EUROPEAN NETWORK OF REGISTERS OF WILLS ASSOCIATION (ENRWA)

"Cross-Border Wills" (CroBoWills) Project

Review of national practices regarding the opening of wills in Europe

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PRELIMINARY COMMENT

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Summary

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Introduction

The European Network of Registers of Wills Association (ENRWA) was formed in 2005 on the initiative of the European Notariat. It currently has 17 members and 2 partners[1]. The objectives of this association include, in particular, facilitating searches for a deceased person's last will in foreign registers of wills thanks to the interconnection of registers.

In late 2012, ENRWA obtained co-financing from the European Commission for the implementation of the "CroBoWills" project with the aim of taking stock of national procedures for opening wills discovered during a cross-border search. Within the framework of a previous project implemented by ENRWA, an extensive network of European registers of wills had been set up. This has made it easier and quicker to search for wills in foreign registers, after the testator's death, and to identify the precise place where the will is held. The legal professionals entrusted with settling the succession are then faced with the difficulty of accessing the content of the will, which they need to settle the succession. By examining, in all Member States of the European Union, the mechanisms whereby wills are opened and the information contained in them is disclosed, the "CroBoWills" project will generate ideas for improving this transmission in a cross-border context.

Moreover, this issue will doubtlessly become more problematic from 2015, with the entry into force of European regulation n° 650/2012 on cross-border successions and the creation of a European certificate of succession. This legislation provides in principle for the

[1] ENRWA's members are the Notariats of Austria, Belgium, Bulgaria, Croatia, Spain, France, Hungary, Italy, Latvia, Luxembourg, the Netherlands, Poland, Portugal, Romania, Saint-Petersburg, Slovenia and Switzerland. ENRWA's partners are the Estonian and Lithuanian registers of wills.

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applicability of a single law to the whole succession procedure[2]. The professionals entrusted with settling a succession in accordance with this law will invariably need to be aware of all the wills left by the deceased in order to ensure that their final wishes are fully respected.

In order to identify all national practices regarding the opening of wills[3] and the communication of their content, a questionnaire was sent to specialists in this subject in each Member State, generally practitioners with responsibility for settling successions. Their answers have enabled us to draw up a state-of-play report for each national situation, as well as a summary document of national situations ("summary report of national practises related to the opening of wills in Europe").

For each Member State, the procedure for opening wills will be presented (I) both from the point of view of national practices (A) and in a cross-border context (B). It is important to note here that the opening of a will is not based systematically on a legal or regulatory procedure. It may simply be a question of a practice or even the simple fact of opening the will and reading it. The opening of the will is in all cases the prerequisite to communicating its content (II).

[2] Recital n° 37 specifies that the regulation is intended to introduce harmonised conflict-of-laws rules to provide European citizens with more predictability regarding the law that will govern their succession, "irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State".

[3] The word "will" must be understood here in the broad sense and includes all the last wills entered in the various national registers of wills. Moreover, an exhaustive list of forms of wills permitted in each EU Member State is included in the state-of-play report of the "Europe Wills" project, see www.arert.eu.

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Austria

I. The opening of wills

A. National practices

Wills are opened by a notary, by delegation of the court. In such circumstance, the notary acts as a "judicial commissioner", that is to say they perform this task as the representative of the public authorities[4].

Irrespective of the form of the will, the party holding the will must forward it to the judicial commissioner for opening.

Authentic wills are kept by the notary who drew up the instrument, his or her successor, or are lodged with the court. A certified true copy of the instrument is transmitted to the judicial commissioner. The latter draws up a protocol containing full information on the authenticity and validity of the will, such as details of its opening and any irregularities noted. The authenticated copy of the will is then stored in the archives of the archives of the court.

Holographic and allographic wills are kept either by the testator and his or her family, or are lodged with the court. Upon the death of the testator, the instrument is transmitted to the judicial commissioner who draws up a protocol.

Heirs and legatees are not required to be present when the will is opened. They are informed of this subsequently when they receive the protocol together with a copy of the will.

[4] Judicial commissioners are involved in the settlement of successions in Austria, Croatia and Slovakia.

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Finally, given their special nature, oral wills give rise to a protocol drawn up by the court, after having heard the witnesses who heard the testator's last wishes. This form of will is, however, relatively rare and is valid only in emergencies.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a foreign public authority.

Moreover, Austrian law does not lay down any specific rules for the situation where a will, held in Austria, has to be sent abroad. The original instrument must be kept in the archives of the Austrian court of competent jurisdiction for the settlement of the succession. The will does not need to be translated before it is transmitted. Even if the judicial commissioner has a good command of the language of the country where the document has to be sent, they will not translate it.

II. Disclosing the information contained in wills

The judicial commissioner can transmit the information contained in the will. They may communicate the information:

- to the heirs;
- to the national public authorities;
- to foreign public authorities via the mutual legal assistance system. This involves mutual assistance between two countries for the performance of judicial activities falling outside the scope of their respective territorial jurisdiction. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure may communicate it to them if the need arises;

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- and more generally, to any person having a legitimate interest, determined according to the circumstances by the judicial commissioner;

The authenticated copy of the will may only be sent by regular mail, while the content of the will may be notified either by regular mail or via electronic mail.

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Belgium

I. The opening of wills

A. National practices

Wills are opened by notaries. The arrangements for opening wills vary according to their type:

- authentic wills are generally read to the heirs of the deceased by the notary. The notary will then forward the document to the tax authorities.
- the opening of holographic wills is governed by article 976 1° of the Civil Code which stipulates that the will must be transmitted to a notary. If it is sealed, the latter will open it. A protocol, describing the state of the will, will then be drawn up. The will and the related protocol will be kept in the notary's records. Then, within one month of the date of the protocol, the notary must file a certified true copy of the record with the Clerk of the Court of First Instance of the judicial district in which the succession is administered, together with a certified true copy of the will. The clerk will record the documents filed by the notary in a special register and issue a receipt to the notary.
- the opening of international wills is governed by article 976 2° of the Civil Code: the notary with whom an international will has been lodged draws up a protocol covering the opening and condition of the will. In the month following the date of the protocol, the notary must submit a certified copy to the registry of the Court of First Instance in the district in which the succession was opened and a certified copy of the will and certification. The court clerk will enter the details in a special register and provide the notary with a receipt.

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B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State.

On the other hand, in the case of successions opened abroad, the Belgian Civil Code stipulates that holographic and international wills, together with the protocol, must be filed with the Clerk of the Court of First Instance of the judicial district where the notary is established. The will does not need to be translated before it is transmitted. Even if the notary has a good command of the language of the country where the document has to be sent, they will not translate it.

II. Disclosing the information contained in wills

The notary may disclose the information contained in the will. The notary may communicate the information:

- to the heirs;
- to the public authorities or to fellow Belgian notaries;
- to the public authorities or the legal professionals with responsibility for settling the succession abroad. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure may communicate it to them if the need arises;
- and more generally to any person having a legitimate interest[5], in which case only those elements in the will of interest to these persons will be disclosed.

A copy of the will and its content may be transmitted by regular mail or by electronic mail.

[5] In Belgian law they are referred to as “interested persons”, namely the legal heirs, legatees and persons denied their entitlements under the will.

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Bulgaria

I. The opening of wills

A. National practices

At the current time wills are opened by notaries in Bulgaria. However, pre-1998, the opening of wills was the responsibility of regional courts. At that time, notaries were civil servants and their role was limited to entering wills in a register. Nowadays, there are still some regions where, in the absence of notaries, the courts retain this jurisdiction.

The arrangements for opening wills vary according to their type:

- in general, authentic wills are simply read to the heirs.
- holographic wills may be transmitted to a notary for opening by any person having a legitimate interest. The request must be submitted in writing to the notary, together with proof of death. The notary then opens the will in the presence of the person who submitted the request and draws up a protocol in which he or she describes the state and characteristics of the will (type of paper used, number of pages, etc.). This protocol must then be signed by the person who requested the opening of the will and by the notary. The actual will is then signed on each page by the parties. The notary keeps all these documents: holographic will, protocol, and proof of death.

Wills are generally opened in the presence of the deceased's heirs or any person having a legitimate interest. They may, at this time, obtain a copy of the will.

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B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State.

Moreover, Bulgarian law does not lay down any specific rules for the situation where a will, held in Bulgaria, has to be sent abroad. The will does not need to be translated before being transmitted. Even if the notary has a good command of the language of the country where the document has to be sent, they will not translate it. The notary will preferably enlist the services of a sworn translator.

II. Disclosing the information contained in wills

The notary may disclose the information contained in the will. The notary may communicate the information:

- to the heirs;
- to the public authorities and legal professionals, whether they are located in Bulgaria or abroad (notary, lawyer, court, tax authorities, etc.). Moreover, the persons who are entitled to receive a copy of the will may communicate it to a public authority or a legal professional located abroad and entrusted with settling all or part of the succession;

- and more generally to anyone having a legitimate interest. To assess this interest, it is necessary to ascertain the relationship between the deceased and the person requesting to receive the information contained in the will and the reasons why they wish to obtain this information.

A copy of the will and its content may be transmitted by regular mail or by electronic mail.

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Croatia

I. The opening of wills

A. National practices

Wills are opened by the courts or by notaries depending on where they are held. In connection with the settlement of succession, the notary acts as a "judicial commissioner", that is to say he or she performs this task as the representative of the public authorities[6]. If a will has been lodged with a court, such court will open it and then transmit it to the notary with responsibility for settling the succession.

The procedure is identical irrespective of the form of the will. Anyone holding a will (or any document which the person in question has reason to believe is a will), as well anyone who is aware of the existence of a will and the place where it is held, must communicate the document or this information to the nearest municipal court[7]. Moreover, the judicial commissioner is required to search the register of wills as soon as the succession settlement procedure is opened in order to ascertain the existence of a will and where it is kept. The judicial commissioner than reads the will and draws up a protocol in which all the wills discovered, their dates and locations are indicated, together with the name of the authority which has issued the death certificate and, depending on the type of will, the name of the

[6] Judicial commissioners are involved in the settlement of successions in Austria, Croatia and Slovakia.

[7] In Croatia, authentic wills may be drawn up by a municipal court, a legal advisor to the municipal court, a notary or, abroad, by a consul or diplomatic representative. The testator may then choose to keep the will or to lodge it with a third party. Accordingly, the testator may transmit the will for safekeeping to a notary, municipal court, a legal advisor to the municipal court or, if abroad, to a consul or diplomatic representative. The latter will then be required to keep the will, irrespective of whether or not they drew it up, and to record it electronically with the relevant register.

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person who transmitted it to the court, information on whether the will was open or sealed, what type of seal was used, and the names of the witnesses present. Once the will has been opened, the heirs present at its reading can obtain a copy of it.

Finally, there is the oral will, which is reserved for exceptional circumstances. This type of will must be declared before two witnesses present at the same time, and who do not have to be heirs. These witnesses must then record the testator's last wishes in writing and transmit the document as quickly as possible to a court or a notary for safekeeping. If the witnesses cannot record these last wishes in writing they must state them verbally before the court or notary. The oral will must then be opened in the presence of these witnesses.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State. However, when the latter transmits a will to a Croatian court, it must have had it translated.

Moreover, Croatian law does not lay down any specific rules for the situation where a will, held in Croatia, has to be sent abroad. The will does not need to be translated before being transmitted.

II. Disclosing the information contained in wills

The judicial commissioner or the court, depending on where the will is held, may communicate the information contained therein. They may communicate the information:

- to the heirs and anyone granted entitlements or denied entitlements under the will. A copy of the will will be delivered to them;

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- to the foreign public authorities or the legal professionals entrusted with settling the succession abroad, but only via the mutual legal assistance system. This involves mutual assistance between two countries for the performance of judicial activities falling outside the scope of their respective territorial jurisdiction. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure may communicate it to them if the need arises.

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Cyprus

I. The opening of wills

Wills are opened by the courts. In Cyprus, only one form of will exists, the will before witnesses. Wills are recorded in the register by filing an envelope containing the last will with the registration office of the local court ("*Probate Registrar*")[8].

Under Cypriot law, wills cannot be opened during the testator's life, unless the latter gives his or her consent. In such a case, the envelope containing the will must be re-sealed and signed by the testator.

After death, the will may be opened by the executor or any other interested person, in the presence of the Chief Registrar. The latter must establish that the testator is dead and the identity and legitimate interest of the person requesting the opening of the will. Therefore, the Chief Registrar must be present when the will is opened, since they are responsible for checking the documents required for the opening of the will.

II. Disclosing the information contained in wills

The information contained in the will is transmitted by the court. It will only communicate this information to the heirs. It is then for the latter to contact the public authorities, or for the legal professional entrusted with setting all or part of the succession abroad to inform the relevant party of the content of the deceased's will.

[8] More details on the will registration and search system can be obtaining by consulting the *Status Report on Wills Registration and Search in Europe* on the website www.arert.eu.

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The Czech Republic

I. The opening of wills

A. National practices

A notary and the Court can open wills. In such circumstances, the notary acts as a "judicial commissioner", that is to say they perform this task as the representative of the public authorities[9].

The same procedure is followed for opening authentic wills, holographic wills and witnessed wills lodged with a notary. The will is opened by the notary who holds it at the request of the judicial commissioner responsible for settling the estate. The commissioner finds the name of the notary holding the will by searching the register of wills. The notary holding the will then adds a clause stating the name of the judicial commissioner and sends the original will, including this clause, to the Court responsible for settling the estate. At the same time, they send a copy of the will to the judicial commissioner. This procedure is not public.

If the last will and testament was drawn up and held by a former State notary, the Courts are the custodians of the document. At the request of the judicial commissioner, the judge then opens the will and notes its contents. This procedure is not public.

When a holographic or witnessed will has not been sent to a notary, it is opened by the judicial commissioner in the presence of the holder of the will and the presumed heirs[10]. The judicial commissioner then prepares a report on the opening of the will and its contents, known as the "publication report". This report contains information about the person who held the will and those present at the opening. It describes the condition and the

[9] Judicial commissioners are involved in the settlement of successions in Austria, Croatia, Czech Republic and Slovakia.

[10] This is by virtue of a law providing for an in-depth reform of the civil law coming into force on 1 January 2014.

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characteristics of the document (whether or not contained in an envelope, the existence of deletions, etc.), its date and its type (holographic or witnessed). This report and the original will are then sent to the competent Court by the judicial commissioner.

Those present at the opening of the last will and testament can obtain a copy of it.

B. The cross-border context

When a will is sent by a public authority from another Member State, the relevant rules for opening and recording the contents of the document are those which apply to wills that have not been lodged with a notary in the Czech Republic. If such a will is not an authentic will, it is mandatory for the original document to be sent to the judicial commissioner. Certified copies are not acceptable.

Moreover, Czech law does not lay down any specific rules for the situation where a will, held in the Czech Republic, has to be sent abroad. The will does not need to be translated before being transmitted. Even if the judicial commissioner has a good command of the language of the country where the document has to be sent, they will not translate it.

II. Disclosing the information contained in wills

The judicial commissioner may disclose the information contained in the will. It may communicate the information:

- to the heirs. Those present when the document is opened[11] and when its contents are certified can have a copy of the will sent to them.
- to the national public authorities.

[11] This situation is limited in the case of holographic and witnessed wills which were not lodged with a notary when they were drawn up.

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- and more generally to anyone having a legitimate interest. Foreign public authorities and legal professionals responsible for settling the estate abroad can be considered as having a legitimate interest. In this case, a notary or Court located in a foreign country will have to use the mutual legal assistance mechanism. This involves mutual assistance between two countries for the performance of judicial activities falling outside the scope of their respective territorial jurisdiction. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure may disclose it to them if the need arises.

Everyone else will have to wait until the estate has been settled in the Czech Republic before they can obtain a copy of the will. The certified true copy[12] of the will can be sent by post.

[12] More precisely, this is a certified copy of the documents related to the estate.

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Denmark

I. The opening of wills

A. National practices

Wills are opened by the court or by the heirs themselves depending on the form of the will:

- public wills are those that have been signed or lodged with a *"notary public"*. The latter cannot, however, be considered the same as a notary in the Romano-Germanic legal systems since, although the *"notary public"* certifies a certain number of documents (the testator's identity and signature), they do not assess the validity of the will's content. The original public will is kept by the testator, and the "notary public" simply retains a copy which they can record in the register of wills provided for that purpose. Upon the death of the testator, the court with jurisdiction for settling the succession must consult this register in order to collect as much information as possible regarding the deceased's last wishes. It will then summon all known heirs in order to interview them and inform them of the deceased's will.
- wills before witnesses are not recorded in the Danish register of wills. These instruments are kept by the deceased and it is therefore the responsibility of the latter's family members, when they locate the will, to open it.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State.

Moreover, Danish law does not lay down any specific rules for the situation where a will, held in Denmark, has to be sent abroad. The will does not need to be translated before being transmitted. The public authorities or the legal professionals involved in settling the

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succession, even when they have a good command of the language of the country where the document has to be sent, will not translate it.

II. Disclosing the information contained in wills

The court and the "*notary public*" may transmit the information contained in the will. They may transmit it:

- to the heirs and relatives of the deceased;
- to the public authorities or the legal professionals with responsibility for settling successions abroad, provided that the latter can demonstrate their legitimate interest. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure may communicate it to them if the need arises;
- and, more generally, to any person having a legitimate interest, that is to say anyone whose situation is changed as a result of the existence of the will.

Both the copy and content of the will may be transmitted by regular mail or by electronic mail.

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Estonia

I. The opening of wills

A. National practices

Wills are opened or the information contained in the wills is disclosed by a notary settling the succession. The arrangements for opening wills vary according to their type:

- authentic wills are generally read to the deceased's heirs by the notary entrusted with settling the succession. The latter will have requested and obtained a copy from a notary who drew up the will, or directly from the register of successions[13] which contains the succession files of all the notaries. The content of the will is disclosed without any special formalities.

- wills deposited with notary in a sealed envelope are opened by the notary who holds the will. After having been contacted by the notary responsible for settling the succession, the notary who holds the will opens it. Notary opening the will invites person entitled to succeed to participate in the opening but their failure to attend does not prevent the notary to open the will. Notary, who opens the will, forwards a copy of it to the notary settling the succession, confirming at the same time the date and time of the opening of the will. The notary responsible for settling the succession then informs the heirs of the opening of the will and continues the succession procedure.

- holographic wills and will signed in presence of witnesses[14] (called "domestic wills" in Estonian law) must be transmitted by the person holding them to the notary entrusted with settling the succession. The content of the will is disclosed without any special formalities. Domestic wills may be registered in the succession register by the person making the will or

[13] This register contains information on wills, mutual wills and all other instruments relative to successions.

[14] Wills before witnesses are sometimes called "allographic" wills in countries with a Romano-Germanic legal system.

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by the person holding the will. The registration of domestic wills in the succession register is not compulsory.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State.

Moreover, Estonian law does not lay down any specific rules for the situation where a will, held in Estonia, has to be sent abroad.

II. Disclosing the information contained in wills

The notary may disclose the information contained in the will. They may communicate the information to the person entitled to succeed. Only persons who would be heirs in the case of intestate succession and heirs shown in the will have the right to receive information on the content of the will.

The persons who are entitled to obtain a copy of the will may communicate it to the public authorities or the legal professionals with responsibility for settling the succession abroad.

Everyone, including the authorities abroad, can access the information in the succession register after the death of the bequeather is certified. On the authenticated wills and domestic wills registered in the succession register it is possible to find out:

- the given name and surname of the bequeather,
- the date and place of birth and the personal identification code of the bequeather,
- the type of the document and the date and year of notarisation or taking into deposit of the document and the number of the document according to the register of notarial acts,
- the name of the notary,
- the location of the will or succession contract.

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Finland

I. The opening of wills

A. National practices

Wills are usually kept at the deceased's home or in a bank safe-deposit box in Finland. It is also possible to lodge them with a local court, but in practice this is rare.

In Finland, the will before witnesses is the principal authorised form of will[15]. Two witnesses, relatives of the deceased, witness the signing of the will. They can then search for the will after the testator's death. The will is then simply opened and read. When the will is kept at a bank, the bank does not remove it from the safe-deposit box unless all the forced heirs[16] are present or represented.

Oral wills also exist, for use in exceptional circumstances. In the event of death in such cases, the witnesses will be heard by the court so that the provisions of the will can be transcribed.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State. Translation is recommended when the language used in the will is not understood. Moreover, Finnish law does not lay down any specific rules for the situation where a will, held in Finland, has to be sent abroad.

[15] In emergencies or in the case of illness, oral or holographic wills can be used.

[16] Finland has a system of forced heirs in favour of direct descendants; half of the estate is reserved for them.

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II. Disclosing the information contained in wills

The information contained in the will is communicated by the legatees specified in the will. According to the Code of Inheritance, this must be served to the heirs via a process server or otherwise in a verifiable manner. A certified copy of the will is attached to the notification. In the case of oral wills, the legatees must attach a certified copy of the court record in which the will has been re-transcribed after the court has heard the witnesses, or any other written record of the will's content. If there are no successors, the beneficiaries under the will will notify the deceased's last wishes to the tax authorities.

If the will designates several beneficiaries, the notification made by one of them is sufficient and is binding on all of them.

The notification enables the heirs to ensure that the reserved portion of the estate is respected and to contest the will if they consider it necessary. Any such action must be instituted within six months of the notification of the will. However, as soon as the heirs have accepted the will or waived the right to act, any action is extinguished.

The executor, designated in the will, or a court-appointed administrator contacts the legatees in order to inform them of the content of the will. He or she may not, however, serve the testament instead of the latter.

In practice, in Finland, the appointment of an executor frequently avoids disputes relating to the settlement of successions.

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France

I. The opening of wills

A. National practices

Wills are opened by a notary. Wills are sometimes lodged with a lawyer, but the latter must transmit the will to a notary for the purpose of settling the succession.

The arrangements for opening wills vary according to their type:

- authentic wills are generally read to the heirs of the deceased by the notary. The latter then transmits the document to the tax authorities for registration.
- holographic and mystic wills give rise to an additional formality since, as soon as the testator's death is announced, the notary holding the will draws up a protocol of the opening of the will, containing a description of the instrument, which they then file in their public records. The notary with responsibility for settling the succession then generally summons the heirs to read the will to them. The will is then transmitted to the tax authorities for registration.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State. However, the instrument transmitted to the notary must be translated into French.

Moreover, French law does not lay down any specific rules for the situation where a will, held in France, has to be sent abroad. Even if the notary has a good command of the language of the country where the document has to be sent, they will not translate it.

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II. Disclosing the information contained in wills

The notary may disclose the information contained in the will. They may communicate the information:

- to the heirs;

- to the public authorities, for example, to the tax authorities or courts, in particular when the will is not drawn up as an authentic will[17].

-to the public authorities or the legal professionals with responsibility for settling the will abroad, whether it involves the court, a notary or a lawyer. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure may communicate it to them if the need arises.

A copy of the will and its content may be transmitted by regular mail or by electronic mail.

[17] If there are no lineal heirs, non-authentic wills do not confer seisin on either the legatees or the executor. In such a case it is for the President of the Court to authorise the latter to take the inheritance.

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Germany

I. The opening of wills

A. National practices

he court is the competent authority for opening wills. In Germany, authentic wills may be held by a court or a notary, holographic wills may be held by a court or the testator. The court which holds the will is not necessarily the court of competent jurisdiction for settling the succession ("*Probate Court*"). In such a case, the court holding the will may open it and transmit it to the court of competent jurisdiction. On the other hand, when the will is held by a notary or the testator's family, the latter must transmit it to the court of competent jurisdiction which will open it.

There are two will opening procedures:

- a public opening in the presence of the legal heirs. The latter may, at that time, obtain a copy of the will.
- a "silent" opening, which is the most frequently used procedure in practice. Generally a court official is tasked with opening the will and noting any erasures and other anomalies on the will and on the envelope containing the will, if applicable. The official then draws up a protocol, containing this description and the date of death, the date of opening of the will and the names of the legatees. The latter and the legal heirs will then be notified of the content of the will.

B. The cross-border context

When a will has been located in another Member State and has been opened there before being transmitted to the court of competent jurisdiction to settle the succession in Germany, the latter will not open the will.

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German law does not lay down any specific provisions for the situation where a will, held in Germany, has to be sent abroad. The original instrument is kept with the German court and only a copy is sent. The will does not need to be translated before being transmitted.

II. Disclosing the information contained in wills

The court may disclose the information contained in the will. It may communicate the information:

- to the heirs;
- to some national public authorities, e.g. the inland revenue;
- to the public authorities and the legal professionals entrusted with settling all or part of the succession abroad, when the latter can demonstrate that they are acting on behalf of a person who has a legitimate interest. Foreign courts may thus contact their German counterparts within the framework of mutual legal assistance in order to obtain a copy of the will for execution. This involves mutual assistance between two countries for the performance of judicial activities falling outside the scope of their respective territorial jurisdiction. Moreover, the persons who are entitled to obtain an executory copy of the will during the succession procedure may communicate it to them if the need arises;
- and, more generally, to any person or authority having a legitimate interest, that is to say any person who is granted entitlements or denied entitlements as a result of the existence of the will.

A copy of the will may be conveyed by regular mail or by encrypted electronic mail.

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Greece

I. The opening of wills

A. National practices

Wills are opened by the courts or by the consular authorities, when they are lodged with the latter. The arrangements for opening wills vary according to their type:

- authentic wills are kept by the notary who drew them up. When the notary learns of the testator's death, they send a certified true copy of the will to the competent justice of the peace court. The court then opens the will and draws up a protocol which reproduces the will in full and attests to the lack of any irregularity. The original authentic will is kept by the notary who drew it up.

- holographic wills can be lodged with a notary. In such a case, the notary, once they have been informed of the testator's death, presents the original will to the competent justice of the peace court of the judicial district where the notary is established[18]. The court then draws up a protocol of the opening of the will, reproducing the full content of the will and attesting to its state (erasures, words written over the existing text, blanks) and the absence of irregularities. Although not required by law, the notary is generally present at the hearing when the will is opened. The original will is retained by the court which opened it.

Any other person in possession of a holographic will, once informed of the death of the testator, presents the original will to the Justice of the Peace in the district of the last place of residence of the deceased or of his/her own place of residence. The publication procedure before the judge remains unchanged.

[18] The notary may also transmit the original holographic will to the justice of the peace court located in the judicial district of the deceased's last domicile. However, this possibility is rarely used in practice.

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- mystic wills[19] must be handed by the testator to a notary in the presence of three witnesses, or two notaries and one witness. On this occasion, the testator declares verbally that the document transmitted is his or her will. The document is written, by hand or by any mechanical means, by the testator or another person, and must be signed by the testator. The will is then placed in a sealed envelope, on which the notary indicates the surname and first name of the testator as well as the date of delivery of the private deed. The envelope is then signed by all the persons present. Upon receipt of the mystic will, the notary draws up an authentic instrument

Upon the death of the testator, the notary transmits the sealed envelope and the notarial deed of deposit to the justice of the peace court of the judicial district where it was drawn up. The court will then check, in the notary's presence, that the seal is unbroken, and open the will. Any person having a legitimate interest may attend the hearing at which the will is opened. Once the will has been opened, the court will initial the will and the envelope containing it, date and countersign it. Finally, it will draw up a protocol, reproducing the full content of the will and attesting to its state (erasures, words written over the existing text, blanks) and the absence of irregularities. The original mystic will is retained by the court which opened it.

- Finally, there is a type of will reserved for exceptional circumstances (danger of imminent death, epidemic, etc.). These wills are only valid for three months from the date on which the exceptional circumstances end.

For all forms of wills, if the testator's last domicile is not within the jurisdiction of the justice of the peace court having opened the will, a copy of the protocol must also be sent for archiving to the court of competent jurisdiction of the testator's last domicile. Then, in all cases, a copy of this protocol is sent to the Clerk of the Court of First Instance of Athens and to the tax authorities.

[21] That is to say a will transmitted to a notary in a closed envelope.

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Consular authorities may also hold wills. When they are informed of the testator's death, they can open the will and draw up a protocol, reproducing the full content of the will and attesting to its state (erasures, words written over the existing text, blanks) and the absence of irregularities. A copy of this written report is then sent to the Clerk of the Court of First Instance of Athens and to the clerk of the justice of the peace court of the judicial district in which the deceased had his or her domicile or place of residence. The original instrument is retained in the consular authority's archives.

B. The cross-border context

There are no specific provisions governing the opening of wills drawn up or deposited abroad. The will must be opened in accordance with the law and practices of the country where the will is held. Any person having a legitimate interest, after having obtained a copy of the will opened abroad, may then transmit this copy, certified by the authority having opened it, to the clerk of the justice of the peace court, in Greece, or to any Greek consular authority if he or she resides abroad. If the copy is in a foreign language, it must be translated before it is lodged. The clerk of the court or the consular authority then promptly sends a copy of the will together with the name of the person lodging it and its date of presentation to the Clerk of the Court of First Instance of Athens. Providing the Clerk of the Court with a copy of the will is not mandatory for a will opened abroad to be used in Greece[20].

On the other hand, Greek law does not lay down any specific rules for the situation where a will, held in Greece, has to be sent abroad. The will does not need to be translated before being transmitted.

[20] Any foreign will presented before a Greek public authority must be legalised before its presentation, that is to say either apostilled if the originating State has ratified the Hague Convention of 5 October 1961, or legalised by the Greek diplomatic or consular authorities or by the Ministry of Foreign Affairs.

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II. Disclosing the information contained in wills

The information contained in the will may only be communicated once the formalities relating to the opening of the will have been accomplished. Then, the courts, notaries, lawyers and, more generally, any person having a legitimate interest may communicate information regarding the will's content.

The information may be communicated to a public authority or a legal professional with responsibility for settling all or part of the succession abroad or in general terms to any person with a legitimate interest[21].

A copy of the will and its content may be transmitted by regular mail or by electronic mail.

[21] For example, a creditor of the heir or the deceased.

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Hungary

I. The opening of wills

A. National practices

Wills are opened by notaries. The procedure is identical irrespective of the type of will, with the exception of oral wills. A register of wills was set up in 1993. It is managed by the Notariat. The notary who is responsible for settling the succession searches the register of wills and, if applicable, contacts the notary with whom the will has been lodged to obtain a copy of it. The notary entrusted with settling the succession opens the will to find the names of the legatees and then invites the heirs, legatees and any other interested persons to a "hearing" by enclosing a copy of the will. At this hearing, the will is read aloud and described. When the will has been lodged with a lawyer or a private individual, this individual must transmit it to a notary for opening.

Other instruments exist which may contain testamentary dispositions, such as deeds of inheritance and donations, for which the procedure is identical.

Oral wills are those made in exceptional circumstances. The witnesses present when the testator dictated his or her last wishes must then contact a notary so that the latter can draw up a protocol. The notary hears the witnesses of the oral will separately and registers their statements in the minutes of the hearing. The proclamation of the oral will is the exposition of the witnesses' statements.

In all cases, the heirs and any other interested persons[22] must be present before the notary. These parties may, on this occasion, express any reservations they may have regarding the validity of the will, in substance or in form. All the parties present may obtain a copy of the will.

[22] Namely forced heirs, legatees, the executor, creditors of the estate and any other person having an interest in the succession, such as the surviving spouse.

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If a person who has not been invited by the notary considers that they have a legitimate interest, they have one year to prove this interest before the courts. However, if the person's does name does not feature in the will, this interest cannot be established. A legatee based abroad who was not invited to the hearing, also has a period of one year from the end of the succession procedure to contact the notary who settled the succession. After that period has lapsed, they must file an application with the courts.

Anyone, irrespective of his or her nationality, and having a legitimate interest, is entitled to ask for the succession procedure to be re-opened if an element which might have had a bearing on the devolution of the estate was not taken into account. Any request to re-open the procedure must be submitted to the notary no later than one year after the notary's decision has acquired the force of res judicata. After that deadline has expired, the case must be referred to the courts.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State.

Moreover, Hungarian law does not lay down any specific rules for the situation where a will, held in Hungary, has to be sent abroad. The will does not need to be translated before being transmitted. However, if the notary has a good command of the language of the State where the will is to be sent, and has official language certification, signed by the Justice Ministry, they will agree to translate it.

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II. Disclosing the information contained in wills

The notary is responsible for transmitting the information contained in the will. They may communicate it:

- to the heirs. The notary is required to inform them of the content of the deed by summoning them to the hearing.
- to the national public authorities;
- to the public authorities or the legal professionals with responsibility for settling all or part of the succession abroad. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure may communicate it to them if the need arises;
- and, more generally, to any person having a legitimate interest. The notary is required to inform them of the content of the deed by summoning them to the hearing.

A copy of the will and its content may be transmitted by regular mail or delivered by hand.

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Ireland

I. The opening of wills

A. National practices

Wills are usually held by the deceased's lawyer or on occasion by his/her relatives. In the Republic of Ireland, for a will to be valid it must be a witnessed will. It can be drawn up by a lawyer or by the testator. The simultaneous presence of two or more witnesses is required[23]. A holographic will is not a valid will. However, if a testator made a holographic will in a jurisdiction in which this form of will is valid, Irish legislation accepts the holographic will.

At the time of death, the lawyer will open the document and contact the executor who has been named in the will by the testator. If no executor is appointed, the lawyer will contact the relatives. Where the relatives have retained custody of the original will, it is usual for them to instruct a Solicitor to deal with the administration of the estate. The will is then submitted to a specialised authority called the Probate Office, under the jurisdiction of the Irish High Court, so that its validity can be verified by a legal process. It is then published by the issue of a Grant[24] to which a copy of the original will is attached as an annex. The Grant identifies the person who has authority to administer the deceased's estate.

[23] Where a beneficiary under the will or his/her spouse act as witnesses to will, the will is valid but the benefit under the will is null and void – Section 81 Succession Act 1965 .

[24] This is a Grant of Probate when the application is made to the Probate Office by an executor and a Grant of Letters of Administration with Will Annexed when the application is made by someone else. A number of documents must be provided in support of the application, such as the original will, the oath of the applicant and, a full inventory of the deceased's estate. Further affidavits are sometimes required if further evidence is required.

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A Public Register is maintained in the Probate Office and it identifies all wills which have been proved in the Republic of Ireland together with the name of the person or persons who have responsibility for the administration of the deceased's estate.

B. The cross-border context

Where a testator with a foreign domicile has assets in the jurisdiction of the Republic of Ireland, Section 102 of the Irish Succession Act 1965 allows for any valid will he may have made in another jurisdiction to be proved in the Republic of Ireland. It is necessary for a lawyer in the Republic of Ireland to be instructed by the appropriate next of kin of the deceased person. The lawyer will apply on behalf of such next of kin to have a Grant issued in the deceased's estate and to have the will published in the Republic of Ireland. If the will is in a foreign language, the Probate Office will require an official translation into English of the will from a qualified translator.

Irish law does not lay down any specific rules for the situation where a will, held in the Republic of Ireland, has to be sent abroad. It is a matter for the receiving country to decide on its own procedures for the opening of the will in its jurisdiction. If a Grant has issued in a deceased's estate in the Republic of Ireland, the receiving country will usually require a sealed and certified copy together with a Judges Certificate of the Will and Grant from the Republic of Ireland. Where no Grant has issued, it is a matter for the receiving country to set its own procedures.

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II. Disclosing the information contained in wills

Before the Irish Probate Office issues the Grant, the content of the will is confidential and the executor is the only person who can decide who should have access to the information it contains. The recipients of this information will usually be the heirs and any others with a legitimate interest.

Once the will has been published, it becomes a public document which can be accessed by anyone on payment of a fee. Those interested can contact the Probate Office to obtain a certified copy of the will and the Grant.

The Probate Office sends copies of the will by post only.

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Italy

I. The opening of wills

A. National practices

Under the Italian Civil Code the opening of a will takes the form of its publication by a notary. The publication procedure varies according to the type of will.

In the case of authentic wills, mystic wills and holographic wills lodged with a notary, the notary who holds the will informs the heirs and legatees, whose address they know, of the existence of the will as soon as they learn of the testator's death. The publication of the will consists in drawing up a protocol.

In the case of holographic wills kept by the testator or family members, the latter must transmit the will to a notary as soon as they become aware of the testator's death. The notary then publishes the will by drawing up a protocol in the form of an authentic instrument, in the presence of two witnesses [25] and at least one of the heirs. This protocol reproduces the full text of the will and describes the state and characteristics of the will (type of paper used, number of pages etc.). The original will, together with a death certificate, will be attached to the protocol, which will be signed by the person with whom the will was lodged, the witnesses and the notary.

Irrespective of its form, the will becomes effective once it has been published and has become a public document. The protocol is sent to the clerk of the court and to the Italian register of wills. Anyone can then ask the notary for a certified true copy of the protocol.

[25] The heirs cannot be witnesses for the publication of the will. The witnesses must have reached the legal age of majority and have legal capacity, be Italian, reside in Italy and not have an interest in the succession.

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B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State. However, if the will has been opened by an authority abroad, there is no need to accomplish the formalities relating to the publication of the will in Italy.

Moreover, Italian law does not lay down any specific rules for the situation where a will, held in Italy, has to be sent abroad. The will does not need to be translated before being transmitted. However, if the notary has a good command of the language of the State where the will has to be sent, they will generally agree to translate it.

II. Disclosing the information contained in wills

The notary is responsible for transmitting the information contained in the will. They must transmit a copy of the protocol to the clerk of the court and the central register of wills.
Moreover, they may communicate the information:
- to the public authorities or the legal professionals with responsibility for settling the succession abroad. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure may communicate it to them if the need arises;
- to anyone requesting a certified true copy as soon as the will has been published.

A copy of the will may be transmitted by regular mail or by electronic mail.

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Latvia

I. The opening of wills

A. National practices

Wills are opened by notaries. The procedure is identical irrespective of the form of the will. To settle the succession, the Latvian notary must hold all the original wills drawn up by the deceased. Therefore, if a will is held by a fellow notary in Latvia, the latter must send the original by regular mail to the notary settling the succession.

When they have all the wills in their possession, the notary entrusted with settling the succession sets a date for their opening and reading. They inform the heirs of this date and post an announcement in a publicly visible place on the premises of their office. All the wills located are opened and read at the same time, even though some of them might be invalid. After the reading of the will, the notary draws up a protocol in the form of an authentic instrument which specifies the state of the will (corrections, erasures, words added or deleted, etc.), whether it was sealed, if the seal was intact, what legacies are provided for in the will, and finally, whether the heirs and legatees present have raised any objections to the authenticity or validity of the will.

The notary invites the heirs, the legatees, the administrator, the executor and, if applicable, the witnesses who signed the will to attend the opening of the will. However, their presence is not mandatory. The notary will inform those who were not present of their status and the period of time within which they must accept or refuse the inheritance. Those who were present on the day of the opening of the will may obtain a copy of the will to which a notation is added to the effect that the will has been opened and read.

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B. The cross-border context

The opening of a will in Latvia requires the notary to be in possession of the original will, including in cases where the will is deposited abroad, for it to be effective. Unless stipulated otherwise in a bilateral convention, a will located abroad must be legalised either by the consular department of the Ministry of Foreign Affairs or via the diplomatic or consular channels of the country from where the will originates, or be apostilled by the competent authorities.

A copy of the will, even when it has been apostilled, is not a sufficient basis on which to draw up a protocol and produce the legal effects provided for in the will. This copy may, however, be read by the notary to the successors, but if the latter wish to avail themselves of the provisions of the will without being in possession of the original will, they must apply to the courts to establish the existence and content of the will.

On the other hand, Latvian law does not lay down any specific rules for the situation where a will, held in Latvia, has to be sent abroad.

II. Disclosing the information contained in wills

The notary may communicate the information contained in the will. In principle, a notary may only communicate the information to the legal heirs, legatees and their representatives, in particular by transmitting to them extracts of his or her notarial deed book. After the will has been read, the notary transmits the content of the will to the persons who were not present at the opening of the will.

Exceptionally, the notary may also disclose information regarding the content of the will:

- to judicial officers, the public prosecutor's office and other institutions involved in the procedure, in connection with the performance of their duties;

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- to officials of other institutions and private individuals, with the consent of the parties to the will or with the authorisation of the President of the Regional Court. Therefore, private individuals may only have access to the content of the will with the approval of the President of the court.

The notary may not disclose the information contained in the will to the public authorities or the legal professionals entrusted with settling all or part of the succession abroad, unless stipulated otherwise in a bilateral convention[26]. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure are not authorised to communicate it to them.

When the communication of information is permitted, a copy of the will and its content may only be transmitted by regular mail.

[26] Agreements exist between the Latvian Republic and Russia, Belarus, Ukraine, Moldova, Kyrgyzstan, Poland and Uzbekistan.

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Lithuania

I. The opening of wills

A. National practices

Wills are opened by notaries. The arrangements for opening wills vary according to their type:

- for authentic wills, the notary entrusted with the settlement of the succession determines the day for the opening of the will. They inform the legal heirs and any other interested parties accordingly. They also search the register of wills and read to the successors all the provisions of the wills located.
- for holographic wills lodged with a notary, the procedure is identical, with the additional requirements that the notary must draw up a protocol describing the state of the envelope and the means of protection of the envelope from infringement. If the will is not lodged with the notary entrusted with settling the succession, the notary with whom the will has been lodged will forward it to the notary so that they can read it to the successors on the agreed day.
- in the case of a holographic will kept by the testator or his or her family, the court must validate it within one year of the testator's death. Otherwise, the will is not valid.

The notary summons the legal heirs and any other interested parties for the reading of the will. However, their presence is not mandatory. Those who are present can obtain a copy of the will.

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B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State.

Moreover, Lithuanian law does not lay down any specific rules for the situation where a will, held in Lithuania, has to be sent abroad. The will does not need to be translated before being transmitted. Even if the notary has a good command of the language of the country where the document has to be sent, they will not translate it.

II. Disclosing the information contained in wills

The notary may disclose the information contained in the will. The notary may communicate the information:

- to the heirs, legatees and, more generally, to all the successors having rights in the succession;
- to the public authorities or the legal professionals with responsibility for settling all or part of the succession abroad. In practice, however, it is the heirs who, after having obtained a copy of the will from the notary, transmit it to them.

The notary may also be called upon to communicate the information contained in the will to the Justice Ministry, if so requested within the framework of mutual legal assistance by a foreign public authority of a country with which Lithuania has signed a bilateral convention. This ministry will then transmit the information to the competent authority.

A copy of the will may be transmitted by regular mail or by electronic mail.

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Luxembourg

I. The opening of wills

A. National practices

The opening of wills varies according to their form. Whereas authentic wills are opened[27] by the notary, the court has jurisdiction for the opening of holographic and mystic wills.

Concerning authentic wills, the notary contacted by the heirs searches the register of wills. If the notary finds the will, they request that the notary with whom the will has been lodged send them a copy[28] of the authentic will by regular mail. The notary then opens the will and informs the heirs and legatees of its content.

The situation of holographic and mystic wills[29] is governed by article 1007 of the Luxembourg Civil Code. These two forms of will must be lodged with the President of the Court of First Instance of the judicial district where the succession is administered by the notary with whom the will was lodged. The judicial authority then draws up a protocol of the presentation, opening and state of the will. In the case of a mystic will, the will may only be opened by the President of the Court in the presence of the notary and the witnesses who signed the authentic instrument drawn up by the notary, in which the testator declares that the document transmitted by them in a sealed envelope contains their will. Then, for the two aforementioned forms of will, the court orders the will to be deposited with the notary appointed by the heirs to settle the succession. The latter will then receive a copy of the will by regular mail.

[27] It should be noted that the term "opening of a will" is used figuratively, given that holographic wills are not usually sealed and authentic wills are never sealed.

[28] From a legal point of view, such a copy is the copy of a will executed before a judicial officer.

[28] That is to say a will transmitted to a notary in a closed envelope.

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B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State.

Moreover, Luxembourg law does not lay down any specific rules for the situation where a will, held in Luxembourg, has to be sent abroad. The will does not need to be translated before being transmitted. However, if the notary has a good command of the language of the State where the will has to be sent, they may agree to translate it or its content.

II. Disclosing the information contained in wills

The notary may disclose the information contained in the will, after having received the copy of the will by regular post. They may communicate the information to the heirs. If applicable, it will be for the latter to transmit the relevant information to the public authorities or the legal professionals entrusted with settling all or part of the succession abroad.

A copy of the will may be transmitted by regular mail or by electronic mail.

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Malta

I. The opening of wills

A. National practices

Wills are opened by notaries. The arrangements for opening wills vary according to their type:

- public wills, received by a civil law notary, are simply opened and read to those who are consulting the notary and who have presented the testator's death certificate. This is the most common type of will in Malta. When a public will is drawn up, its references are entered in a public register. After the death, the notary can consult this register to locate the testator's will.

- secret wills, also known as mystic wills, are opened in accordance with a specific procedure. The notary who receives them must submit them to the Court[30] within 4 days. After the death, the notary conducts a search at this Court on behalf of the persons who have consulted him. If a will is found, they then request the Court to set a date and time for opening it. This information is then published in the Maltese Official Journal. At the appointed time, the judge verifies that the will is indeed that of the deceased and checks its condition, particularly that of the seals. They then open the document in the presence of the notary. The judge then hands the will and the envelope to the notary, who reads it before the Court. The notary next prepares a written report of the opening and retains it together with the original will and the envelope in their files. They then have 15 days in which to log the opening of the secret will in the public register which contains the references of authentic wills.

[30] Only one Court in Malta, the Court of Voluntary Jurisdiction, is responsible for recording mystic wills.

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B. The cross-border context

There are no specific provisions governing opening wills transmitted by a public authority located in another Member State. Malta ratified the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, which means that wills drawn up in a form other than those provided for by Maltese law are recognised if the document meets the requirements of the country of origin. If the will was opened abroad, the Maltese opening procedure will not be implemented. It is not a requirement for the will to be translated before it is sent. If the notary who receives it is proficient in the language of the country of origin, they may translate it. Otherwise, the services of a translator can be enlisted.

Moreover, Maltese law does not lay down any specific rules for the situation where a will, held in Malta, has to be sent abroad. The will does not need to be translated before being transmitted.

II. Disclosing the information contained in wills

The notary may disclose the information contained in the will.

After the death, the will becomes a public document, which can be accessed by anyone via the notary. The notary will deliver a copy of the will by hand or by post to anyone who requests it, including public authorities or legal professionals responsible for settling the estate abroad.

Communication by electronic means is also possible. However, a copy sent in this way must be authenticated, so electronic communication is not always the easiest method to use.

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The Netherlands

I. The opening of wills

A. National practices

The opening of wills varies according to their form. Whereas authentic wills are opened by the notary, the court has jurisdiction for the opening of holographic and mystic wills. In practice, in the Netherlands, testators frequently opt for authentic wills.

Authentic wills are drawn up and kept by a notary. Upon the death of the testator, the notary transmits a copy of the will to the heirs at their request.

Holographic wills are transmitted by the notary[31] to the local court in the judicial district where the testator died for the court to open the will. To this end, the court draws up a protocol of the handing over and the opening of the will, describing the state of the will. Then, the court will return the protocol at the notary with whom the will was lodged.

Lastly, there is another form of will, limited however to certain specific types of property, such as the deceased's personal effects of limited value. This form, called a "codicil", needs simply to be handwritten, dated and signed by the testator. Generally, these wills are kept in the testator's home and are handed to the notary by family members upon the death of the testator. The notary then opens the document and takes account of its provisions when settling the succession.

[31] In the Netherlands, the holographic will must be transmitted to a notary to be valid. This instrument is then similar to a mystic will.

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B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State.

Moreover, Dutch law does not lay down any specific rules for the situation where a will, held in the Netherlands, has to be sent abroad. The will does not need to be translated before being transmitted. Even if the notary has a good command of the language of the country where the document has to be sent, they will not translate it.

II. Disclosing the information contained in wills

The notary may disclose the information contained in the will. The notary may communicate the information:

- to the heirs;
- to the public authorities, in particular the tax authorities;
- to the public authorities and the legal professionals entrusted with settling the succession, provided that they can prove that they are acting on behalf of and with the consent of a person having a legitimate interest. Moreover, the persons who are eligible to receive a copy of the will may communicate it to the latter in case of need;
- and, more generally, to any person having a legitimate interest within the meaning of article 49 of the law on notaries. Pursuant to this article, a notary may only deliver copies of the wills that they hold to the parties whose rights derive from these instruments, that is to say those who are granted entitlements. The notary may only communicate the excerpt of the will concerning them.

A certified copy of the will and its content may only be transmitted by regular mail.

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Poland

I. The opening and the publication of wills

A. National practices

Wills, irrespective of their form, are opened and published by the courts and also by the notary, but the notary does not automatically publish a will, but does so only if requested by an interested party. The procedure is identical for authentic and holographic wills and a protocol of the opening and publication of the will is established.

Anyone in possession of a deceased person's will must lodge it with the courts, unless the will is in the possession of the notary who establishes the request for publication of the will.

If several wills exist, all the wills must be opened and a single protocol of opening is established. This protocol of opening must contain a description of the outside of the will, its date, the date it was lodged with the court and the name of the person who lodged it. The date of opening and the date of its publication must be noted on the will.

Then, the court or notary will inform the interested persons[32] that the will has been opened and published. If it has been published by the notary, the latter will also send a copy of the protocol of opening to the competent court to inform it of the publication of the will. The court may also request the notary to provide it with a copy of the will. The presence of the heirs is therefore not mandatory at the time of the opening and publication of the will. However, they can obtain a copy of the will.

Ordinary wills are reserved for exceptional circumstances. In such wills, the testator announces verbally his or her last wishes before two witnesses and a representative of the local administration. They can only be opened and published by a court, before the

[32] Including the executor and administrator of the succession.

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witnesses who heard the testator's last wishes. For the remainder, the arrangements for the publication of this form of will are the same as for the other forms.

B. The cross-border context

There are no specific provisions governing the opening and publication of wills received from abroad.

In addition, under Polish law, there are no specific rules when a will, kept in Poland, is transmitted to another country. Such wills do not need to be translated before they are sent to another country. Even if a notary has a good knowledge of the language of the country where the will is to be sent, they do not have the right to translate it.

For all successions, the Polish courts automatically open and publish wills not falling within their jurisdiction. The consul of the testator's country of origin will be informed of the procedure and may participate in it.

II. Disclosing the information contained in wills

An extract of the will and the protocol of the opening and publication of the will are sent, upon request, to the competent bodies of the testator's country of origin. The original will may be sent if no other official procedures are provided for in Poland.

The information contained in the will may be communicated to anyone with a valid interest, namely the heirs, the legatees and the public authorities with responsibility for settling the succession in Poland or abroad. Legal heirs omitted from the will are also entitled to receive such information.

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Portugal

I. The opening of wills

A. National practices

Wills are opened by notaries. The arrangements for opening wills vary according to their type:

- for authentic wills, anyone in possession of a death certificate may ask the notary with whom the will is lodged to open it. The testator's death is then noted on the will.
- for closed[33] and international wills held by a notary, such notary is competent to open the document. If the closed will is kept by the testator or family members, the latter may contact any notary to have it opened. Upon presentation of proof of death, the notary will open the will and draw up a protocol, describing the state of the will and including any irregularities and erasures. The will is read in the presence of two witnesses and, if applicable, the person with whom it was lodged for safekeeping. The date of death is indicated on the will, and the instrument is then signed by all the persons present (the notary, the person with whom the will was lodged and the witnesses) and registered.

Once the will has been opened, irrespective of its form, it becomes a public document to which anyone can have access and obtain a copy[34].

[33] For more information on this form of will, see www.arert.eu, heading "legal practitioners", "Status reports of the "Europe Wills" project".

[34] As the date of death is mentioned on the will, it is not necessary to provide a death certificate to obtain a copy. Anyone can therefore obtain a copy of the will subject to payment of the cost of the copy.

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B. The cross-border context

Under Portuguese law, when the will has been transmitted by a foreign public authority, the notary will open the will in accordance with the procedure established by the laws of the country in which the document originated. If the notary is not familiar with such laws, they will consult the relevant consulate or embassy or contact a fellow notary in the country in question in order to obtain written confirmation of the procedure to be followed.

On the other hand, Portuguese law does not lay down any specific rules for the situation where a will, held in Portugal, has to be sent abroad. The will does not need to be translated before being transmitted. However, if the notary has a good command of the language of the State where it is to be sent, they will generally agree to translate the will.

II. Disclosing the information contained in wills

The notary may disclose the information contained in the will.

Because of the public nature of this instrument, the notary may communicate the information to anyone, including the public authorities or the legal professionals entrusted with settling the succession abroad. Moreover, the persons who have obtained a copy of the will may communicate it to the latter.

A copy of the will is sent only by regular mail.

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Romania

I. The opening of wills

A. National practices

Wills are opened by notaries. The arrangements for opening wills vary according to their type:

- authentic wills are simply opened and read to the heirs on the date set for that purpose (the day of the "debate"). In order to ensure that all the wills are found, it is compulsory for the notary to consult the national register of wills. The presence of the persons entitled to a reserved share is mandatory on the day of the debate. If there are no such heirs and the will designates a sole legatee, only the latter will be summoned.
- holographic wills must be forwarded by the person with whom they have been lodged to a notary, who must endorse them for purposes of immutability. If the will has been drawn up in a foreign language, a certified translation of the will must be presented at the same time. Once the will has been endorsed, anyone can request an authenticated copy. The notary with responsibility for settling the succession then sets a date for the opening of the will, the "debate", which takes place in the presence of the legal heirs, legatees and executor if applicable[35]. The notary then draws up a protocol describing the circumstances of the delivery of the will and details of its format, the number of pages and the instruments used to write it (pen, ink, colour, etc.), any errors, additions and where they are located in the document. The protocol also reproduces the full text of the will, as written by the deceased (plus any additions if applicable). If the will has been drawn up in a foreign language, the protocol will reproduce the text translated into Romanian and the certified translation will be attached to the protocol. Lastly, the protocol specifies how the opening of the will was

[35] If the succession is vacant, the public authorities (to which the assets will be awarded) will be summoned. If one of the heirs has legal incapacity, his or her legal representative must be summoned.

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organised, the declarations of the heirs confirming the deceased's writing and the hearing of witnesses, if applicable.

The original holographic will is then transmitted to the legatees, who are informed of their obligation to preserve it in its original form. The legatee who receives it then signs a receipt as well as the protocol. The original protocol is retained by the notary.

Lastly, there is a form of will reserved for exceptional circumstances, namely special wills. According to the Civil Code, these wills become null and void 15 days after the date on which the testator is once again able to draw up a will in the customary manner, that is to say generally once the emergency or exceptional circumstances which justified the use of these forms have ceased to exist. When opening such wills, the notary must ensure that they are not invalid. The original will is then transmitted to the legatees.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State. However, in practice, if a holographic will has been opened abroad and a protocol of the opening of the will has been drawn up by a competent authority which has then correctly apostilled or legalised it, the opening formalities do not have to be repeated in Romania.

Moreover, Romanian law does not lay down any specific rules for the situation where a will, held in Romania, has to be sent abroad. The will must, however, be translated before transmission into an internationally used foreign language or into the language of the country in which it will be used. Even if the notary has a good command of the language of the country where the document has to be sent, they will not translate it.

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II. Disclosing the information contained in wills

The notary may disclose the information contained in the will. They may communicate the information:

- to the legal heirs and their representatives, and to any other person granted entitlements under the will;
- to the public authorities or the legal professionals with responsibility for settling all or part of the succession abroad. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure may communicate it to them if the need arises;
- and, more generally, to any person having a legitimate interest.

A copy of the will may be transmitted by regular mail or by electronic mail.

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United Kingdom

The situation described below relates to the legal systems and practices of England, Scotland and Northern Ireland. Their practices with regard to opening wills and disclosing the information in them are similar enough to justify looking at them together, while highlighting any points specific to one of them.

I. The opening of wills

A. National practices

Wills are held by the deceased or by a relative, or if appropriate by a lawyer. In the United Kingdom, other than Scotland, the only permitted type of will is the witnessed will[36]. The simultaneous presence of two witnesses is required[37]. These witnesses will usually know where the will is kept. At the time of death, they will simply open the document and hand it over to the executor, if one has been appointed. If the will does not name an executor, the Court will be responsible for appointing an estate administrator.

The administrator is also involved in settling the estate, as it is the responsibility of a specialised authority, under the jurisdiction of the Senior Court, to examine the validity of the will so that a document known as a Grant[38] can then be drawn up, to which the original will is attached as an annex.

[36] Holographic wills are legally valid in Scotland but since 1 August 1995 required further proof.

[37] The presence of only one witness is required in Scotland.

[38] In Scotland, the executor will apply for a Grant of Confirmation from the Sheriff Court Commissary Department. In Northern Ireland, the Chancery Office, under the jurisdiction of the Chancery Division of the Supreme Court, will issue a Grant of Probate to the executor and a Grant of Letters of Administration to the estate administrator. In England, the same types of Grant are issued as in Ireland, but by the Probate Registry, also under the jurisdiction of the Chancery Division of the Senior Courts.

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B. The cross-border context

There is no specific provision governing opening wills sent by a public authority from another Member State. The United Kingdom ratified the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. All types of will (authentic, holographic, allographic, etc.) are therefore recognised. However, if one of the deceased's assets is located in England, a Grant must be drawn up, regardless of any documents issued by a public authority or a legal professional responsible for settling the estate abroad. This rule can be explained by the fact that under English law, ownership of the deceased's property vests to the executor or administrator before being transferred by them to the heirs. The purpose of the Grant, therefore, is to confirm the correctness of the will and confirm the transfer of ownership to executors or administrators. They will subsequently transfer assets to the heirs and legatees designated therein, after payments of all debts and taxes.

If the will is in a foreign language, a certified translation must accompany the Grant application.

In England and Wales, an additional procedure must be carried out in order to appoint the person who is to act as estate administrator and, consequently, to apply for the Grant. An affidavit[39] relating to the law under which the will was drawn up must also accompany the Grant application.

Moreover, English law does not lay down any specific rules for the situation where a will, held in the UK, has to be sent abroad. A Grant will therefore need to be issued. The will does not need to be translated before it is transmitted. Even if the staff of the specialised authority are proficient in the language of the country to which the document is to be sent, they will not translate it.

[39] A solemn declaration before an authorised person.

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II. Disclosing the information contained in wills

Before establishing the Grant, the content of the will is confidential and only those who are in possession of the document can decide who should have access to the information it contains.

Once the will has been published, it becomes a public document, which can be accessed by anyone on payment of a fee. Private individuals, national or foreign public authorities and legal professionals responsible for settling the estate, in the United Kingdom or another State, can contact the specialised authority of the relevant State to obtain a certified copy of the will together with the Grant.

In view of the public nature of the document, it is also possible for anyone who holds it to disclose its contents to anyone they wish.

Copies of the will are only sent by post.

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Slovakia

I. The opening of wills

A. National practices

Wills are opened by a notary, by delegation of the court. In such circumstances, the notary acts as a "judicial commissioner", that is to say they perform this task as the representative of the public authorities[40].

Irrespective of the form of the will, the notary simply reads it to the heirs. The notary who holds authentic, holographic or allographic wills sends a certified true copy by regular mail to their fellow notary entrusted with settling the succession. Holographic and allographic wills held by the testator or family members must be transmitted to the aforementioned notary so that they can read it to all the heirs.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State. Moreover, Slovak law does not lay down any specific rules for the situation where a will, held in Slovakia, has to be sent abroad.

[40] Judicial commissioners are involved in the settlement of successions in Austria, Croatia and Slovakia.

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II. Disclosing the information contained in wills

The judicial commissioner may transmit the information contained in the will. They may communicate the information:

- to the heirs;

- to the foreign public authorities that have requested it via the mutual legal assistance system. This involves mutual assistance between two countries for the performance of judicial activities falling outside the scope of their respective territorial jurisdiction. In this situation, the foreign authority must submit its request via the Justice Ministry. Then, the judicial commissioner will transmit by regular post a certified true copy of the authentic will or the original holographic will to the ministry.

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Slovenia

I. The opening of wills

A. National practices

Wills are opened by the courts, irrespective of the person who holds the will. In Slovenia, they may be lodged with a court, a notary, a lawyer or a private individual[41]. After the testator's death, in the last three cases, the party holding the will must transmit it to the court with jurisdiction for settling the will, that is to say the court of the judicial district where the deceased was residing temporarily or permanently at the time of their death. This court then opens the will and draws up a protocol, which is signed by the competent judge and two witnesses[42]. On the other hand, where the will is lodged with a court, the latter will open it and draw up the protocol, even if it does not have jurisdiction for settling the succession.

The heirs may be present at the opening of the will, although this is not an obligation, and obtain a copy of the will.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State.

Moreover, Slovenian law does not lay down any specific rules for the situation where a will, held in Slovenia, has to be sent abroad. The will does not need to be translated before being

[41] Wills kept by notaries, lawyers and courts must be entered in the register of wills, managed electronically by the Chamber of Notaries of Slovenia.

[42] The witnesses may be heirs of the deceased.

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transmitted. Even if the notary has a good command of the language of the country where the document has to be sent, they will not translate it.

II. Disclosing the information contained in wills

The court may transmit the information contained in the will. It may communicate the information:

- to the heirs;

-to the public authorities or the legal professionals with responsibility for settling the will abroad, whether it involves the court, a notary or a lawyer. Moreover, the persons who are entitled to obtain a copy of the will during the succession procedure may communicate it to them if the need arises.

A copy of the will is sent only by regular mail.

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Spain

I. The opening of wills

A. National practices

The opening of wills varies according to their form. Whereas authentic wills are opened by the notary, the court has jurisdiction for the opening of holographic and mystic wills.

Authentic wills are generally read to the deceased's heirs by the notary.

Anyone in possession of a holographic will, whether a notary or a private individual[43], must transmit it to the court in the judicial district where the death occurred within 10 days of the death. Otherwise, the person holding the will may be held liable for any loss resulting from a delay in presenting the will. The court will first satisfy itself of the testator's death by consulting the civil register before opening the will. It initials all the pages and establishes the testator's identity on the basis of three witnesses who are familiar with the deceased's writing and signature. The latter must declare that they do not have any serious doubts that the will was duly written and signed by the testator. If it considers it necessary, the court may order a handwriting analysis. The surviving spouse, the legitimate descendants and ascendants and, otherwise, the deceased's brothers and sisters are invited to attend the opening of the will by the court. If no-one can be present[44], the tax authorities are notified. The persons summoned before the court can then express any reservations they may have regarding the validity of the will. Once the testator's identity has been established, the court records this in the registers of the notary with responsibility for settling the succession. The formalities accomplished are also noted therein. Two certificates relative to the formalities accomplished are issued to the heirs and legatees.

[43] For example, heirs, legatees or the executor.

[44] For example, due to geographical distance, an under-age heir or if there are no heirs.

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Lastly, there is a form of will reserved for exceptional circumstances (imminent threat of death, epidemic, etc.). Such wills are valid only for two months from the end of the exceptional circumstances. In the event of the testator's death during this period, the witnesses must contact the court within 3 months in order to obtain an official executory document in accordance with Spanish law.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State.

Moreover, Spanish law does not lay down any specific rules for the situation where a will, held in Spain, has to be sent abroad. The will does not need to be translated before being transmitted. However, if the notary has a good command of the language of the State where the will has to be sent, he or she may agree to translate it.

II. Disclosing the information contained in wills

The notary may disclose the information contained in the will. After the testator's death[45], the notary may transmit a copy of the will:

- to the testamentary heirs, that is to say the persons whose share has been amended by will, the legatees, executors, administrators and any other person with rights recognised in the will;

[45] During his or her lifetime, only the testator or a specially appointed representative is allowed access to the content of the will, in accordance with the provisions of the Basel Convention of 16 May 1972 on the establishment of a Registration of Wills system.

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- to the persons who are partially or totally denied their entitlements in the succession under the will;

- to the persons entitled to a reserved share.

The notary does not transmit information on the content of the will to any other persons. The notary may therefore not disclose information to the public authorities or the legal professionals entrusted with settling all or part of the succession abroad. Only those who are entitled to receive the information contained in the will may transmit such information to the latter.

The information contained in the will and/or a copy of the will itself are sent by post or electronically. In the latter case, in accordance with Spanish regulations, documents may only be transmitted electronically between notaries or to public authorities and legal registers and institutions.

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Sweden

I. The opening of wills

A. National practices

Wills are generally kept by testators at home, in a safe, or lodged with a lawyer. In Sweden, wills before witnesses are the main form of authorised will[46]. Two witnesses are therefore present for the signing of the will. They may then search for the will after the testator's death. The will is then simply opened and read to the heirs.

B. The cross-border context

There are no specific provisions governing the opening of wills transmitted by a public authority located in another Member State. Moreover, Swedish law does not lay down any specific rules for the situation where a will, held in Sweden, has to be sent abroad.

II. Disclosing the information contained in wills

The information contained in the will is communicated by the legatees designated in the will or by the administrator of the estate if applicable. A certified copy of the will must thus be served to the legal heirs. If the latter wish to contest the validity of the will, they must do so within 6 months of the transmission of a copy of the will.

Parties wanting to obtain information on the content of the will or a copy of it, wherever they are located and irrespective of their status, must contact the heirs and legatees.

[46] In emergencies or in the case of illness, oral and holographic wills may be permitted.

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All the heirs to the succession, called "*distributees*", must prepare an inventory of the deceased's assets to be sent to the tax authorities. In this context, the will may be attached to this inventory. The will then becomes a public document to which all citizens, whether they are Swedish or foreign nationals, can have access[47].

When the will is lodged with a lawyer or a bank, in principle, the foreign public authorities have no difficulty in obtaining a copy of the will, when they are duly entrusted with settling the succession.

[47] In Sweden, all documents are freely accessible to citizens unless they are regarded as secret.

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