



IC RW Expert Group

Recommendations on Electronic Will Registration and Data Exchange

I. Purpose of the Document

The aim of the recommendations

The aim of the recommendations is to provide concrete guidelines to enhance developments in the interconnection of registers of wills in order to encourage Member States to register wills and exchange data electronically.

The recommendations contain legal, technical and organisational parameters. The potential target group are the citizens and legal practitioners dealing with succession cases in the European Union.

Necessity

Based on the information revealed at the European Commission's website¹, there are approximately 450,000 cross-border succession cases in the EU every year. Even though there is no definition for the term "cross-border succession" or "international inheritance", it presumably involves the cases where the estate, the deceased or the persons entitled to the estate are in different countries.

According to the results of a poll² carried out in the framework of the e-Justice project "Further developments in the area of the interconnection of registers of wills" (hereinafter referred to as the "IC RW project"), it can be summarised that obstacles preventing development in this area are either legal, technical or organisational. The results also revealed that in some cases it is difficult to reach the necessary political decision, which is why it is important to keep the political level informed through different channels about the obstacles and improvements in the area.

¹ http://ec.europa.eu/justice/civil/family-matters/successions/index_en.htm

² 11169/1/15 REV1 EJUSTICE 95 JUSTCIV 194





It was also outlined that in some cases Member States are facing financial and technical obstacles or strict national laws do not allow information exchange on wills. Notaries have also mentioned difficulties in finding authorities handling the case and receiving responses from another Member State authority in cross-border cases. Although the platform of the European Network of Registers of Wills Association (ENRWA) interconnects 16³ national registers of wills and enables to enquire information about the existence of wills, which has improved the situation significantly, the cross-border reciprocal data exchange is still not possible in some cases even within ENRWA. Therefore, it is necessary to develop the area further, to overcome the obstacles and to improve cross-border communication across the European Union.

Expected outcome

The goal is to draw attention of the Member States to the importance of using modern electronic solutions for registration of wills and for exchanging information related to succession matters in order to enable smoother and more secure communication. In relation to that, it is expected that achievements in this area will be expanded by involving the maximum number of Member States, leading to more effective settlement of succession proceedings.

II. Taking into account

Legal background

- o The Convention on the Establishment of a Scheme of Registration of Wills, drawn up within the Council of Europe by a committee of governmental experts under the authority of the European Committee on Legal Co-operation (CCJ), was opened to signing by the Member States of the Council on 16 May 1972, in Basel (hereinafter referred to as the “Convention”).
- o The Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 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 (hereinafter referred to as the “Succession Regulation”).
- o The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

³ AT, BE, BG, EE, FR, DE, EL, HU, LV, LT, LU, NL, PL, SK, RO, St. Petersburg





- o The Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (hereinafter referred to as the “e-IDAS Regulation”).

E-Justice

- o The Strategy on European e-Justice 2014-2018 (hereinafter referred to as the “Strategy”) adopted by the Council on 6 December 2013.
 - Section 24 of the Strategy states that “the e-Justice projects must have the potential to involve all the Member States of the European Union and all Member States should be encouraged to participate in order to ensure their long-term viability and cost-efficiency /.../”.
 - Moreover, section 38 of the Strategy states that “the interconnection of national registers containing information that is relevant to the area of justice should be promoted. The necessary technical and legal preconditions should be ensured to make such interconnections possible”.
- o The Multiannual European e-Justice Action Plan 2014-2018 adopted by the Council on 6 June 2014 (hereinafter referred to as the “Action Plan”).
 - Project 17 of the Action Plan stipulates that an informal expert group on the interconnection of registers of wills should be created in co-operation with the Member States and notaries. The project was transposed from the previous Action Plan for the period 2008-2013.
- o The guidelines on the implementation of the Action Plan⁴ endorsed by the Council on 4 December 2014 sets out the concrete steps to be taken by the Working Party on e-Law (e-Justice), including the setting up of the informal working group on the interconnection of registers of wills. The opening meeting of the informal IC RW working group was held on 18 November 2014.
- o The e-Justice project “Further developments in the area of the interconnection of registers of wills” (JUST/2014/JACC/AG/E-JU/6966) co-funded by the European Commission and co-ordinated by Estonian Ministry of Justice was launched on 1 October 2015 together with the following partners: The European Network of Registers of Wills Association (ENRWA), Estonian Chamber of Notaries, Lithuanian State Enterprise Central Mortgage Office, the Ministry of Justice of Spain (the General Directorate of Registers and Notaries), Italy (Notartel S.p.A.), Hungarian National Chamber of Civil Law Notaries, Austrian Chamber of Civil Law Notaries, the Ministry of Justice of Greece, and the Registry Agency of Bulgarian Ministry of Justice.

⁴ 15771/14 EJUSTICE 117 JUSTCIV 300 COPEN 295 JAI 909





The current situation

- o Due to increasing mobility of the EU citizens, more efficient cross-border communication and proceedings is needed.
- o Work already undertaken during the first e-Justice Action Plan for the period of 2008-2013 at the national level on creating electronic registers of wills and at the EU level on the interconnection of registers of wills has already produced significant results. Under the second e-Justice Action Plan for the period of 2014-2018 the work is continued and possible further developments discussed.
- o Over the past years several large scale European projects have been carried out in order to develop solutions suitable for cross-border exchange of data and documents, authentication and integrated work flows. The feasibility study⁵ carried out within the ICRW project posed the questions whether there are already existing suitable tools applicable for communicating information regarding the existence of wills and the content of wills, and what enhancements to the process of document and information exchange could be suggested, in order to facilitate greater interconnection of registers of wills in order to enable more effective succession proceedings.
- o With the financial support of European Union, the ENRWA has developed an interconnection of European registers of wills. The work is still ongoing to expand the system in order to ensure reciprocal information exchange across European Union. A secure notarial cloud, EUFides governed by an international non-profit association makes it easier for European notaries to work together on cross-border files.
- o A large scale pilot project e-CODEX (e-Justice Communication via Online Data Exchange), co-funded by the European Commission and the Partners, has been conducted with the goal to improve the cross-border access of citizens and businesses to legal means in Europe, and also to improve the interoperability between legal authorities within the EU.
- o The activities of the IC RW expert group contribute to the implementation of the Action Plan by enhancing developments in the area of interconnection of registers of wills through joint co-operation in order to encourage Member States to register wills and exchange electronically the data necessary for settling succession matters.
- o The national state of play of the Member States was studied in the framework of the activities of the IC RW expert group. From the results of the polls,⁶ the following information was gathered:

⁵ 12953/16 EJUSTICE 157 JUSTCIV 252

⁶ 11169/1/15 REV1 EJUSTICE 95 JUSTCIV 194; 13215/15 EJUSTICE 129 JUSTCIV 242; 12961/16 EJUSTICE 158 JUSTCIV 253





- One of the main obstacles preventing enhancement in the area of registers of wills is related to the differences of the legal framework in various Member States. Legal restrictions or lack of political interest are the main reasons for not joining the Basel Convention and the ENRWA. There are 13 Member States⁷ that have not joined the ENRW data exchange platform and 15 Member States⁸ that have not joined the Convention. Some countries also outlined that their national legal regulation is not entirely in line with the provisions of the Convention. This concerns mainly cross-border data exchange and access to information.
 - Technical situation of the Member States concerning the existence of an electronic register of wills is good⁹ but the absence of centralised or interconnected national registers could be an obstacle in certain countries. The main concerns are related to electronic cross-border data and document exchange and access to information, raising the question of publicity and differences in legal systems.
 - In addition, some organisational difficulties were brought out by the Member States, like problems in finding authorities handling the succession and receiving replies within a reasonable timeframe in cross-border cases, as well as the fact that it is not possible to receive information via an electronic platform from all the Member States.
- o Therefore, there are still some obstacles to overcome and challenges to meet. The creation of a recommendation policy designed to encourage European citizens and legal professionals to register wills and to exchange information across borders is one way to raise awareness and draw attention to the necessity for smoother and more secure electronic communication in the succession matters. Differences in the Member States' practices as well as the interoperability of the systems and the principle of decentralisation should not be put aside while analysing the use of modern electronic solutions. Potential synergies with existing projects and work already undertaken should also be taken into account.

⁷ CZ, DK, IE, ES, IT, CY, MT, PT, SI, FI, SE, UK, HR (ES, HR, IT, PT, SI, SK are ENRWA members).

⁸ BG, CZ, IE, EL, HR, LV, HU, MT, AT, PL, RO, SI, SK, FI, SE (DE, DK, UK have signed the Convention but have not ratified it).

⁹ Based on the poll (answers provided by 24 MS-s), there are 3 countries with no national register of wills and 4 countries where it is not held electronically.





III. Recommendations

Member States are invited to overcome their internal obstacles and to implement the necessary measures at the national level for contributing to the cross-border co-operation and electronic information, data and document exchange in order to ensure that the last wishes of the testator are respected and fulfilled.

Legal aspects

- The Member States not yet acceded to the Basel Convention of 16 May 1972 on the establishment of a scheme of registration of wills are invited to consider it, with a view to facilitate the discovery on the existence of a will after the death of the testator.
- According to Article 7 of the Convention the request for registration shall contain the following information at least, and the Member States not yet acceded the Convention are invited to base on that:
 - a) Family name and first name(s) of testator or author of deed (and maiden name, where applicable);
 - b) Date and place (or, if this is not known, country) of birth;
 - c) Address or domicile, as declared;
 - d) Nature and date of deed of which registration is requested;
 - e) Name and address of the notary, public authority or person who received the deed or with whom it is deposited.
- According to the Article 8 of the Convention the registration shall be secret during the lifetime of the testator and on the death of the testator any person may obtain the information listed above on presentation of an extract of the death certificate or of any other satisfactory proof of death. The Member States are invited to base on that principle.
- Any further relevant data should be registered and exchanged in order to ensure the availability of necessary information. Member States are invited to analyse the national legal possibilities for electronic:
 - a) registration and information exchange on the initiation of succession proceedings;
 - b) registration of national and European succession certificates.
- National legislation should enable smooth electronic cross-border reciprocal information, data and document exchange. Possibly a real-time Internet-based search from the national respective registers should be created and made available to the legal professionals or citizens dealing with





succession cases. This approach complies with the once-only and data re-use principles and enables direct access to the primary data source. The access to registers should be determined on the role and legitimate interest of the enquirer, preferably based on e-IDAS compliant authentication means or by legal professional.

- Member States are invited to analyse the legal possibilities for:
 - a) forwarding information on the existence of wills by using electronic means;
 - b) forwarding a certified digitised copy of the will by using electronic means;
 - c) forwarding a copy of the succession certificate by using electronic means.
- It is the responsibility of the information's owner to ensure that a retention period for keeping information accessible is stated in case information is uploaded to a system other than the national professional register, e.g. in collaborative workspaces.

Organisational aspects

- Member States should take initiative to carry out activities for raising public awareness, for example by publishing and sharing information about the importance to register wills and about the possibility to enquire information about the existence of wills from other countries.
- Member States should take the initiative to collaborate in order to share best practices and to explore and enhance the possibilities for exchanging succession related information and documents electronically in cross border cases. Already existing networks and solutions (ENRWA, EUFides, e-CODEX etc.) should be taken into account and dialogues for further developments should be continued.
- Member States are invited to publish their national digital access points for enquiring information on wills in the e-Justice portal.
- A standardised enquiry form with unified data fields and definitions of input options should be created.
- Member States are invited to determine a reasonable period of time for answering an enquiry from another Member State. The information about the reasonable period of response could be made available in the e-Justice portal.
- The national requirements necessary for a successful enquiry should be published in the e-Justice portal.
- The responsibility of guaranteeing the timeliness of the information publicly available in the e-Justice portal lies on the Member States. It is advised to review the publicly available information





once a year and to set up an internal practice to ensure this task is performed in an adequate manner. Any respective bodies, whose homepages Portal redirects to, are also invited to follow that principle.

Technical aspects

- Electronic solutions following high-standard security principles and data protection rules should be preferred while establishing schemes on registration of wills and data exchange. The experience of other Member States and existing electronic cross-border solutions should be taken into account before setting up any new systems.
- Particular attention should be paid to the information security ensuring the confidentiality, integrity and availability of data. Special internal methods to fulfil the security requirements must be implemented.
- The European e-Justice concept is based on the principle of a decentralised system. Each Member State should assess its national system and take necessary steps to facilitate interoperability and interconnectivity in order to contribute towards more effective succession proceedings.
- An interactive tool could be created in the e-Justice Portal, which directs a person to the right contact point in a succession matter or provides direct access to the national digital contact point providing necessary information along the way.
- In order to enable citizens' access to the information they are entitled to, and to ease the professionals' working processes, as well as keeping in mind the e-IDAS Regulation:
 - a single digital contact point containing different functionalities like enquiry and data exchange possibilities, transmission of documents, etc. should be used;
 - the necessary technical capability at the national level for national and cross-border electronic information, data and document exchange should be ensured;
 - real-time Internet-based data exchange or searches from national registers should be preferred;
 - a scheme for confirming a legitimate interest or a representation right in an electronic manner should be designed as an additional option for legal professionals;
 - e-IDAS compliant authentication levels and mechanisms should be defined, agreed and established;
 - mechanisms for verifying the authenticity of data provided by the enquirer should be established;





- wills in paper form should be digitalised. Digitalisation of wills could be applied either retroactively, on wills registered starting from a certain point of time in the future or after the death of the testator. The confidentiality requirement should be applicable for the persons involved in the process. If the will is deposited in a sealed envelope, this sealed envelope could be digitalised in order to fix the fact of the existence of a will. For ensuring the legal certainty of the digitalised will, either an electronic seal or a time stamp certifying the existence of a document at a given time should be used.
- o The right to use the information system and to enter and/or view the data should be based on user roles and user privileges on different levels depending on who is the data enquirer. It must be identifiable who has entered, changed, deleted, destroyed or viewed data.
- o Lawful use of the register has to be verified as an ongoing process. All actions taking place in the register have to be logged and maintained to guarantee the legitimacy of the data held in the register.

The recommendations should be published in the e-Justice Portal.

