



“Cross-Border Wills” Project
Discussion Workshop in Riga
31 January 2014
9 a.m. – 1 p.m.
Minutes

Chair of the meeting:

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

List of attendees:

- Mrs Inga OGA, Representative of the Latvian Ministry of Justice, Director of the Department of Legal Professions
- Mrs Sandra STIPNIECE, Vice-President of the Latvian Chamber of Notaries
- Mr Eduards VIRKO, member of the Executive of the Latvian Chamber of Notaries
- Mr Aigars KAUPĒ, member of the Executive of the Latvian Chamber of Notaries
- Mrs Inga KALNISKANE, notary in Latvia
- Mr Gatvis LITVINS, Director of the Notarial Institute of Latvia
- Mr Sergejs TARASOVS, Development engineer for the central information system for notaries “MikroKods Ltd”, in Latvia
- Mr Vitālijs BOGDĀNS, Legal Consultant, Latvian Chamber of Notaries
- Mrs Dita RELIŅA, Legal Consultant, Latvian Chamber of Notaries
- Mrs Dace VALGERE, Legal Consultant, Latvian Chamber of Notaries
- Mr Jan GIELEC, President of the company “Rejstry Notarialne Sp. Z.o.o”, notary in Poland
- Mr Eduards GRÜNBERG, notary in Tartu, Estonia
- Mrs Eglė ČAPLINSKIENĖ, consultant to the Lithuanian Chamber of Notaries
- Mr François-Xavier BARY, ENRWA Director
- Mrs Céline MANGIN, “Cross-Border Wills” Project Coordinator

The Chairman, Mr GIRARD, opened by thanking the Latvian Notariat for their hospitality and the representatives of other Notariats for coming to Riga. Mr GIRARD then presented the agenda and introduced the ENRWA and 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



Project co-financed by
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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.

What are the main types of will in your State and how are they opened?	
Latvia	<p>The main types of will approved in Latvia are:</p> <ul style="list-style-type: none">- <u>the public will (authentic)</u>, drawn up in the presence of two witnesses. The notary writes the wording and prepares a preservation deed. The testator has the right to request that the heirs mentioned in the document receive, during the testator's lifetime, an official copy of the will concerning them.- <u>the private will</u>. When the testator deposits a private will with a notary, the notary prepares a deposit protocol without being aware of the contents of the will. The testator states that he/she is handing over the will for preservation. The stamp and signature of the notary are displayed on the envelope, as well as the signatures of the two witnesses. Private wills submitted to a notary are not included in the notary's "Register of Notarial Instruments".- <u>the holographic will</u>, which does not require a witness. <p>When the notary holding any type of will becomes aware of the death of the testator, he/she sets a date for it to be opened. If a different notary is made responsible for settling the succession by the heirs, he/she must retrieve the final will of the deceased in its original form. The heirs are responsible for making a search for all of the deceased's wills.</p> <p>Notaries can apply for information about a will through their internal messaging system up to 1 May 2014. There is, however, no legal obligation to respond to an application for information transmitted in this way. From May 2014, there will be a Register of Wills in Latvia that will contain wills made since 1 September 1993. Wills drawn up prior to this date will gradually be entered in the register. This will enable notaries to search the register directly, improving the current system.</p> <p>The transmission between Latvian notaries of a certified copy of the original record of a public will is deemed to be the equivalent of the original. In fact, the original will document must remain with the notary that drew it up.</p>





	<p>If the original will is not available, there is a legal procedure before the local court that allows a copy to be accepted. This procedure can be used when the original will is located abroad and cannot be transmitted to Latvia. It consists of proving the existence of the will and its contents. The judge sometimes has to recognise the existence of a will when a foreign public authority sends an official extract from its register. It also happens that the recognition of the existence and contents of a will by a foreign court allows it to be taken into account in the settlement of a succession in Latvia.</p> <p>When the notary has obtained the will, he sets a date for the opening, notifies the known heirs and legatees and displays it prominently in the office. Anyone who considers that they have an interest in knowing the contents of the will can therefore attend on the set date. If there are no known heirs or legatees, for example because the will is sealed, the notary publishes an announcement in the Official Journal inviting all interested parties to the opening.</p> <p>The opening of the will varies according to the type of will:</p> <ul style="list-style-type: none">- <u>the opening of a public will</u> consists of reading the testamentary dispositions then preparing a protocol covering the contents of the will.- <u>the opening of a private will</u> also consists of reading the document. If it is sealed, it will be opened and then read to the heirs. An opening protocol will be prepared covering the contents of the will. Some private wills are not deposited with a notary when they are drawn up. In such cases, they can be taken to a notary after the death, but the two witnesses must be present on the day of the opening and must certify that the document accurately represents the last wishes of the deceased by signing the opening protocol. If one of the witnesses dies before the testator, the will is excluded from the succession procedure. <p>Those present on the day of the opening of the will can make comments and objections that will be recorded in the protocol of the opening. It frequently happens that there is no one in attendance on the day of the reading of the will.</p> <p>When the opening protocol is completed, the will becomes public with regard to all of the heirs and legatees.</p>
Poland	<p>The main types of wills in Poland are:</p> <ul style="list-style-type: none">- <u>the authentic will (in the form of an authentic instrument),</u>- <u>the holographic will.</u> <p>The will can be in the possession of any person, most often it is in the possession of the testator, the heir or another trusted person. The original of the authentic will is in the possession of the notary and on the basis of this excerpts are being issued that are equally authentic. The number of notarial wills is increasing.</p>





	<p>To become effective, the will has to be opened and published by a court or a notary, when an interested person applies to the notary separately to publish the will or when the application is linked to the procedure of issuing a notarial certificate of inheritance on the grounds of this will.</p> <p>The interested persons are not being informed about the date of the opening and publishing of the will, but they can be present, which will always be the case during the procedure of issuing a notarial certificate of inheritance, as then the simultaneous presence of all statutory and testamentary heirs is compulsory.</p> <p>The notary does not publish the will ex officio though, this is without an application of the interested person. If the notary is in the possession of a deceased person's will aside from activities that were entrusted to him he is obliged to deposit it at court as any other person.</p> <p>The notary publishing the will is drafting a separate protocol of this publication in which he is describing its exterior condition and states its date, the date of deposition and names the person who deposited it. The notary is stating the date of the opening and the publishing on the will.</p>
Estonia	<p>The types of will approved in Estonia are the authentic will, the mystic will, the holographic will and the "allographic" will. The authentic type is the most frequently used (in 70 to 80% of cases). However, most successions are settled intestate.</p> <p>All wills drawn up by or deposited with a notary or consul are registered in the central Register of Wills. Holographic wills, which may be deposited with a notary simply as an option, are usually retained at the home of the testator. Whoever finds them after the death must submit them to a notary.</p> <p>After the death, the notary responsible for settling the succession must make a search of the register of wills and the testamentary archives containing the references of wills drawn up before the register was introduced, i.e. before the 1990s.</p> <p>The notary responsible for settling the succession recovers, at the request of any individual, all wills and testaments drawn up by the deceased. The communication and transmission of copies of wills between notaries is carried out by electronic means. This transmission is encrypted and signed electronically.</p> <p>Before the will is officially opened, the notary must send copies to all legal heirs, together with the date of the opening. The notary must also publish an official announcement so that any interested party can be present on the date set for the reading of the will.</p> <p>The will is always opened by the notary.</p> <p>- the opening of an <u>authentic will</u> does not require any special formalities. It is simply</p>





	<p>read to those present.</p> <ul style="list-style-type: none"> - the notary who holds a <u>mystic will</u> opens it once he/she has been contacted by the notary responsible for settling the succession. The latter then informs the heirs of the opening of the will. - A <u>private will</u> is given to the notary responsible for settling the succession, who opens it without any special formality. <p>The courts do not intervene in the testamentary process except in the event of a dispute. Disputes or challenges are rare and usually concern holographic wills.</p>
Lithuania	<p>The main types of will approved in Lithuania are:</p> <ul style="list-style-type: none"> - <u>the public will (authentic)</u>, which accounts for the vast majority of Lithuanian wills (around 99%). - <u>the holographic will</u>, which can be retained by the testator or submitted to a notary. <p>Public and holographic wills deposited with a notary are recorded in a central register that is consulted at the time of the opening of a succession.</p> <p>Notaries are responsible for opening all wills. They can obtain a copy of the will by contacting the notary holding the will.</p> <p>The opening procedure varies according to the type of will.</p> <ul style="list-style-type: none"> - <u>authentic wills and</u> are simply read to the heirs by the <u>notary</u>. An opening protocol may be drawn up. - <u>sealed holographic wills</u> are unsealed and an opening protocol is drawn up. - <u>holographic wills kept at the home of the testator</u> must be ratified by a judge within a period of one year of the death of the testator. Failing that, they become null and void.
<p>Is it possible to communicate the information contained in wills at national and international level? To whom and in what form?</p>	
Latvia	<p>It is possible to communicate information once the opening report has been completed, but only to heirs and legatees (unless there is a bilateral agreement to the contrary). The comments and objections included in the report are accessible to those who request them.</p> <p>Third parties and creditors of the deceased or those who believe they have a right arising from the will can only obtain information about the contents of the will if they attend the reading at the time and date set by the notary.</p>





	<p>Creditors usually make themselves known to the notary during the settlement of the succession. They will not receive information about the contents of the will, but they will be sent a copy of the certificate of inheritance by the notary. They will therefore know who to approach to obtain reimbursement of their claim. In the event of a dispute, they can apply to the courts.</p> <p>In the absence of a bilateral agreement to the contrary, a Latvian notary can only communicate the information contained in the will to the heirs and legatees. Accordingly, a legal professional responsible for settling the succession abroad, even in part, is not authorised to receive a copy of the will.</p> <p>However, during his or her lifetime, the testator can designate those persons authorised to receive information about the last will and testament. This designation must be specific and it is not possible for the testator to name an abstract group such as “any legal professional responsible for settling my succession abroad”. However, if the testator names a specific foreign notary, the latter can obtain a copy of the will.</p>
Poland	<p>In succession matters, in which Polish courts do not have jurisdiction, the notaries open and publish the will ex officio. The appropriate consul is being informed, who can take part in the procedure.</p> <p>The authorities of the country whose the testator are being issued on demand an excerpt of the will and an excerpt of the protocol of the opening and publication of the will. The original of the will can be issued if no further administrative activities are being foreseen in Poland.</p> <p>The information contained in the will can also be communicated to other persons who have a legitimate interest, this is the heirs, legatees and public authorities responsible for carrying out the succession procedure, in Poland or abroad. Statutory heirs not mentioned in the will are also entitled to receive information.</p> <p>Creditors may not be informed of the contents of a will; they must apply to the heirs for reimbursement, as it is the heirs who are responsible for the debts once the succession procedure has concluded.</p> <p>In Poland there is a register of notarial certificates of inheritance, which only indicates the testator (statutory or testamentary) and the notary who received the registered act. Getting to the act itself or to the will is only possible via the indicated notary. The register is publicly available for everybody, also for creditors. It is planned to extend the register to court orders on certificates of inheritance.</p> <p>The communication of information and documents is being carried out by ordinary mail.</p>





<p>Estonia</p>	<p>Once the will has been opened, it is necessary to demonstrate a legitimate interest in order to be informed of the contents of wills. Those who are entitled to access are:</p> <ul style="list-style-type: none"> - the heirs and legatees. Heirs or legatees deprived of their rights by a new will can also be informed of the contents of wills. - those with a legal interest, i.e. certain administrative departments such as the tax office. - anyone else who can demonstrate a legitimate interest. This point is not regulated in detail in national legislation; it is up to the notary to assess this interest. <p>An Estonian notary holding a will usually agrees to transmit an official copy by post or electronically to a legal professional responsible for settling the succession abroad and to any public administration requiring the information.</p>
<p>Lithuania</p>	<p>The communication of information contained in wills is restricted to those with rights arising from the succession. The heirs and legatees may therefore obtain information about the contents of a will by contacting the notary. Anyone else with a legitimate interest can also contact the notary, who will ascertain the existence of such an interest.</p> <p>The tax department is not usually interested in obtaining the information contained in a will; it prefers to contact the legal heir rather than a legatee. The same applies to creditors.</p> <p>The legislation does not prevent the transmission of information to a legal professional responsible for settling the succession abroad. However, in practice it is the heirs who will be responsible for this.</p> <p>The communication is usually effected by post. The electronic transmission of information is not prohibited, but this method is rarely used due to the infrequent application of the electronic signature in Lithuania.</p>
<p>Have you encountered many cases of cross-border succession in the course of your professional practice?</p>	
<p>Latvia</p>	<p>There are cases of cross-border succession, particularly with Russia. In addition, there are mutual legal assistance agreements in succession cases with the neighbouring countries, although they deal mainly with the modalities for recognising wills rather than communicating the information contained in them.</p> <p>Questions related to cross-border succession are mainly dealt with by the Ministry of Justice in the relevant country. In addition to the copy of the will, the certificate of</p>





	inheritance has to be circulated.
Poland	The representative of the Polish Notariat has not encountered any cases of cross-border successions. The Republic of Poland is party to the Hague Convention of 5 October on the Conflict of Laws Relating to the Form of Testamentary Dispositions.
Estonia	There are few cases in which a notary is asked to send a copy of a will abroad. In addition, there is no obligation to make a search for wills abroad (unlike at national level, where the notary is required to search the Estonian Register of Wills). In practice, such searches will only be made if one of the heirs strongly insists on the existence of a will abroad.
Lithuania	There seem to be few cases of cross-border succession. When a foreign public authority needs to obtain information about the contents of a will, this request is usually passed to the notary by the heir and the heir himself/herself presents the copy of the will to the foreign public authority. That is why it is difficult to estimate the number of successions with international dimensions.

Conclusion:

Cooperation between legal professionals located in different countries is generally possible within the group of countries represented at the discussion workshop in Riga. Only Latvia has a more restrictive law, requiring the application of mutual legal assistance. This mechanism slows down cooperation by increasing the number of participants involved in the exchange of information contained in wills. It runs the risk of being inadequate in the face of the growing number of cross-border successions resulting from the freedom of movement within Europe and due to the possibility of a choice of law applicable to a succession offered by the regulations concerning cross-border successions.

