

# CROBECO and assistance for Dutch notaries from local foreign specialists

Lucienne van der Geld

*legal director at Netwerk Notaries  
and lecturer at Radboud University Nijmegen*





Can local foreign assistants help prevent problems for Dutch buyers and Dutch notaries?



**I'VE ONE RESIDENCE  
IT'S JUST I'VE A BASEMENT  
IN BULGARIA AND A  
GROUND FLOOR IN SPAIN**

© Ian Dicks

**Network Notaries is the biggest alliance of notarial law firms in the Netherlands, with over 600 specialized notaries.**

**We study and research new legal options. Through our more than 150 branch firms, we provide our clients with information and advice concerning important moments in their lives.**

**Network Notaries uses a unique monitoring system to measure and safeguard our quality standards.**



Er is altijd een  
netwerknotariss  
bij u in de buurt

Wij hebben met elkaar kennis  
en ervaring binnen handbereik



# CROBECO

> impressive framework  
has been set up

Our question: *what are the opportunities, threats (or risks) and challenges by using this framework?*





# threats

- mainly questions that will undoubtedly get an answer
- questions concerning our insurance, expectations between notaries and gestores and differences between foreign law and Dutch law
- pitfalls like the notorious 'land-grab' cases, 'illegal homes' as a result of *Ley de Costas*, the inland seawater canals of Empuriabrava.





# Latin notarial system in the Netherlands

1. position of the civil-law notary entails a duty of care to the parties involved in the transaction (seller and buyer) but also with respect to third parties
2. choosing Dutch law: the buyer's obligation to examine and the seller's obligation to disclose information





## The Dutch Supreme Court in 1984

"The court of appeal has apparently - and rightly - assumed that the civil-law notary's function in legal transactions also requires him in specific circumstances to exercise a certain degree of care for the interests of third parties who may be affected by the official acts that his clients wish him to perform."

(the Tilburgse Hypotheekbank rulings, 23 December 1984)







## **Court of Appeal of Amsterdam in 2011**

This judgment could be taken to imply that the Dutch notary has a duty of care with respect to third parties in the sense of refusing his services if he is aware that providing those services would result in an unlawful act against a third party or a breach with respect to a third party.

(Appealcourt of Amsterdam 24 May 2011)







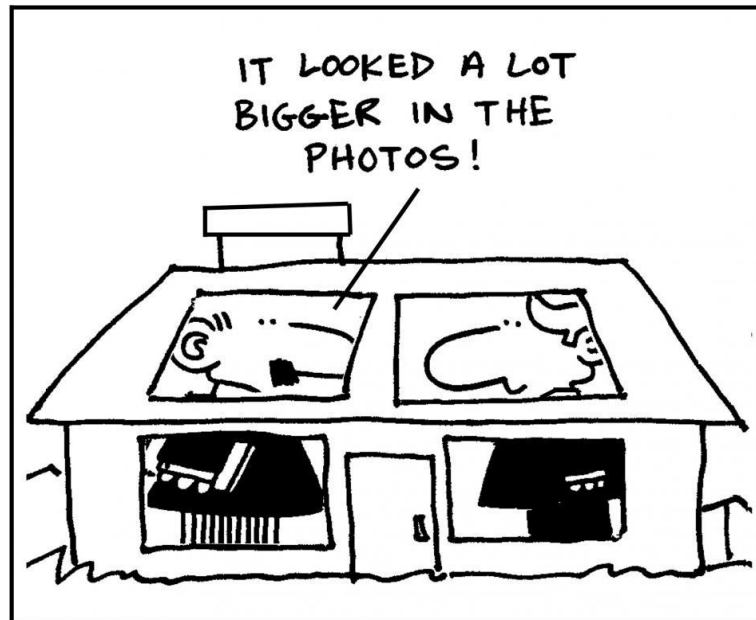
## What can the *gestor* do?

- the Netpro assistant — the *gestor* — can take over part of the notary's investigative work in the foreign country
- the Dutch notary needs to have some knowledge of the law of the country where the property is located
- Our general terms and conditions: *The civil-law notary should always exercise appropriate care when engaging third parties. The notary is not liable for breaches by the third parties he has engaged. The notary is deemed to have been authorized by the client to accept any limitations to the liability of third parties on behalf of the client.*



# tasks for the gestor

1. requesting the tax number
2. consulting the Spanish cadastre and land register
3. finding out whether full ownership applies or whether there is another real right
4. conducting a title search
5. investigating easements, public-law restrictions
6. investigating permits needed for construction



# do's and don'ts

always use a Netpro assistant!

the Dutch notary must have  
knowledge of the law of the foreign  
country

the clause library (or repository of  
clauses) is also an important aid





## challenges

- basic knowledge of the law where the property is located
- no language barrier between the Dutch notary and the Netpro assistant
- system for sharing knowledge among Dutch notaries

- fees for notarial services in the Netherlands





## is CROBECO ready for this case?

A Dutch couple sell their holiday home in Spain to another Dutch couple. The purchase contract and deed of transfer of title are signed in the presence of a Dutch civil-law notary.

When discussing the purchase contract, it turns out that the son of the couple selling the property is really sorry the house is being sold. He would very much like to have the opportunity of buying the house back in future if it were to come back 'on the market'.



## opportunities

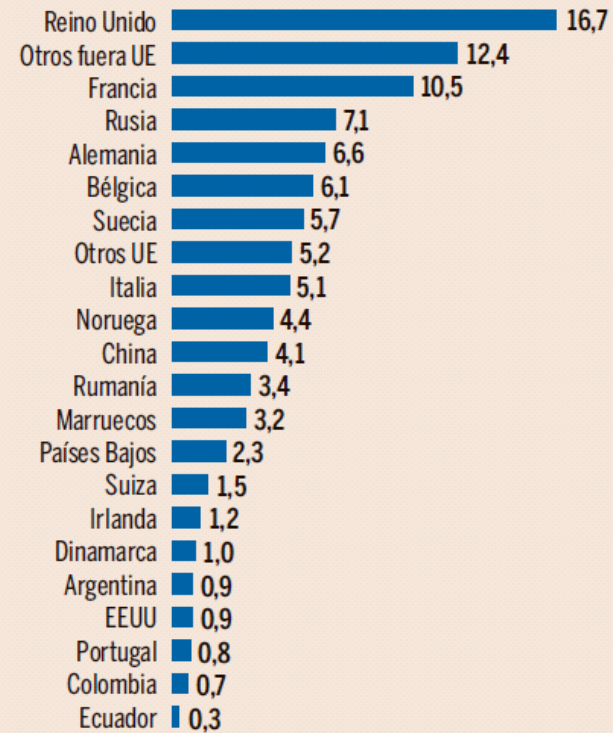
- influence of European Succession Regulation
- ‘one-stop shop’: choosing Dutch law has an effect in other countries for second home as well as inheritance



### APETITO FORÁNEO POR EL LADRILLO ESPAÑOL

#### > Compraventa de vivienda libre por nacionalidades

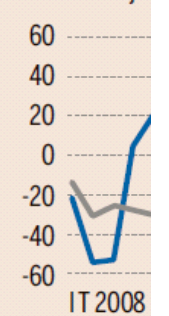
En porcentaje del total foráneo.



#### > Compraventa de vivienda libre

Tasa de variación

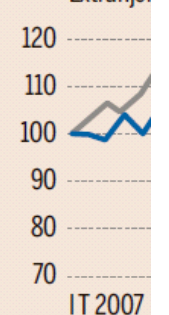
— Extranjero



#### > Precio por vivienda libre

Variación acumulada

— Extranjero



Fuente: Centro de Información Estadística del Notariado



