



“Cross-Border Wills” Project
Discussion Workshop in Paris
14 February 2014
9 a.m. – 12.30 p.m.
Minutes

Chairs of the meeting:

- Mr Karel TOBBACK, ENRWA President , notary in Boom, Belgium
- Mr Philippe GIRARD, ENRWA Vice-President and Treasurer, notary in Marseille (France)

List of attendees:

- Mrs Marianna PAKIRIAKOU, Greek Delegate to the European Affairs Committee (EAC) within the International Union of the Latin Notariat Latin (IULN), notary in Thessalonica, Greece
- Mr Robert SCHUMAN, Notary in Differdange, Luxembourg
- Mr Pierre-Luc VERVANDIER, Head of Mission, French Bureau of Notaries, Brussels
- Mrs Véronique DE BACKER, Legal Advisor and Head of Database Support Services, Royal Federation of the Belgian Notariat (FRNB)
- Mrs Lineke MINKJAN, International Affairs Advisor, Legal Department of the Dutch Notariat (KNB)
- Mr Michael GUTFRIED, Head of the Central Register of Wills, German Notariat (“Bundesnotarkammer”)
- Mr Andrew JOHNSON, Vice-President of the Notaries Society of England and Wales, notary public in Canterbury, England
- Mr Richard FRIMSTON, Chair of the STEP (*Society of Trust and Estate Practitioners*) EU Committee, Member of the International Committee of the Law Society of England and Wales, Notary public and solicitor at Russell-Cooke LLP, London
- Mrs Nicola PLANT, Notary public and solicitor in England
- Mr Nigel MCGINNITY, Co-founder of “*Certainty*”, the National Will Registration service in the United Kingdom
- Mr François-Xavier BARY, ENRWA Director
- Mrs Céline MANGIN, “Cross-Border Wills” Project Coordinator



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The Chairman, Mr GIRARD, began by welcoming the attendees and thanking the French Notariat for their hospitality. He then introduced the ENRWA and presented the tools offered by them to search for wills registered abroad. The Chairman, Mr TOBBACK, explained the “Cross-Border Wills” project. This project is co-funded by the European Commission as part of the 2007-2013 “Civil Justice” Programme. Its implementation will provide, among other things, information about the procedures for opening wills and the conditions for communicating the information contained in them. Its intention is not to modify the existing legal systems, but to improve cross-border legal cooperation by expanding the knowledge base relating to these systems. In fact, it is crucial to respect the diversity of national laws relating to will registrations and searches. The main points of the summary report were then presented by Céline MANGIN. The discussion then turned to the issues set out below.

How are wills opened in your State?	
France	<p>The main types of will in France are:</p> <ul style="list-style-type: none"> - <u>the authentic will</u>. - <u>the holographic will</u>, retained by the testator or submitted to a notary. - <u>the mystic will</u>, stamped and sealed. It is held by a notary. <p>When the notary draws up or receives a will, he/she registers its details in a national database of wills, the <i>Fichier Central des Dispositions de Dernières Volontés</i> (FCDDV).</p> <p>After the death, the notary responsible for settling the succession will make a search in this database and, if a will is found, contact the relevant colleague for a certified copy of the will.</p> <p>The opening of the will varies according to the type of will:</p> <ul style="list-style-type: none"> - <u>authentic wills</u> are simply read to the heirs. - <u>holographic and mystic wills</u> require an additional formality: the notary summons the heirs to read them the will and then prepares a protocol of the opening and filing. <p>In all cases, the will is then sent for registration at the competent tax office.</p>
Belgium	<p>The main types of will approved in Belgium are:</p> <ul style="list-style-type: none"> - <u>the authentic will</u>. - <u>the holographic will</u>, retained by the testator or submitted to a notary. - <u>the international will</u>, given to a notary already sealed or placed in a sealed envelope by a notary. <p>There has been a register of wills since 1977, which records the references of all wills drawn up by or sent to a notary. After the death, anyone can make a search in this</p>



	<p>register on presentation of a death certificate. The notary responsible for settling the succession can use this register to find out where the deceased's will is held.</p> <p>The opening of the will varies according to the type of will:</p> <ul style="list-style-type: none"> - <u>authentic wills</u> are simply read to the heirs. - <u>holographic and international wills</u> are read to the heirs and legatees, who are then given a copy by the notary. The notary then files a 'description and condition' protocol, which either describes the will or has a copy attached to it. This document is then recorded in the notaries filing system, enabling a record to be kept of the opening. The notary next informs the Court of First Instance for the area in which the succession is opened, sending it a copy of the will and the filing protocol. <p>In all cases, the will is sent to the tax department after being opened.</p>
<p>Luxembourg</p>	<p>The main types of will approved in Luxembourg are:</p> <ul style="list-style-type: none"> - <u>the authentic will</u>, drawn up by the notary - <u>the holographic will</u>, retained by the testator or a notary. - <u>the mystic will</u>, stamped and sealed. It is held by a notary. <p>There is a register of wills that enables notaries to find wills drawn up or deposited by their colleagues. The notary holding the will then sends a certified copy of the will to the notary responsible for settling the succession.</p> <p>The opening of the will varies according to the type of will:</p> <ul style="list-style-type: none"> - <u>the authentic will</u> is opened without any special formalities. The notary informs the heirs of its contents. - <u>holographic or mystic wills</u> are sent to the Court, which prepares a protocol of the presentation, opening and condition of the will. The Judge then orders the will to be handed to the notary responsible for settling the succession. The notary becomes the definitive custodian of the will.
<p>Netherlands</p>	<p>The main types of will approved in the Netherlands are:</p> <ul style="list-style-type: none"> - <u>the authentic will</u>, the most widely used type of will. - <u>the holographic will</u>, retained by a notary . <p>All wills are recorded in a register that can be consulted by any citizen. After the death, it is therefore a simple matter to find the deceased's last will and testament. In order to consult the register, a lawyer simply has to produce a death certificate. This register has existed since the beginning of the 20th century. The Dutch Notariat took over responsibility for the register in 2007.</p> <p>There is a rare form of will limited to certain low-value assets called the "codicil". It is kept at the testator's place of residence. The heirs must deliver it to the notary.</p>



	<p>After the death, the notary responsible for settling the succession makes a search for the will in the register and then requests, if necessary, an official copy from the notary holding the document.</p> <p>The opening procedure varies according to the type of will:</p> <ul style="list-style-type: none"> - <u>the authentic will</u> is opened by the notary without any special formalities. - <u>the holographic will</u> must be given by the notary to the Court to be opened. The Judge prepares a protocol of the delivery and opening of the will.
<p>Germany</p>	<p>The main types of will approved in Germany are:</p> <ul style="list-style-type: none"> - <u>the authentic will</u>, drawn up by a notary, but submitted to the Court to be retained during the lifetime of the testator. - <u>the holographic will</u>, retained by the testator or given to the Court. - <u>the inheritance agreement</u>, kept by a notary. <p>The stipulations of wills held by a notary or the Court are recorded in the register of wills, managed by the Chamber of Notaries.</p> <p>After the death of the testator, the will is sent to the Court responsible for settling the succession: the notary sends the inheritance agreement, and private individuals send wills found at the deceased's place of residence. Authentic wills and holographic wills held by the Court are opened by the holding Court then sent to the Court responsible for settling the succession. The latter informs the legal heirs of the existence of the will and its location. It then opens any will that has not yet been opened and retains the original document.</p> <p>The opening of wills and inheritance agreements can be either "public" or "silent". The silent opening is the most frequently used, in which a court official is responsible for physically opening the will and describing its condition. The public opening is carried out in the presence of the legal heirs.</p> <p>Due to the existence of an electronic wills register, the Court now has much easier access to wills. It is also the Court that decides to make a search of foreign registers.</p>
<p>Greece</p>	<p>The main types of will approved in Greece are:</p> <ul style="list-style-type: none"> - <u>the authentic will</u>, held by the notary - <u>the holographic will</u>, retained by the testator or submitted to a notary. - <u>the mystic will</u>, which must be submitted sealed to one notary in the presence of three witnesses or to two notaries in the presence of one witness. All those present sign the envelope. The notary then draws up an authentic deposit deed. <p>After the death, the notary holding an authentic or holographic will must send a certified copy or the original of the holographic will to the Court of the Peace, which opens the will and prepares a protocol reproducing the entire contents of the will.</p>



	<p>If a holographic will is kept at the deceased's place of residence, family members who find it are required to present it to the Justice of the Peace, who opens it and prepares a protocol reproducing the entire contents of the will and stating its condition.</p> <p>In the case of a mystic will, after the death of the testator, the notary holding the will presents the sealed envelope and the deposit deed to the Justice of the Peace, who verifies the seal in the presence of the notary, opens the will and prepares an opening protocol that reproduces the entire contents of the will.</p> <p>Consular authorities in other countries can open the wills they hold when they are informed of the death of the testator. They also prepare a protocol reproducing the entire contents of the will.</p> <p>When the will is held by a notary, the opening is still carried out by the Court of the Peace that has jurisdiction. If this Court is not that of the deceased's last place of residence, it sends a copy of the opening report to the relevant Court. In all cases, a copy of the report is sent to the Court of First Instance in Athens and the tax department.</p>
<p>United Kingdom (England)</p>	<p>A unique feature of the United Kingdom is that this State has different jurisdictions whose laws concerning the settlement of succession are not identical. The rules and practices currently in force in England and Wales are set out below.</p> <p>The United Kingdom signed the Basel Convention of 16 May 1972, but no register of wills within the meaning of this Convention has since been established.</p> <p>Probate is a legal document similar to a certificate of inheritance. The Probate Office also accepts the submission of wills during the lifetime of the testator. This registry is not very successful as a register of wills as it requires the testator to give up the original will. At the same time, some commercial companies have created registers that only record the references of the wills, which are usually held by solicitors. "Certainty the National Will register" has been the most successful and acts as the national register. The Probate registers contain approximately 20,000 wills, while there are more than 4 million references entered in the "Certainty the National Will register" database.</p> <p>In England, the only type of will allowed is the will before witnesses. Most of these (90%) are held by solicitors.</p> <p>After the death there is, strictly speaking, no opening of the will. The will belongs to the testator during his/her lifetime, then it is in the hands of the executor of the will, or in the absence of an executor, an administrator. The solicitor contacts the administrator to pass on the will and proceed with the reading. The first sentence of the will usually designates the executor, making it easy to locate this person. The executor can also contact the solicitor directly and present him/her with a death certificate in order to obtain the will. If the will is in the hands of the executor, it is up to him/her to decide whether or not to read it to the family.</p>



	<p>One of the distinctive features of English law compared to laws in Romano-Germanic legal systems is that the deceased's estate is vested in the executor during the settlement of the succession. The executor can therefore dispose of it as he/she sees fit, unless a beneficiary has been named in the will. The executor and the beneficiary are usually the same person.</p> <p>The executor will approach the Court to confirm the validity of the will and issue a Grant of Probate, to which the original will is attached. This document is required when the assets are in English territory and to release funds from the deceased's English bank accounts. It is only issued after all of the tax requirements have been met.</p> <p>In rare cases, if there is no property in English territory, it is possible for the executor to transfer the original will to a foreign legal practitioner responsible for settling the deceased's succession. In practice, however, the executor usually retains it in case property or assets belonging to the deceased are later discovered on English territory.</p>
<p>Is it possible to communicate the information contained in wills at national and international level? To whom and in what form?</p>	
<p>France</p>	<p>The information contained in the will can be given to anyone who has a legitimate interest, i.e. the heirs and legatees, legal practitioners responsible for settling the succession in France or abroad and administrations.</p> <p>The notary will send a copy of the will by post or electronically, depending on the circumstances.</p>
<p>Belgium</p>	<p>On account of the notary's duty of discretion, a copy of the will can only be given to those with a legitimate interest (the "interested persons"), i.e. the beneficiaries (heirs and legatees), legal practitioners and administrations. This can also include foreign legal practitioners. The notary can send them a copy of the will by post or electronically, as appropriate.</p> <p>Creditors of the deceased cannot be sent information; however, in all cases a Certificate of Succession is required to release the deceased's funds.</p>
<p>Luxembourg</p>	<p>The information contained in the will can be given to anyone who has a legitimate interest, i.e. the heirs and legatees, legal practitioners responsible for settling the succession in Luxembourg or abroad and administrations.</p> <p>The notary will send a copy of the will by post.</p>



<p>Netherlands</p>	<p>The information contained in the will can be communicated to those with a legitimate interest, which effectively means:</p> <ul style="list-style-type: none"> - the heirs and legatees. - administrative departments, e.g. the tax office. - public authorities and legal practitioners responsible for settling successions abroad, if they can show that they are acting on behalf of someone who has a legitimate interest and with that person's consent. <p>Heirs who have no rights with regard to the succession cannot be given access to the content of the will.</p>
<p>Germany</p>	<p>After the opening of the will, the information it contains is automatically communicated to:</p> <ul style="list-style-type: none"> - the tax office. - the legal heirs and legatees (in more general terms, to any person who is the beneficiary of a clause in the will and therefore has a legitimate interest). - the executor of the will, if appropriate. <p>Other individuals, such as creditors, for example, can only obtain information contained in a will if they can demonstrate that they have a legal interest, i.e. their legitimate interest in being informed of these details.</p> <p>In the absence of specific rules concerning the communication to other countries of the information contained in a will, the legitimate interest criterion applies. However, the transmission of such information is not simple in practice (<i>see following question</i>).</p> <p>In principle, the Court sends copies of wills by post. While the law does provide for the electronic transmission of information, in practice, this method of communication is not yet used in the absence of a suitable technical framework. Files and records related to succession are currently kept in paper form.</p>
<p>Greece</p>	<p>After a will has been opened, it is possible to communicate the information contained in it to anyone with a legitimate interest: i.e. public authorities and legal practitioners responsible for settling the succession in Greece or abroad. Creditors of the heirs or the deceased are deemed to have a legitimate interest.</p> <p>In the case of a mystic will, those with a legitimate interest may be present at the opening of the will by the Court.</p> <p>A copy of the will can be sent by post or electronically.</p>
<p>United Kingdom</p>	<p>Once the Court has issued a Grant of Probate, the will becomes public (except in rare cases, such as the royal family). Anyone can then request a copy of the will from the</p>



(England)	<p>Court that holds it, e.g. an administrative department, a legal practitioner in the United Kingdom or abroad, creditors of the deceased, private citizens, etc. A form is available online to apply for and receive, on payment of a fee, a certified copy by post within 7 to 10 days.</p> <p>Some websites specialise in the publication of the wills of famous people. Charities also tend to make regular searches to find out if they are the beneficiary of a donation.</p> <p>Due to the public nature of a will after the death of the testator, some people use the “trust” system if they want certain information to remain confidential. In this case, the will simply refers to the existence of the “trust” and gives the name of the “trustee”, i.e. the person responsible for disposing of the assets. The name of the beneficiary of the trust remains confidential, thus enabling, for example, illegitimate children to receive a bequest.</p>
<p>In your professional practice, have you encountered many cases of cross-border succession and have you experienced any problems settling them?</p>	
France Belgium	<p>There are a few cases of cross-border succession. Settling them does not usually pose any problems, as it is possible to send information to a legal practitioner abroad. The notary will assess if this is appropriate according to the legitimate interest of the person on whose behalf the foreign notary is settling all or part of the succession.</p>
Luxembourg	<p>Bearing in mind the high percentage of foreigners in Luxembourg (40%), there are a number of cases of cross-border succession. While the notary may communicate the information contained in a will to legal practitioners abroad, in practice it is left to the heirs to cover this issue. It is therefore the heirs who will establish whether or not the person requesting the information contained in a will has a legitimate interest in doing so.</p>
Netherlands	<p>The Dutch register is interconnected via the RERT platform (European Network of Registers of Wills – ENRW or RERT), which makes searching for a will in the registers belonging to this network a simple procedure. If the notary finds a will abroad, he/she then contacts the relevant colleague to obtain a certified copy.</p> <p>One of the main obstacles to the settlement of cross-border successions is searching for wills in those States that are not part of the RERT network.</p>
Germany	<p>There are no specific provisions in German law concerning the modalities of sending a will to another State.</p> <p>In practice, it is difficult for a foreign public authority to obtain information about the</p>



	<p>existence of a will in Germany due to way in which the succession procedure is organised. Information concerning the death is sent by the Civil Status services in paper form or by electronic means. A search in the register of wills is automatically carried out and the results sent to the Court responsible for the succession, accompanied by a death certificate. This increasingly automated procedure makes it difficult to make a search for wills from another State.</p> <p>In addition, the German Probate Court has broad jurisdiction over the settlement of successions. If a will is located in Germany, this Court will usually be responsible for opening it (and settling the succession). In some very rare cases, the Court will not have jurisdiction and will therefore be able to send the will abroad. These cases are the exception due to the residual jurisdiction of German courts with regard to German citizens. It is only possible in the case of non-nationals who leave no assets in Germany.</p> <p>This particular method of organising the search procedure combined with the broad jurisdiction makes cross-border cooperation difficult, particularly between notaries. It is therefore necessary to fall back on the intervention of the Embassies, which slows procedures down and makes them more cumbersome.</p> <p>Taking account of wills held abroad is also difficult, as it is the Court responsible for settling the succession that decides to make a search in foreign registers. In practice, it is up to the heir to make a search in foreign registers of wills. The heirs will usually contact a notary when they require notarial deeds. The notary will then prepare the documentation for submission to the Court. During the process of gathering information for this deed, the notary will ask the heirs if they are aware of the existence of a will held abroad.</p>
<p>Greece</p>	<p>The lack of a computerised register of wills makes searching difficult in Greece. It is rather difficult for a legal practitioner located in another country to discover the existence of a will before the information related to its opening has been communicated to the Court of First Instance in Athens. What is more, the Court rarely makes searches to locate wills in foreign registers.</p>
<p>United Kingdom (England)</p>	<p>Cross-border succession issues frequently arise in England and will increase in the coming years, particularly in London where 40% of the 8 million residents are foreigners.</p> <p>It is possible to send an English will to another State, but only after a Grant of Probate has been issued.</p> <p>If the will is discovered abroad and the assets are in England, a Grant of Probate is required. Foreign wills are recognised in England in accordance with the Hague Convention of 5 October 1961 on the conflict of laws relating to the form of testamentary dispositions. In support of an application for a Grant of Probate, the Court usually requires a sworn affidavit from a legal practitioner in the State in which</p>



	<p>the will was drawn up attesting that the will is valid under national law.</p> <p>The will is sometimes located abroad after the issue of a Grant of Probate in England. In this case, it is necessary to approach the courts in the system used to draw up the will in order to have the succession re-opened and settled through the courts.</p> <p>Another difficulty in settling cross-border successions in England lies in the powers of the English executor of the will (or the administrator of the succession when an executor is not designated). They are often broader than in the case of executors recognised in the Romano-Germanic legal systems. Under English law, the executor is the owner of the deceased's assets during the settlement of the succession, which is never the case in the Romano-Germanic legal systems. This difference causes practical difficulties, particularly when the executor under English law takes action with regard to the assets of the deceased located elsewhere in Europe. This is why the English executor will usually leave it to the family of the deceased to deal with the question of assets abroad.</p> <p>When the European regulation on cross-border successions comes into force, which will not apply to the United Kingdom, the question arises of the acceptance of a European Certificate of Succession by the Court for the purpose of issuing a Grant of Probate. In principle, an affidavit will always be required.</p>
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Conclusion:

In most of the States represented at this discussion workshop, the opening of wills and the communication of the information contained in wills are fairly similar procedures. Most of these States have a Register of Wills that is interconnected with other European registers, making searches easier. The notaries in these States collaborate with ease. Making a search for wills in Germany and Greece is more difficult due to their method of organisation. In many cases, the information relating to the existence of a will in these States can only be accessed once the succession has been fully, or almost fully, settled.

Inheritance law is different in the United Kingdom, particularly in terms of the powers invested in the executor of the will. The executor is effectively the owner of the will. It can therefore be difficult for a foreign legal practitioner to know whom to approach for the information contained in the will. This information can be accessed after the issue of the Grant of Probate, when the succession will be settled.

The entry into force of the Cross-Border Succession Regulation should enable such difficulties to be overcome, at least in those States where it will apply, as this regulation stipulates that heirs and legatees can apply for a European Certificate of Succession to be issued, which states the dispositions of property upon death.

