EUROPEAN NETWORK OF REGISTERS OF WILLS ASSOCIATION (ENRWA)

"EUROPE WILLS" PROGRAMME

Status report on schemes of wills registration and search in Europe

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Introduction

The European Network of Registers of Wills Association (ENRWA) was initiated by the European Notariats and created in 2005. It currently has 14 members[1].

At the end of the year 2008 ENRWA obtained co-funding from the European Commission in order to implement the “Europe wills” programme. This programme aims at contributing to the establishment of the European judicial area for citizens in the field of successions and, from a practical point of view, at promoting mutual recognition of wills, thus making it possible for law practitioners as well as for European citizens to search for last wills and testaments within the European Union as a whole.

Within this framework a questionnaire was drafted and sent to experts in succession law from the European Union member States as well as from Croatia, candidate country for EU membership. Experts from 28 countries, the list of which is attached in annex, filled in and returned the questionnaire: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungry, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, United Kingdom, Slovakia, Slovenia, Spain and Sweden.

Each expert provided us with the responses enabling to establish a status report of the schemes of wills registration and search in his country. The synthesis of these answers is available in an interim report. The various reports will be discussed during seminars which purpose is to draw up a list of recommendations for the implementation or upgrade of the European regulatory framework allowing easier circulation of wills between the European Union member States. The data provided by the experts will also allow elaboration of factsheets aimed at providing citizens with information on how to register and search for a will in their country.

[1] The members of the ARERT are the Belgian, Croatian, Spanish, French, Italian, Latvian, Dutch, Polish, Portuguese, Romanian, Slovenian, Swiss Notariat and the Notariat of St Petersbourg.

For each State the following points are addressed in sequence: international conventions relating to the form of wills and/or to the will registers (1), the circulation of wills within Europe (2), the different types of wills in each country (3) and finally the rules regarding registration and search for wills (4).

Austria

1. International Conventions

Austria has not signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on the date it was opened for signature then ratified by Austria on 28th October 1963, with the reservation provided for in article 12. Such article provides that "each Contracting State may reserve the right to exclude from the application of the present Convention any testamentary clauses which, under its law, do not relate to matters of succession."

However, the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will has not been signed.

2. Circulation of wills within Europe

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

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

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

Oral unwitnessed wills are deemed contrary to Austrian public order.

A will established by a foreign public authority may be deemed valid in Austria and have the same effect as a will of the same form (or of equivalent form) established in Austria provided it is an authentic deed and its content complies with Austrian public order.

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

3. Types of wills

Three types of wills are allowed under Austrian law: authentic wills, holographic wills and allographic wills. The oral form can be used under specific circumstances.

Authentic wills are drawn up by a civil law notary.

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

Allographic wills are drafted by the testator, written by someone else, signed by the testator and three witnesses.

Any written will can be deposited with a civil law notary.

4. Registration and search for wills

Succession proceedings are carried out by notaries and by courts. The civil law notary is competent to carry out the succession proceedings and prepare the matter for decision by the judge or judicial officer.

The notary acts as a "judicial commissioner", in other terms he discharges a judicial function as delegatee of public authority.

There is a will register in Austria; it is administered by the Austrian notariat ("*Österreichisches Zentrales Testamentsregisterr"*). Definition and administration of this register are provided for by law, the register itself is operated by the Austrian Chamber of civil law notaries according to the legal provision. The register is kept electronically.

A heredity certificate register does not exist, but as every proceeding is filed the whole proceeding can be found by searching the registers of the courts.

- **Wills registrations**

Civil law notaries and courts are required, and lawyers are allowed, to record the deposition of a will in the register. Registration is mandatory in accordance with legal provisions and deontological rules.

Citizens from other member States may have their wills deposited and recorded in the register.

All written types of wills allowed under Austrian law may be registered.

The following data must be communicated to the register:

- Testator's family name,
- Testator's date and place of birth,
- Testator's social security number (Optional),
- Testator's address,
- Type of will,
- Date of will,

- Date of registration of the will,
- Name and address of the depository notary, court or lawyer.

The testator is not identified by an official number.

His date of death is not recorded in the register.

Amendments are not possible in the register, whereas withdrawals and revocations are possible to register.

- **Search for wills**

According to the currently applicable Austrian law, only civil law notaries acting as "judicial commissioners" may query the will register while carrying out succession proceedings. Thus, after a person's death the court hands over the proceeding to the competent civil law notary (generally according to the location of the deceased's domicile) to carry out the succession proceedings. Only such a "judicial commissioner" may query the register.

The search for wills is performed through the register. Disclosure of wills is mandatory; failing to do so might lead to compensation for damages. Nevertheless, query of the register is not mandatory by law but customary.

The existence of the will remains secret during the testator's life. It is not necessary to provide a death certificate to perform a search because the requirement of having a legal proceeding to settle the estate is sufficient proof of death.

The register does not respond to queries from and towards other member States, in practice a competent Austrian Court can be asked for judicial assistance and may query the register or might also open a legal proceeding to settle the estate if Austrian jurisdiction is applicable.

Belgium

1. International Conventions

Belgium signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills on the date it was opened for signature and ratified it on 8th February 1977.

Belgium also signed the Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions on 10th October 1968 with the reservation provided for in article 10. Such article provides that "each Contracting State may reserve the right not to recognize testamentary dispositions made orally, save in exceptional circumstances, by one of its nationals possessing no other nationality".

The Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will was signed on 17th May 1974 and ratified on 21st April 1983.

2. Circulation of wills within Europe

A will is deemed valid as regards its form if it respects:

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

- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

A will established by a foreign public authority may be deemed valid and have the same effect as a will of the same form (or of equivalent form) established in Belgium subject to control of ifs form and substance. Such control will establish the capacity of the will to have its full effect. For example provisions contrary to Belgian public order are unacceptable.

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

3. Types of wills

Belgian law allows authentic, holographic, international and privileged wills.

Authentic wills are drawn up by a notary.

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

International wills comply with the provision of the Washington Convention of 26th October 1973.

Privileged wills are military wills or wills made at sea.

Belgian law used to allow sealed wills but these ceased to exist following incorporation of the rules regarding international wills.

4. Registration and search for wills

Succession proceedings are carried out by civil law notaries in Belgium. There is a central will register administered by the Royal Federation of Belgian Notaries (FRNB): the central register of dispositions of last wills "*registre central des dispositions de dernières volontés (CRT)*". Definition and administration of this register are regulated in a Royal Decree which will shortly be adapted with a view to the introduction of a new register of prenuptial agreements.

Electronic registration and search in the CRT are possible. 67 % of the registrations and 22 % of the searches are performed electronically. Alternatively registrations and searches may be made by postal mail or by fax.

The Act of 6 March 2009 provides for the creation of a register of prenuptial agreements which may be consulted during the spouses' lifetime by notaries, public authorities, and by the spouses themselves. The management of both these registers is entrusted to the Royal Federation of Belgian Notaries (FRNB).

- **Wills registration**

Wills may be deposited with a civil law notary or with a Belgium diplomatic representative in a foreign country. Such qualified professionals will then record the wills in the will register through the medium of the FRNB.

Civil law notaries (and diplomatic representatives) are required to register the wills referred to in article 4 of the Basel Convention. This article refers to "formal wills declared to a notary, a public authority or any person authorised by the law of that State to record them, as well as other wills deposited with an authority or a person authorised by law to accept such deposit, with a formal act of deposit having been established" as well as "holographic wills which have been deposited with a notary, a public authority or any person authorised

by the law of that State to accept them, without a formal act of deposit having been established, subject to that law permitting such deposit."

Registration of these dispositions must occur within 15 days from the date of the deposit or of drawing up of the formal deed.

Registration is mandatory for deeds referred to in the article 4 of Basel convention, and also for deeds for which, by Royal Decree dated 28 October 1977, the registration obligation was extended, namely contractual institutions between spouses, prenuptial agreements waiving the equal division of joint estate in kind, donations between spouses, deeds containing changes to the prenuptial agreement if those changes modify the previously determined devolution. Failure to register subjects the notary to disciplinary sanctions.

For other deeds not concerned by Article 4 of the Basel Convention, registration is still optional, for example for holographic wills that might not have been deposited at a notary's. The testator may request the registration of his holographic will at a later date.

When a holographic will is deposited with the notary, a testator may object to his will being recorded in the register.

Entry in the register does not subject the testator to any nationality or residence requirement.

At the time of registration of a will, the civil law notary (or diplomatic representative) must communicate at least the following data to the register (as provided in the Basel Convention):

- Testator's family name and first name(s),
- Date and place of birth,
- Testator's address,
- Testator's last spouse's name,
- Type of deed,

- Date of deed or date of registration of the will,
- Name and address of the depository or witnessing notary.

The testator is identified by an official identification number.

The date of death is recorded in the register.

Amendments, withdrawals and revocations are possible in the Belgian register.

In 2008, 41,550 wills have been recorded in the register (19,290 authentic wills, 20,758 holographic wills and 1,502 international wills).

The cost of registration of a will amounts to 17 Euros (currently being reviewed).

- **Search for wills**

The existence of the will remains secret during the testator's life.

After the testator's death, a will search request is sent to the Royal Federation of Belgian Notaries (FRNB). Any person (civil law notaries, judges, lawyers, private persons) in possession of a document proving the death of the testator (a death extract or an extract of the national register) may perform a search in the register. Provision of a death certificate is mandatory.

Query of the register is mandatory at the time of carrying out succession proceedings, failing which the civil law notary may incur disciplinary sanctions.

The register also responds to queries from and towards other member States.

The Belgian register is interconnected with the French register through the European Network of Registers of Wills (ENRW).

In 2008, 54,015 queries were processes in the CRT.

Nowadays the cost of a search amounts to 17 Euros (currently being reviewed).

Bulgaria

1. International conventions

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

2. Circulation of wills within Europe

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

- the internal law applicable to the place where the testator made his will (local form), or
- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

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

A will established by a foreign public authority may be deemed valid in Bulgaria and have the same effect as a will of the same form (or of equivalent form). The conditions of such validity are governed by the provisions of bilateral agreements between Bulgaria and other States. Failing such convention, Bulgarian international private law shall apply.

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

3. Types of wills

Bulgarian law allows authentic wills and holographic wills.

Authentic wills are drawn up by a civil law notary in the presence of two witnesses. The testator must express his last wills orally to the civil law notary. The recorded will is then read out to the testator in the presence of the two witnesses. Fulfilment of such formalities must be recorded by the civil law notary in the text of the will. Date and place of drawing up must also be recorded. The will is then signed by the testator, the witnesses and the civil law notary. In case the testator is unable to sign, the reasons for his incapacity must be recorded in the text of the will.

Holographic wills are entirely handwritten by the testator. They are dated and signed by the testator. A holographic will may be handed over to a civil law notary in a sealed envelope (it is then assimilated to a sealed will). In such case the notary drafts a protocol for the hand over, by writing on the sealed envelope, which is then signed by the testator and the civil law notary. The protocol is then recorded by the notary in a special register. The testator may also keep the holographic will at home the associated risk being that the will may remain unfound.

4. Registration and search for wills

In Bulgaria, succession proceedings are carried out by civil law notaries. In case there is no notary in the particular judicial region where the deceased had his domicile, the function of civil law notary is discharged by a judge for the entries.

The Bulgarian register of wills was established on 17 October 2009. That register is managed by the Bulgarian Notariat (Notary Chamber of Bulgaria).

Registration and search in the central register are performed electronically.

- **Wills registration**

Before 17 October 2009, the existence of authentic wills had to be communicated to a registration office ("*Service for entering"*). 112 offices were available within Bulgaria. Each office kept a Ledger recording information related to authentic wills (existence and revocation) as well as a second Ledger recording information related to holographic wills. Both Ledgers allowed keeping wills.

A civil law notary drawing up a will by authentic deed had to, within three days, present a copy of the will to the court through the registration office. The same applied when the testator revoked the will before the notary.

When a civil law notary agreed to keep a holographic will, he had to communicate the testator's name within three days to the registration office.

After the death of the testator and the announcement of the will, if the latter referred to immovables or to real rights relating to immovables, a copy of the holographic will was communicated to the registration office.

Since 17 October 2009, civil law notaries have been recording information related to wills directly in the central register.

Civil law notaries are thus able to register authentic and holographic wills deposited in their offices. Registration is mandatory failing which disciplinary sanctions may apply (theoretically up to 5 year suspension of exercise of activity).

Citizens from foreign States may register their wills in the register.

The following data are communicated to the register:

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

The testator is identified by an official identification number.

The date of death is recorded in the register.

Amendments, withdrawals and revocations are possible in the register.

The cost of registration amounts to 0.1 % of the material interest (the pecuniary value).

- **Search for wills**

Transfer to a central register allows faster search. Until the register was established, searches had to be made in the 112 registration offices by scrutinizing the Ledgers.

Since October 17, 2009, searches in the register have been performed electronically from the Notary Chamber or from notaries' offices.

Query of the register is only mandatory upon request from the heirs. Nevertheless, it is recommended.

Disclosure of wills is mandatory failing which disciplinary sanctions may apply.

The register responds to requests from foreign registers.

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

Croatia

1. International conventions

Croatia has not signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed by Yugoslavia on the day it was opened for signature and ratified on 25th September 1962. On 5th April 1993 Croatia declared itself to be bound by the Convention.

The Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will has not been signed. Nevertheless, the provisions of such convention have been incorporated in the Croatian succession law.

2. Circulation of wills within Europe

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

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

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

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

A will may also be deemed valid if its form is that of an international will.

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

3. Types of wills

Two main types of wills exist under Croatian law: public wills and private wills.

Public wills are drawn up by a civil law notary, by a municipal court or by consular bodies. Thus this type groups authentic wills and international wills (also allowed since the provisions of the Washington Convention have been incorporated in Croatian law).

Private wills group holographic wills, handwritten dated and signed by the testator himself and allographic or witnessed wills. The latter type needs not be handwritten by the testator himself but it must be signed by the testator and by two witnesses.

Finally, the last type of private will is the oral will, admitted under some extraordinary circumstances.

4. Registration and search for wills

In Croatia, after the death of a person, a succession procedure is initiated by the court. Then, the civil law notaries will entrust with the settlement of inheritance.

There is a Croatian will register administered by the notariat.

Registration and search may be performed electronically.

- **Wills registration**

Civil law notaries, judges, lawyers, consular bodies and private persons who made their will may record wills in the register.

Wills of all forms may be registered but registration is not mandatory.

Foreign citizens may not record their wills in the register.

The following data is communicated to the register:

- Testator's family name and first name(s),
- Date of birth,
- Type of will,
- Date of registration of the will,
- Place where the will is held.

The testator is not identified by an official number.

The date of testator's death is not recorded in the register.

Withdrawals, revocations and other amendments are possible in the register.

Each year around 1,900 are recorded in the register.

Registration cost amounts to around 15 Euros.

- **Search for wills**

Before his death, the filed information may be accessed by the testator himself or by a person who receive a special power of attorney from the testator. After his death, the register may be accessed by lawyers, civil law notaries, courts and consular bodies.

In accordance with legal provisions, the wills register must be queried at the time of carrying out succession proceedings.

Disclosure of a will is legally mandatory.

The existence of the will remains secret during the testator's life. It's not necessary to provide a death certificate to perform a search in the register because the inheritance proceeding is initiate by the court. Before the court, the death should be proved.

The register does not reply to requests from and towards foreign States.

Yearly about 20,000 searches are performed in the register.

The cost of a search amounts to 23 Euros.

Cyprus

1. International conventions

The Republic of Cyprus signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills on 27th June 1974 and ratified it on 20th January 1975.

The Republic of Cyprus has not signed the Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.

The Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will was ratified on 19th October 1982.

2. Circulation of wills within Europe

According to Cypriot international private law a will is deemed valid as regards its form if it respects the internal law applicable to the place in which the testator had his domicile at the time of his death.

In Cyprus, a will established by a foreign public authority may be deemed valid. Thus authentic wills are deemed valid. In addition, a bilateral agreement with the United Kingdom allows declaration of validity of wills established in the United Kingdom provided the act has been issued an official seal.

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

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

3. Types of wills

Cypriot law allows only one form of will, the will made before witnesses. It must contain the testator's last will dispositions, be signed by the testator and be signed by two witnesses, simultaneously present at the time when the testator signs it. The will does not need to be written by the testator's hand; it may be written by a third person or typewritten. It may be established on any type of medium (computer, etc.).

4. Registration and search for wills

In Cyprus succession proceedings are carried out by judges.

There is a will register; its definition and administration are provided for by law. This register is administered by "*Probate registrars"* or registration offices of the local courts. Nevertheless such scheme is more a will deposit scheme than a registration scheme.

The register is not centralized and not kept electronically.

- **Wills deposit**

Wills are deposited with the registration offices where they are physically kept. Wills are deposited in a sealed envelope at the registration office.

Lawyers and private persons may deposit wills but this is not mandatory.

It is also possible to keep a will at home or to hand it over to a lawyer for safekeeping.

Foreign citizens may deposit their wills.

In order to deposit a will, the testator (or his lawyer) goes to the registration office where he is given an envelope in which the will is inserted. The envelope bears the date and the signatures of the testator and of two witnesses.

The following data is recorded on the envelope:

- Testator's family name and first name(s),
- Testator's address,
- Date of the will,
- Date of registration of the will.

The testator is identified by an official number.

The date of the testator's death is not recorded on the envelope.

Amendments, withdrawal and revocations of the documents held by the registration offices are possible.

1,400 wills are deposited yearly.

Registration cost amounts to 6 Euros.

- **Search for wills**

During settlement of the succession it is not mandatory to perform a search for will. Nevertheless it is the duty of the "*administrator*" or "*executor of the wills*" to gather information necessary to liquidate the succession and distribute the estate.

Information held by the registration offices may be accessed by lawyers and private persons.

However, only persons having a legal interest (heirs, executor, etc.) may consult the register on presentation of a death certificate.

The existence of the will must remain secret during the testator's life and provision of a death certificate is mandatory in order to access the information held by the registration offices. Such registrations offices reply to queries from and towards other member States.

The cost of a search amounts to 2 Euros regardless of its origin, a person residing in Cyprus or a foreign register.

Czech Republic

1. International conventions

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

2. Circulation of wills within Europe

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

- the internal law applicable to the place where the testator made his will (local form), or
- the internal law applicable to the nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death.

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

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

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

3. Types of wills

Czech law allows four types of wills.

Authentic wills are drawn up by a civil law notary.

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

Secret wills are deposited in a closed envelope with a civil law notary.

Witnessed wills require the presence of two witnesses and may be used when the testator cannot read or write.

4. Registration and search for wills

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

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

All registrations and searches are performed electronically.

- **Wills registration**

Registration of a will is possible through a civil law notary. Registration of a will in the register is not mandatory. All types of wills allowed under Czech law may be registered.

Non Czech nationals may record their wills in the register.

The following data is communicated to the register:

- Testator's family name and first name(s),
- Date of birth,
- Testator's address,
- Date of registration of the will,
- Name and address of the depositary notary,
- Identification number given at birth, should this be the case.

The testator is identified by an official number.

The date of death is not recorded in the register.

Amendments, withdrawals and revocations are possible in the register.

The cost of registration amounts to 3 Euros.

- **Search for wills**

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

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

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

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

The cost of a search amounts to 3 Euros.

Denmark

1. International conventions

Denmark has signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills. Nevertheless this Convention has not been ratified.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on the date it was opened for signature and ratified on 21st July 1976.

The Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will has not been signed by Denmark.

2. Circulation of wills within Europe

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

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

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

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

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

3. Types of wills

Several types of wills are allowed under Danish law: public wills, witnessed wills and emergency wills.

Public wills are signed or acknowledged in front of a Notary public. The notary public is not to be assimilated to the profession of civil law notary as it exists in Romano Germanic law countries; indeed, whereas the Notary public certifies certain elements (testator's identity, testator's signature, etc.) he does not assess the validity of the content of the deed.

The Notary public draws up a document certifying that he has verified the testator's identity and the testator's mental capacity. He records the name of the persons who were present when the will was signed as well as any other circumstances that may impact the validity of the will.

Witnessed wills are signed or certified by two witnesses. The witnesses must record their names in the will. The witnesses must be at least 18 years of age, legally competent and must not be included in the will as beneficiaries. They must be physically present and be aware of their status of witnesses.

Emergency wills are used when the testator is ill or finds himself in an emergency situation preventing him from using any of the other forms of wills provided for under Danish law. No condition of form is required. The validity of an emergency expires three months after disappearance of the impairment which has prevented the drawing up of a public or witnessed will.

4. Registration and search for wills

Upon notification of a death to Danish authorities, the information is forwarded to the competent court. Such court then convokes the deceased's family in order to decide upon the succession settlement modalities. Successions may be settled in different ways in Denmark depending in particular on the corpus of the estate and on the presence of certain heirs, in particular the spouse. Such criteria will determine who will be in charge of settling the succession. The court may thus decide that a lawyer will be in charge of settling the succession.

There is a Danish will register; it is administered by the State. Definition and administration of the register are provided for by law.

There is a register of matrimonial contracts, also administered by the State.

The vast majority of registrations and searches are performed electronically.

- **Wills registration**

Notaries public may record public wills in a local register. Such registration is not legally mandatory; however, when a Notary public certifies a will, information of the identity of the testator and the date of certification are transmitted to the register.

Foreign citizens may have their wills recorded in the register provided they have a civil identification number. Such a number is attributed to persons born or having their domicile in Denmark.

The following data must be communicated to the wills register:

- Testator's civil identification number: this number gives access to other information regarding the testator: name, address, date of birth etc.
- Date of registration of the will,
- Name of the Notary public who registered the will.

The testator is identified by an official number.

The date of death is not recorded in the register.

Amendments, withdrawals and revocations are possible in the register.

Yearly between 40,000 and 50,000 wills are recorded in the register. In 2008, 42,254 registrations took place.

Registration is free of charge.

- **Search for wills**

The local court carrying out the succession proceedings must gather all information necessary to the settlement of the succession. The court may thus access the register. The lawyer in charge of settling the succession and the heirs may not perform searches; they must send a request to the court having direct access to the wills register.

At the time of carrying out succession proceedings, query of the register is mandatory.

The existence of the will remains secret during the testator's life.

The register responds to requests from other member States. Response time is generally short: a few days.

No data records the number of searches regarding wills specifically.

Searches are free of charge.

Estonia

1. International conventions

Estonia signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills on 3rd October 2000 and ratified it on 21st September 2001.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on 13th May 1988 with the reservation provided for in article 10. Such article provides that "each Contracting State may reserve the right not to recognize testamentary dispositions made orally, save in exceptional circumstances, by one of its nationals possessing no other nationality".

However, the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will has not been signed by Estonia.

2. Circulation of wills within Europe

A will is deemed valid as regards its form if it respects the law applicable to the place where the testator has made his disposition (local form).

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

A will established by a foreign public authority may be deemed valid in Estonia and have the same effect as a will of the same form or of equivalent form.

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

3. Types of wills

Two categories of wills exist under Estonian law: notarial wills and domestic wills.

Notarial wills include authentic wills, drawn up by a notary and sealed wills, deposited with a notary in a sealed envelope.

Domestic wills include wills before witnesses, which must be signed before two witnesses, and holographic wills, written, dated and signed by the testator's hand.

4. Registration and search for wills

In Estonia succession proceedings are carried out by civil law notaries.

The Estonian will register is provided for and defined by law. It is administered by the State.

Registrations and searches are performed electronically.

Such register also collects information regarding the existence of heredity certificates.

- **Wills registration**

A civil law notary may record a will in the register. Registration of a will is legally mandatory. Only the registration of authentic wills is mandatory, however all types of wills may be registered.

Foreigners may register their wills.

The following data must be communicated to the register:

- Testator's family name and first name(s),
- Testator's date and place of birth,

- Testator's address,
- Type of will,
- Date of will,
- Date of registration of the will,
- Name and address of the depository notary.

The testator is identified by an official number.

The date of death is recorded in the register.

Amendments, withdrawals and revocations are not possible in the register.

Yearly 8,000 wills are registered

The cost of registration of a will amounts to 12 Euros. A bill foresees raising this amount to 32 Euros.

- **Search for wills**

Civil law notaries, judges and private persons may access the register.

At the time of carrying out succession proceedings query of the register is legally mandatory.

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

The register responds to queries originating from other member States.

Disclosure of a will is not mandatory.

Yearly about 15,000 searches are performed in the register.

The search for a will is free of charge.

Finland

1. International conventions

Finland has not signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on 3rd March 1962 and ratified on 24th June 1976.

The Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will has not been signed by Finland.

2. Circulation of wills within Europe

A will is deemed valid as regards its form if it respects:

- the internal law applicable to the place where the testator made his will (local form), or
- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

In Finland, some foreign regulatory forms may, in very exceptional cases, be deemed contrary to public order or to the content of mandatory rules. Such could be the case, for example, for regulations placing men and women in unequal conditions.

A will established by a public authority from another country may be deemed valid in Finland and have the same effect as a will of the same form (or of equivalent form) established in Finland provided it complies with one of the forms provided for by The Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. Yet, as a rule, in accordance with the provisions of Finnish conflict of law regulations the applicable law to a succession is the law of the State in which the deceased had his domicile at the time of his death. Nevertheless, if the testator previously had his domicile in another State, the law of the place where the deceased had his domicile at the time of his death will only apply if the testator was a national of the related State at the time of his death or if he has had his residence in it for at least five years.

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

3. Types of wills

As a rule, only witnessed wills are allowed in Finland. Notwithstanding, holographic wills and oral wills may be deemed valid.

Witnessed wills are made in writing and signed by the testator in the presence of two impartial witnesses; both must be simultaneously physically present. The witnesses and the testator must sign the will.

Notwithstanding, a person who is ill or unable to make a witnessed will due to a compelling reason may draft a holographic will, handwritten and signed by himself but without the presence of witnesses. In similar compelling circumstances, it is also possible to express one's last will orally in the presence of two witnesses present at the same time. Should the

cause of the impossibility to make the will in its ordinary form cease to exist, the testator must establish a witnessed will.

4. Registration and search for wills

The settlement of a succession may take place without involvement of a law practitioner if all the beneficiaries of the succession agree. In case of difficulty, an administrator or a distributor of the estate may be appointed by the court. In case of disagreement as to the distribution of the estate, a lawsuit may be filed.

There is no register of wills in Finland. During the work carried out in 2004 with a view to reforming the Finnish Succession Code, the Ministry of Justice set up a working group which supported the creation of a register of wills.

There is a register of matrimonial contracts administered by local registration offices.

In the absence of a register, registration of wills is not possible. The will is kept by the testator in the place of his choice. In order for the will to be found, the testator discloses its existence and reveals the place where it is kept to a trusted person. Wills are generally kept in the family, with the testator's lawyer or in a safety deposit box in a bank. Heirs can thus perform their search in these locations.

After the testator's death, disclosure of the will is mandatory. Destruction of a will is punished by law; the offender may lose his rights in the succession.

France

1. International conventions

France signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills on the date it was opened for signature and ratified it on 20th September 1974.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on 9th October 1961 and ratified on 20th September 1967 with the following reservation: "in accordance with the provisions of Article 10 of the Convention, France reserves the right not to recognize testamentary dispositions made orally, save in exceptional circumstances, by one of its nationals possessing no other nationality".

The Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will was signed by France on 29th November 1974 and ratified on 1st June 1994.

2. Circulation of wills within Europe

In accordance with the provisions of French international private law, a will is deemed valid as regards its form if it respects:

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

- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

Some foreign regulatory forms may be deemed contrary to public order or to the content of mandatory rules. Thus, joint wills (wills containing the testamentary disposition of two or more testators) used to be deemed contrary to French public order. It was later admitted that the joint nature pertaining to matters of form of the will, it was deemed valid as regards its form if, for example, the law of the place where the will was drafted allows this type of will. Nevertheless, the possibility remains that some forms of wills may not be deemed valid under French law (e.g. an oral will only recorded on an audio tape or file).

A will established by a foreign public authority may have the same effect in France as a will established in France. A foreign will is presumed legal and valid: it is therefore deemed valid and is enforced as long as it remains undisputed.

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

3. Types of wills

Four types of wills are allowed in France: authentic wills, holographic wills, secret wills (also called sealed wills) and international wills.

Authentic wills are drawn up by a civil law notary. They are established in the presence of two notaries or of one notary and two witnesses. They are signed by the notary and by the witnesses.

Secret wills are sealed. They are deposited with a civil law notary in the presence of two witnesses. The testator, the civil law notary and the two witnesses sign the envelope containing the will.

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

International wills comply with the conditions provided for by the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will.

4. Registration and search for wills

In France, succession proceedings are carried out by civil law notaries. French consulates located in countries outside of the European Union may also discharge this function.

There is a will register: the Central Register of Testamentary Dispositions "*Fichier Central des Dispositions de Dernières Volontés"* (FCDDV), administered by the Association for the Development of Notarial Services "*Association pour le Développement du Service Notarial"* (ADSN). Definition and administration of the register are provided for by law.

Such register complies with the provisions of the Basel Convention.

Currently, civil law notaries perform most registrations and searches electronically. Electronic access is only possible for civil law notaries. Others must send a written request by postal mail.

There is also a companies registers ("*registre du commerce et des societies"*) administered by the register of the commercial court ("*greffe près les tribunaux de commerce"*).

- **Wills registration**

French civil law notaries, consuls and ambassadors only may register a will.
It is mandatory to record a will in the register in accordance with a deontological obligation.

All types of wills allowed under French law may be recorded in the register.

Registration of wills is performed by means of a record in the Central Register of Testamentary Dispositions.

Registration of a will is not legally mandatory. Nevertheless, a civil law notary may be professionally liable in case of failure to register a will that the testator wished to be registered. A testator may also wish his will not to be registered and the notary must abide by this choice.

Foreign citizens may register their wills.

The following data is communicated to the register:

- Testator's family name and first name(s),
- Testator's date and place of birth,
- Testator's address,
- Name of spouse,
- Type of will,
- Date of will,
- Date of registration of the will,
- Name and address of the depository notary.

The testator is not identified by an official number.

The date of death is recorded in the register.

Amendments, withdrawals and revocations are possible in the register.

Yearly between 230,000 and 330,000 wills are registered in the central register (2007 and 2008 data).
The cost of registration amounts to 8.70 Euros excluding taxes.

- **Search for wills**

The register may be queried by civil law notaries, lawyers, judges and private persons.

The search for a will is performed through query of the Central Register of Testamentary Dispositions.
The law doesn't impose this query. However if it can be proven that a civil law notary had knowledge of the existence of a will discovered belatedly, he may be professionally liable.

In accordance with deontological regulations, query of the register is mandatory at the time of carrying out succession proceedings.

The existence of a will must remain secret during the testator's life. As a rule, provision of a death certificate is mandatory to access the register. Nevertheless, a civil law notary querying the register electronically does not have to provide a death certificate but must certify that he has one in his possession.

The register responds to requests from foreign registers; the response time is generally relatively short. The French register is interconnected with the Belgian register through the European Network of Registers of Wills (ENRW).

Yearly between 360,000 and 450,000 searches are performed (2007 and 2008 data).

The cost of a query of the central register amounts to 12.54 Euros excluding taxes for non notaries, whichever the response, to 8.70 Euros excluding taxes for notaries in case of negative response and to 17.40 Euros for notaries in case of positive response.

These amounts remain unchanged for requests originating from abroad.

Germany

1. International Conventions

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

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

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

2. Circulation of wills within Europe

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

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

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

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

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

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

3. Types of wills

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

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

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

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

4. Registration and search for wills

In Germany, succession proceedings are carried out by judges.

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

Such procedure is long and tedious since it involves several public authorities. This is the reason why the Federal chamber of German civil law notaries ("*Bundesnotarkammer*") expressed its support for the creation of a central will register.

In addition, the Federal chamber of German civil law notaries manages the register of general powers of attorney.

- **Wills deposit**

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

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

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

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

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

- **Search for wills**

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

Greece

1. International conventions

Greece has not signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on 5th October 1961 and ratified on 3rd June 1983.

However, the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will has not been signed.

2. Circulation of wills within Europe

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

- the internal law applicable to the place where the testator made his will (local form), or,
- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

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

A will established by a foreign public authority may be deemed valid and have the same effect as a will of the same form (or of equivalent form) established in Greece only provided it is translated and published by a court.

The regulations regarding the international circulation of wills do not alter whether the public authority having established the will is located within the European Union or not.

3. Types of wills

Three types of wills are mainly allowed: wills established by authentic deed, holographic wills and sealed wills. In some exceptional circumstances (in wartime, on ships, etc.), it is possible to draw up wills which are valid for a limited period. Such wills are declared to have lapsed three months after the circumstances that justified them have ceased to exist.

Wills established by authentic deed (or "public") are drawn up by a civil law notary in the presence of three witnesses or by two civil law notaries in the presence of one witness.

Holographic wills are handwritten and signed by the testator himself. A holographic will may be deposited with a notary, held by a lawyer or a close relative or friend, etc. Lawyers may seek homologation by court of the wills they assisted in drafting.

Sealed wills are drafted by the testator or by a third party and deposited with a notary in a sealed envelope in the presence of one witness. Such a will may also be drafted in the presence of three witnesses without a notary in attendance. The sealed will must however be subsequently deposited with a notary.

4. Registration and search for wills

In Greece, succession proceedings are carried out by civil law notaries. However whereas a succession is filed in court, the court only publishes the will. The heirs freely elect the notary in charge of carrying out the succession.

There is currently no will register in Greece. All wills drafted by or deposited with civil law notaries are registered in the will Ledger of the depositary notary and are kept in each office. Every quarter, the notary must send the list of wills drafted or deposited at his office to the local court. The clerk of the court registers the data in an index, under pain of disciplinary sanctions. The data is not centralised.

The content of the will remains secret during the testator's life; and will only be revealed on presentation of a death certificate. However, the existence of the will may be disclosed during the testator's life.

The testator need not be a Greek national.

Monthly, a list of deceased persons is communicated to the civil law notaries who must check in their offices the presence of a related will. In case a will exists, the civil law notary forwards it to the court for publication. Such publication allows the civil law notary in charge of carrying out the succession proceedings to have knowledge of the existence of the will.

Civil law notaries may be held liable in case of failure to check the list of deceased persons transmitted to them.

The Greek notariat expressed its support towards the creation of an official centralised will register. The Ministry of Justice seems to be favourably disposed towards this suggestion; however, a law must be passed to provide for the principles and modalities governing such register.

Hungary

1. International conventions

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

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

2. Circulation of wills within Europe

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

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

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

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

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

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

3. Types of wills

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

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

Holographic wills are handwritten by the testator.

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

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

Oral wills are only allowed under extraordinary circumstances.

4. Registration and search for wills

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

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

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

Negotiations are ongoing towards interconnection of the two registers.

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

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

- **Wills registration**

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

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

Civil law notaries communicate specific data electronically to the register.

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

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

Foreign citizens may record their wills in the register.

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

The following data is communicated to the register:

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

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

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

Amendments, withdrawals and revocations are possible in the register.

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

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

- **Search for wills**

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

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

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

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

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

The cost of a search amounts to around 4 Euros.

Ireland

1. International conventions

Ireland has not signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills.

Ireland acceded to the Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions the 3rd August 1967.

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

2. Circulation of wills within Europe

In accordance with the provisions of Irish international private law, a will is deemed valid as regards its form if it respects:

- the internal law applicable to the place where the testator made his will (local form), or,
- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

A will established by a foreign public authority may be deemed valid in Ireland and have the same effect as a will of the same form (or of equivalent form) on the condition that the Irish Probate Office delivers a Grant of Probate. When the will is drawn up in a foreign language, a translation is necessary. If a foreign jurisdiction delivers a Grant, a certified copy bearing a seal must be addressed to the Probate Office.

The regulations regarding the circulation of wills are equivalent whether the public authority having established the will is located within the European Union or not.

3. Types of wills

Irish law allows only one form of will: the will made before witnesses.

The will [2] must be written and the testator must sign or mark the bottom of the will in the presence of two witnesses. He must also acknowledge his signature or mark in the presence of two witnesses. The two witnesses must be present at the same time and sign the will in the presence of each other and of the testator. They do not necessarily know the content of the will.

The witnesses, as well as their spouses, cannot be beneficiaries of the will.

The will must be dated and signed by the testator and the witnesses at the bottom of the document. Generally, the signatures are placed under a phrase called the "attestation clause". This phrase indicates: "Signed by the testator in our presence and by us in the presence of the testator". The attestation clause is not a condition of the validity of the will, but it is recommended to include it in the will in order to facilitate its proof.

[2] Substantive conditions also exist: the testator must be 18 or have been married; he must be mentally sane.

The will must include the name and address of the testator as well as a clause stipulating that the testator certifies to revoke or renounce all of his former wills or codicils[3]. The will must designate one or several executors who shall ensure that the final wishes of the testator are respected after his death. Finally, the will must include a clause governing the devolution of estate with regard to assets which he has not individually mentioned in his will.

4. Registration and search for wills

There are no registers of wills in Ireland. Neither the State nor the law professionals wish to create one. In effect, few wills are made in Ireland as the rules of legal devolution appear to suit the majority of citizens.

There are no other registers.

The will is kept by the testator himself, by his lawyer or can be filed in a safe with the bank, etc. To find it, the executor(s) therefore must search in various places.

[3] "I hereby revoke all former wills and testamentary instruments made by me and declare this to be my last wills and testament".

Italy

1. International conventions

Italy signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills on the date it was opened for signature and ratified it on 25th September 1981.

Italy signed the Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions on 15th December 1961.

Italy signed the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will on 16th May 1991 and acceded to it on 16th May 1991, therefore the Convention is fully in force.

2. Circulation of wills within Europe

A will is deemed valid as regards its form if it respects:

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

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

A will established by a foreign public authority may be deemed valid in Italy in and have the same effect as a will of the same form (or of equivalent form) provided it is legalised or an *apostille* is attached to it. It must also have been translated by a sworn translator.

The regulations regarding the circulation of wills are equivalent whether the public authority having established the will is located within the European Union or not.

3. Types of wills

Italy allows authentic wills, sealed wills, holographic wills, international wills and special wills.

Authentic wills are drawn up by a civil law notary.

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

Sealed wills are written by the testator or by a third party, placed in a sealed envelope and handed over to a notary.

International wills are provided for by the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will.

Under specific circumstances (extraordinary or dangerous situations), special wills may be made.

4. Registration and search for wills

Succession proceedings are carried out by civil law notaries and by judges.

There is a will register in Italy; it is administered by the Ministry of Justice. Definition and administration of the register are provided for by law.

Wills are also registered in the successions register administered by the Italian courts.

Both registers comply with the provisions of the Basel Convention.

Registrations and searches may be performed electronically. The register is computerized.

- **Wills registration**

Civil law notaries perform registrations in the register. Such registration is mandatory failing which disciplinary and financial sanctions are provided for by law.

All types of wills may be recorded in the register.

The civil law notary must communicate the following data to the register:

- Testator's family name and first name,
- Date and place of birth,
- Testator's address,
- Type of will,
- Date of will,
- Date of registration of the will,
- Name and address of the depository notary.

The testator is not identified by an official number.

The date of death is recorded in the register.

Foreign citizens may record their wills in the Italian register.

Amendments, withdrawals and revocations are possible.

Yearly about 30 000 wills are registered.

The registration of a will costs € 14.80 to which € 43.66 of stamp duty is to be added.

- **Search for wills**

A search for will is performed through query of the will register or of the successions register. The will register may be accessed by civil law notaries, lawyers, judges and private persons.

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

Disclosure of a will is mandatory.

The existence of a will remains secret during the testator's life.

Provision of a death certificate is mandatory to access registers.

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

The cost of a search in the will register amounts to 20 Euros.

Querying foreign registers costs € 28 per register queried.

Latvia

1. International conventions

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

2. Circulation of wills within Europe

A will is deemed valid as regards its form if it respects Latvian law as the law applicable to the succession.

In accordance with the provisions of bilateral conventions signed by Latvia a will may be deemed valid as regards its form if it respects the internal law applicable to the nationality possessed by the testator at the time when he made the disposition or the internal law applicable to the place where the testator made the disposition

As a rule, the law applicable to the form of the will is Latvian law, thus no regulations may be deemed contrary to public order or to the content of possible mandatory rules.

In accordance with Latvian international private law, a will established by a foreign public authority may only be deemed valid in Latvia if the will complies with the provisions of Latvian law.

3. Types of wills

Several types of wills are allowed in Latvia.

Authentic wills (or public wills) are drawn up by a civil law notary or by the custody court (Latvian custody courts have several functions similar to the functions of civil law notaries, one of them is drawing of will) when the testator is present in Latvia. Latvian consulates are deemed competent to draw up wills abroad. The presence of two witnesses is required.

Holographic wills are handwritten by the testator himself.

Witnessed wills (or private wills) may be handwritten by the testator or not. In any case, the will must be signed in the presence of two witnesses or the testator must declare that he personally signed the will himself in the presence of the two witnesses. Should the testator be illiterate or unable to sign, the will may be signed on his behalf by a third party; however this circumstance must be recorded in the will itself and be confirmed by the witnesses.

Witnessed will may be kept by the testator himself or deposited with a civil law notary, a custody court or the consulate for Latvian nationals residing abroad.

Oral wills (or privileged wills) are allowed under certain extraordinary circumstances. When such circumstances cease to exist the testator must draw up an authentic will or a witnessed will within a period of three months. Oral wills become null and void three months after expiration of the extraordinary circumstances having justified the recourse to the oral form. The presence of two witnesses is required for oral wills to be deemed valid.

4. Registration and search for wills

In Latvia succession proceedings are carried out by civil law notaries. Judges are only involved in case of dispute.

There is no central will register. The Ministry of Justice is currently investigating the means necessary to implement such a register. The Latvian Notariat Council supports this initiative.

- **Wills deposit**

Authentic wills are kept by the public authority having drawn it up. Private wills deposited with a civil law notary or with a custody court (or consulate) are also kept in the place where they were deposited.

The deposit of a witnessed will must be done in a sealed envelope by the testator himself. The testator must declare that the deposited document records his last wills and the envelope must bear the seal of the receiving authority. The envelope must be signed by the testator and by the receiving authority. Fulfilment of such formalities is evidenced by handing over an official document.

Only authentic wills must mandatorily be kept by a public authority. Wills in other forms may be kept by the testator or deposited with a civil law notary or a custody court (or a consulate if the testator resides abroad).

- **Search for wills**

Upon having knowledge of the death of a person who has deposited their wills with him, a notary must set a date for reading the deed with the heirs and must publish a legal advertisement in a visible public place indicating the location of the civil law notary's office. In case of a private will, the civil law notary must assess its validity prior to reading the act.

To search for an authentic or private will, the heirs must go to the professional's office where the deed is kept. There is no means allowing searching for private wills which have not been deposited.

Disclosure of a will is mandatory.

Lithuania

1. International conventions

Lithuania signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills on 14th January 2004 and ratified it on 19th May of the same year.

However Lithuania has signed neither the Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions nor the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will. The principles of the Hague Convention have however been integrated into Lithuanian national law.

2. Circulation of wills within Europe

A will is deemed valid as regards its form if it respects the internal law applicable to the place where the testator made his will (local form). A will as well as its amendment or revocation shall also be valid in regard of the form if the form of the indicated acts is in compliance with the requirements of the law of the state of the testator's domicile, or those of the laws of the state whose citizen the testator was at the time when the relevant acts were performed, or the law of the state of the testator's residence at the time when those acts were performed or at the time of his death. A will in respect of an immovable thing, as well as any amendment or revocation thereof shall be valid if the form of the acts concerned is in compliance with the requirements of the law of the state where the immovable thing is located.

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

A will established by a foreign public authority may be deemed valid in Lithuania and have the same effect as a will of the same form (or of equivalent form) provided it has been legalised or an *apostille* is attached to it.

These regulations do not alter whether the will has been established within a member State of the European Union or not.

3. Types of wills

Several types of wills are allowed: authentic wills, drawn up by a civil law notary and "personal" wills, handwritten by the testator. The latter may be deposited with a civil law notary in an envelope. Should this not have been the case, a court will need to homologate the will after the testator's death. "Personal" wills may be assimilated to holographic wills or to sealed wills depending on the case.

4. Registration and search for wills

Succession proceedings are carried out by civil law notaries; registration and search for wills are performed by such qualified professionals.

There is a will register in Lithuania; it is administered by the State. The leading institution is the Ministry of Justice; the register is managed by Central Mortgage Office. Definition and administration of the register of wills are provided for by law.

Registration and search for wills are performed electronically.

The Central Mortgage Office also manages the register of mortgages, the register of prenuptial agreements, the register of seizures and the register of contracts.

- **Wills registration**

Civil law notaries, consulates, and, under some specific circumstances, the Lithuanian Chamber of Notaries may record wills in the register.

When a civil law notary draws up a will or when a will is deposited at his office he informs the register of wills accordingly. The communication can be performed electronically but also by postal mail or the civil law notary may go and register the will himself.

Registration of a will in the register is mandatory failing which disciplinary sanctions may apply.

Both types of wills may be recorded in the register. “Personal” wills may be recorded provided they have been deposited with a notary or homologated by a court.

Foreign citizens may record their wills in the register.

The following data is communicated to the register:

- Testator’s family name and first name(s),
- Testator’s date and place of birth,
- Testator’s address,
- Type of will,
- Date of will,
- Date of registration of the will,
- Name and address of the depository notary,
- Number of the civil law notary who registered the will.

The testator is identified by an official number

The date of death is not recorded in the register.

Amendments, withdrawals and revocations are possible in the register.

Yearly about 30 000 wills are registered.

Registration is free of charge.

- **Search for wills**

The register may be accessed by civil law notaries, private persons, judges, lawyers, consuls, the Lithuanian Chamber of Notaries and foreign registers.

After the testator's death, the heirs may query the register about the existence of a will. In case of positive response the name of the depository notary will be communicated and the heirs will have to enter in contact with him to gain knowledge of the content of the will.

During succession settlements query of the register is legally mandatory.

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

The register responds to requests from other member States. A specific body handles searches from abroad.

The cost of a search amounts to 1 Euro. Searches from and towards other States are free of charge.

Luxembourg

1. International conventions

Luxembourg signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills on the date it was opened for signature and ratified it on 3rd June 1982.

Luxembourg signed the Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions on 5th February 1968 and ratified it on 7th December 1978 with several reservations. Thus, "the Grand Duchy of Luxembourg reserves the right

1) in derogation with the third paragraph of Article 1 of the Convention to determine in accordance with the *lex fori* the place where the testator had his domicile;

2) not to recognize testamentary dispositions made orally, save in exceptional circumstances, by a national of Luxembourg possessing no other nationality;

3) to exclude from the application of the Convention any testamentary clauses which, under the law of Luxembourg, do not relate to matters of succession".

Luxembourg has not signed the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will.

2. Circulation of wills within Europe

Under the law of Luxembourg, a will is deemed valid as regards its form if it respects:

- the internal law applicable to the place where the testator made his will (local form), or,

- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

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

A will established by a foreign public authority may be deemed valid and have the same effect as a will of the same form (or of equivalent form) provided such form is allowed by the law of the State in which the will has been drawn up.

The above principles do not alter whether the will was established by a public authority located within the European Union or not.

3. Types of wills

The law of Luxembourg mainly allows authentic wills, holographic will, secret wills and some special types of wills.

Authentic wills must be drawn up by a civil law notary in the presence of two witnesses or be drawn up by two civil law notaries.

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

Secret wills are acts written by the testator or by another person and handed over to a civil law notary in a closed and sealed envelope, in the presence of witnesses.

There are also some special forms of wills, varying according to circumstances (military will, will drawn up at sea or in a place infected by the plague or another contagious disease). In all events, the will must be authenticated by a publicly appointed official.

4. Registration and search for wills

Succession proceedings in Luxembourg are carried out by civil law notaries and by the Registration and Property Administration ("*Administration de l'enregistrement et des domains*").

There is a will register, the definition and administration of which are provided for by law. The register is administered by the Directorate of the Registration Administration.

The register is not computerized; registrations and searches are performed through printed forms.

There is a register of matrimonial contracts also administered by the Directorate of the Registration Administration.

The wills register and the register of matrimonial contracts both comply with the provisions of the Basel Convention.

- **Wills registration**

A will may be deposited with a civil law notary, a lawyer or a financial institution. Any person in possession of a will may register it. Registration of a will is mandatory and belated registration may be punished by a fine of 25 Euros. Moreover, civil law notaries must register the wills they are cognizant of, failing which they may be held professionally liable.

Registration of a will may be performed directly by a notary through the Registration and Property Administration. Private persons may also refer to this administration in order to record their holographic wills in the register.

Foreign citizens may record their wills in the register.

Authentic wills, holographic wills, and secret wills may be recorded in the register.

The following data must be communicated to the register:

- Testator's family name and first name(s),
- Testator's date and place of birth,
- Testator's address,
- Testator's profession,
- Type of will,
- Date of will,
- Date of registration of the will,
- Name and address of the depositary notary.

The testator is identified by an official number.

The date of death is recorded in the register.

Amendments, withdrawals and revocations are possible in the register.

The cost of registration amounts to 9.92 Euros.

- **Search for wills**

At the time of carrying out succession proceedings, query of the register is mandatory failing which disciplinary sanctions may apply. The register may be queried by civil law notaries, judges, lawyers and private persons.

The existence of a will remains secret during the testator's life and provision of a death certificate is required to query the register.

Disclosure of a will is legally mandatory failing which a civil law notary may be held professionally liable.

The register responds to requests from other registers with a response time of 5 to 8 days. A specific body is in charge of responding to requests from other member States.

The cost of a search amounts to 9, 92 Euros regardless of its origin, Luxembourg or another member State.

Malta

1. International conventions

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

2. Circulation of wills within Europe

According to private international Maltese law, a will is deemed valid as regards its form if it respects the local form, i.e. the internal law applicable to the place where the testator made his will.

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

A will established by a foreign public authority may be acknowledged as valid in Malta and have the same effects as a will of the same form (or of equivalent form), provided that the form in question is allowed by the State in which the will was drafted.

The above regulations do not change whether the public authority having established the will is located within the European Union or not.

3. Types of wills

Maltese law allows authentic wills, secret (sealed) wills and some special forms of wills. Holographic wills are not valid.

Authentic (or public) wills are drawn up and kept by the notary. Two witnesses are needed.

The sealed will is drawn up by the actual testator or by a third party. The will is then placed in a sealed envelope. The testator has to declare that the envelope contains his or her will before two witnesses.

Under certain circumstances, it is possible to draw up a provisional will. For example, a will drawn up on a ship is such a case. Once the ship has reached port, the captain has to go and register in the register within 4 days. The will is valid for a period of one month.

4. Registration and search for wills

The civil law notary is entrusted with the settlement of inheritances in Malta.

There is a central register of wills and it is defined and managed according to legal provisions.

The register is managed by the State and more particularly by the Ministry of Justice. That register does not comply with the Basel Convention but a legislative amendment is to be introduced in 2010 so as to ensure conformity of the Maltese system with the said Convention. This is a public register which contains all the deeds transferring real rights (i.e. rights relating to things).

The register does not allow the registration of wills to be performed electronically. Civil law notaries can receive answers to their queries electronically but such answers are not official. An official answer must be sent on a paper medium.

In parallel, there is also a register containing sealed wills, held by the court.

So, the registration and the research proceeding depend on the types of wills.

- **Wills registration**

Sealed wills are kept by the court which undertakes to register them after the testator (or the notary who help to write the will) has put the deed in a sealed envelope.

The civil law notary is entrusted with the registration of authentic wills. Registration is mandatory in accordance with legal provisions. Failing which, the notary incurs a sanction that may range from a fine to the suspension of the exercise of the activity.

Authentic wills are kept at the notary's. They are filed in a Ledger which is transferred to the notaries' records every 6 months. Every month, the notary makes a certified copy of the deeds that he or she holds and is keeping.

All the types of wills may therefore be registered.

To register an authentic will in the register, the notary must, within 15 days, communicate the following information to the register:

- Testator's surname and first name(s),
- Place of birth,
- Testator's address,
- Testator's profession,
- Names of the testator's parents,
- Date and time of the will,
- Registration date of the will,

- Name of the depository notary.

The information is transmitted to the register on a paper medium, accompanied by the notary's signature.

The testator is identified by an official number, which is the number appearing on his or her identity card.

Citizens of other Member states may enter their will in the register.

The date of death is not entered in the register.

About 5,000 wills are registered every year.

Registration costs 5 Euros.

Amendments, withdrawals and revocations concerning the wills recorded in the register are possible through the registration of a new will.

- **Search for wills**

It is mandatory to query the public register at the time of the settlement of inheritances otherwise the notary is liable to disciplinary sanctions. The civil law notary, the judge, the lawyer and private citizens may query the register, after the testator's death.

Searches in the register may only be made 21 days after the testator's death.

The search for an authentic will is made by sending a request to the register electronically or on a paper medium. The civil law notary may receive a reply electronically but only the reply sent on a paper medium is considered official.

Provision of a death certificate is mandatory to perform a search in the register.

However, the existence of an authentic will may be revealed during the testator's lifetime: the public register will not give direct information about the existence of an authentic will except when a research about all the deeds concluded by a person in a certain period of time. A legislative amendment, aimed at safeguarding the secrecy of the existence of the will, should be introduced in 2010.

About 17,000 searches are made in the wills register and in the register transferring real rights.

The register answers queries from and to Member States within approximately 10 days.

A search costs € 5 Euros, whether it comes from Malta or from another Member State.

To search for a sealed will, a request must be sent to the court which will communicate the information at its disposal within 10 days of the request. It is mandatory to provide a death certificate.

The Netherlands

1. International conventions

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

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

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

2. Circulation of wills within Europe

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

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

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

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

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

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

3. Types of wills

Dutch law allows authentic wills and secret wills.

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

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

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

4. Registration and search for wills

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

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

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

Registrations and searches may be performed electronically.

- **Wills registration**

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

Authentic and secret wills can be registered.

Foreign citizens may register their wills, but only if the will is made with the help of a Dutch notary. So it is not possible to register wills that were made abroad.

The following data is communicated to the register:

- Testator's family name and first name(s),
- Date and place of birth,
- Testator's address,
- Type of will,
- Date of will,

- Date of registration of the will,
- Name and address of the depository public authority.

The testator is not identified by an official number.

The date of death is recorded in the register.

Amendments, withdrawals and revocations of the registered wills are not possible in the register.

Yearly 350,000 wills are recorded in the register.

The cost of registration amounts to about 9 Euros.

- **Search for wills**

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

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

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

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

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

The register responds to requests from other member States.

Yearly 240,000 searches are performed in the register.

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

Poland

1. International conventions

Poland has not signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills.

Poland signed the Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions on the date it was opened for signature and ratified it with the reservation provided for in article 12, ("Each Contracting State may reserve the right to exclude from the application of the present Convention any testamentary clauses which, under its law, do not relate to matters of succession").

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

2. Circulation of wills within Europe

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

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

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

A will established by a foreign public authority may have the same effect as a will of the same form (or of equivalent form) drafted in Poland provided it respects the internal law of the place where the dispositions were made and, so far as immovables are concerned, the law of the nationality possessed by the testator.

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

3. Types of wills

Polish law allows authentic wills, holographic wills and two special types of wills: ordinary and special wills.

Authentic wills are drawn up by a civil law notary.

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

Ordinary wills are drawn up in writing in the presence of an official of the local borough (mayor, head of registration offices, etc.). Two witnesses are required in order to ensure validity of such wills.

Special wills are made under extraordinary life threatening circumstances (travel by sea, by plane, during military service). For instance, in the event of fear of imminent death, the testator may make an oral will. Three witnesses must be present at the same time, one of them having to record the testator's last wishes in a report. That report must then be signed by the three witnesses or by the testator and two witnesses. If no report has been drawn up, the witnesses may come and confirm the testator's last wishes by a statement at court

within six months of the testator's death. The oral will lapses 6 months after the fear of imminent death ceased to exist.

4. Registration and search for wills

In Poland, succession proceedings are carried out by civil law notaries and by judges.

There is no will register in Poland.

Nevertheless other registers exist: heredity certificates register administered by the Polish National Notariat Council, the trade register and the property register, both are administered by courts and by the Ministry of Justice.

Registration of a will is not possible.

Civil law notaries keep wills at their offices. The heirs must thus refer to the family notary to have knowledge of the existence of a will.

Ordinary wills drawn up in the presence of an official of the local borough and two witnesses are kept by the official in the presence of whom the will has been drawn up. Nevertheless, safekeeping of the documents is not provided for by law.

To search for a will, the heirs can refer to the family civil law notary, to the local administration, to the local borough or to the archives of the property register. In the absence of a will register, finding a will may be particularly difficult unless the testator is advised precisely of the place where the will could be found.

Disclosure of a will is legally mandatory, failing which various sanctions may apply: loss of rights in the succession, criminal sanctions in case of fake declaration regarding the document and civil liability.

Portugal

1. International conventions

Portugal signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills on 19th September 1978 and ratified it on 20th April 1982.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on 29th September 1967 but has not been subsequently ratified.

The Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will was signed on 19th November 1975.

2. Circulation of wills within Europe

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

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

Some foreign regulatory forms may be deemed contrary to public order or to the content of mandatory rules. For instance, it will be the case of the wills contrary to the international public order or of mutual and joints wills (wills containing the testamentary disposition of two or more testators).

A will established by a foreign public authority may be deemed valid and have the same effect as a will of the same form (or of equivalent form) drafted in Portugal provided it has been established with a solemn form or it was been approved by a civil law notary.

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

3. Types of wills

Under Portuguese law three types of wills are mainly allowed: authentic wills, closed wills and international wills.

Authentic wills, also called "public wills" are drawn up by a civil law notary.

Closed wills are drafted and signed by the testator or drafted by another person upon the testator's request and signed by the latter. A closed will must be approved by the civil law notary. It may then be kept by the testator, handed over to another person or deposited with a civil law notary.

International wills comply with the provisions of the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will.

Lastly, special forms of will exist, for example, military wills or wills drawn up on board an aeroplane or a ship. Such wills are provisional.

4. Registration and search for wills

In Portugal, succession proceedings are carried out by civil law notaries.

There is a will register, definition and administration of which are provided for by law. This register is administered by the Ministry of Justice. It is not computerized.

The Portuguese Notariat is setting up its own wills register in which registrations and searches will be performed electronically.

- **Wills register**

A civil law notary must record some of the wills he is cognizant of in the register.

It is legally mandatory to register a will.

Foreign citizens may have their wills recorded in the register.

The following data is communicated to the register:

- Testator's family name and first name(s),
- Testator's date and place of birth,
- Testator's address,
- Type of will,
- Testator's mother's and father's names,
- Date of will,
- Date of registration of the will,
- Name and address of the depositary notary.

The testator is not identified by an official number.

The date of death is recorded in the register.

Amendments, withdrawals and revocations are possible in the register.

Registration in the register is free of charge.

- **Search for wills**

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

The register may be queried by several people: notaries, lawyers, judges and private persons.

Query is only possible after the testator's death and provision of a death certificate is mandatory. The existence of the will thus remains secret during the testator's life.

Disclosure of a will is not mandatory.

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

Search queries made orally to the notary are free of charge but the issuance of a document taken from the wills register costs 23 Euros.

Romania

1. International conventions

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

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

2. Circulation of wills within Europe

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

- the internal law applicable to the place where the testator made his will (local form), or
- the internal law applicable to the nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

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

A will established by a foreign public authority may have the same effect as a will of the same form (or of equivalent form) established in Romania provided an *apostille* is attached to the formal deed, or that the signature of the notary having established the will has been supervised by a recognized authority. Some existing bilateral agreements may exempt from these formalities.

3. Types of wills

Four types of wills are allowed under Romanian law.

Authentic wills are drawn up by a civil law notary.

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

Secret wills are deposited in a sealed envelope with a civil law notary.

Privileged wills are drafted under extraordinary circumstances (will at sea, military will or will made in case of catastrophic event). Such a will is only deemed valid if its author dies during the course of such an extraordinary event.

4. Registration and search for wills

In Romania succession proceedings are carried out by civil law notaries and by judges.

The wills register is administered by the Romanian Notariat (The National Union of Notaries Public from Romania). Definition and administration of the register are provided for by law.

The register is computerized, but currently it is not directly accessible via internet. Registrations and searches are therefore currently performed by means of printed forms. However, data processing is already computerized. After the summer, it will be possible to perform all formalities through an Internet portal.

After computerization of the register, interconnection with the ENRW will be possible.

The Romanian notariat administers several other registers:

- Register of succession options whereby heirs having accepted or refused the succession are listed,
- proxy revocation register,
- succession register for Romanian citizens whose domicile is abroad but whose succession is partially located in Romania.

The new Romanian Civil Code also entrusted the notariat with the administration of the register of matrimonial contracts, of the donations register and of the register of debtors.

- **Wills registration**

A civil law notary may register a will by communicating the required information to the central register.

Registration of a will in the register is mandatory in accordance with legal provisions. A civil law notary is professionally liable in case of failure to comply with this requirement. Nevertheless, only authentic wills may be registered.

Foreign citizens may record their wills in the register.

The following data is communicated to the register:

- Testator’s family name and first name(s), according to his/hers birth certificate, ID card, marriage certificate, death certificate, and eventually other names/first names one may have during his life (the register keeps one distinct position for any of this),
- Date and place of birth,
- Testator's parents names and first names, according to his/hers birth certificate,

- Testator's gender,
- Testator's address,
- Testator's identification number,
- Testator's date and place of death (optional, the testator may be alive at the moment of the registration),
- Type of will,
- Date of will (year-month-day-hour-minute),
- Date and authentication number of registration of the will,
- Name and address of the depository notary.

The testator is identified by an official number.

The date of death is recorded in the register (either at the moment of processing a new entry in the registry, or on the occasion of queries).

Amendments, withdrawals and revocations are possible in the register.

Yearly about 25,000 wills are recorded in the register

Registration is free of charge.

- **Search for wills**

A civil law notary is in charge of carrying out the succession proceedings. At that time he is legally requested to query the register in order to gain knowledge of any testamentary dispositions the deceased may have left; failing which he may be held professionally liable.

Disclosure of a will is legally mandatory. Thus, when a civil law notary is in charge of carrying out the succession proceedings, the heirs must disclose all the wills they are cognizant of failing which they may lose their rights in the succession.

The existence of a will remains secret during the testator's life. Provision of a death certificate is required to query the register.

Yearly about 100,000 searches are performed in the register.

The register responds to requests from and towards other States with the same response time as for national requests: 1 working day more or less.

The cost of a search amounts to around 5 Euros whether it emanates from a Romanian civil law notary, a foreign register or civil law notary.

Slovakia

1. International conventions

Slovakia has not signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions has not been signed by Slovakia

Czechoslovakia signed the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will in 1974. However, Slovakia did not declare itself to be bound by this Convention.

2. Circulation of wills within Europe

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

- the internal law applicable to the place where the testator made his will (local form), or
- the internal law applicable to the nationality possessed by the testator at the time when he made the disposition.

A will established by a foreign public authority may be deemed valid in Slovakia provided its form respects the local form or the law applicable to the nationality of the testator.

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

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

3. Types of wills

Slovakia allows several forms of wills: authentic wills, drawn up by a civil law notary, holographic wills, handwritten, dated and signed by the hand of the testator and witnessed wills (or allographic wills), drafted by a third party and signed by the testator and two witnesses.

Wills in special form are also allowed for persons who cannot read or write, minors under 15 years of age, people who are blind and people who are deaf and cannot read or write.

4. Registration and search for wills

In Slovakia, succession proceedings are carried out by a civil law notary appointed by the court.

The will register is administered by the Slovakian notariat in accordance with legal provisions. Registrations and searches in the register are performed electronically.

The Slovakian Chamber of Notaries also administers other registers: the Central Notarial Record of deeds, the Central Notarial Record of determined moral persons, the Central Notarial Record of collateral charges, the Central Notarial Record of auctions, the Central Notarial Record of notarial minutes and the Central Notarial Record of authenticated signatures.

- **Wills registration**

Civil law notaries record wills in the register. Authentic wills are recorded at the time of drawing up of the deed. In other cases, the testator may elect to deposit his will with a civil law notary in order for it to be recorded in the register.

Citizens from other member States may record their wills in the Slovakian register.

All types of wills may be registered; however, registration is only mandatory for authentic wills. Registration of other forms of wills is optional.

The following data is communicated to the register:

- Testator's family name and first name(s),
- Testator's date of birth,
- Testator's place of permanent residence,
- Type of will,
- Date of will,
- Date of registration of the will,
- Name and address of the depositary notary.

The testator is identified by an official number given at birth.

The date of death is recorded in the register.

Amendments, withdrawals and revocations are possible in the register. Such changes are performed by means of a new registration.

Yearly around 4,500 wills are recorded in the register.

The cost of registration amounts to about 3.30 Euros

- **Search for wills**

After a person's death, the court appoints a civil law notary to carry out the succession proceedings.

As such, the civil law notary must then query the register. He is the only person allowed to do so. In response the register will communicate information regarding the will if it exists.

Query of the register is legally mandatory after the testator's death.

Disclosure of the will is only mandatory for heirs within the framework of the succession.

The existence of a will remains secret during the testator's life. Provision of a death certificate is required to query the register.

The register does not respond to requests from other States.

Yearly around 49,000 searches are performed in the register.

The cost of a search amounts to nearly 3.30 Euros.

Slovenia

1. International conventions

Slovenia has not signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills.

The ex-Socialist Federal Republic of Yugoslavia was party to the Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. Slovenia declared itself to be bound by this Convention on 8th June 1992.

The Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will was signed on 20th August 1992.

2. Circulation of wills within Europe

In accordance with the provisions of Slovenian international private law, a will is deemed valid as regards its form if it respects:

- the internal law applicable to the place where the testator made his will (local form), or,
- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

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

A will established by a foreign public authority may be deemed valid in Slovenia and have the same effect as a will of the same form (or of equivalent form). Indeed, the principle of reciprocity applies, meaning that a notarial deed drawn up abroad will be enforced in the same way as a deed drawn up in Slovenia. A notarial deed will therefore be directly enforceable on Slovenian territory insofar as it does not award rights which would be incompatible with the Slovenian judicial system.

These rules are different whether the public authority having established the will is located within the European Union or not.

3. Types of wills

Under Slovenian law four types of wills are allowed.

Authentic wills are drawn up by a civil law notary. The presence of two witnesses is required.

International wills comply with the provisions of the Washington Convention of 26th October 1973.

Secret wills are deposited in a sealed envelope with a civil law notary.

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

4. Registration and search for wills

In Slovenia succession proceedings are carried out by courts.

There is a will register, the central register of dispositions of last wills; it is administered by the Slovenian Chamber of Notaries. Definition and administration of the register are provided for by law.

The vast majority (90%) of registrations and searches are performed electronically.

- **Wills registration**

Wills may be recorded in the register by a judge, a civil law notary or a lawyer. Indeed, lawyers may keep wills, for example when they assisted in their drafting. The testator may then wish that his will be kept by his lawyer. Some wills may also be deposited with the court. The judge then performs their registration.

Registration of wills in the register is mandatory.

Citizens from other member States may not record their wills in the register.

The following data is communicated to the register:

- Testator's family name and first name(s),
- Date and place of birth,
- Testator's address,
- Type of will,
- Date of will,
- Date of registration of the will,
- Name and address of the depositary notary.

The testator is identified by an official number, given at birth and based on the date of birth.

The date of death is recorded in the register.

Amendments, withdrawals and revocations are possible in the register.

Yearly around 1,800 wills are registered.

The cost of registration amounts to 41 Euros for the first registration, 23 Euros for the following.

- **Search for wills**

The search for a will may be performed by a civil law notary or by a judge after the testator's death. Query of the register is legally mandatory during settlement of a succession. The heirs may also query the register.

Disclosure of a will is not mandatory.

The existence of a will remains secret during the testator's life and provision of a death certificate is required to query the register

The register does not respond to requests from other registers.

The cost of a search amounts to 22 Euros.

Spain

1. International conventions

Spain signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills on 7th December 1984 and ratified the Convention on 28th June 1985.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on 21st October 1976 and ratified on 11th April 1988.

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

2. Circulation of wills within Europe

As a part of The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, in Spain any will is deemed valid as regards its form if it respects one of the connecting factors provided for the Convention. Thus, in accordance with the provisions of Spanish international private law, a will is deemed valid as regards its form if it respects:

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

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

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

A will established by a competent foreign public authority may be deemed valid in Spain and have the same effect as a will of the same form in Spain provided it is officially translated and legalised.

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

It is also necessary to bear in mind that Spain presents a very specific characteristic in Civil Law. This is the coexistence of different civil legislations in the same country.

For this reason Spanish Civil Code coexists with the different "*derechos forales*" in Aragon, Baleares, Catalonia, Galicia, Navarre and Basque Country. And the differences between them are particularly important in relation with successions and testaments. For example joint or mutual wills or succession agreements are not allowed in Spanish Civil Code but they are admitted and regulated in some of the others Spanish civil legislations.

Looking at internal conflicts between different Spanish civil laws according to Spanish international private law a will is deemed valid as regards its form if it respects the law applicable to the place where the testator made his will (local form), and a will also is valid as regards its form if it respects the law applicable to its content or the testator's personal law (art. 11 Civil Code).

3. Types of wills

Spanish law allows:

- Open wills, drawn up by a public authority, a civil law notary as a general rule; but they also can be drawn up by diplomatic agents, for Spanish nationals located abroad, or exceptionally by the captain of a ship or by a priest according to some specific Spanish civil legislation (i.e. Navarre);
- Secret wills (also called sealed wills), handed over to a civil law notary in a sealed envelope;
- Holographic wills, handwritten, signed and dated by the testator himself.

Open will drawn up by a civil law notary is the most usual way of making a will in Spain.

According to Spanish law, as an exception, fourteen is the legal age for notarial wills.

Since 1990, in notarial wills the presence of witnesses is not necessary. Nevertheless there are some exceptions:

a) if the testator declares that he does not know or he cannot read or sign his own will;

b) if the testator is a deaf person who cannot read the will;

b) if the testator is a blind person;

c) if the testator or the civil law notary asks the presence of them.

Spanish law admits wills in the presence of witnesses**, if the intervention of a civil law notary is not possible,** for exceptional circumstances (in imminent danger of death or during an epidemic time). They require a written form and they have a period of validity of two

months if the testator survives and if he dies in this time it is necessary a judicial procedure for its validation.

4. Registration and search for wills

In Spain, succession proceedings are usually carried out by civil law notaries.

There is a General Register of Last Wills, the "*Registro General de Actos de Última Voluntad*", administered by the Ministry of Justice.

Definition and administration of such Register are provided for by the Notarial Regulation (Annexe II) established by a Royal Decree.

Nowadays, registrations and searches are performed electronically.

This Register complies with the provisions of the Basel Convention.

In the General Register of Last Wills, since 2007, there is a specific Section for life insurance contracts, where it is possible to obtain information about this type of contracts after the death of a person.

Matrimonial contracts are not registered in the General Register of Last Wills, unless they contain a successoral provision, but in the Civil Register. The object of this Register is the different circumstances referred to civil status of the citizens (birth, marriage, death and incapacity).

- **Wills registration**

Spanish civil law notaries, and diplomatic agents, only for nationals located abroad, are obliged to communicate the will's data to the General Register of Last Wills (see *infra*).

According to some Spanish civil legislation (i.e. Navarre) if the will is drawn up by the priest, the priest himself has the same duty.

Recording a will in the register is mandatory failing which a civil law notary may be held professionally and civilly liable.

All types of wills, and succession agreements if they are allowed by the specific civil legislation, may be recorded in the Register. Holographic wills can be recorded in the Register. It is necessary that the testator affirms its existence, the date and the place where the will has been signed and the rest of the circumstances for the Register in a notarial act. Then the civil law notary will notify the fact to the Register.

Foreigners may register their wills.

The following data is communicated to the register:

- Testator's family name and first name(s),
- Testator's marital status,
- Testator's date and place of birth,
- Testator's identification document,
- Testator's address,
- Testator's parents' first name(s),
- Testator's spouse's family name and first name(s),
- Type of will,
- Date of will,
- Name and address of the depository notary.

The testator is identified by an official number.

The date of death is not recorded in the register.

Amendments, withdrawals and revocations are possible in the register.

Yearly an average of 580,000 wills are registered.

Registration is free of charge.

- **Search for wills**

The search for a will is performed at the General Register of Last Wills. Such register then delivers a certificate advising of the existence or not of a will and of the place where it is held. All the wills made by the testator are refereed in the certificate. As a general rule the last will establishes the dividing up of the estate but it is possible and not very infrequent that the last will simply amends or completes a former one.

The Register being public may freely be accessed by civil law notaries, lawyers, private persons, etc. Nevertheless, the existence of a will remains secret during the testator's life. Provision of a death certificate is mandatory to perform a search. It is necessary to wait fifteen days from the testator's death to ask for the certificate from the General Register of Last Wills.

Query of the register is mandatory at the time of carrying out succession proceedings.

Disclosure of wills is legally mandatory (failing which disciplinary sanctions may apply).

The Register responds to queries originating from other member States, the response is immediate, as for national searches.

The cost of a search amounts to 3.47 Euros.

Sweden

1. International conventions

Sweden has not signed the Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills.

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on the date it was opened for signature and ratified by Sweden on 9th July 1976.

However, the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will has not been signed.

2. Circulation of wills within Europe

A will is deemed valid as regards its form if it respects:

- the internal law applicable to the place where the testator made his will (local form), or,
- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

3. Types of wills

Swedish law allows witnessed wills. Such a will is written by the testator in the presence of two witnesses present at the same time. The testator may also testify before the two witnesses present at the same time that he signed his will. In both cases the witnesses must be aware that the document is a will but must not have knowledge of its content.

In case of emergency or of illness these rules may be modified. If he is unable to draft a will, the testator may make an oral will in the presence of two witnesses present at the same time. In some cases the testator may also dispose of his assets through a holographic will written and signed by his hand but out of the presence of two witnesses. An oral or holographic will becomes null and void if no witnessed will is drawn up within three month after its drawing up.

4. Registration and search for wills

There is no will register in Sweden. Creation of a central register has been discussed on several occasions. In particular, the tax administration has proposed the creation of an optional register. The Ministry of Justice is competent to decide.

Several forms are possible for the settlement of successions.

The first form is a joint administration of the deceased's assets by the legal owners of the estate (surviving spouse, cohabitant, heirs or universal legatees). This joint ownership of the succession applies when no other disposition has been made about the deceased's estate which will be thus administered until its distribution.

Furthermore, the succession may be settled by an executor ("*testamentsexekutor*") named by the deceased, most generally in his will.

Last, the succession may be settled by an official estate administrator ("*boutredningsman*") On request by one of the legal owners of the estate or, if applicable, by the executor designated by the testator, the administration of the estate shall be entrusted to an official estate administrator.

Testators generally keep their wills in a safety deposit box at the bank or hand it over to their lawyer. Some private companies are also specialised in the safekeeping of the wills.

After a person's death, an inventory of the assets is prepared. The person in charge of settling the succession will then have to search for the will by referring for example to the testator's lawyer, to safekeeping private companies, by searching the testator's domicile or bank. If a will exists, the original or a copy of the document is attached to the inventory. Such inventory must be realised within three months after the date of death. In the course of the following months, the inventory must be forwarded to the tax administration for registration.

United Kingdom

The replies provided below apply to England &Wales, Scotland, and Northern Ireland.

1. International conventions

The Hague Convention of 5th October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions was signed on 13th February 1962 and ratified on 6th November 1963 with the reservation provided for in article 9. Such article provides that "each Contracting State may reserve the right (…) to determine in accordance with the *lex fori* the place where the testator had his domicile".

The Basel Convention of 16th May 1972 on the Establishment of a Scheme of Registration of Wills has been signed by the United Kingdom as a whole and effected by sections 23-25 Administration of Justice Act 1982 and the Washington Convention of 26th October 1973 providing a Uniform Law on the Form of an International Will has similarly been signed by the United Kingdom as a whole and effected by sections 27 & 28 Administration of Justice Act 1982.

None of these sections have been brought into force and therefore neither Convention has been ratified by any part of the United Kingdom. They could however be brought into force without the need for fresh primary legislation.

By virtue of section 24, the Principal Registry of the Family Division of the High Court of Justice ("The Probate Registry") is the national body for the whole of the United Kingdom for the purposes of the Basel Convention, and accordingly has the functions assigned to the national body by the Basel Convention including the functions of arranging for the registration of wills in other Contracting States as provided for in Article 6 of the Convention and of receiving and answering requests for information arising from the national bodies of other Contracting States.

2. Circulation of wills within Europe

Since the United Kingdom has ratified the Hague convention, a will is deemed valid as regards its form if it respects:

- the internal law applicable to the place where the testator made his will (local form), or
- the internal law applicable to a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- the internal law applicable to the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- so far as immovables included in the succession are concerned, the law applicable to the place where they are situated.

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

The matter of the definition of public authority is sensitive. Notaries public in the United Kingdom would argue that their authentic acts fall within the *Unibank* definition[4], since they are appointed by the state, their acts are in the required form and the authenticity relates to signature and to content.

United Kingdom Inheritance Certificates (Grants of Representation) are recognised between the three jurisdictions of England & Wales, Scotland and Northern Ireland.

[4] For further information about the *Unibank* decree, see the interim report.

Grants of Representation from Commonwealth countries must be issued a new seal ("re-sealing") by one of the High Courts of United Kingdom in order to be valid.

3. Types of wills

In **England & Wales and Northern Ireland,** to be valid a will must be attested to by two witnesses. The will must comply with the provisions of the Wills Act of 1837 according to which, a will must be written and signed by the testator in the presence of two or more witnesses present at the same time who must also sign.

Wills may be drafted by the testator without involvement of a law practitioner. Some wills may be entirely drafted by the testator; others are produced on will forms available from stores. These forms are adjusted by the testator to his personal situation through the addition of the clauses he finds relevant. Wills may also be drafted with the assistance of a lawyer.

In **Scotland**, there are two forms of Will, the holographic form with no witness or the form with one witness. The witnessed form is self proving. The holographic form requires further evidence of due signature [the Requirements of Writing (Scotland) Act 1995].

4. Registration and search for wills

Regulations regarding registration of wills vary depending on the place where the will is drafted.

In **Scotland**, there is no public central will register.

In **England & Wales** it is possible to Deposit a Will with the Principal Probate Registry under s.126 Supreme Court Act 1981. Detailed Regulations are set out in the Wills (Deposit for Safe

Custody) Regulations 1978 SI 1978/1724. The system is therefore very similar to that existing in Cyprus and similar arrangements exist in **Northern Ireland** under Article 27 of the Administration of Estates (Northern Ireland) Order 1979.

- **Wills deposit**

The testator, or any person authorized to do so, may file a will, placed in a sealed envelope, to the Probate Registry. If the will is filed with a local Probate Registry, it is transferred to the main Registry, the Principal Registry of the Family Division.

The following data is recorded on the envelope:

- Testator's family name and fist name(s),
- Testator's date of birth,
- Testator's address,
- Date of the will,
- Date of the deposit,
- Names of the executors appointed in the will,
- Names of the two witnesses.

Once the will has been filed, the testator shall receive a certificate which indicates that he has filed his will (or codicil). The testator is advised to keep this certificate in his personal documents so that his will can be easily found after his death.

Amendments and withdrawal of the documents held by the Probate Registry are possible.

The current cost in England is £15.

The existing deposit and registration arrangements are voluntary. Professionally prepared Wills in England are generally not deposited with the Registry. Professionals hold the original

Will and testators are encouraged to keep a copy of their Will with their papers, so that the name and address of the solicitors or other professionals who hold the original is available.

Commercial Will Registers exist, but are very unlikely to succeed. There is a political reluctance to make the registration of all Wills compulsory. Since England only has one form of Will, it is not easy to distinguish between professional and non professional Wills. It has been suggested that a possible compromise might be if the UK ratified the Washington Convention and made it compulsory for International Wills to be registered whilst the registration of other Wills remained voluntary.

- **Search for Wills**

Throughout the United Kingdom, the settlement of an inheritance is carried out by a personal representative, a separate legal person from the heirs. Personal Representatives are often one or more of the heirs together with a professional or family friend. They are called “Executors” if they are named as such in a Will, or called “Administrators” if they are not. Executors derive their authority from the Will. Administrators derive theirs from an order of the court.

In practice however, in order for third parties to be satisfied as to the authority of the personal representatives, an order of the court (Grant of Representation) must always be obtained and seen.

In Scotland this is known as a “Confirmation”. In the remainder of the United Kingdom this is known as a “Grant”. Executors have a “Grant of Probate”. Administrators have a “Grant of Letters of Administration”.

Once the Court has issued the Grant of Representation, it rarely has any further role, unless a dispute arises.

Before any Grant of Representation (Probate or Letters of Administration) is issued in England, the English electronic Register is checked by the Probate Registry, to ensure that there is no other Will.

If a will exists, proof of death shall be required against the remittal of the envelope containing the testator's will.

On death, if no copy will can be found, advertisements are sometimes placed in the professional press.

It would be logical if the Probate Registry were linked to ENRW so that it could check if any will existed in any other EU jurisdiction.

ANNEXE

List of experts

Country	Name	Position
Austria	Mr. Aleksander WINKLER	Civil law notary
Belgium	Mrs. Veronique DE BACKER Mrs. Marguerite DE GELLINCK	Specialist of private international law, law department of Belgium Notariat (FRNB) Specialist of Belgium register of wills (FRNB)
Bulgaria	Mr. Kamen KAMEVOV Mr. Svetlin MIKUSHINSKI	Civil law notary Civil law notary
Croatia	Mr. Denis KRAJCAR Mrs. Gordona HANŽEK	Civil law notary General Secretary of Croatian chamber of civil law notaries
Czech Republic	Mrs. Martina HERZANOVA	Civil law Notary in Pragua, member of the International commission of the chamber of notaries of Czech republic.
Denmark	Mr. Anders SPAHOLT JØRGENSEN	Head of section in the Danish Ministry of Justice in the department under which the law of wills and succession falls
Estonia	Mr. Edgar GRÜNBERG	Civil law notary in Tartu
Finland	Dr. Salla LÖTJÖNEN	Senior Advisor, Legislative Affairs, Ministry of Justice
Germany	Dr. Thomas DIEHN	Candidate civil-law notary, Head of Bundesnotarkammers register for durable Powers of Attorney
Greece	Mr. Athanassios DRAGIOS	Civil law notary in Athens from 1999. Lawyer from 1993 to 1998. Graduated in community in law at the University of Bordeaux (France). Member of the board of directors of the Athens notary chamber
Hungary	Dr. Krisztina VARGA	Member of the Hungarian chamber of civil law notaries from 2000 and associate notary from 2004. Delagate for the chamber of civil law notaries for several CNUE working groups. From 1st January 2009, manager of the Notarial archive of the National chamber and responsible of the register of wills

Ireland	Mr. Michael HOLOHAN	Assistant Principal Officer, Civil Law Reform Division of the Department of Justice, Equality and Law Reform, Ministry of Justice
Italy	Mr. Valerio AURIEMMA	Civil law notary in Bologna
Latvia	Mrs. Ineta BALDIŅA Mrs. Helena BĀRBALE	Director of Department of free legal professions. Deputy Director of Department of free legal professions.
Lithuania	Mrs. Vaidota MAJUTE	Legal consultant of Lithuanian Chamber of civil law Notaries
Luxembourg	Mr. Patrick SERRES	Civil law notary in Bettembourg
Malta	Mr. Joseph Henri SAYDON	Civil law notary in La Valette
The Netherlands	Prof. Dr. Barbara E. REINHARTZ	Professor at the Faculty of Law at the University of Amsterdam, Member of the European commission expert group PRM III/IV (Succession and wills) et PRM III (Property consequences of marriage)
Poland	Mr. Jan GIELEC	Civil law notary, Vice President of the Polish National council of Civil law notaries, in charge of all issues concerning the development of new technologies and issues relating to the creation of central registers
Portugal	Prof. Nuna Gonçalo SILVA	Professor of Law at the University of Coimbra
Romania	Mr. Bogdan Constantin IRIMIA	Civil law notary in Vaslui. Previously, programmer in the IT field. Graduated Accounting University in Iasi as accountant
Slovakia	Mr. Peter DANCZI	Civil law notary, member of the analytic group of the Chamber of notaries of Slovak republic
Slovénia	Mrs. Marjana TIČAR BEŠTER Mr. Aleksander SANCA	President of Slovenian Notariat General Secretary of Slovenian chamber of civil law notaries
Spain	Mr. Isidoro Antonio CALVO VIDAL	Civil law notary in la Coruna, ENRWA Vice President

Sweden	Prof. Hans Heinrich VOGEL	Professor of law at Lund University
United Kingdom	Mr. Richard FRIMSTON	Solicitor and Notary Public. Member of the European commission expert group PRM III/IV (Succession and wills) et PRM III (Property consequences of marriage)