



**EUROPEAN NETWORK OF REGISTERS OF WILLS  
ASSOCIATION (ENRWA)**

**“EUROPE WILLS” PROGRAMME**

Status report on schemes of wills registration  
and search in Europe

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## Czech Republic

### 1. International conventions

The Czech Republic has not signed any of the international conventions regarding the form of wills and their scheme of registration: Basel Convention of 16<sup>th</sup> May 1972 on the Establishment of a Scheme of Registration of Wills, Hague Convention of 5<sup>th</sup> October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, Washington Convention of 26<sup>th</sup> October 1973 providing a Uniform Law on the Form of an International Will.

### 2. Circulation of wills within Europe

According to international private law, a will is deemed valid as regards its form if it respects the internal law applicable in the state whose nationality the testator possessed at the time when he made the disposition. It is sufficient, though, if it complies with the internal law applicable in the state where the testator made his will (local form).

Some foreign regulatory forms may be deemed contrary to public order or to the content of mandatory rules: Czech law does not allow oral wills.

A will established by a public authority located in another member State may have the same effect as a Czech will provided it is not contrary to public order or to the content of mandatory rules.

These private international law regulations do not alter whether the public authority having drafted the will is located within the European Union or not.



### 3. Types of wills

Czech law allows four types of wills.

Authentic wills are drawn up by a civil law notary.

Holographic wills are handwritten, dated and signed by the testator himself.

Witnessed wills are made in front of witnesses. They are not necessarily written by the testator himself but they have to be signed by the testator personally in front of two witnesses.

Testator who cannot write or read may express his or her last will in front of three witnesses who are present at the same time.

### 4. Registration and search for wills

Succession proceedings are carried out by civil law notaries. In this framework, the civil law notary acts as a “judicial commissioner”.

There is a will register in the Czech Republic; it is administered by the Notary Chamber of the Czech Republic. Definition and administration of the register are provided for by law.

All registrations and searches are performed electronically.

- **Wills registration**

Registration of a will is possible through a civil law notary. Registration of a will in the register is not mandatory, unless the will is drawn up in the form of a notarial deed in which case the notary always registers the will into the register. All types of wills allowed under Czech law may be registered.

Non Czech nationals may record their wills in the register.



The following data is communicated to the register:

- Testator's family name and first name(s),
- Identification number given at birth, or, if this number hasn't been assigned to the testator, his or her date of birth,
- Testator's address,
- Date of registration of the will,
- Name and address of the depositary notary,
- Ordinary number according to the list of wills of the notary with whom the will is deposited.

The date of death is not recorded in the register.

Amendments, withdrawals and revocations are possible in the register.

The cost of registration amounts to 12 Euros.

- **Search for wills**

At the time of carrying out succession proceedings, a civil law notary acts as judicial commissioner. He is the only person authorised to query the register. Query of the register during succession settlements is legally mandatory.

Disclosure of the will is mandatory after the testator's death.

The existence of a will remains secret during the testator's life. Provision of a death certificate is mandatory to perform a search.

The register responds to requests from and towards other member States.

The cost of a search amounts to 3 Euros.



# Germany

## 1. International Conventions

Germany signed the Basel Convention of 16<sup>th</sup> May 1972 on the Establishment of a Scheme of Registration of Wills on the date it was opened for signature. Such convention has subsequently not been ratified.

The Hague Convention of 5<sup>th</sup> October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on the date it was opened for signature and ratified on November 20<sup>th</sup> 1965.

However the Washington Convention of 26<sup>th</sup> October 1973 providing a Uniform Law on the Form of an International Will has not been signed by Germany.

## 2. Circulation of wills within Europe

According to German law a will is deemed valid as regards its form if it respects:

- the internal law applicable to the place where the testator made his will (local form),  
or
- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or



- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

A will established by a foreign public authority may be deemed valid in Germany and have the same effect as a will of the same form (or of equivalent form) established in Germany provided the form of such will respects the law of the place of disposition, the law of the country of which the testator was a national, the law of the place of usual residence or of domicile or the law of the place where the immovable is located.

No foreign regulatory form may be deemed contrary to public order or to the content of mandatory rules.

The above private international law regulations do not alter whether the public authority having established the will is located within the European Union or not.

### **3. Types of wills**

In Germany, a testator may state his last wills through an authentic will, a holographic will or a testamentary contract.

Authentic wills are valid only if they are drawn up by a civil law notary.

Holographic wills are entirely handwritten by the testator himself and bear the testator's signature composed of his family name and first name(s). The testator may deposit his holographic will with a local court. This does not condition the validity of the act but ensures safekeeping of the will.

Testamentary contracts are valid only if they are drawn up by a civil law notary.



## 4. Registration and search for wills

In Germany, succession proceedings are carried out by judges.

There is no central will register until 2012. Nevertheless a deposit procedure allows finding last will dispositions after the testator's death.

Such procedure is long and tedious since it involves several public authorities. This is the reason why a national register of wills (Zentrales Testamentsregister) will be established in 2012 ([www.testamentsregister.de](http://www.testamentsregister.de)). It will be hosted by the Federal chamber of German civil law notaries ("*Bundesnotarkammer*").

In addition, the Federal chamber of German civil law notaries manages the register of general powers of attorney ([www.vorsorgeregister.de](http://www.vorsorgeregister.de)).

- **Wills deposit**

In compliance with legal provisions, authentic wills must be deposited with the local court. This is a mere possibility for holographic wills. The wills themselves are forwarded to the court.

Thus a notary establishing a will through authentic deed must deposit such will with the court failing which he will be held professionally liable. The court must advise the register of births, deaths and marriages held in the testator's place of birth of the existence of an authentic will.

Testamentary contracts can be deposited either with the local court or with the notary. The register of births, deaths and marriages held in the testator's place of birth must be advised of the existence of a testamentary contract.

If a holographic will is deposited with the local court, the court must advise the register of births, deaths and marriages held in the testator's place of birth of the existence of this will. Accordingly, the various registers of births, deaths and marriages are cognizant of the



existence of authentic wills, testamentary contracts and of the holographic wills which have been deposited with a local court.

- **Search for wills**

After the testator's death the civil law notary or the court of the deposition will be advised by the register of births, deaths and marriages of the death of the testator. The civil law notary or the court of the deposition will send the will or the testamentary contract to the court carrying out the succession proceedings (generally the court of the place where the testator had his domicile or his habitual residence). Dissimulation and/or destruction of a will are punished by civil and criminal law under German law.

Starting in 2012, the national register of wills will provide information about all existing wills except for holographic will which have not been deposited with a local court. The register may be queried by civil law notaries and judges only. The register will inform both the probate court and the depositary in case of death ex officio.



# Hungary

## 1. International conventions

Hungary has not signed any of the international conventions related to the form of wills and to their scheme of registration: Basel Convention of 16<sup>th</sup> May 1972 on the Establishment of a Scheme of Registration of Wills, the Hague Convention of 5<sup>th</sup> October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions and Washington Convention of 26<sup>th</sup> October 1973 providing a Uniform Law on the Form of an International Will.

Nevertheless some of the provisions of the Hague Convention have been included in Hungarian international private law.

## 2. Circulation of wills within Europe

According to Hungarian international private law, a will is deemed valid as regards its form if it respects:

- Hungarian law or,
- the internal law applicable to the place where the testator made his will (local form),  
or
- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or



- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

No foreign regulatory form may be deemed contrary to public order or to the content of mandatory rules.

A will established by a foreign public authority may be deemed valid and have the same effect as a will of the same form (or of equivalent form) established in Hungary provided it complies in its form with the provisions of Hungarian law, the law of the place of disposition, the law of the country of which the testator was a national, the law of the place of habitual residence or of domicile or the law of the place where the immovable is located.

The above private international law regulations do not alter whether the public authority having established the will is located within the European Union or not.

### **3. Types of wills**

Hungarian law allows several types of wills: authentic wills, holographic wills, allographic wills, wills deposited with a civil law notary and oral wills.

Authentic wills are drawn up by a civil law notary or by a judge.

Holographic wills are handwritten by the testator.

Allographic wills (or witnessed wills) are handwritten or typed by a person who is not the testator. They must be signed in the presence of two witnesses or the testator must declare having signed it in the presence of two witnesses.

Wills deposited with a civil law notary may be sealed (they will then be assimilated to secret wills) or remain unsealed. They are not necessarily handwritten by the testator.

Oral wills are only allowed under extraordinary circumstances.



## 4. Registration and search for wills

In Hungary, succession proceedings are carried out by civil law notaries and by judges. The civil law notary settles the succession as would a district court, without involvement of other law practitioners. The proceedings are concluded by a decision taken by the civil law notary. In case of dispute, the heirs may refer the matter to the Court of Appeal. The heirs may thus not freely elect the civil law notary as he is appointed by law according to the date of death and to the domicile of the deceased.

There is a will register provided for by law. This register is administered by the Hungarian National Chamber of Notaries. This register also records succession contracts and gifts *mortis causa*, the provisions of which may impact the settlement and liquidation of the succession.

There is also a will register administered by the bar. Indeed in Hungary more than half of the wills are drafted by lawyers.

Negotiations are ongoing towards interconnection of the two registers.

To date lawyers may communicate the information in their possession to the register administered by the Notariat through their Chamber. The aim is to allow lawyers to register the data in their possession directly in both registers.

All registrations and searches in the register administered by the notariat are performed electronically.

- **Wills registration**

Many qualified professionals may register a will: civil law notaries, judges, lawyers and consuls.

Registration modalities vary according to the type of qualified professional involved.



Civil law notaries communicate specific data electronically to the register.

However, other professionals authorised to register wills must use a printed form which they fill in and forward to the notarial archives from where they will be registered.

It is mandatory to record wills drafted by or deposited with civil law notaries in the register failing which a civil law notary may be held professionally liable. Registration of other wills is optional.

Foreign citizens may record their wills in the register.

All wills allowed in Hungary may be recorded in the register.

The following data is communicated to the register:

- Testator's family name and first name(s),
- Testator's birth family name and first name(s),
- Testator's date and place of birth,
- Type of will,
- Date of will,
- Date of registration of will,
- Name and address of the person (notary or not) with whom the will is deposited,
- Reference number (of file or document) at the depository's.

The testator is not identified by an official number but each record receives a unique number allowing identification.

The date of death is not recorded in the register but the succession proceedings file number is recorded.

Amendments, withdrawals and revocations are possible in the register.

Yearly nearly 4,000 wills are recorded in the register.

Registration of a will in the register is free of charge.



- **Search for wills**

The register may only be queried by the civil law notary in charge of the succession proceedings. The National Chamber of Hungarian Notaries' archives may also have to query the register. Searches are performed through a secured intranet connection.

During the settlement of a succession, the civil law notary in charge of the succession proceedings must perform the search and disclose the existence of a will, failing which he may be held professionally liable. This obligation only applies to a search in the register administered by the notariat.

The existence of a will remains secret during the testator's life and provision of a death certificate is mandatory to perform a search.

The register, or more accurately the National Chamber of Hungarian Notaries, responds to requests from and towards other States.

Yearly about 94,000 searches are performed in the register.

The cost of a search amounts to around 4 Euros.



## The Netherlands

### 1. International conventions

The Netherlands signed the Basel Convention of 16<sup>th</sup> May 1972 on the Establishment of a Scheme of Registration of Wills on the date it was opened for signature and ratified it on 12<sup>th</sup> December 1977.

The Netherlands signed the Hague Convention of 5<sup>th</sup> October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions on 17<sup>th</sup> March 1980 and ratified it on 1<sup>st</sup> August 1982 with the reservation provided in Article 10 (“testamentary dispositions made orally, save in exceptional circumstances, by a Dutch national possessing no other nationality at the time the dispositions were made are not recognised in The Netherlands”).

The Washington Convention of 26<sup>th</sup> October 1973 providing a Uniform Law on the Form of an International Will has not been signed.

### 2. Circulation of wills within Europe

According to Dutch international private law, a will is deemed valid as regards its form if it respects:

- the internal law applicable to the place where the testator made his will (local form),  
or
- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or



- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

A will established by a foreign public authority may be deemed valid and have the same effect as a will of the same form (or of equivalent form) drafted in The Netherlands provided the form of the will respects the law of the place where the dispositions were made, the law of nationality, the law of the place of habitual residence or of domicile or the law of the place where the immovable is located.

Some foreign regulatory forms may be deemed contrary to public order or to the content of mandatory rules. For example this is the case of joint wills which are deeds containing the last wills of two or more persons either in favour of a third party or in their mutual favour, or of succession agreement which are deeds through which a person decides in their lifetime upon the destiny of their estate after their death.

The above private international law regulations do not alter whether the public authority having established the will is located within the European Union or not.

### **3. Types of wills**

Dutch law allows authentic wills and secret wills.

Authentic wills are drawn up by the civil law notary in accordance with the directions given by the testator.

Secret wills are drafted by the testator himself or by a third party. The document, sealed or not, must then be deposited with a civil law notary who certifies the deposit of the will.

Thus, under Dutch law, to be deemed valid, all wills require involvement of a civil law notary.



## 4. Registration and search for wills

Succession proceedings are carried out by civil law notaries in The Netherlands.

There is a will register administered by the KNB, the Dutch notariat. Definition and administration of the register are provided for by law.

There is also a register of matrimonial contracts and a register recording heredity certificates, both are administered by courts.

Registrations and searches may be performed electronically.

- **Wills registration**

Civil law notaries are in charge of recording wills in the register. Such registration is mandatory failing which disciplinary sanctions may apply. When a will is drawn up or deposited, the civil law notary communicates the information electronically to the central register.

Authentic and secret wills can be registered.

It is possible to register wills that were made abroad.

The following data is communicated to the register:

- Testator's family name and first name(s),
- Date and place of birth,
- Type of will,
- Date of will,
- Name and address of the depository public authority.

The testator is identified by an official number (BSN-number).



The date of death is recorded in the register.

The registration of amendments, withdrawals and revocations of the registered wills are obligatory.

Yearly 350,000 wills are recorded in the register.

The cost of registration amounts to about 9 Euros.

- **Search for wills**

The register is public and as such may be accessed by civil law notaries, private persons or by the tax administration.

Generally private persons refer to a civil law notary to perform a search in the register. The response from the register indicates the place where the will is kept.

Query of the register is not mandatory during the settlement of a succession.

The existence of a will remains secret during the testator's life. Provision of a death certificate is mandatory in order to perform a search in the register.

Disclosure of a will is mandatory. Nevertheless only information regarding the existence of the will is disclosed; the content of the deed itself is not. Such content is only communicated to those who have a vested interest in it.

The register responds to requests from other member States.

Yearly 240,000 searches are performed in the register.

Searches are free of charge regardless of their origin: The Netherlands or another State.