EUROPEAN NETWORK OF REGISTERS OF WILLS ASSOCIATION (ENRWA)

"Cross-border Wills" (CroBoWills) Project

Summary report of national practices related to the opening of wills in Europe

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PRELIMINARY COMMENT

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Introduction

The European Network of Registers of Wills Association (ENRWA) was formed in 2005 on the initiative of the European Notariat. It currently has 17 members and 2 partners[1]. The objectives of this association include, in particular, facilitating searches for a deceased person's last will in foreign registers of wills thanks to the interconnection of registers. In late 2012, ENRWA obtained co-financing from the European Commission for the implementation of the "CroBoWills" project with the aim of taking stock of national procedures for opening wills discovered during a cross-border search. Within the framework of a previous project implemented by ENRWA, an extensive network of European registers of wills had been set up. This has made it easier and quicker to search for wills in foreign registers, after the testator's death, and to identify the precise place where the will is held. The legal professionals entrusted with settling the succession are then faced with the difficulty of accessing the content of the will, which they need to settle the succession. By examining, in all Member States of the European Union, the mechanisms whereby wills are opened and the information contained in them is disclosed, the "CroBoWills" project will generate ideas for improving this transmission in a cross-border context.

The entry into force in 2015 of the European regulation No. 650/2012 on cross-border successions and the creation of a European Certificate of Succession[2] is very likely to

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

[2] European Regulation No. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. It can be accessed at the address:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0107:0134:EN:PDF.

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increase the number of cross-border searches for wills insofar as, in principle, the purpose of a single law is to govern the entire succession[3]. The professional entrusted with estate settlement will therefore necessarily have knowledge of the wills left by the deceased, together with the content of such wills, so as to be able to fully respect the deceased's last wishes. In fact, the legal professional will be able to distribute the assets in accordance with the deceased's last wishes only after having examined the content of all the provisions *mortis causa* left by the deceased. The "Cross-border Wills" project does not, for all that, aim to examine the conditions in which wills circulate insofar as the original of that document is not necessary for settlement of the estate. Only knowledge of the information contained in the deceased's last will and testament is pertinent.

A questionnaire was sent to legal professionals entrusted with settling estates in all the Member States of the European Union. The purpose of that questionnaire was to draw up an inventory of all the national practices related to the opening of the will and to the communication of the information contained therein. The answers provided by those countries made it possible to draw up an inventory of practices related to the opening of wills and to write this summary report. It is important here and now to point out that this question is not generally governed by an overall legislative or regulatory framework but comes within the scope of an assortment of texts and professional practices. The latter vary from one country to another. It is however possible to identify points that they have in common, more often than not on account of the legal family on which national laws depend.

Three main judicial families co-exist within the European Union.

[3] The whereas clause No. 37 stipulates that the regulation should introduce harmonised conflict-of-laws rules, providing European citizens with greater predictability of the law that will apply to their succession as a whole, "irrespective of the nature of the assets and regardless of whether the assets are located in another Member State or in a third State".

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- Roman or Romano-Germanic law systems. They are characterised by the existence of authentic instruments. The latter was defined by the Court of Justice of the European Communities in the Unibank judgement, delivered on 17 June 1999[4]. The European Regulation on Cross-Border Succession contains this definition while specifying that it is an instrument which has been formally drawn up or registered as an authentic instrument in a Member State the authenticity of which:

  i) relates to the signature and the content of the authentic instrument and

  ii) has been established by a public authority or any other authority empowered for that purpose by the Member State of origin.

  In matters of succession, the States belonging to the family of Romano-Germanic law have a form of will with which the other systems are not familiar, the authentic will, drawn up by a civil law notary.

- "Common Law" judicial systems are characterised by the fact that there is no notary, no authentic instrument and no reserved portion of an estate.

- Mixed judicial systems. They borrow characteristics from both the previous systems. For instance, even though the reserved portion of an estate exists, the institution of the Notariat does not exist in those States and neither does the authentic will. As far

[4] According to the CJEU, the authentic instrument is a document the authenticity of which has been established by a public authority or any other authority empowered for that purpose by that State. It is therefore an instrument:

- established by a public authority or any other authority empowered for that purpose by the Member State in which it originates.
- drawn up in the required form.
- which authenticates the signature and the content of the instrument.

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as estate settlement is concerned, the particularity of those judicial systems is the extent of the involvement of heirs and legatees, without the mandatory involvement of a legal professional. Since the main form of will that exists is the will before witnesses, those witnesses will usually know where the will is being kept. They will therefore help the legatees to trace the instrument. Denmark is in a particular situation because, even if it comes within this judicial family, it has an additional form of will, the public will signed or registered with a "*Notary public*", a State official who may not however be compared to the civil law notary existing in countries belonging to the Romano-Germanic family[5].

These main judicial families are going to make it possible to identify similarities and divergences as far as the opening of wills (I) and the communication of the information contained in those wills (II) are concerned both in a national and cross-border context.

[5] The "*Notary public*" is going to certify a number of elements, such as the parties' identities and signatures but he does not assess the validity of the content of the instrument.

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I. Opening of wills

In the large majority of Member States of the European Union, the opening of wills is not the subject of a precise judicial framework. Consequently, national practices have been implemented, which sometimes seem disparate. By agreeing on shared terminology (A), it is however possible to identify the main trends in common in consideration of the person or of the authority entrusted with opening the instrument (B) and by examining the way in which the document stating the opening of the will, referred to as the "protocol of the opening of the will" (C) is drawn up. The cross-border context does not involve any specificity as far as the opening of wills is concerned (D).

A. Terminology

The objective of the "Cross-border will" project is the examination of the national procedures for opening of wills in all the Member States of the European Union. First and foremost, agreement is needed on the meaning to be given to the term "will" and, above all, to the instruments referred to by that term (1). Then, the opening of the will sometimes refers to different practices ranging from the mere reading of the instrument to the fulfilment of a specific procedure. The meaning of these terms in this summary report must therefore be made clear (2) together with such terms as "protocol of the opening of the will" (3), which refers to the document drawn up concomitantly with the opening of the will, if necessary.

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1. Will

The term "will" refers to standard forms of wills existing in each Member State[6]. The will may therefore be authentic, holographic, allographic, sometimes referred to as "before witnesses", mystic and international. The international will is the form laid down by the Washington Convention dated 26 October 1973 providing a uniform law on the form of an international will[7].

Extraordinary forms of will exist and vary according to the countries concerned[8]. An imminent danger or circumstances directly threatening the testator's life (battlefield, sinking ship, etc.) generally justify recourse to that particular formality which will subsequently have to be put into a proper form after the disappearance of the danger. Owing to their exceptional nature, such forms of wills comply with specific rules and will not be considered in this summary.

2. Opening of the will

Depending on the countries concerned, the procedure for opening the will may take varied forms, ranging from merely reading the instrument to the heirs to compliance with a specific formality. The terms "opening of the will" should be considered in their broadest meaning and encompass all the practices leading to awareness of the content of the instrument and thereby make it possible to analyse the methods according to which the deceased's last

[6] An exhaustive list of forms of wills existing in each member state can be found in "Review of the systems for registering and searching for wills in Europe", available on the site www.arert.eu/?lang=en.

[7] This convention can be accessed at the following address: http://www.unidroit.org/english%20/conventions/1973wills/1973wills-e.htm

[8] For example, forms of oral wills exist.

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wishes are known and communicated to the beneficiaries while taking judicial systems in their entirety and in their diversity into account.

3. Protocol of the opening of the will

All the Member States do not use the same terminology to refer to the document drawn up to certify the opening of the will, when a will exists. The content of that document is moreover variable[9]. The term "protocol of the opening of the will" was however chosen so as to be able to make it easier to bring the different judicial systems closer together. In the context of this summary report, it will mainly involve searching for the existence of such an instrument in the different Member States of the European Union and examining its content.

B. The person responsible for opening the will

In the Member States, the will is opened:

- by the deceased's close relatives (mixed judicial systems),
- or by a special judicial procedure (Common Law systems),
- or by a public authority, the court or the civil law notary (Romano-Germanic law systems).

In mixed judicial systems, and more particularly in Finland and in Sweden, the relatives of the deceased, usually the heirs or legatees, are the ones who have the right to open the will. Since the standard form of will is the will before witnesses, the latter will generally know where that instrument is to be found after the testator's death. This solution is explained by

[9] Cf. *infra*, C. Drawing up an official opening report.

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the fact that the heirs, in a broad sense, are the ones who will be entrusted with the settlement of the estate[10]. Denmark's situation has a particularity, insofar as it is a country where a form of will exists that does not exist in the other mixed systems: public wills. For instance, if wills before Danish witnesses will be opened by the relatives of the deceased, public wills will be opened by a public authority, the court.

In Common Law judicial systems, special judicial procedures lead the court to play a role at the time of the opening of a will. The court's role is variable according to the country concerned. In Cyprus, the register of wills consists of a system for depositing instruments. The executor or one of the heirs may obtain the material instrument, after the testator's death, only in the presence of the person responsible for the registration office, a court official, assigned to keep the last wills and testaments of the island's residents. In United Kingdom and Ireland, the will is actually opened after death by the executor named in the will or if none is appointed the heirs of testator who benefit under the will. Even though the estate settlement is carried out, not by a public authority, but by the *"personal representative"*, a judicial person distinct from the heirs, the court must generally intervene. In the majority of cases the will necessarily has to be forwarded to the court with a view to drawing up a "*grant of probate"* usually obligatory for carrying out the wishes contained in that will on English and Irish territory.

In Romano-Germanic law systems, the opening of the will is characterised by the involvement of a public authority, whether that authority is the court or the civil law notary. In some countries, both those authorities are competent, most frequently according to the form of the will.

First and foremost, the notary is the public authority who will be involved in most countries coming within this judicial family, in view of the major role that the notary plays in estate

[10] Court action is however filed in the event of dispute.

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settlements. 10 countries are concerned in this way (Belgium, Bulgaria, Estonia, France, Hungary, Italy, Latvia, Lithuania, Portugal, and Romania).

Then in 6 other countries (Austria, Croatia, Germany, Greece, Slovakia, Slovenia), the will is solely opened by the court or a person whom the court appoints. In some of these countries, the notary is actually required to play the role of "judicial commissioner" in the settlement of the estate, i.e. he is going to fulfil his duty as a person to whom public authority is delegated.

Lastly, there are 6 countries where both those public authorities are involved in the opening of the will, generally according to its form. In 4 of them (Luxembourg, the Netherlands, Malta and Spain), the notary is entrusted with opening authentic wills while recourse to the court is necessary for the opening of other forms of wills. The form of the will therefore determines the authority that is entrusted with the opening procedure. Poland and the Czech Republic are in an original situation, since the court or the notary may open the will without distinction, seeing that the will is in their possession, regardless of the form of the will.

Person responsible for opening the will in the Member States of the EU[11]

Who is responsible for opening the will?	The court or the court-appointed person (judicial commissioner, for example)	A notary	The deceased's close relations (heirs, legatees, simple holder of the will)
Austria	X		
Belgium		X	
Bulgaria		X	
Croatia	X		
Cyprus	X		

[11] This table explains how most wills are opened in EU Member States. It covers general patterns and does not take account of the various special cases in a number of Member States, usually relating to low-value succession, in which it is the family of the deceased who open the will, without the intervention of a public authority.

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Who is responsible for opening the will?	The court or the court-appointed person (judicial commissioner, for example)	A notary	The deceased's close relations (heirs, legatees, simple holder of the will)
Czech Republic	X	X	
Denmark Public will Will before witnesses		X	X
Estonia		X	
Finland			X
France		X	
Germany	X		
Greece	X		
Hungary		X	
Italy		X	
Ireland	X		
Latvia		X	
Lithuania		X	
Luxembourg Authentic will Mystic and holographic will	X	X	
Malta Authentic will Mystic will	X	X	
The Netherlands Authentic will Holographic will	X	X	
Poland	X	X	
Portugal		X	
Romania		X	
Slovakia	X		
Slovenia	X		
Spain Authentic will Holographic will	X	X	
Sweden			X
United Kingdom	X		

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In the large majority of Member States of the European Union, the task of opening wills falls to a public authority. On that occasion, the public authority will generally draw up an official opening report.

C. Drawing up a protocol of the opening of the will

The existence of a protocol of the opening of the will depends on the legal system in force.

In mixed judicial systems, no public authority is involved in the opening of the will and, more generally in estate settlement, no instrument is drawn up at the time when the will is opened. The relevant legal systems do however generally require a procedure intended to make sure that the existence of the will is communicated to legal heirs[12].

In Common Law systems, no protocol of the opening of the will is drawn up. In United Kingdom and Ireland, the grant of probate may however be considered as serving the same purpose as the previously mentioned document since it will contain the date of death and a copy of the will is appended to it. Such an instrument drawn up by the court having jurisdiction is moreover usually necessary for estate settlement.

In most Romano-Germanic law systems, a protocol of the opening of will is drawn up, although the contours of that practice vary in the 22 countries concerned. It will generally be drawn up after the last wishes have been read out to the heirs.

Firstly, in 9 countries, an official report is necessarily drawn up irrespective of the form of the will. In 5 of them (Austria, Croatia, Germany, Greece, Slovenia), the court or the judicial

[12] Cf. *infra*, II. The communication of information contained in the will, C. Recipients of the information.

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commissioner entrusted with opening the will draws up that protocol. In 3 others States (Hungary, Italy and Latvia), it is the duty of the notary to draw up such an instrument. In Poland, those two public authorities may draw up the protocol indifferently[13].

Next, in 11 countries of the European Union, a protocol is drawn up only for the opening of wills that have not been drawn up in the authentic form[14]. It thus seems that recourse to a public officer when the last will and testament is being drawn up exempts from drawing up an instrument subsequently to the testator's death. In most of those countries, the protocol of the opening of the will is generally drawn up by the notary (8 countries are concerned: Belgium, Bulgaria, Estonia[15], France, Lithuania, Malta, Portugal, Romania) and more rarely by the court (Luxembourg, the Netherlands and Czech Republic). There is a specific case in the Czech Republic where the opening of holographic wills before witnesses handed to a notary will not be the subject of a protocol of the opening of the will.

Lastly, in 2 countries (Slovakia, Spain), no document will be drawn up when the will is opened. The latter will then be simply read to the heirs by the public authority entrusted with opening it.

[13] As a reminder, in Poland, all the forms of wills may be opened by the notary or the court without distinction. It is therefore coherent that both those authorities may draw up protocols of the opening of the will.

[14] The situation in Estonia is unique in that a protocol of opening is drawn up for only one form of will, namely wills delivered to a notary in a sealed envelope (sealed wills).

[15] See preceding note.

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Existence of a protocol for the opening of a will in the Member States of the EU

	Does a protocol for the opening of a will exist?	To be opened by whom?	For which type of will?
Austria	Yes	Notary (judicial commissioner)	All
Belgium	Yes	Notary	All except authentic
Bulgaria	Yes	Notary	All except authentic
Croatia	Yes	Notary (judicial commissioner)	All
Cyprus	No		
Czech Republic	Yes	Notary (judicial commissioner)	All except authentic, holographic and before witnesses handed to a notary
Denmark	No		
Estonia	Yes	Notary	Wills deposited with notary in a sealed envelope
Finland	No		
France	Yes	Notary	All except authentic
Germany	Yes	Court	All
Greece	Yes	Court	All
Hungary	Yes	Notary	All
Ireland	No, but existence of a "grant of probate"	Court	All
Italy	Yes	Notary	All
Latvia	Yes	Notary	All
Lithuania	Yes	Notary	All except authentic
Luxembourg	Yes	Court	All except authentic
Malta	Yes	Notary	All except authentic
The Netherlands	Yes	Court	All except authentic
Poland	Yes	Court or notary	All
Portugal	Yes	Notary	All except authentic
Romania	Yes	Notary	All except authentic
Slovakia	No		
Slovenia	Yes	Court	All
Spain	No		

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	Does a protocol for the opening of a will exist?	To be opened by whom?	For which type of will?
Sweden	No		
United Kingdom	No, but existence of a "grant of probate"	Court	All

The exact content of the protocol of the opening of the will varies according to the countries but some elements seem to be common to a majority of them, or at least derive from the same idea. That idea is to certify death and the opening of the instrument containing the deceased's last wishes. The instrument frequently reproduces the content of those last wishes or a copy of them may be appended to it. When it records the opening of a holographic will, the protocol also contains elements describing the material conditions in which the will is found, sometimes going as far as a detailed description (specifying, for example, the detail of its format, the type of pen and ink, the presence of deletions or additions). If necessary, the state of the envelope containing the will is specified together with the identity of the person who handed it to the public authority entrusted with opening it.

Protocols of opening of the will exist in most Member States. Those instruments have the advantage of facilitating the communication of information contained in wills.

D. Lack of specificities of cross-border wills

Cross-border wills are wills that have been discovered or that have to be communicated to a country other than the country in which the public authority or the deceased's close relatives searching for them are located. Since the opening of last wills and testaments is seldom governed by national legislation, the process for opening cross-border wills is not

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defined within any specific framework, whether it concerns wills to be communicated to another country (1) or wills that have been discovered in that country (2).

1. Wills communicated to another Member State

Original wills usually do not leave the country in which they are discovered. They are kept according to the procedures defined by each set of national legislation. For instance, authentic wills are kept in the records of the notary who drew up those instruments and some countries lay down that they should be transferred to judicial archives when that professional terminates his duties. The other forms of wills may be kept by the notaries, the courts or by the actual heirs, as the case may be. The original of the will is opened by the appropriate professional according to the rules of his own country and the matter of communication of the will is only posed afterwards. Since the original of the instrument never leaves its country of origin, only a certified copy will be sent, possibly accompanied by the protocol of the opening of the will. In that way, wills are always opened according to the law and/or practice of the country in which they are kept.

2. Wills discovered in another Member State

Whenever a will is discovered in a Member State other than the country in which it should be applied, it raises the question as to how its forms and the provisions that it contains should be taken into account. The objective of the "Cross-border Wills" project is to examine the conditions in which the person wholly or partly entrusted with the estate settlement can obtain information about the content of the last will and testament; the matter of the effectiveness of such a will is not examined here[16].

[16] This matter currently comes within the scope of the rules of private international law in force within Member States.

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Furthermore, the form of wills discovered in another Member State is not generally a problem insofar as most EU Member States are signatories to the Hague Convention of 5 October 1961 on Conflicts of Laws Relating to the Form of Testamentary Dispositions. That Convention lays down a number of connecting factors so as to avoid conflicts of laws in that area. Article 27 of the regulation on cross-border successions contains the connecting factors listed in the Hague Convention, extending them to all the countries bound by that text[17]. That is why, within the EU, it is relatively rare for a provision *mortis causa* not to be valid as far as its form is concerned in another European Union country.

Although governed by law only to a small extent, the opening of wills does comply with principles common to the Member States of the European Union. Once the will has been opened, the information contained in that will must be able to be communicated so that the deceased's last wishes are respected.

[17] The United Kingdom, Ireland and Denmark are not bound by the provisions of the European regulation.

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II. Communication of the information contained in the will

Once the will has been opened, the information contained in it must be able to be communicated so as to ensure respect for the deceased's last wishes. Generally speaking, the transmitted documents (A) will be communicated in the form of a certified true copy, obtained from the person who proceeded with the opening of the will (B). The recipients of that information vary fairly widely within the Member States.

A. Communicated documents

The originals of wills are never transmitted. The original of the authentic will remains in the records of the notary who drew up the will or, sometimes, it is registered in the court records. The other forms of wills may be kept by the notaries, the court archives or sometimes one of the heirs. Documents that are required to be exchanged among legal professionals entrusted with estate settlements are, either the certified copy of the will or an abstract of the latter, or the certified copy of the protocol of the opening of the will that generally resumes the content of the will.

In mixed judicial systems, to the exclusion of Denmark, no legal professional deals with estate settlements. The form of communication of the will is imposed on legatees. They must serve, by way of the process server, the certified copy of the will of which they are the beneficiaries.

In Common Law systems, situations are varied. In Cyprus, the registration of the will consists of depositing the instrument at a registration office. Only the heirs and the executor may actually take the last will and testament from that register after the testator's death. The heirs and the executor therefore recover the original of the instrument and are free to pass

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on the information contained in the will in whatever form they wish. It is likely that only the copy of the instrument will be forwarded. In United Kingdom and Ireland, by contrast, once the court has issued the *grant of probate*, the will is kept in a public register. Any person may then obtain a copy of the last will and testament and of the *grant of probate*. Strictly speaking, there is no actual communication of the will, but it will be possible to obtain a copy of it by post.

In Romano-Germanic systems and in Denmark, all the countries agree that the legal professional entrusted with estate settlement forwards a certified copy of the will by post to the persons who may be the recipients of that information. In 10 of them (Austria, Croatia, Czech Republic, Germany, Hungary, Latvia, Poland, Portugal, Slovakia and Slovenia), that copy may solely be sent by post. In the others, it may also be sent by electronic means. As for the terms of the instrument, i.e. the meaning of the information contained in the will, 10 Member States accept its communication, 8 both by post and by electronic means (Austria, Belgium, Bulgaria, Estonia, France, Greece, Malta and the Netherlands) and two through letters only (Hungary and Latvia).

Forms of communication of the information contained in the will

Communication of the will?	Copy of the instrument		Terms of the instrument	
	By post	By electronic means	By post	By electronic means
Austria	X (authenticated copy)		X	X
Belgium	X	X	X	X
Bulgaria	X	X	X	X
Croatia	X			
Cyprus				
Czech Republic	X			
Denmark	X	X	X	X
Estonia	X	X	X	X

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Communication of the will?	Copy of the instrument		Terms of the instrument	
	By post	By electronic means	By post	By electronic means
Finland	X	X	X	X
France	X	X	X	X
Germany	X			
Greece	X	X	X	X
Hungary	X and delivered by hand		X and delivered by hand	
Ireland	X			
Italy	X	X		
Latvia	X		X	
Lithuania	X	X		
Luxembourg	X	X		
Malta	X	X	X	X
The Netherlands	X (official copy)	X	X	X
Poland	X (official copy)			
Portugal	X			
Romania	X	X		
Slovakia	X (copy certified through legal assistance)			
Slovenia	X			
Spain	X	X		
Sweden				
United Kingdom	X			

Within the European Union, a majority of the Member States accept that the certified copy of the will circulates among the legal professionals entrusted with estate settlements. A good many of them allow the certified copy to be sent by post and by electronic means[18]. The deceased's last will and testament may thus be taken into consideration in a Member State other than the one in which the will was drawn up or is kept. In actual fact, the circulation of the instrument as such is not necessary to allow the legal professional to settle

[18] As far as a certified copy is concerned, it is possible to send the copy by electronic means provided a secure electronic signature is used.

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the estate, only knowledge of its content is important. The onus is then on the legal professional whether or not to take the provisions of the will into account in the estate settlement, according to the rules of his national law (and as from 2015 according to the Regulation on Cross-border Successions).

B. The obtaining of information

The obtaining of a certified true copy of the will or of the protocol of the opening of the will is a more or less easy task depending on the country in which the public authority, the legal professional or the private citizen that proceeded with the opening of the will is located. Generally speaking, information may be obtained merely by applying to one of the latter parties. In a cross-border context, one of the main difficulties of the potential heirs located abroad therefore becomes the obtaining of the exact contact details of the person to whom they should apply. The diversity of judicial systems within the European Union does not make such a search any easier. In fact, if some countries precisely determine which public authority or which legal professional is empowered to settle the estate, in others, the actual heirs are the ones who may choose that authority, for example by going to the notary of their choice.

In mixed judicial systems, (Finland, Sweden and for wills before witnesses drawn up in Denmark), information is obtained by applying to the heirs and the legatees formed as a separate legal entity referred to as the *distributee*. In that case, the identification of the *distributees* in a cross-border context seems a source of difficulties, particularly if there are no close relatives in those countries.

The situation is variable in Common Law judicial systems. In Cyprus, since wills are kept by an official responsible for a registration office, the document containing the last wishes may

only be obtained by actually going to that office. In the United Kingdom and in Ireland, it is usual to appoint an executor. At the time of death, the will belongs to the executor and information relating to the last wishes may therefore obtained from that person. Failing an executor, the heirs may be contacted. In both those countries, wills become public after the issue of a grant by the court. Once that formality has been accomplished, it is also possible to obtain a copy of the last will and testament from the court having jurisdiction.

Two situations may be encountered in Romano-Germanic law systems. In most of those countries (Belgium, Bulgaria, Estonia, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovenia), the legal professional who opens the will may send information abroad relating to the content. That professional is either chosen by the heirs or appointed by law.

In a minority of countries coming within that judicial system (Austria, Croatia, Czech Republic, Latvia, Slovakia), information is obtained through a long and complex procedure involving recourse to mutual judicial assistance in order to communicate information to a foreign country. Generally, those are countries in which the court or a person appointed by the judge is competent to open succession proceedings. Mutual judicial assistance requires the existence of a bilateral or multilateral agreement[19] which defines the requirements and the form in which an instrument may be requested by the authorities of another country. It involves applying to the Ministry of Justice of one's own country who will request assistance from his counterpart. The latter will then search for the holder of the instrument and will communicate his certified copy if the person making the request is entitled to receive it.

[19] These bilateral agreements generally go beyond the mere framework of the communication of the last will and testament and refer more generally to cooperation in civil matters.

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C. Recipients of the information

As far as the recipients of information relating to the provisions of deceased persons' last wills are concerned, national practices do not differentiate as to whether such information must be communicated to persons located inside or outside national territory. This is an area where a variety of situations exist in Member States, ranging from widespread communication to a situation where information is imparted solely to the heirs and legatees, and include the most frequent case where information is communicated to any person having a legitimate interest. Depending on the countries, recipients of information may therefore be any person (1), any person having a legitimate interest (2) or solely the heirs and legatees.

1. Any person

In five Member States, the will is considered as a public document to which any person may have access, either after the testator's death (Malta and Portugal) or after the fulfilment of some formalities generally connected with the opening of the instrument (United Kingdom[20], Ireland[21] and Italy[22]). It is then possible to obtain a certified copy of the testator's last will by applying to the public authority that proceeded with the opening of the instrument or fulfilled the necessary formalities

In Sweden, the heirs may enclose the will with the inventory of the deceased's assets sent to the tax authorities. In that case, the will becomes public, since transparency is the principle in that country regarding public documents.

[20] After the issue of the *grant of probate* by the court.

[21] After the issue of the *grant of probate or a grant of Letters of Administration* by the court.

[22] After publication of the will.

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2. Any person having a legitimate interest

Most Member States agree that the information contained in the will may be communicated fairly widely to any person having a legitimate interest, whether that person is a private citizen, a government service or any other national or foreign, public authority[23], acting on behalf of a person having such an interest. For example, that will be the case for the Tax Authorities which generally needs to know the content of the will in order to calculate the taxes relating to the inheritance.

This criterion of legitimate interest refers to the idea according to which only those who are concerned by the provisions of the will are entitled to be aware of the will's exact content. This is assessed by the public authority that opens the will, according to the procedures defined by its own national law. In some legislation, the list of persons having such an interest is precisely defined[24] whereas, in others, it will be according to the specific case and it will always be possible for the court to assess how that criterion is applied. The same criterion will be used when the request for information about the content of the will originates from a foreign country. It then risks being assessed differently between the person who makes the request for information and whoever receives it. For example, the case of heirs deprived of rights by the will is assessed differently by the Member States. In some countries, a copy of the will may be forwarded to them, whereas, in others, they will have to be content with the statement by the public authority that they are no longer the deceased's heirs. Differences of appreciation may be a source of difficulties in a cross-border context and some persons may find themselves faced with a refusal to communicate a last

[23] Whether it is the court or the notary.

[24] In Belgium, for example, these are the "interested parties", i.e. legal heirs, legatees and persons deprived of their rights by the will.

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will and testament located in a foreign country even though they would be entitled to such information in their own country.

3. Heirs and legatees only

A small number of countries reserve the information contained in the will to the heirs and legatees alone, to the exclusion of any other persons, including public authorities. *A fortiori,* when they are located in a foreign country, the latter may neither obtain a copy of the will nor information about what it contains. In those countries, (Cyprus[25], Latvia and Spain), the law generally lays down a previously determined list of persons who are authorised to receive information. Private citizens or professionals entrusted with estate settlement may not obtain information about the deceased's last will and testament from the public authority having proceeded with the opening of the will. They therefore have to apply to the heirs or legatees. If such a request involves few difficulties in a national context, it risks being more problematical as far as cross-border successions are concerned where the identification of the beneficiaries of the will and of the heirs may prove to be difficult or identification will take longer at the very least. Cross-border estate settlement may therefore be slowed down by such a search.

Lastly, two countries are in a particular situation owing to the fact that the will is not opened by a legal professional. In Finland and in Sweden, the obligation to notify the legal heirs of the content of the will lies with the legatees. That notification shall take place by way of the process server. However, although a requirement is imposed concerning communication to the legal heirs, no text forbids communication of the information to whomever they deem appropriate.

[25] An original feature of the Cyprus situation is that the heir or the legatee is required to be physically present. The registrar actually hands over the envelope containing the will to a person physically present.

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To end, in all the judicial systems, it will always be possible for the persons who have received a copy of the will or information about its content to communicate that information freely.

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Conclusion

The rules and practices governing the opening and the transmission of wills are varied within the Member States. However, the different law systems may be grouped within major trends allowing the exchange of information among most Member States. For instance, wills are opened by a public authority in almost all the countries. At the time the will is opened, a protocol, the content of which is similar, is drawn up in two-thirds of the Members States. Communication of the copy of the will is generally allowed among legal professionals entrusted with estate settlements located in two different Member States. However, the differences in methods of communication combined with the complexity of some procedures make it difficult to obtain information within a short period of time, so slowing down the settlement of cross-border successions. By contrast, a considerable number of countries accept that the copy is sent electronically, thus opening the way to more thorough reflection on the subject of recourse to new technologies so as to facilitate and speed up such communication. The entry into force in 2015 of the regulation on cross-border successions is very certainly going to increase the number of cross-border will searches and, when an instrument is discovered, the person entrusted with estate settlement will need to obtain the content of that will. Anything that can facilitate and speed up the exchange of information in this matter, whether it involves the development of networks of co-operation among professionals or the use of computer tools, will therefore contribute to consolidating the area of justice, freedom and safety for European citizens.

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