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Subject: Conclusions of the Council and the Representatives of the Member States meeting within the Council on interconnection of electronic registers of wills
- Conclusions of the Council and the Representatives of the Member States meeting within the Council (7 December 2017)

Delegations will find in the annex the Conclusions of the Council and the Representatives of the Member States meeting within the Council on interconnection of electronic registers of wills, adopted by the Council at its 3584th meeting held on 7 December 2017.

**Conclusions of the Council and the Representatives of the Member States
meeting within the Council
on interconnection of electronic registers of wills**

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE
GOVERNMENTS OF THE MEMBER STATES

1. TAKE NOTE of the results of a survey¹ carried out in the framework of the e-Justice project 'Further developments in the area of the interconnection of registers of wills' (hereinafter the 'IC RW project'), showing that challenges preventing development in this area may be summarily classified as legal, technical or organisational.

2. ACKNOWLEDGE THAT:
 - a) In some cases Member States face legal, financial and technical challenges regarding information exchange on wills,
 - b) Notaries have mentioned difficulties in finding the authorities handling their case and in obtaining responses from another Member State authority in cross-border cases,
 - c) Although the platform of the European Network of Registers of Wills Association (ENRWA) interconnects 15² national registers of wills and makes it possible to ask for information about the existence of wills, which has improved the situation significantly, cross-border reciprocal data exchange is still not possible in some cases even within ENRWA.

¹ 11169/1/15 REV1 EJUSTICE 95 JUSTCIV 194.

² AT, BE, BG, EE, FR, DE, EL, HU, LV, LU, NL, PL, SK, RO, St. Petersburg (Russian Federation).

3. AGREE THAT it would therefore be desirable to, on a voluntary basis, develop the area of interconnection of electronic registers of wills further, in order to improve communication across the European Union, for the profit of citizens and legal practitioners, dealing with cross-border succession cases by carefully analysing the potential of every already existing tool (ENWRA, EUFides, e-CODEX etc.).
4. RECOGNISE THAT providing specific guidelines for enhancing developments in the area of interconnection of wills registers could be valuable for Member States willing to take further steps regarding electronic wills registration and data exchange.
5. AGREE THAT the guidelines prepared by the expert group on interconnection of registers of wills, intended for citizens and legal practitioners dealing with succession cases in the European Union are meant to be seen as an indication of the possibilities offered by modern technology which could be explored on a voluntary basis in the future.
6. IN LIGHT OF THE ABOVE, INVITE MEMBER STATES TO:
 - a) take note of the advantages of using modern electronic solutions for registration of wills and for exchanging information related to succession matters,
 - b) acknowledge that the objective of more effective succession proceedings settlement could be achieved by enhancing cross-border cooperation on a voluntary basis and in accordance with the Member States' national legislation and succession practices, and
 - c) reflect on the guidelines, as set out in the Annex to these Conclusions, as a voluntary means to improve cooperation in cross-border succession cases.

7. INVITE THE COMMISSION TO:

- a) acknowledge that cross-border information exchange for succession cases would need to achieve security compliance with Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC,
- b) provide an interactive tool on the e-Justice Portal to direct a person to the national contact point responsible for succession matters or to such national digital access point, if applicable, providing necessary information along the way,
- c) publish the national requirements necessary for a successful enquiry on existence of will on the e-Justice Portal, and
- d) publish these guidelines on the e-Justice Portal.

**Guidelines on
voluntary cross-border cooperation regarding interconnection of electronic will registration
and data exchange**

I. Legal background

1. A number of international and EU instruments exist already in this field:
 - a) 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 (CDCJ) and opened for signing by the Member States of the Council on 16 May 1972 in Basel (hereinafter referred to as "the Convention");
 - b) 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;
 - c) 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 (hereinafter referred to as "the Data Protection Regulation");
 - d) 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").

II. Work done in the area of e-Justice

2. According to the Strategy on European e-Justice 2014-2018 adopted by the Council on 6 December 2013³, 'the e-Justice projects must have the potential to involve all the Member States of the European Union and all Member States should be encouraged to participate in order to ensure their long-term viability and cost-efficiency [...]'.

³ Paragraph 24, Strategy on European e-Justice 2014-2018, OJ C 376, 21.12.2013, p. 7-11.

3. Moreover, according to the Strategy on European e-Justice 2014-2018, "the interconnection of national registers containing information that is relevant to the area of justice should be promoted. The necessary technical and legal preconditions should be ensured to make such interconnections possible."⁴
4. Under project 17 of the Multiannual European e-Justice Action Plan 2014-2018, adopted by the Council on 6 June 2014, an informal expert group on the interconnection of registers of wills had to be created in co-operation with the Member States and notaries. The project was transposed from the previous Action Plan for the period 2008-2013.
5. The guidelines⁵ on the implementation of the Action Plan endorsed by the Council on 4 December 2014 set out the specific steps to be taken by the Working Party on e-Law (e-Justice), including the setting up of the informal expert group on the interconnection of registers of wills. The opening meeting of the informal expert group was held on 18 November 2014.
6. The e-Justice project "Further developments in the area of the interconnection of registers of wills"⁶, co-funded by the European Commission and co-ordinated by Estonian Ministry of Justice, was launched on 1 October 2015, with the following partners: European Network of Registers of Wills Association (ENRWA), Estonian Chamber of Notaries, Lithuanian State Enterprise Central Mortgage Office, Ministry of Justice of Spain (General Directorate of Registers and Notaries), Italy (Ministry of Justice and Notartel S.p.A.), Hungarian National Chamber of Civil Law Notaries, Austrian Chamber of Civil Law Notaries, Ministry of Justice of Greece, and Registry Agency of Bulgarian Ministry of Justice.

⁴ Paragraph 38.

⁵ 15771/14 EJUSTICE 117 JUSTCIV 300 COPEN 295 JAI 909.

⁶ JUST/2014/JACC/AG/E-JU/6966.

III. The current situation at EU and national level

A. EU level activities

7. Due to the increasing mobility of EU citizens, more efficient cross-border communication and proceedings would appear necessary.
8. Work already undertaken during the first e-Justice Action Plan for the period of 2008-2013 at national level on creating electronic registers of wills, and at the EU level on the interconnection of registers of wills, has already produced significant results. Under the second e-Justice Action Plan for the period of 2014-2018, the work is continuing and possible further developments are being discussed.
9. Over recent years, several large-scale European projects have been carried out to develop solutions suitable for cross-border exchange of data and documents, authentication and integrated work flows. The feasibility study⁷ carried out within the Council expert group's project posed the questions of whether suitable tools already existed that could be used for communicating information regarding the existence of wills and the content of wills, and what enhancements to the process of document and information exchange could be suggested, in order to facilitate greater interconnection of registers of wills and thus make more efficient succession proceedings possible.
10. With the financial support of the European Union, the ENRWA has developed an interconnection of European registers of wills. Work is still ongoing to expand the system in order to ensure reciprocal information exchange across the European Union. A secure notarial cloud, EUFides, governed by an international non-profit association, makes it easier for European notaries to work together on cross-border files.
11. A large scale pilot project e-CODEX (e-Justice Communication via Online Data Exchange), co-funded by the European Commission and the partners, has been conducted with the goal of improving cross-border access for citizens and businesses to legal resources in Europe, and also to improve interoperability between legal authorities within the EU.

⁷ 12953/16 EJUSTICE 157 JUSTCIV 252.

12. The activities of the Council expert group contributed to the implementation of the Action Plan by enhancing developments in the area of interconnection of registers of wills through joint co-operation in order to encourage Member States to register wills and to exchange the data necessary for settling succession matters electronically.

B. State of play at national level

13. The national situation of the Member States was studied by the Council expert group. From the results of the two surveys⁸, the following information was gathered:
14. One of the main challenges to improvements in the area of registers of wills is the differences between the legal frameworks in various Member States. Fourteen⁹ Member States have not joined the ENRWA data exchange platform and fifteen¹⁰ have not joined the Convention. Some countries also indicated that their national legislation was not entirely in line with the provisions of the Convention. This concerns mainly cross-border data exchange and access to information.
15. The technical situation of the Member States concerning the existence of an electronic register of wills is good¹¹ but the absence of centralised or interconnected national registers could be an obstacle in certain countries. The main concerns are related to electronic cross-border data and document exchange and access to information, raising the question of accessibility and differences in legal systems.

⁸ 11169/1/15 REV1 EJUSTICE 95 JUSTCIV 194; 13215/15 EJUSTICE 129 JUSTCIV 242; 12961/16 EJUSTICE 158 JUSTCIV 253.

⁹ CZ, CY, DK, ES, HR, IE, IT, LT, MT, PT, SI, FI, SE, UK (ES, HR, IT, MT, PT, SI are ENRWA members)

¹⁰ BG, CZ, IE, EL, HR, LV, HU, MT, AT, PL, RO, SI, SK, FI, SE (DE, DK, UK have signed the Convention but have not ratified it).

¹¹ Based on the survey (answers provided by 24 Member States), there are three Member States with no national register of wills and four Member States where it is not held electronically.

16. In addition, some organisational difficulties were identified by the Member States, such as problems identifying the authorities handling the succession and receiving replies within a reasonable timeframe in cross-border cases, as well as the fact that it is not possible to receive information via an electronic platform from all the Member States.
17. The creation of a common policy designed to encourage European citizens and legal professionals to register wills and to exchange information across borders on a voluntary basis would be one way to raise awareness and draw attention to the benefits of smoother and more secure electronic communication in cross border succession files.
18. Differences between the Member States' practices as well as the interoperability of the systems and the principle of decentralisation should not be neglected when analysing the use of modern electronic solutions. Potential synergies with existing projects and work already undertaken should also be taken into account.

IV. Suggested guidelines

19. Member States are invited, on a voluntary basis and without prejudice to their national legislation in this area, to continue with their reflections on how to best overcome their internal challenges regarding interconnection of electronic wills registers and how to implement the necessary measures at the national level to contribute to cross-border cooperation and electronic information, data and document exchange in order to ensure that the last wishes of the testator are respected and fulfilled.

A. Legal aspects

20. Concerning legal aspects, the Member States which have not yet acceded to the Convention are invited to consider this, with a view to facilitating the discovery of the existence of a will after the death of the testator.

21. According to Article 7 of the Convention, the request for registration must contain at least the following information; the Member States which have not yet acceded to the Convention are also invited to use a similar schema of basic information:
- a) family name and first name(s) of testator or author of deed (and maiden name, where applicable),
 - b) date and place (or, if that is not known, country) of birth,
 - c) address or domicile, as declared,
 - d) nature and date of deed of which registration is requested,
 - e) name and address of the notary, public authority or person who received the deed or with whom it is deposited.
22. According to Article 8 of the Convention, the registration is secret during the lifetime of the testator and on the death of the testator any person may obtain the information listed above on presentation of an extract of the death certificate or of any other satisfactory proof of death. The Member States are invited to apply the same principle, within the limits of and without prejudice to their national legislation.
23. The option to register and exchange other relevant data could also be considered in order to ensure the availability of necessary information. The Member States are invited to analyse the national legal possibilities regarding:
- a) electronic registration and information exchange on the initiation of succession proceedings, and
 - b) electronic registration of national and European succession certificates.
24. The Member States are further invited to consider, on a voluntary basis, the possibility of implementing additional national measures with a view to enabling smooth electronic cross-border reciprocal information, data and document exchange.

25. Such additional measures could, with due respect to the national legislation of each Member State, include the creation of e-services which would allow legal professional or citizens dealing with succession cases to make enquiries from the relevant national registers. This approach would comply with the once-only and data re-use principles and make possible direct access to the primary data source. The right to view data should depend on the role and user rights of the enquirer and follow national legislation and succession practices of the Member States.
26. In addition, the Member States are invited on a voluntary basis to analyse the legal possibilities for:
- a) forwarding information on the existence of wills by electronic means,
 - b) forwarding a certified digitised copy of the will by electronic means, and
 - c) forwarding a copy of the succession certificate by electronic means.

B. Organisational aspects

27. Concerning organisational aspects, the Member States are invited to carry out activities to raise public awareness, for example by publishing and sharing information about the possibility of registering wills and about the possibility of requesting information about the existence of wills from other countries.
28. The Member States are invited to collaborate to share best practices and to explore and enhance the possibilities for exchanging succession-related information and documents electronically in cross-border cases. Existing networks and solutions (such as ENRWA, EUFides and e-CODEX) should be taken into account in accordance with the Member States' national legislations, and dialogues on further developments should be continued.
29. The Member States are invited to publish their national digital access points for requesting information on existence of wills in the e-Justice Portal.

30. The Member States are invited to determine a reasonable period of time for answering an enquiry from another Member State. The information about the reasonable response period could be made available on the e-Justice Portal.
31. The responsibility for ensuring that the information publicly available on the e-Justice Portal is up to date lies with the Member States. They are invited to review the publicly available information once a year and to set up an internal practice to ensure this task is performed adequately. Any relevant bodies whose homepages the Portal redirects to are also invited to follow that principle.

C. Technical aspects

32. Concerning technical aspects, the Member States are invited, on a voluntary basis, to consider the following guidelines when designing technical solutions in this area:
 - a) High-standard security principles and data protection rules should be followed when schemes on registration of wills and data exchange are being established. The experience of other Member States and existing electronic cross-border solutions should be taken into account before setting up any new systems;
 - b) Particular attention should be paid to information security, ensuring the confidentiality, integrity and availability of data. Adequate internal methods to fulfil the security requirements should be implemented;
 - c) The European e-Justice concept is based on the principle of a decentralised system architecture. Member States are invited to assess their national systems and take the necessary steps to facilitate interoperability and interconnectivity in order to contribute towards more effective succession proceedings.

33. When designing technical solutions in this area, the Member States are invited to consider, on a voluntary basis and with due respect to their national legislation, the following options in order to facilitate citizens' access to the information they are entitled to, and to ease the working processes of professionals. Due account should also be taken of the General Data Protection Regulation, confidentiality rules, the e-IDAS Regulation and advantages of modern digital technologies:
- a) provision of the necessary technical capability at national level for electronic information, data and document exchange;
 - b) use of a single digital contact point, with different functionalities such as enquiry and data exchange options, transmission of documents, etc;
 - c) creation of functional e-services for the professionals and citizens, and communication between registers. The right to view data should be based on national legislation and user rights. It should be possible for the system owner to identify who has entered, changed, deleted, destroyed or viewed data;
 - d) establishing e-IDAS-compliant authentication levels and mechanisms;
 - e) establishing mechanisms for verifying the authenticity of data provided by the enquirer;
 - f) digitisation of wills in paper form could be applied according to the provisions of national legislation. If the will is deposited in a sealed envelope a notification of the existence of a sealed envelope can be placed in an electronic register. The integrity of the sealed envelope must not be compromised in any way.
34. Lawful use of the register should be verified as an ongoing process. All actions taking place in the register should be logged and maintained to guarantee the legitimacy of the data held in the register.