a compromise had been reached.

The proposal stipulates a mandatory public preventive control in company law by administrative authorities, courts and/or notaries. Furthermore, as part of this public preventive control, a catalogue of minimum requirements that need to be checked is established to ensure reliable register data within the European Union. To enable the use of this previously checked company data across borders, the proposal introduces a so-called EU Company Certificate which can be, among others, obtained electronically via the BRIS. The initiative also provides for a contractual, digital EU Power of Attorney, which shall be accepted as evidence of the authorised person's entitlement to represent the company in cross-border measures under the Directive.

#### Revision of the eIDAS Regulation

Back in 2014, the European legislator adopted a regulation on electronic identification and trust services for electronic transactions which was being revised during the course of the current Parliament's term. The final agreement has now been adopted by the Parliament and the Council, so that only the publication in the Official Journal of the European Union is still pending. The revised eIDAS Regulation will introduce an EU-wide wallet, the so-called European Digital Identity Wallet. The wallet will enable citizens to identify themselves and provide signatures by means of qualified electronic signatures within the EU. It will also be possible to use this electronic tool for identification purposes in the context of notarial online procedures. Furthermore, users may add so-called attributes to the wallet, such as driver licences, diplomas or bank accounts. Last, the aforementioned EU Company Certificate and the digital EU Power of Attorney are intended to be compatible with the wallet.

#### e-Justice Regulation

The European institutions adopted the regulation (EU) No 2023/2844 on the digitalisation of judicial cooperation in cross-border civil, commercial and crim-

inal matters (e-Justice Regulation) on 13 December 2023. However, the regulation will only apply from 1 May 2025. It will facilitate electronic communication of authorities with each other on the one hand and of citizens or companies with authorities on the other hand. For the former, using electronic communication is generally mandatory in regard to the laws covered by the regulation, while for the latter it is optional. The electronic exchange will be done via a decentralised IT system "e-CODEX", which was developed with the financial support of the European Commission. The e-CODEX system will also interconnect national and European IT systems.

The regulation has only limited applicability to notaries. While notaries constitute authorities in the meaning of the regulation, the scope is currently limited to, among others, the issuance of certificates regarding the content of an authentic instrument for their enforcement abroad or to proof the evidentiary effects of authentic instruments abroad within the framework of European regulations, such as the EC Maintenance Regulation (Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligation), the EU Succession Regulation (Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession) and the EU Matrimonial Property Regulation (Regulation on implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes). The e-justice Regulation also applies to the communication with courts within the scope of the EU Succession Regulation.

#### Outlook

The above-mentioned legislative in-

itiatives are anticipated to be adopted within this legislative period, if they have not been passed yet. In addition, there are more legislative dossiers relevant to notaries which are, however, not expected to be finalised before the new parliament will be elected. This includes for example the parenthood proposal or the legislative package regarding the protection of adults. The former will provide a uniform set of rules on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood. The initiative shall further create a European Certificate of Parenthood. The package on the protection of adults is comprised of two legislative acts: The first is a proposal on a Council Decision that will oblige all member states to become or remain parties to the 2000 Protection of Adults Convention, the second is a proposal for an accompanying regulation.

Unlike the Bundestag, the European Parliament does not follow the principle of discontinuity. Thus, legislative files that have not yet been finalised will be continued by the newly elected Parliament in the new term. We can therefore continue to expect legislation from Brussels which will be relevant to the notarial profession. ✓

#### >> About the author

*Monika Thull is a notary candidate in the district of the Koblenz Chamber of Notaries and works as a legal advisor in the Brussels office of the German Federal Chamber of Notaries.*



# HIGHLIGHTS



Friedrich Rößler

## INTERVIEW WITH FRIEDRICH RÖSSLER

**Mr Rößler, you are a lawyer by background. What made you decide to enter the exciting world of European politics as an employee of a Member of the European Parliament?**

To be honest, it was rather a coincidence and not part of a specific career plan. During my studies, I had no particular interest in European law and, like many other law students, had to resort to “selective learning” in this area for the first state examination. Then, during my legal traineeship, I had the opportunity to work at the European Parliament in Brussels for three months. After this insight into European politics, I was simply hooked and applied for a job as a parliamentary assistant after completing my second state examination.

**You work for MEP Ralf Seekatz. Can you give us an insight into your work? Do you have a usual working day?**

As a policy advisor, I am responsible for the committee’s work. In comparison to other parliaments, the MEPs negotiate the current legislative proposals for their respective parliamentary groups and are therefore very involved with their content. For us, the most important dossiers in this legislative period were the new Anti-Money Laundering Regulation and the Retail Investment Strategy. We negotiate these reports with other political groups and later on with the Council. In this context, we also hold talks with the Commission, the permanent representations or stakeholders. The key is to take into account all the concerns from different sectors and countries, and find a balanced compromise. You get to know an incredible number of interesting people in your daily work and learn something new every day. So it never gets boring.

**You work on a wide variety of legislative projects in the European Union. Can you briefly summarise the process of a legislative initiative in the European Parliament?**

After the European Commission publishes a legislative proposal, it is assigned to the responsible committee in the European Parliament. Each political group then appoints a responsible rapporteur who negotiates on behalf of the entire group. After the vote in the committee and plenary, trilogue negotiations with the Council are being held. The outcome of the negotiations must then be confirmed in plenary.

**When you look back on the current legislative period, what are some unforgettable moments or successes that will remain a lasting memory?**

From my point of view, the negotiations on the AML Regulation were particularly defining for this legislative period. As we had been negotiating this comprehen-



sive legislative package almost around the clock for the last two years, it was a huge relief when we finally concluded the negotiations. The negotiations were anything but easy. However, in the end, we were able to implement almost all the points that were important to us and created an ambitious European framework without losing the sense for measure and mean.

**The European elections are just around the corner. Will the European Union afterwards still be the same?**

Current forecasts assume that parties on the right will make gains. In this legislative period, we mostly had a majority of Social Democrats, Greens and Liberals, which made life quite difficult for us. So far, the members of the AfD and the other ID parliamentary groups have completely declared their non-cooperation. If this complete inactivity continues, little will change. At worst, there will be a political stalemate after the European elections. However, less legislation at European level does not always have to be a bad thing. In any case, I do not see the European project in danger. ✓

**>> About the interviewee**

*Friedrich Rößler is Policy Advisor to Member of the European Parliament Ralf Seekatz.*

**>> About the author**

*The interview was conducted by Larissa Oebel, notary candidate in the district of the Rhenish Chamber of Notaries and Director in the Brussels office of the German Federal Chamber of Notaries.*



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# A CUP OF COFFEE WITH ...



**Prof Dr Jens Bormann,  
LL.M. (Harvard)**

**„Notaries are a core component of an effective preventive administration of justice.“**

*Prof Dr Jens Bormann*

Prof Dr Jens Bormann is a notary in Ratingen, has been President of the German Federal Chamber of Notaries (hereinafter: “Bundesnotarkammer” or “BNotK”) since 2015 and an honorary professor at Leibniz Universität Hannover since 2017. In addition, he has held the office of Vice-President of the International Union of Notaries (UINL) for Europe since 2022 and is Chair of the UINL working group “International Organisations”. In this edition of BNotK international, Prof Dr Bormann answers questions regarding his work as President of BNotK and UINL Vice-President for Europe.

**Prof Dr Bormann, you have been committed to the notarial profession since your time as a notary candidate. From 2006 to 2011, you were Director-General of BNotK in Berlin, since 2015 you have been President of BNotK, and in 2022 you were also appointed Vice-President for Europe of the International Union of Notaries (UINL). Where does your commitment stem from and why is this kind of work so important?**

My commitment, as you call it, - which, incidentally, I share with many of my notary colleagues - certainly stems from the conviction that, in addition to the traditional fulfilment of the public mandate as a notary, the representation of the notarial profession as well as the political work in this regard are essential for its continued existence and its constant further development in the interests of citizens.

Time and again I hear colleagues say: *“For me, the notarial profession is the best legal profession there is”*. Personally, I can fully agree with this statement. However, the intention behind what we do at BNotK goes beyond that.

Notaries are a core component of an effective preventive administration of justice. As public officials, they make a significant contribution to ensuring both the rule of law and legal certainty. As gatekeepers, they play a key role in ensuring reliable public registers and are strong partners of the state in the area of financial crime. Through the legality checks they perform and their obligation to neutrality as well as confidentiality, they facilitate balanced and targeted agreements, thus contributing to appeasement and reducing the number of contentious proceedings before the courts. The fact that you will find a notary even in the most rural areas of our country and the socially compatible fee system ensure that our citizens have effective access to law and justice.

Thus, we play a crucial role in our legal system. Against this background, I think it is important that we strive to uphold the tried and tested principles of this system and work towards an objective presentation and perception of our public activities and the associated added-values for citizens and companies through our professional work. This part of our work at BNotK therefore relates to the status quo.



Prof. Dr. Jens Bormann and Larissa Oebel / Photos UINL

At the same time, however, we must of course not remain in the "here and now", but also dare to look to the future and ask ourselves how we can further develop and improve our public services. In order to achieve this goal, well-grounded professional work is also essential.

**You mention the future of the profession. Are there any developments that pose particular challenges now or in the future?**

I think that every advancement is accompanied by specific challenges. One major upheaval that is already in full swing and will continue is digitalisation, which has conquered almost all areas of our lives in recent years.

The digitalisation of our profession is therefore a topic that is particularly important to me. Some may think that we as notaries are rather caught up in tradition than proactively breaking new ground. However, that is by no means the case. In recent years, we have invested immensely in technical innovations and legally compliant digital solutions. The BNotK's digitalisation projects are diverse: from our Electronic Archive of Authentic Acts and notarial online procedures to future projects such as the use of artificial intelligence - we are constantly working not only to adapt to digitalisation, but also to actively advanced it.

At the same time, we deem it imperative to transfer the well-proven principles of the analogue world, which serve to guarantee legal certainty and the rule of law, also into the digital world.

In a speech last year, our Federal Minister of Justice, Dr Marco Buschmann, stated that notaries are not only "guardians of form", but also "co-guarantors of civil liberty". I agree with this statement. It takes account of the fact that freedom and form are inextricably linked and that form, as a means of preventing arbitrariness, creates legal certainty and peace under the law. These are crucial values that we are no less dependent on in the digital context than in the analogue world. It is therefore our duty to ensure that form and freedom continue to exist in the context of digitalisation. In my opinion, the aspect of digital sovereignty plays a decisive role in this regard.

**As President of BNotK and UINL Vice-President for Europe, you are able to draw a direct comparison. How does the work of the profession at international level differ from national work?**

Contrary to what one might think, the differences are not that great. But, of course there are some: One major difference, for example, is working in an umbrella organisation compared to working as an individual Chamber of Notaries.

At national level, the BNotK represents the interests of German notaries vis-à-vis national or European legislators or international institutions such as the World Bank or the OECD. This work naturally continues in an international context. However, the work of an umbrella organisation like the UINL is primarily about the common interests of the "European notariat" or even the "world notariat", which ideally speak with one voice. What is particularly exciting about our international work is that we sometimes even have the opportunity to



cooperate with international organisations. For example, we have published two guides with the Food and Agriculture Organisation of the United Nations (FAO): one on the responsible administration of tenure and the preventive administration of justice and one on strengthening gender equality in notarial practice.

Another difference is that the decision-making process with 91 member-notariats, as it is the case within the UINL, is naturally different and the main topics of interest are not identical either. For example, German legislative procedures, which we closely follow at a national level, may be less relevant in an international context. Also, the organisation of the notarial profession can vary greatly from country to country, as can current issues and challenges.

In the end, however, the similarities always outweigh the differences, such as the endeavour to draw attention to the many added-values of the preventive administrative justice through notaries. For this reason, as UINL Vice-President for Europe, I am going to publish a practical handbook on this subject in order to illustrate the key aspects in a general yet precise manner in several languages. It is my hope that this handbook will be of assistance to notaries in Europe and around the world in their discussions with legislators, government institutions and international organisations.

**The international work is very diverse and ranges from discussions with the World Bank to participation in congresses and events in distant countries. What do you particularly enjoy about this job?**

Of course, there is a lot to choose from. However, I particularly value the dialogue with my international colleagues. At UINL level, we meet regularly to discuss current topics and projects and to learn more about the experiences on certain aspects in other countries. The international work enables me to think outside the box and come into direct contact with notaries from all over the world. On the one hand, this is personally very enriching. On the other hand, it also helps with my work back at home. Many topics, such as digitalisation, are not specific to Germany, but affect people all over the world. Being able to exchange views on the respective challenges, solutions and experiences is a privilege that I wouldn't want to miss. ✓

#### >> **About the author**

*The interview was conducted by Larissa Oebel, notary candidate in the district of the Rhenish Chamber of Notaries and Director in the Brussels office of the German Federal Chamber of Notaries.*

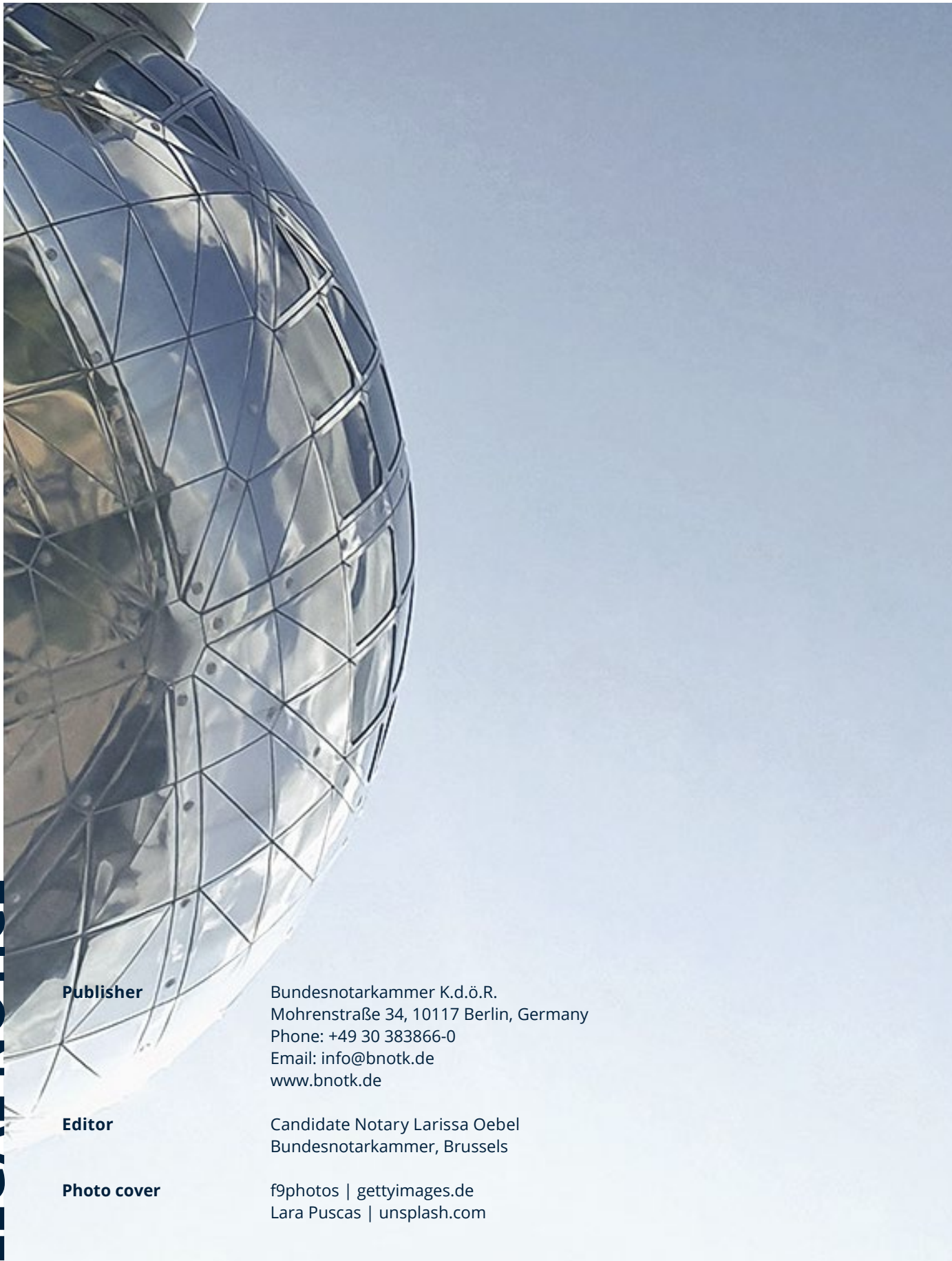


*Prof Dr Jens Bormann  
Photo: Marc Müller, Munich*



*Lionel Galliez, Prof Dr Jens Bormann, Dr Cristina N. Armella  
Photo: Marc Müller, Munich*

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Bundesnotarkammer K.d.ö.R.  
Mohrenstraße 34, 10117 Berlin, Germany  
Phone: +49 30 383866-0  
Email: [info@bnotk.de](mailto:info@bnotk.de)  
[www.bnotk.de](http://www.bnotk.de)

**Editor**

Candidate Notary Larissa Oebel  
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