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NOTE

From: the Estonian delegation
To: Working Party on e-Law (e-Justice)
Subject: Interconnection of Registers of Wills
- Final report

Delegations will find attached the final report from the Estonian delegation on the work carried out in the context of the expert group on interconnection of registers of wills.

e-Justice Expert Group Interconnection of Registers of Wills Final Report

Executive Summary

This final report summarises the work done in the framework of the project and expert group on „Further developments in the area of interconnection of registers of wills“ (hereinafter referred to as the “ICRW”).

The ICRW was launched based on the Multiannual European e-Justice Action Plan 2014-2018, which stipulates that an informal expert group on the interconnection of registers of wills should be created in co-operation with the Member States and notaries.

The European e-Justice 2014-2018 Strategy states that e-Justice projects must have the potential to involve all Member States and the interconnection of national registers containing information that is relevant to the area of justice should be promoted.

Based on these principles, the main goal of the ICRW was formulated.

The project co-funded by the European Commission¹ was led by the Estonian Ministry of Justice in close cooperation with the Centre of Registers and Information Systems and with project partners². The participants of the e-Justice expert group represented an average of 20 Member States and the Council of the Notariats of the European Union (hereinafter referred to as the “CNUE”).

¹ JUST/2014/JACC/AG/E-JU/6966

² ENRWA, EE - Chamber of Notaries, LT - The State Enterprise Centre of Registers, ES - Ministry of Justice, General Direction of Registers and Notaries, IT - Notartel S.p.A., HU - National Chamber of Civil Law Notaries, AT - Chamber of Civil Law Notaries, EL - Ministry of Justice, BG - Registry Agency.

The overall goal of the ICRW project was to contribute to the implementation of the e-Justice Action Plan by exploring and enhancing the possibilities for exchanging succession related information and documents electronically between the Member States in order to improve and fasten the cross-border communication in succession matters.

The main topics of the work were to:

- map the current state of play of the Member States (obstacles, existing policies, financing models, ICT systems etc.);
- share the best practices of the Member States;
- screen and update the succession related factsheets of the e-Justice portal;
- carry out a feasibility study for a secure electronic tool for cross-border transmission of certified copies of wills;
- draft recommendations for electronic wills registration, data and document exchange;
- create an XML standard structure for the European Certificate of Succession and for its application.

During a period of almost two years, current succession proceeding practices of the Member States and existing information technology systems were studied and as an outcome the specific suggestions were provided.

Below a brief overview about the main activities, findings, conclusions and recommendations is outlined.

1. Legal background

Even though there is no definition for the term “cross-border succession” or “international inheritance”, it presumably involves the cases where the estate, the deceased or the persons entitled to the estate are in different countries.

So, persons settling cross-border succession cases should take into account both European Union as well as national legal framework of the Member States.

The European Union legal instruments having the importance to the area of succession are as follows:

- The Convention on the Establishment of a Scheme of Registration of Wills, drawn up within the Council of Europe by a committee of governmental experts under the authority of the European Committee on Legal Co-operation (CCJ), was opened to signing by the Member States of the Council on 16 May 1972, in Basel (hereinafter referred to as the “Convention”).
- The Regulation (EU) 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 (hereinafter referred to as the “Succession Regulation”).
- The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- The Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (hereinafter referred to as the “e-IDAS Regulation”).

National succession related regulations were studied during the polls³ of the ICRW project. The Member States referred to the national data protection rules and to the regulations governing the work of the notaries. It became evident that national rules apply also in cross-border cases and national strict legislation may prevent the information exchange regarding wills in cross-border cases. However, it mainly concerns the question who is entitled to receive the information.

³ 11169/1/15 REV1 EJUSTICE 95 JUSTCIV 194; 12961/16 EJUSTICE 158 JUSTCIV 253

2. Report of the Activities

Below the information about the activities, deliverables and results of the ICRW project and expert group is provided.

2.1 Information gathering

As a first step, the European Network of Registers of Wills Association (hereinafter referred to as the “ENRWA“) was invited to present the current situation⁴ at the e-Law (e-Justice) Working Party meeting on 25 September 2014. State of play together with the main obstacles to overcome and challenges to be met were highlighted.

An initial ICRW mandate was discussed at the first expert group meeting on 18 November 2014 and a decision of compiling a questionnaire for gathering information about the current state of play of the Member States was made.

The questionnaire⁵ was distributed to the Member States in June 2015 and 24 Member States⁶ provided their answers. Based on that, a document containing all the answers⁷ and a summary document⁸ outlining the main findings were drafted.

The main findings and conclusions demonstrate that obstacles preventing development of the area are either legal, technical, financial or organisational. In some cases strict national laws do not allow information exchange on existence of wills. Notaries mentioned difficulties in finding authorities handling the case and receiving responses from another Member State authority in cross-border cases. Although, the ENRWA platform interconnects 16 national registers of wills and has improved the situation significantly, the cross-border reciprocal data exchange is still not possible in some cases even within ENRWA. With regard to the transmission of the content of wills, currently regular post service or e-mail exchange is used. In order to forward the information via secure electronic means in the future, Member States were asked to map the possible data protection and legal questions that may arise.

⁴ 13003/14 EJUSTICE 76

⁵ 8567/1/15 REV1 EJUSTICE52 JUSTCIV96

⁶ AT, BE, CY, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SI, SK, UK

⁷ 11169/1/15 REV1 EJUSTICE 95 JUSTCIV 194

⁸ 13215/15 EJUSTICE 129 JUSTCIV 242

As an additional input, the suggestions for possible future activities were outlined by the Member States.

Based on the information gathered from the notaries and Member States, the general framework of the ICRW was designed.

2.2 Exchanging the best practices

There were nine ICRW expert group meetings altogether during the period of 2014 – 2016.

Timetable of the ICRW meetings								
18/11/ 2014	27/01/ 2015	12/05/ 2015	8/09/ 2015	12/11/ 2015	2/02/ 2016	2/03/ 2016	3/05/ 2016	21/09/ 2016

For the purposes of sharing the know-how and best practices the partners of the ICRW project were invited to introduce their national systems at those meetings.

So, Austria, Hungary, Lithuania, Spain, Italy and Estonia presented their national systems and ENRW, EUFides and e-CODEX platforms were introduced by the system owners or project leaders.

2.3 Screening and updating the succession related factsheets of the Portal

The purpose of the e-Justice Portal is to provide specific and up-to-date information on justice systems and to improve access to justice for the EU citizens and legal practitioners in every official language of the EU.

In order to find out the Member States' position on the factsheets of the Portal, the specific poll was launched by the Hungarian delegation in the frame of the e-Law (e-Justice) Working Party. Results of this poll⁹ revealed that there are still some aspects requiring attention and a certain amount of restructuring would be necessary.

⁹ 9208/15 EJUSTICE 62

Possible suggestions for the succession related factsheets of the Portal were discussed at the expert group meeting and the document¹⁰ with concrete suggestions was presented to the e-Law (e-Justice) Working Party.

As a result, the Commission decided to restructure the taxonomy tree regarding the information about wills, which were moved under the succession factsheet of the Portal. In addition, the information regarding inquiry and data exchange on wills, and respective links to the factsheets on ENRWA's homepage and to the Successions in Europe website (held by CNUE) were included. Also, the functionality "Find a notary" is now outlined there.

For more, the EJM-civil has established a working group on issues relating to information exchange in the context of the Regulation, and as the work is ongoing, the additional brochures and information could be added to the Portal.

2.4 Feasibility study for a secure electronic tool for cross-border transmission of certified copies of wills

The scope, methodology and timetable of the ICRW feasibility study¹¹ was discussed at the ICRW meeting held on 2 February 2016. It was decided that an additional survey regarding the exchange of data and content of wills should be conducted among the Member States in order to gain deeper insight into the succession related cross-border data exchange. The questionnaire was forwarded to the Member States on 30 May 2016. 19 Member States and CNUE provided their answers¹².

The survey revealed differences between the EU Member States in terms of exposure of data as well as regarding persons entitled to receive the information about the existence or content of wills. There are some Member States that currently would not be able to provide such information electronically, mainly because of their national legislation, as well as because of the absence of widely used secure information networks in succession matters.

¹⁰ 11170/1/15 REV1 EJUSTICE96 JUSTCIV192

¹¹ 12953/16 EJUSTICE 157 JUSTCIV 252

¹² 12961/16 EJUSTICE 158 JUSTCIV 253

Because of these differences, it could be stated that more detailed information in a uniform and simple manner regarding succession matters should be presented. For this purpose, the usage of ICT solutions could be promoted and applied in order to engage all interested parties and to make the cross-border communication procedures more transparent and less time-consuming. The Member States' national legislation, specific needs and differences in practices should be taken into account.

As the sustainability and wider usage of already existing systems is essential in the area of e-Justice, various currently available ICT solutions and network connections were outlined in the study. However, a detailed analysis regarding technical requirements and costs involved should be carried out by the information system owners as a possible next step, especially in relation to the e-IDAS standardized solutions applicable to the public sector and governmental institutions.

The recommendations, alternatives and possible steps for a wider delivery of information on wills and for greater access to the information were presented in the study. More specifically, a multi-layered approach outlining an initial list of concrete activities, functionality expectations and user access classification were provided.

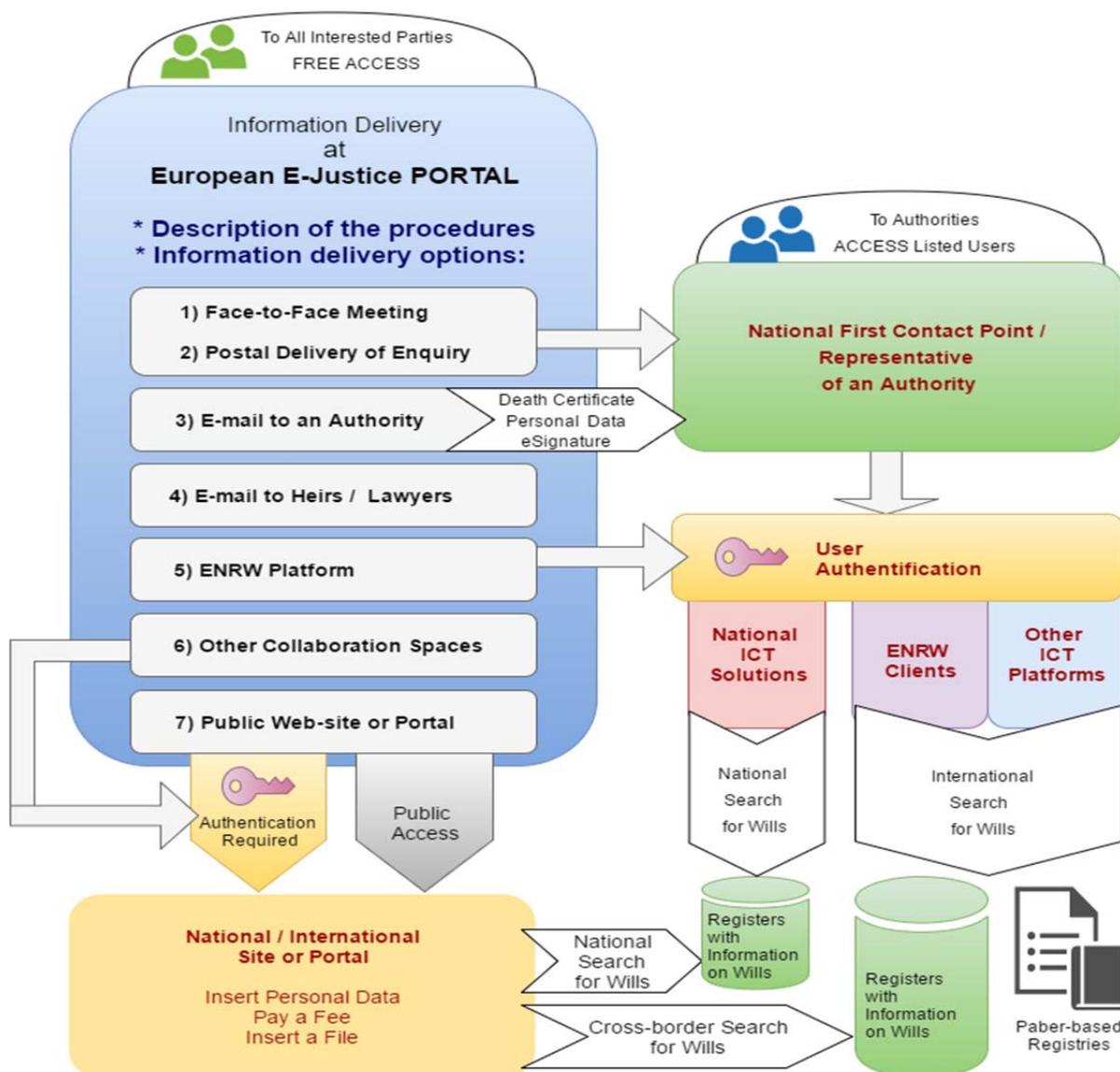


Figure 1. An overview of possible layout of an ICT solution for receiving information on wills.

As a conclusion of this study it may be stated that digital access to information, interoperable ICT systems and a secure connection channel for linking different types of existing systems could be considered a flexible way for developing the area of interconnection of registers of wills further by involving all Member States and interested parties.

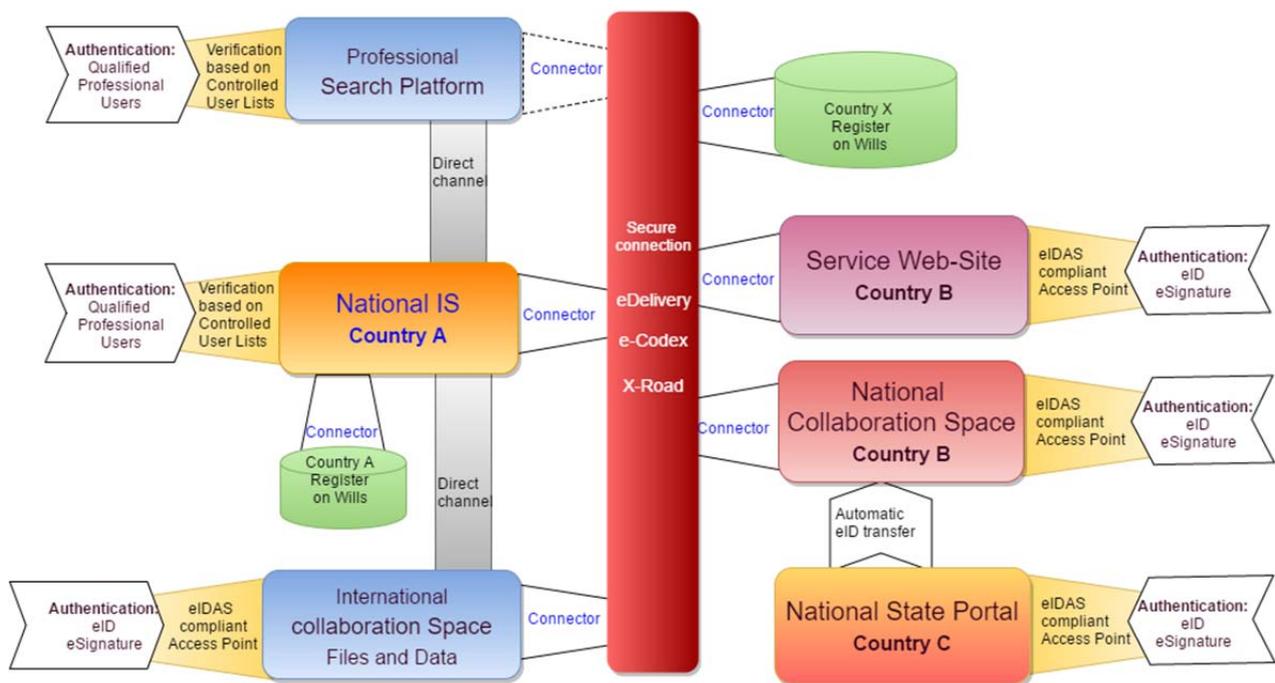


Figure 2. Overview of possibilities for connecting information systems over secure network connections, and for authenticating users of the network of interconnected systems.

Member States are invited to assess the possibility of following the recommendations of this study, based on their specific needs, future strategic visions and funds available.

2.5 The ICRW recommendations on electronic will registration and data exchange

In addition to the obstacles outlined in section 2.1 preventing the further developments of the area, the results of the poll revealed that in some cases it is difficult to reach the necessary political decision. Therefore, it is important to keep the political level informed through different channels. The creation of a recommendation policy designed to encourage European citizens and legal professionals to register wills and to exchange information across borders is one way to raise awareness and to draw attention to the necessity for smoother and more secure electronic communication in the succession matters.

Recommendations document invites Member States to overcome their internal obstacles and to implement the necessary national measures for contributing to the cross border cooperation and to the electronic information, data and document exchange. However, the differences in the Member States' practices as well as the principles of interoperability and decentralisation should not be put aside. Potential synergies with existing projects and work already undertaken should also be taken into account.

An initial discussion of the structure and content of the document was launched at the ICRW expert group meeting on 2 March 2016 and the draft document was presented during its meeting on 21 September. The document¹³ was considered final by the ICRW expert group on 12 October 2016.

The recommendations contain legal, technical and organisational suggestions for possible further activities. Some of the aspects are highlighted below.

Firstly, the legal aspects point out that the Member States not yet acceded the Basel Convention of 16 May 1972 on the establishment of a scheme of registration of wills, are invited to base on that and to consider the accession. It is stressed that national legislation should enable smooth electronic cross-border reciprocal information, data and document exchange and further relevant data should be registered and exchanged in order to ensure the availability of necessary information to the professionals and persons with legitimate interest.

Under the section of organisational aspects the importance of cooperation and awareness raising activities are outlined, as well as the importance of continuous dialogues for further developments between the Member States and already existing networks (ENRWA, EUFides, e-CODEX etc.). As during the poll notaries mentioned difficulties in finding authorities handling the case and receiving responses from another Member State authority, the recommendations document invites Member States to determine a reasonable period of time for answering an enquiry from another Member State.

¹³ 11993/1/16 EJUSTICE 143

Technical aspects stress firstly that electronic solutions following high-standard security principles and data protection rules should be preferred in this area. For the purpose of an easy access to the justice, an interactive tool could be created into the e-Justice portal, which directs a person to the right contact point providing necessary information along the way. e-IDAS compliant authentication mechanisms should be enabled for providing access to the Member States' national digital contact points. Digitalisation of registered wills creates the possibility for transmitting wills to the professionals or persons with legitimate interest by electronic means, which is why this aspect is also mentioned and briefly explained in the document. And finally, it is stressed that a lawful use of the register has to be verified and actions logged in order to guarantee the legitimacy of the data held in the register.

The Working Party on e-Law (e-Justice) is invited to discuss the recommendations document during its meeting on 25 October 2016.

2.6 The European Certificate of Succession

The Succession Regulation entered into force on 17 August 2015, established European Certificate of Succession (ECS) and set the obligation to keep information related to the ECS. Still, the Regulation does not state whether certificates should be registered electronically, however digital by default should be the preferred option in EU.

Since Estonian national registers are kept electronically, and the information related to ECS is also registered in the electronic Succession Register, a prototype¹⁴ of the national solution on electronic registration, inquiry and data exchange system of ECS¹⁵ were created and introduced by the Estonian Centre of Registers and Information Systems at the e-Justice cooperation mechanism forum in June 2015.

¹⁴ <https://succession.rik.ee/>

¹⁵ 7837/15 EJUSTICE 30

As a second part of the work done regarding ECS, the semantics, XML schemas and business process description document were compiled based on the Commission Implementing Regulation (EU) No 1329/2014 and for the purpose of creating a dynamic forms for the e-Justice portal. The business process document¹⁶ describes the ECS issuing process in general, as exact business process rules depend on technical readiness and national legislation of each Member State. The semantics documentation¹⁷ describe and find a common understanding on the definitions of the data fields and business rules having an effect on filling in the form and for the structure of an XML.

XSD schema files for ECS together with a detailed XML identifier list and respective supplementary element descriptions were forwarded to the Commission in June and the dynamic ECS form should be made available in the portal in November. Work with the Application of ECS is still ongoing.

3. Next steps

Now, as the work of the ICRW has reached to an end and the finalisation process is ongoing, the publication of the project results should be launched. Information should reach to the EU citizens, notaries and officials handling the succession proceedings. The main communication channels to be considered are the professional networks, websites of the authorities who participated in the project, and the e-Justice portal. A brief information note about the work done in the ICRW project and its expert group will be prepared and shared for this purpose.

Still, despite the fact that the expert group activities have ended, the work should be continued by the practitioners in order to develop the area further and to start the implementation of the ICRW recommendations.

In the frame of the final implementation assessment of the current e-Justice Action Plan, also an overview regarding the developments of this area could be given. Based on that, the decision about the necessity to include a follow-up project to the third e-Justice Action Plan could be made.

¹⁶ 5432/1/16 REV1 EJUSTICE 7 JUSTCIV 10

¹⁷ 5430/16 EJUSTICE 5 JUSTCIV 8, 11995/16 EJUSTICE 144 JUSTCIV 226