



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

**Chairs of the meeting:**

- Mr Karel TOBBACK, ENRWA President, notary in Boom, Belgium
- Mr Octavian ROGOJANU, ENRWA Vice-President and Treasurer, notary in Bucharest, Romania

**List of attendees:**

- Mr Rudolf KAINDL, former President of the Notariats of the European Union (CNUE), notary in Austria
- Mr Christoph BEER, notary in Austria
- Mr Alexander WINKLER, notary in Austria
- Mrs Cindy FÖKEHRER, director of the Brussels Bureau of the National Council of the Austrian Notariat
- Mr Svetlin MIKUSHINSKI, Vice-President Bulgarian Council of Notaries, notary in Bulgaria
- Mrs Antonia KOEVA, notary in Bulgaria
- Mrs Vessala IVCHEVA, notary in Bulgaria
- Mrs Nelly IVCHEVA, notary in Bulgaria
- Mrs Katalin URBÁN, archivist in Hungary
- Dr. Tamás SAJBEN, Hungarian Chamber of Notaries
- Mr Peter DANCZI, International affairs representative for the Slovakian Notariat, notary in Slovakia
- Mrs Sonja KRALJ, Vice-President of the Slovenian Notariat, notary in Slovenia
- Mr Aleksander SANCA, Slovenian Chamber of Notaries
- Mr François-Xavier BARY, ENRWA Director
- Mrs Céline MANGIN, “Cross-Border Wills” Project Coordinator



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The Chairman, Mr TOBBACK, began by thanking the Austrian Notariat for their welcome. The meeting agenda was presented and the attendees then introduced themselves. The Chairman, Me KAINDL, next welcomed the attendees to the premises of the Austrian Notariat.

Mr ROGOJANU presented the ENRWA, and Mr TOBBACK 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.

<b>How are wills opened in your State?</b>	
Austria	<p>In Austria, the District Court opens the succession file once the death has been officially reported. This file is then sent immediately to a notary in the same administrative district as the court, and he/she will act as a delegate of the court to settle the succession (“judicial commissioner”).</p> <p>Since the early 1970s, there has been a Central Register of Wills, computerised and managed by the Chamber of Notaries. Each notary who draws up or receives and holds a will must register it there. More recently, there has been a register managed by lawyers, intended to record wills deposited with them.</p> <p>The judicial commissioner must search both registers of wills. The notary before whom an authentic will is drawn up will then be informed of the settlement of the succession by his/her colleague and must send them the original will. If a will is found at the place of residence, the family must provide the original to the notary handling the succession.</p> <p>The judicial commissioner then prepares an official “reception” protocol confirming receipt of the will, in which he/she notes the name of the testator, the date of the will, its form, if it was contained in an envelope, sealed or unsealed and, if appropriate, the name of the person who provided the will. Finally, the notary explains any factors likely to cast doubt on the validity of the will, such as crossings-out.</p> <p>A certified copy of the will is then attached to the “reception” protocol. The original will is kept in the succession file which, once the succession has been completed, is sent to the court for archiving.</p>





	<p>The judicial commissioner only informs the heirs and legatees named in the will. Third parties not mentioned in the will cannot be informed of the contents; the judicial commissioner will simply inform them that they do not feature in the will. Nor are they allowed access to the succession file. The notary also informs the ‘forced’ heirs so that they can challenge the will, if they wish to.</p> <p>Heirs living abroad can authorise a legal professional in their country of residence to take any necessary steps in Austria. In fact, while the judicial commissioner is solely competent to prepare the inventory, other measures can be taken by a person mandated to do so.</p> <p>When a succession is settled abroad, information relating to the existence of a will in Austria can be obtained by recourse to the mutual legal assistance procedure through the Austrian Ministry of Justice. This Ministry will verify the validity of the request and its compliance with legislation on the protection of personal data. This system works well, so it is unlikely that the Ministry of Justice will want to change it.</p> <p>A foreign notary can also apply directly to the judicial commissioner responsible for the succession, who will verify the legitimate interest of those he/she represents, e.g. children born out of wedlock. If this interest is well-founded, the Austrian notary is then required to communicate the information contained in the will. This procedure is faster than mutual legal assistance.</p> <p>Finally, it is important to note that the Austrian courts have very broad jurisdiction. If an Austrian national dies abroad, there is a residual jurisdiction in favour of the court in the district of his/her last place of residence in Austria. The place where the deceased’s estate is located can also constitute a connecting factor. Finally, the Vienna District Court has subsidiary jurisdiction over Austrian nationals.</p>
<p>Bulgaria</p>	<p>Until 1998, notaries were employed by the State and came under the jurisdiction of the Court of First Instance. Registration agencies now fulfil this role in those regions where there are no notaries. Bulgarian notaries now have regional jurisdiction.</p> <p>A will deposited with a State notary prior to 1998 can be searched for at the 113 registration agencies across the country. Searches are sometimes difficult if the place where they are held is not related to the deceased’s place of residence.</p> <p>The Notariat was privatised in 1998. Since then, notaries have had exclusive jurisdiction with regard to the deposit and opening of wills. Since 2010, the Notariat has had an electronic register managed by the Chamber of Notaries. Notaries are required to register all information relating to a will immediately. It is therefore a simple matter to locate a will deposited after 1998.</p> <p>The opening of the will can be requested by anyone in possession of a death certificate. An opening protocol is then prepared, which describes the quality of the</p>





	<p>paper used, the number of pages, its characteristics, the crossings out and additions, and the name of the person who requested the opening of the will. The contents of the will are not included. The type of will can be referred to. The notary then sends a copy of the will to the heirs and legatees.</p> <p>Once it has been opened, anyone with a legitimate interest can request a copy of the will. If the validity of the legitimate interest is disputed, it is possible to take the matter before the courts. The judge can then order a copy of the will to be made available.</p> <p>In addition, since 2001, all wills opened that involve an immovable property or a right 'in rem' must be recorded at the registration agency of the district where the property is located before the notary can provide a copy of the will to those with a legitimate interest.</p> <p>When a notary responsible for settling a succession has to locate heirs abroad, he/she can apply to the District Court, which will use the rather complicated mutual legal assistance procedure.</p>
<p>Hungary</p>	<p>Since 1993, there has been a Register of Wills managed by the Notariat. The notary settling the succession makes a search in the Register of Wills, or may be contacted by the notary holding the will. He or she will then open the will to discover the names of the legatees. The notary will then summon all of the heirs, legatees and, in more general terms, all interested parties to a reading, at the same time providing them with a copy of the will. At this reading, the will is read aloud and described.</p> <p>Anyone who believes he/she has a legitimate interest but has not been summoned by the notary has a period of one year in which to prove this legitimate interest before a judge. If it is not mentioned in the will, the legitimate interest cannot be characterised.</p> <p>A legatee residing abroad also has a period of one year from the completion of the succession procedure in which to contact the notary who settled it. After that, he or she must apply to the court.</p>
<p>Romania</p>	<p>The opening procedure of the will varies according to the type of will.</p> <p><u>For public wills:</u> there has been a Register of Wills since 2007, managed by the Chamber of Notaries. All wills and living bequests made since 2007 must be recorded there. Wills drawn up before 2007 can also be recorded, but this is merely an option. A search of this register reveals which notary holds the will. After the search, the notary holding the will sends a copy to the notary responsible for settling the succession.</p> <p>Searching for wills drawn up before this date is not a simple matter, particularly for legal professionals located abroad who are looking for a will in Romania. They must</p>





	<p>contact the notary who drew up the will. If this notary is no longer practising, they can contact the Chamber, which keeps their official records.</p> <p><u>For holographic wills:</u> the notary holding the will inscribes it with the annotation “no change”, and then prepares a protocol describing the condition of the will and its characteristics (type of paper, crossings out, additions, page number for each disposition, etc.). A copy of the will and the protocol are then sent to the notary responsible for settling the succession. If the will has been written in a language other than Romanian, a certified translation must be sent to the notary.</p> <p>To prevent the inherent risks of falsification of holographic wills, the notary sends them to an expert at the Ministry of Justice to verify the handwriting. The presumed heirs also submit any documents written by the deceased, for example postcards, to assist with verifying the handwriting.</p> <p>After the opening, information relating to the opening and contents of a will can be communicated by either the notary or the court. Only a natural person who can prove that he/she is an heir is authorised to receive this information.</p>
Slovakia	<p>The Slovakian system is quite similar to the Austrian system. The courts make notaries responsible for settling the succession as judicial commissioners. Since 2004, all wills drawn up before (authentic wills) or deposited with (allographic wills and holographic wills before a notary) a notary must be entered in the national register. Wills drawn up from 1964 are also included in digital form.</p> <p>After the death, the notary appointed by the court is required to make a search of the register to establish the existence and location of a will. The will may be held by a notary.</p> <p>The notary holding the will prepares a protocol at the time of the opening. This protocol will not include the contents of the will, but it will mention any crossings out or additions. The will and the opening protocol are then sent to the judicial commissioner.</p> <p>The judicial commissioner only notifies the legal heirs (usually the children) and the legatees mentioned in the will. Anyone else must contact the judicial commissioner themselves. It is quite easy to find out who the judicial commissioner is in Slovakia. Third parties not mentioned in the will are not entitled to receive a copy. They will only be informed that they are not named as heirs of the deceased.</p>
Slovenia	<p>The Slovenian Notariat has no jurisdiction over matters related to succession, which falls within the jurisdiction of the courts, including the opening and publication of wills. A new law is being developed to adapt Slovenian law to the provisions of the</p>





	<p>European regulation on cross-border successions.</p> <p>All wills are deposited with the courts, regardless of who holds them. After the death, the court will proceed with the publication of the will. If the court holding the will does not have jurisdiction to settle the succession, it opens the will, notifies the heirs and legatees, then sends the original will to the competent court (in the district of the deceased's last place of residence or of his/her estate). In the absence of a competent court, for example if another State has jurisdiction, the Court of Cassation settles the succession and notifies the competent foreign authority in writing, attaching the will.</p> <p>There is a Central Register of Wills in Slovenia that contains all authentic wills drawn up by notaries since it was created. It is managed by the Notariat, which also makes every effort to record wills deposited with the courts. This register does not include holographic wills. The courts and anyone with a legitimate interest can contact a notary or the Chamber of Notaries to make a search of the register, on presentation of a death certificate. They are informed of the existence of the will, and its holder sends the document to the competent court. The court then sends a copy of the will to the person concerned. The register also provides private individuals with the details of the court responsible for settling the succession.</p>
<p><b>Must those heirs and legatees residing in a different country to the legal professional responsible for settling the succession be informed?</b></p>	
<p>Austria</p>	<p>Austrian law stipulates that all heirs, regardless of their place of residence, must be contacted to make their declaration of succession (i.e. to accept or renounce it). The succession procedure cannot proceed without this declaration.</p> <p>Legatees must be informed of their legacy prior to completion of the succession procedure, without it being necessary to obtain a declaration of acceptance of the legacy in advance. The notary will usually try to contact legatees by post.</p>
<p>Bulgaria</p>	<p>A will is a public document. After the opening, anyone can obtain information about its existence and the succession procedure. Neither the notary nor the court is required to seek out the heirs. It is probable that after the entry into force of the 2012 Regulation on Cross-Border Succession, this situation will change, as the authority responsible for issuing a European Certificate of Succession will have to inform everyone who can demonstrate their rights or challenge the will.</p>
<p>Hungary</p>	<p>All heirs and anyone else concerned with the succession must be informed. The date of the hearing must be set to enable heirs and legatees residing abroad to travel to Hungary. It is also possible for the heirs and legatees to be represented by a legal professional in Hungary.</p>





Romania	The notary is required to make every effort to find the heirs. If they live abroad, they are invited to attend the opening of the will (the day of the “debate”). They are sometimes informed through the intermediary of the Ministry of Justice.
Slovakia	All heirs must be contacted, regardless of where they live. If the notary does not have their contact details, the court is responsible for locating them. The heirs can be represented in Slovakia if they cannot or do not want to travel.
Slovenia	The court is responsible for locating the heirs. They can do this through diplomatic channels. It is not necessary to locate anyone who has renounced their rights to the succession during the lifetime of the testator (via a renunciation agreement).
<b>Is the notary responsible for settling the succession required to make a search in foreign registers of wills?</b>	
Austria	The judicial commissioner is required to make a search in the Austrian Register of Wills. Searching foreign registers is not required, even when the notary suspects the existence of a will.
Bulgaria	The notary is not required to make a search of foreign registers of wills. However, he/she must make every effort to discover the deceased’s last wishes and the extent of the estate, in accordance with the notary’s general obligation to protect the rights and obligations of citizens.
Hungary	The notary is not required to make a search of foreign registers. A search may be made if the facts of the case lead the notary to believe that a will may be found there.
Romania	The notary is not required to make a systematic search of foreign registers of wills. A search may be made if there are solid indications that a will may exist in another country.
Slovakia	The notary cannot directly make a search of foreign registers of wills. This must be done via the courts or the Embassy.
Slovenia	The opening of the will falls within the jurisdiction of the courts. After the death, an heir who has not been contacted has 10 years in which to establish his/her rights in the succession.





<b>In your professional practice, have you encountered many cases of cross-border successions?</b>	
Austria Hungary Slovakia	There are not many cases, but the numbers are growing.
Bulgaria	The number of wills drawn up or deposited in Bulgaria is still quite low, particularly when foreign elements are involved. However, a large number of Russians now own property in Bulgaria, which will certainly increase the number of cross-border successions in coming years.
Romania	There are presently few cases of cross-border succession. However, there are currently around one million Romanian nationals living abroad, mainly in Italy and Spain, whose succession will have to be settled at a later date.
Slovenia	The number of wills is growing due to an increase in divorces and more frequent professional mobility.
<b>Is collaboration between legal professionals in different Member States (e.g. one representing an heir and the other a legatee) possible in the settlement of a cross-border succession?</b>	
Austria	There are no obstacles to cross-border collaboration provided that Austrian law is complied with. Austrian and German notaries already cooperate on cross-border cases.
Bulgaria	Bulgarian notaries have no difficulty collaborating with their foreign colleagues. They can confirm that a will exists, who the testator is and if the will has been opened. It is then possible to send a copy of the will subject to the same conditions that apply to a similar request at a national level.
Hungary	Cooperation is possible.
Romania	There are no obstacles to collaboration. In cross-border areas, there is already significant collaboration between Romanian and Hungarian notaries.
Slovakia	Direct communication between colleagues is possible, and a notary acting as a judicial





	commissioner can also use mutual legal assistance.
Slovenia	It is possible to collaborate with a colleague in another country, provided he/she has a power of attorney or can demonstrate that the person he/she represents has a legitimate interest.

**Conclusion:**

These discussions highlighted the fact that national legislations are designed to regulate internal situations, without taking account of problems caused by foreign factors. The systems are therefore only completely effective within their own States. The entry into force of the European Regulation on Cross-Border Successions will mark the introduction of succession law in an international environment and will certainly result in an increase in the number of international will searches.

