

Notarization from abroad in times of travel restrictions

A French Décret, allows, for the time of the state of emergency, notarization by a French notary without a need for parties to be physically present. Explanation and analysis is [here](#) and (briefly) [here](#). Importantly, the possibility is also open to non-residents of France. Notaries in France had, unsurprisingly, warned of the risk of fraud, but the Conseil d'Etat approved of the decret.

Austria has a similar rule in sec. 90a of its Notary Act. In Germany, this is not (yet?) possible: Art. 40(1) of the German Notarisation Act requires physical presence of the parties; the greatest distance allowed is, apparently, the way to the parking lot. Estonia has introduced an e-notary for notarisation from abroad, but this is available only in Estonian embassies.

The French and Austrian rules raise interesting private international law questions. Usually, notarization requires physical presence - which is why so many lawyers fly from Germany to France to have contracts notarized. Can they now stay at home? If two French domiciliaries sign a contract electronically while in Switzerland, and notarization happens in France, is this a case of Art. 11(1) Rome I Regulation? That would lead to the odd result that the formal requirements would follow from either Swiss law or from the law applicable to the contract (which need not be French law) and not necessarily the law of the place where the French notary sits. And yet, Art. 11(2) seems inapplicable because the notary is not an agent of the parties. Should it be applicable by analogy? Should there be a special rule for notaries that used to be unnecessary because notarization always requires physical notaries? Or is this another reason to rethink the principle of *locus regit actum* for internet contracts?