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From: The European Network of Registers of Wills Association (ENRWA)
To: Working Party on e-Law (e-Justice)

Subject: The interconnection of registers of wills in the EU
- State of play and future planning

Delegations will find attached document by the European Network of Registers of Wills Association (ENRWA).



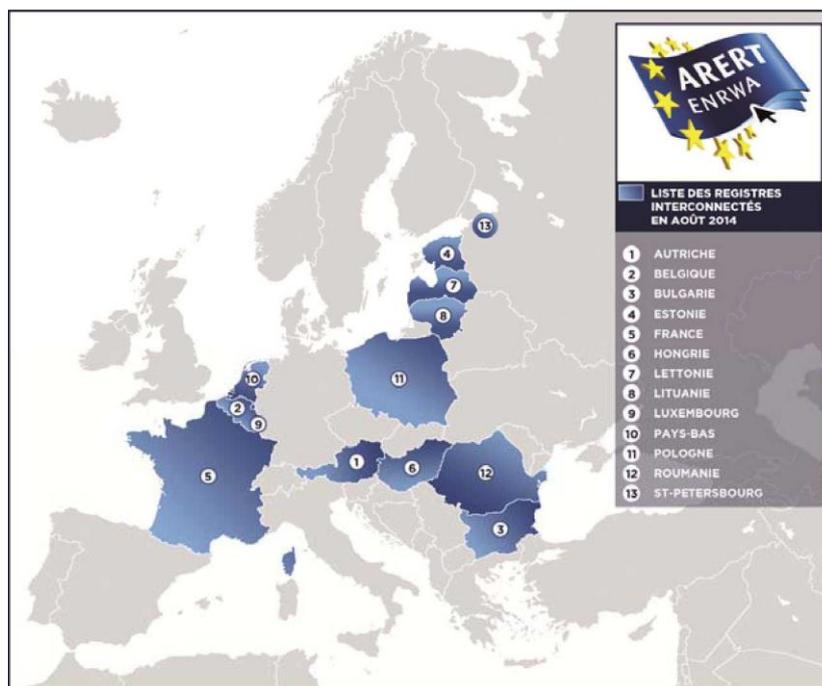
Council of the EU, "E-justice" working group

The interconnection of registers of wills in the EU: state of play and future planning

As part of the settlement of a succession, it is essential to ensure compliance with the deceased's last wishes. To that end, all the wills that the deceased has drawn up must be found, since a will that is not found is equivalent to a non-existent will ... and therefore to last wishes that are not executed and not respected. A solution needs to be found for the 742 million Europeans and the 450,000 cross-border successions, whose numbers are increasing from year to year because of the free movement of persons and goods.

The primary objective of ENRWA (European Network of Registers of Wills Association) is to put in place and ensure the widespread adoption of a public policy tool that enables European citizens to trace all wills drawn up and registered in Europe, via the creation of registers of wills, where no such register exists, and thanks to the interconnection of existing national registers.

At the current time, 13 registers are interconnected via the ENRW platform, thanks to the work carried out by ENRWA and the support of the European Commission¹. There are still some obstacles that need to be overcome (I) and challenges to be met (II) in order to expand this network.



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¹ Between 2010 and 2012 the European Commission co-financed the "Interconnection of European Registers of Wills (IRTE)" project which helped to finance the work involved in connecting up six registers of wills.



I. The obstacles to be overcome

1. The lack of a register designated by a public authority in the spirit of the Basel Convention of 16 May 1972 on the Establishment of a Scheme of Registration of Wills

Update: first of all, some States do not have a register at all or, if they do, their register is not sufficiently organised to enable them to exchange information with their European counterparts (*Greece, Finland and Sweden*). In the *United Kingdom*, the register which contains the references of the largest number of will is a commercial venture. This State, which has signed, but not ratified, the Basel Convention, has not designated a national body as a contact point for the other national bodies designated as such in their country. As these States cannot be interconnected, they deny their citizens the possibility of locating wills from a State other than the one where it was filed.

Possible solution: encouraging Member States to designate a body with responsibility for will registration and searches, in accordance with the spirit and meaning of the Basel Convention, both at national level and abroad, would help to establish the legitimacy of some of them.

2. The existence of a register but no network interconnection

Update: some States have a register of wills but have not yet connected it with the other registers (*Croatia, Czech Republic, Slovakia and Slovenia*). These States often mention restrictive national laws as the reason for the absence of network interconnection. However, such laws have not prevented certain registers in a similar situation from connecting with other registers (see *point 3*). Therefore, these States deny their nationals the possibility of locating a will that might have been left abroad by a deceased person, and deny nationals of the other Member States access to the information contained in their registers.

Possible solution: an initiative by the European Union in favour of the interconnection of registers, as proposed by ENRWA, would help to overcome this difficulty.

3. The lack of reciprocity in exchanges of information because of excessively stringent national laws

Update: some national laws do not allow the national register of wills to be searched by a foreign register. More specifically, the national law limits the consultation of the register solely to the national judicial commissioner appointed by the courts to settle the succession. By extension, a judicial commissioner appointed by a court of another Member State or legal professionals based abroad cannot search the register, even when they have been requested to do so by the deceased's heirs, residing in another Member State. However, the only information returned by the ENRW platform is that relating to the existence of a will (and not its content) and, if applicable, the contact details of the professional who holds the will, in accordance with the Basel Convention.



The States which find themselves in this situation are *Austria and Hungary*, connected to the ENRW platform, but only to search the other registers. This means that although the citizens of these States can locate the wills of family members drawn up or filed abroad, their heirs residing in another State will not be able to ascertain the existence of wills registered in said States, and it will therefore not be possible to respect the deceased's last wishes.

Possible solution: only a change to national legislation making it possible to search the register will overcome this obstacle and enable the citizens of the other Member States to locate wills in their country.

4. The fact that interconnection is not a political priority

Update: some registers of wills are managed by a ministry, generally the Justice or Finance Ministry. Others, although in the public sector, have had their management delegated to an organisation which is not part of the central administration, such as a Notariat. ENRWA, the association which manages the register interconnection platform, is a private not-for-profit association. Some States (*Spain and Italy*) therefore see joining a private association as an obstacle. Nevertheless, it is not necessary for the register's manager to be a member of the association for the register to be interconnected.

Possible solution: ENRWA has put in place a partnership system offering States the possibility to establish a legal framework for cooperation with a view to interconnecting with the Network. In this way their nationals are not denied the possibility of locating a will that might have been left abroad by a deceased person, and the nationals of the other Member States are not denied access to the information contained in their registers. At the same time, the Notariat, which plays a key role in successions in most Member States, may be a member of the association (*Luxembourg*), without that necessarily being the case (*Estonia and Lithuania*).

II. The challenges to be met

1. Changing the business model

A person who registers his or her will wants it to be found, so that their last wishes are respected and executed. Therefore, testators also want foreign registers to be able to search the national register where their will is registered, because they often do not know, when drawing up their will, in which countries they will work or live subsequently. It would therefore be logical for testators to finance the cost of the European disclosure of their will after their death. This cost could be a modest amount of a few euro cents, based on the large number of registrations in European registers of wills. Searches could be free in order to make it a standard practice for legal professionals entrusted with settling successions in the EU to carry out a European will search, without imposing a heavy financial burden on them.



Update: at the current time, ENRWA's business model provides for a remuneration based on the number of searches made during the year for each register of wills. This model was necessary to finance the initial investment, mainly borne by the members on the initiative of the network, by European grants for the interconnection of certain registers, and by the membership fees of ENRWA members.

Possible solution: as the system is now operational and brings together 13 registers, it would be conceivable to change the business model and adopt an approach based on registration-based remuneration and free searches. Obviously, this change in the business model should be spread over several years in order to allow for the time needed to adapt the national regulations. It could be accomplished on the basis of a voluntary initiative by the Member States, or otherwise on the basis of a European initiative.

2. A European registration and search policy

Update: the registration of a will in a register of wills must not be a condition of the will's validity, in accordance with rights in the vast majority of Member States.

Possible solutions:

- first of all, an initial solution would be to introduce a regulatory obligation for all wills to be registered, without non-compliance with this obligation being grounds for the invalidation of the will;

- a second solution would involve an information policy designed to encourage European citizens and the legal professionals whose services they use to register their wills and to search for the wills of their family members in all European registers of wills. This information policy could be based on an initiative of the Member States themselves, or otherwise a European-level initiative. It is vital to promote such registration in order for wills to be found on the death of the testator. Similarly, the legal professionals who settle a succession must make a practice of searching both their national register and other registers. Although some of them have already developed the practice of registering and searching for wills, others have yet to do so.