The Liberalization of Notary Fees in Romania. Objectives and Restrictions

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ABSTRACT

Minimum notary fees are the questionable regulatory feature of Romanian notary system. Classic latin notary system to which it belongs Romanian notary system is the most regulated and most restrictive of the four existing notary systems in the European Union. Notary fees are set by law. Notary is an unusual market activity when assessing service provision is not during but after the quality transpires. Minimum notary fees militate to ensure an adequate quality of notary services at an acceptable cost. In contrast, the liberalization of notary fees aims to increase competition among service providers to encourage professionals to act according to the principle of cost-effectiveness, increase quality or to offer innovative services practice the lowest prices. The purpose of writing is to assess the impact of price liberalization in Romania with reference to the deregulated Dutch notary system and similar systems similar to Romanian, the Belgian system and German system.

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1. Introduction

The increasingly intense economic integration of Europe brought in the forefront one of the most controversial topics: deregulation of notary systems, one of the most discussed regulations being the one regarding the notary fees. In almost all European countries, civil law countries, the notary fees are predeterminated by the state, some of them are maximum (e.g. Austria), some are minimum (e.g. Romania) and part of them are set (Belgium). Fees fully liberalized are encountered in countries such as Netherlands and Italy, and fees prevailing autonomous in Portugal.

Striving to improve and modernize the restrictive standards of professional services the European Commission authorized a study to scientifically substantiate the fact that regulating professions induces unreasonable prices detrimental to consumers, the ZERP study was implemented by the European Centre for Legal Policy in Bremen. This research regarded the real estate transaction market due to the large share of land and buildings wealth held in most of the European countries.

The debate on excessive regulation of professional services determined a response from the Notary Council of the European Union, which mandated the American academic in Comparative Law, Peter L. Murray from the prestigious Harvard University, to actualize another study from an independent perspective. This research scientifically established that there isn’t “any evidence that the regulation of services associated to the transfer of real estate would lead to a lower cost or to a higher efficacy for the consumer. But the opposite seems to be true.”

The idea of liberalization of notary fees emerged in 2009 in Romania, after the publication on the inquiry initiated through the Order of the President of the Competition Council no. 115/01.04.2008, entitled "Investigative report to analyze the real estate market and the real estate transactions related services", which has shown the notary services related to real estate transactions in Romania are characterized by a high degree of regulatory in comparison to the European average, which determines a blockage of competition and therefore Romanian notaries have come to practice Europe's highest fees for real estate transactions due to the lack of competition between notaries. However there wasn’t conducted any research regarding other notary services.

2. Romanian notary system

Along with the most of notary systems in continental Europe (e.g. Belgian system, German system, Italian system, etc.) the Romanian notary system belongs to the Latin traditional notary system where the registrar is invested with formal responsibilities by public authorities. Nevertheless notaries, unlike the public officers, aren't remunerated by authorities.

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The Romanian public notary has a specific status, is a freelance fulfilling acts of public authority, designated by the Minister of Justice, as suggested by European Union Council of Notaries. The functioning and organization is regulated by the state through the Law of public notaries and notary activity no. 36/1995 with changes and additions by Law 77/2012, through a regulation implementing this law, promulgated by Ministry of Justice and through a Professional code of conduct and a Statute, the last two being ratified by professional organization.

Number of notaries is not predetermined, updated annually according to objective criteria such as: number of active public notaries and that of trainee notaries who promoted public notary examination; existing volume of demands on Notary services; local social and economic requirements.

Romanian public notaries are nationwide constituted in the National Union of Public Notaries from Romania (NUPNR), the only professional organization established by law, having legal personality, of public interest, with its own patrimony and budget, formed by 15 Chambers of public notaries (the number of Chambers corresponds to the number of Appellate Courts), is the professional forum of notaries. Each Chamber belongs to public notaries which operate in the territorial jurisdiction of a Court of Appeal, consisting in several counties.

The public notary charges his client, for services provided, a fee whose minimum value is determined by law. The same time he has the obligation to perceive certain taxes. Therefore the public opinion understands by notary fees “all sums of money which pays the public notary for handling a document or notary procedure”, as the President of National Union of Public Notaries from Romania, Mr. Dumitru Viorel Manescu emphasizes. Notary fees consist of several categories of charges: notary honorarium, the tax on devolution of property rights (transferred to state budget by the public notary), the VAT, the charge for real estate advertising (transferred by the notary to the National Agency for Cadastre and Land Registration), taxes collected into the account of Unique Registries verification.

The fees for services provided by public notaries are determined by Council National Union of Notaries approved by the Ministry of Justice.

In establishment of notary fees are taken into consideration: time and volume of work required fulfilling the document or procedure; obtaining additional data and information or collaborating with experts or with other specialists required by the nature, object, complex and difficulty of the document; time constraints in which the notary is compelled by circumstances of the document or procedure to act to ensure efficient legal services; periods of archiving documents and notary procedures; the act or process fulfilling place; public notary accountability in relation to the document or process value.

Notary fees are currently computed according to the Order of the Ministry of Justice no. 46/2011 to approve Standards on charges of fees for public notary services according to which the fees levied are the following:

− fees established in determined amounts (for instance: testaments, accessions and detached properties, mandates, authentications, loan contracts, etc.);
− gradual fees – in parts and percentage shares depending on determined and determinable value of the subject of the notary document (for instance: translative document of ownership which have as their object rights in rem in immovable assets, exchange papers on property or real estate, personal and real estate acts of warranty, inheritance procedure, etc.).

Some documents elaborated in order to assert rights provided by special laws and social protection are exempt from fees and exemptions may be granted if the Romanian state commits to pay or offer 100 % discounts to underage successors without income or to inheritor without any revenues or derive income below minimum wage, etc.

The fees are minimal in Romanian notary system, therefore notaries may increase them according to market demand on notary services, and so fees for the same facilities may differ from one notary office to another.

Due to the European Commission pressure on European level and internally by the Competition Board, the law of public notaries was amended, so on 01.01.2013 went into effect the Law 77/2012, that modifies Law no. 36/1995, that under Article 33, paragraph (2) on a proposal from CIL creates the possibility the Minister of Justice can determine notary acts and procedures for which the fee is freely determined between the notary and the applicant. The Government approved in a Memorandum a pilot project on notary tariff liberalization to eliminate minimum fees for certain documents and notary procedures. Therefore representatives of the Ministry of Justice, Competition Board and NUPNR are set up on March 6, 2013 which of the notary acts and procedures will eliminate minimum fees, taking as term until April 2013 to develop in this regard a draft law.

3. International guidelines

Dutch notary system is a de-governed notary system that is wanted to be promoter of contemporary notary, where the notary is an economic agent satisfying a public position; as example the liberalized Latin notary system. Since 1999 the Dutch Government decided the de-regulation of notary profession in order to
diminish fees and improve quality by increasing competition, promoting innovation, increased choice, a higher distinction of notary services.

Key limitations were abolished: numerus clausus, fixed location and fixed fees. Nevertheless the Dutch system is still part of so-called Latin notary system because there are yet regulatory restrictions especially those on compulsory intervention and exclusive rights in the Dutch system.

The number of notary practitioners is determined by market mechanisms. Entering the market is conditioned only by the preparation of a detailed business plan for the first three years of practice to ensure a certain stability of the notary office, condition disputed by many as being considered excessive. Largely due to economic crises removing this restriction didn’t lead to explosive growth of notary positions.

It was introduced the possibility notaries can conduct business outside the field of practice but aren’t allowed to open subsidiaries of the office in order to eliminate the risk of market concentration. There are many offices where the Dutch notaries can collaborate with lawyers and tax consultants. A notary can be employed with salary of another notary (contractor). The Dutch notaries can advertise by providing information about quality, different experience and fees.

Fixed fees system was abandoned but the transition to tariff liberalization was gradually achieved. It was implemented an outline to reduce fixed fees (scale fees) for services on real estate transfers and those of family law, fees for services in commercial law were completely liberalized. The new system led to price differentiation and offered consumers the opportunity to negotiate prices, but from the desire to maintain work volume some notaries have overly decreased charges.

After the first two years contrary to expectations it was found that the level of fees not only didn’t decrease immediately, but some notary services, such as those related to family law (prenuptial agreements, testaments, etc.), increased and were introduced maximum limits to fees in order to protect low-income people.

Fees for real estate transactions dropped.

In the present economic crisis the Dutch notaries asked the Government to return to the preset charges and the answer given was that “there is no turning back and the only solution is to wait better economic times”.

The German notary system is part of the traditional system, strongly governed by the Latin notary. Due to federal organization we find two main categories of notaries in Germany: full time notary practicing in independent offices and is not allowed to practice any other activity, and notary attorneys who practice this profession as a secondary activity. Notary lawyers are officials appointed by the State who provides independent consulting, impartial and objective for important legal transactions and preventive management. Appointment and supervision of both types of notaries are in the jurisdiction of legal administration.

The notaries of this system are highly qualified professionals that are subjected to stringent monitoring standards, financial responsibility and specialized experience, their number, qualifications, practices and fees are regulated by law. German notaries can exercise their attributions throughout the country. Notary intervention is mandatory, lack of authentication entails the nullity of the contract of sale. Study done by American Professor Peter L. Murray show that notary and services provided are complied especially in Germany.

Notary fees are strictly controlled and are calculated depending on notary services “value” and are determined according to a schedule, as a percentage of the purchase price in a real estate sale transaction, percentage that decreases as the value of the transaction increases, discounts are not permitted nor payments in installments.

In Germany the regulatory level is elevated, consumer costs are low compared to de-governed systems in the United Kingdom and the Netherlands, even the authors of the ZERP study admit it, yet through a case study which analyzed effects on competitive behavior in notary profession in Bavaria using the Bresnahan-Reiss method shows that the argument of geographical restriction entering into the profession with higher price to ensure wide geographic coverage can not be sustained and concludes that profession deregulation would increase benefits at the expense of costs.

Belgian notary system is a regulated system implying the Latin type. Number of standing notaries and novice notaries are set in the Act of notaries. Notary is allowed to open the notary office only in the district in which he was invested, can provide legal counsel anywhere but is not permitted to elaborate and authenticate documents outside district only in certain circumstances (for ill persons or convicted).

Professional forum of Belgian Notaries is the National Chamber of Notaries created along with the taking effect of the New Law of the Notaries, which has the power of self regulation.

Interdisciplinary cooperation between notaries and lawyers or tax advisors is not allowed in Belgium. Specializations are also prohibited; the notary should only provide notary services.

Notary fees are fixed by royal decree. Amount owed by the client consists of three elements: notary fee (established by law), register charge of minimum 25 Euro (to be transferred to the Finance Department) and other expenses related to the provided notary services.

Belgian notary fees are among the highest in Europe as shown in the ZERP study. The more transaction amount becomes larger the more expensive notary fees become.
In order to evaluate the market concurrency in Netherlands and Belgium, Nahuis, Richard, Joelle Noailly, Catherine Schaunans and Frank Verboven conducted a study that showed that there wasn’t a significant increase of competition since price liberalization. However preliminary research has shown that services were adversely affected by concurrency.

4. The pros and cons of notary fees liberalization in Romania

Elimination of minimum notary fees but also of other limitations, such as those regarding the number of notaries, prohibition of advertising, etc., could stimulate price competition and could lead to an increased concern for improving the quality of services.

Notary tariff liberalization induces differentiation of notary fees and price paid-service cost task.

Notary tariff liberalization would balance Notary Offices income located in poor regions with those located in expensive regions, because the fees reflect the actual costs of services and not a percentage of the transaction.

Tariff liberalization would promote innovation regarding the manner in which notaries are organized and offer their services but also in terms of a wider use of information technology (exchange on a secure electronic mail, websites to compare fees for the most common notary services, etc.).

On markets far from being perfect the tariff liberalization could lead to a damaging decline of quality, context in which the notary services request would far exceed demand, and would force public notaries to get into a price war and choose keeping the workload to the detriment of quality.

Notary services are an atypical market activity. Renunciation of minimum fees and emergence of a service market with huge price discrepancies could lead to insecurity among consumers regarding what constitutes appropriate price. Market participants are unable to evaluate notary services at the time of provision but later on avoiding future conflicts that would cost additional costs, whereas through his work the notary guarantees the achievement of public interest such as lawfulness and legal certainty of signed documents, protection of consumers, relieving courts, public interest, etc.

Notary tariff liberalization could cause notaries’ oligopolistic behavior, context in which fees would become rigid.

Free negotiation of fees will lead to differentiation of services thus acting as the economic agent that seeks to maximize income, the public notary could completely exclude a service less profitable from the range of services provided, which would be detrimental to the public interest.

Notary fees de-regulation could have negative consequences for low-income population that will not have access to entire range of notary services because some costs will no longer be accessible to them, situation currently ensured through the mechanism of cross-subsidization between high and low value transactions and subsidizing other low-value services.

Notary tariff liberalization could cause excessive price rises of certain notary services which may require setting maximum notary charges, as happened in the Dutch de-regulated notary system that introduced maximum fees for legal services provided to families of low income groups.

5. Feedback study of Romanian notary services consumers

In order to find out if the price is the criterion that public consider most important to selection of the notary office, I made a selective market research performed on a sample of 73 clients of one of three notary offices in Romania, Tecuci City, Galati County, who had to chose the most important of the four selection criteria: geographical proximity, price, document execution and notary reputation.

A total of 92 people, notary office costumers, were interviewe to determine the acceptability of the current notary system (regulated system) using a set of statements, favorable and unfavorable on its important features. I used the Likert scale. Respondents expressed their agreement or disagreement choosing one of five possible variants from “total agreement” to “total disagreement” that were graded from +2 to -2.

<table>
<thead>
<tr>
<th>Total agreement</th>
<th>Agreement</th>
<th>Indifferent</th>
<th>Disagreement</th>
<th>Total disagreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>+2</td>
<td>+1</td>
<td>0</td>
<td>-1</td>
<td>-2</td>
</tr>
</tbody>
</table>

1. The current number of notaries cover population needs:

| 28 | 51 | 9 | 2 | 2 |

2. Fixed fees guarantee adequate quality notary services as it prevents the offer of poor quality services at a low price:

| 29 | 43 | 11 | 7 | 2 |

3. Notary fee is unreasonably high:

| 17 | 33 | 18 | 16 | 8 |
I have calculated scores for each feature weighting values obtained in the market research with
gradations corresponding to each stage and dividing the values obtained from the total number of sampled
individuals. I have calculated the global score as a simple arithmetic average of the scores obtained for each
feature. I have determined the score obtained for each feature separately but also the global score.

\[ S_{\text{number of notaries}} = \frac{29x(2) + 43x(1) + 18x(0) + 18x(-1) + 2x(-2)}{92} = 1.10 \]

\[ S_{\text{quality}} = \frac{25x(2) + 43x(1) + 18x(0) + 18x(-1) + 2x(-2)}{92} = 0.99 \]

\[ S_{\text{fee}} = \frac{17x(2) + 33x(1) + 18x(0) + 18x(-1) + 2x(-2)}{92} = 0.38 \]

\[ S_{\text{global}} = \frac{1.10 + 0.99 + 0.38}{3} = 0.82 \]

Based on these results we find that this system enjoys positive feedback because the obtained global
score is bigger than 0 however without being considered an exceptional system with sub-unitary values,
respectively 0.82.

Respondents agree that the number of notaries cover the population needs, fixed fees guarantee
adequate quality since it prevents the offer of poor quality services at a low price, while the notary fee is
considered by many clients as unreasonably high.

Clients were asked to indicate on a scale from 1 to 5 as they trust the notary services, 61,11 % of
respondents gave top rating “5”, 22,22 % gave a “4”, 7,78 % have given grade “3”, 1,11 % - “2” and only 7,78 %
gave the lowest grade “1”.

![Figure 1. Confidence level notary services](image)

In order to determine the psychological fee that the client considers it right, when he has to pay the
notary for authentication of a land sale contract (selling land price 10.000 lei), price that at the time of research,
respectively 20.12.2012-28.12.2012, was preset and was at least 220 lei, I have made a selective market
research performed on a sample of 89 people, clients of one of the three notary offices from Tecuci City, Galati
County, who were asked to respond the following questions:

1. In the current system the notary fee for authenticating a land sale contract (land sell price 10.000
lei) is at least 220 lei, if the fee would be liberalized, which is the maximum fee that you are willing
to pay without consider it too expensive?

2. In the current system the notary fee for authenticating a land sale contract (land sell price 10.000
lei) is at least 220 lei, if the fee would be liberalized, which is the below minimum fee you do not
have to ask for this service having doubts about its quality?

I have chosen as reference this notary services, respectively authenticating a land sale contract (land
sale price 10.000 lei), after having calculated the largest share (66,16 %) of total real estate sale contracts
authenticated during January-November 2012 at the Notary Office whose clients have responded the
questionnaire and I have found that the share was owned by sales contracts with a lower or equal selling price
of 10.000 lei, and most of these contracts (a percentage of 81,43 %) are selling land without construction
contracts.

I have used the psychological price technique that “corresponds to the price exercising a certain
attraction for the consumer, attraction that can not be explained by reasoning.”
I have set defined prices just below a round number: 1-101 lei; 101-201 lei; 201-301 lei; 301-401 lei; 401-501 lei; 501-601 lei; 601-701 lei; 701-801 lei and 801-901 lei. I have calculated the percentage of each answer. The results obtained were:

Table 2. Minimum and maximum price questionnaire results

<table>
<thead>
<tr>
<th>Price (lei)</th>
<th>Answers Minimum price</th>
<th>Answers Maximum price</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>no.</td>
<td>%</td>
</tr>
<tr>
<td>1-101</td>
<td>29</td>
<td>32.58</td>
</tr>
<tr>
<td>101-201</td>
<td>25</td>
<td>28.09</td>
</tr>
<tr>
<td>201-301</td>
<td>13</td>
<td>14.61</td>
</tr>
<tr>
<td>301-401</td>
<td>11</td>
<td>12.36</td>
</tr>
<tr>
<td>401-501</td>
<td>6</td>
<td>6.75</td>
</tr>
<tr>
<td>501-601</td>
<td>1</td>
<td>1.12</td>
</tr>
<tr>
<td>601-701</td>
<td>1</td>
<td>1.12</td>
</tr>
<tr>
<td>701-801</td>
<td>1</td>
<td>1.12</td>
</tr>
<tr>
<td>801-901</td>
<td>2</td>
<td>2.25</td>
</tr>
<tr>
<td>TOTAL</td>
<td>89</td>
<td>100</td>
</tr>
</tbody>
</table>

Then I have calculated the cumulated percentages of responses to minimum and maximum price and percentages held by potential clients, calculated as the difference out of 100 % of the amount of cumulative percentages obtained for minimum and maximum price. Cumulative percentages were calculated totaling bottom-up percentages obtained by the two prices, minimum and maximum.

I have passed from the bottom up cumulative percentages of responses for minimum price because any value below the least considered does not matter, however cumulative percentage of responses for the maximum price I went from top to bottom because any value above the maximum considered does not matter.

Table 3 Cumulative percentages and potential clients

<table>
<thead>
<tr>
<th>Price (lei)</th>
<th>Answers Minimum price % cumulative (A)</th>
<th>Answers Maximum price % cumulative (B)</th>
<th>Potential clients % 100-(A+B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-101</td>
<td>100</td>
<td>3.37</td>
<td>-3.37</td>
</tr>
<tr>
<td>101-201</td>
<td>67.42</td>
<td>3.37</td>
<td>29.21</td>
</tr>
<tr>
<td>201-301</td>
<td>39.33</td>
<td>3.37</td>
<td>57.3</td>
</tr>
<tr>
<td>301-401</td>
<td>24.72</td>
<td>4.49</td>
<td>70.79</td>
</tr>
<tr>
<td>401-501</td>
<td>12.36</td>
<td>10.12</td>
<td>77.52</td>
</tr>
<tr>
<td>501-601</td>
<td>5.61</td>
<td>30.34</td>
<td>64.05</td>
</tr>
<tr>
<td>601-701</td>
<td>4.49</td>
<td>50.56</td>
<td>44.95</td>
</tr>
<tr>
<td>701-801</td>
<td>3.37</td>
<td>80.90</td>
<td>15.73</td>
</tr>
<tr>
<td>801-901</td>
<td>2.25</td>
<td>100</td>
<td>-2.25</td>
</tr>
</tbody>
</table>

The psychological price is in the range corresponding to the maximum percentage of potential clients. Systematizing information we can make the graphical representation:
Figure 2. Graphical representation psychological price

According to the results achieved in chart the highest percentage of potential clients 77.52 % is obtained if the notary service price is between 401-501 lei, about two times the current price of this service before liberalization.

Out of 87 persons, notary office clients, a number of 39 persons, a percentage of 44.83 %, consider that notary fees liberalization involves reducing all notary taxes and not only notary fee, while 20.69 % believe that liberalization will increase fees, 18.39 % think of increasing all fees and only 16.09 % believes that tariff liberalization involves reducing notary fees.

When they were asked to appreciate which is the total notary fee of 475 lei payable to the notary to authenticate a land sales contract (land selling price 10.000 lei), to learn if it is known the notary fee amount in all notary costs, out of 88 people only a percentage of 22.73 % knew is 220 lei, the majority, 37.50 % responded that it is 100 lei, 28.41 % said it is 300 lei and 11.36 % estimated that the entire amount is intended to the notary.

6. Conclusions

It is difficult to evaluate the impact it will have the liberalization of notary fees in Romania by reference to the countries where they have already been liberalized or studies made in countries similar to the Romanian system, due to differences given the particularities of each system in terms of: legislation, incidence of tax, public and communal rights and interests, etc.

The whole history of Romanian notary is characterized by regulation which often took the form of restrictions clearly defined by law starting from acceptance, exercise, number, service cost and finishing with responsibilities, restrictions designed to ensure respect to lawfulness in legal relations, legal security, prevention of disputes, etc.. Notary tariff liberalization can bring benefits only when is saved the most important quality of the profession.

The research showed that people now trust the notary, so that most respondents gave the highest grade. The current regulated system enjoys positive feedback without being considered an exceptional system. The respondents agree that the number of notaries cover people’s needs, agree that the minimum fees guarantee appropriate quality of notary services since it prevents the offer of poor quality services at low price, while many clients consider the notary fee unreasonable high.

As asked to respond which is the most important criterion for selecting the notary office, most of the clients have checked notary reputation, price as selection criteria obtained the lowest percentage. Therefore psychological fee is properly considered by the highest percentage of potential clients in obtaining one of the services that have the largest share of all real estate sale contracts which is about two times higher than the prescribed minimum fee.

Clients are not familiar with the notary fee as part of total fees to be paid to the notary, only a percentage of 22.73 % of the respondents were able to properly evaluate.

Most of the respondents (44.83 %) understand by liberalization diminishing all notary costs and not only the notary fee, while 20.69 % of them believe that liberalization will increase fees. Some services will be cheaper, others more expensive.
It is obvious that the Romanian society needs a sufficient time to prepare for the changes that occur in the process of liberalization. It is necessary that the public is well informed about the changes that will be implemented, effects expected from these changes and importance of notary work.

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