



CONCLUSIONS

Task Force Digitalisation

The EU cofinanced Justice without Litigation Project has made an in-depth analysis of the legal particularity in Austria, Croatia, Czechia, Hungary and Slovakia, namely that notaries exercise court functions, in particular in non-contentious succession procedures. In Slovenia, reflections have already been ongoing for some years on the introduction of such court functions for notaries in succession cases. The “Hexagonale” is an informal cooperation of the notarial chambers of the above-mentioned Member States involved in the project. Against that background, the ever-progressing digitalisation in all fields of law has led to setting-up a special project task force dealing with digitalisation in succession cases.

This Task Force has studied the potential developments for digitalisation in succession procedures, both at cross border and national level.

The Task Force has held three meetings (12/11/2021, 28/01/2022, 03/06/2022), mainly in online format. On the basis of the replies to a specially dedicated questionnaire and the discussions at the meetings, the use of ICT-tools in succession procedures and possible improvement of the workflow have been analysed. Also, the new proposal of the EU Commission of 1 December 2021 for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (COM(2021) 759 final) has been discussed.

Project Coordinator: Austrian Chamber of Civil-Law Notaries

Landesgerichtsstraße 20, 1010 Wien
Phone +43 1 40245090, Fax +43 1 4063475, kammer@notar.or.at, www.notar.at

The information obligation according to the General Data Protection Regulation is met with the following data protection declaration (www.notar.at/oenk-dse). If requested, the text of the policy will be sent to you by mail.

Project partners: Chambers of Notaries of Austria, Croatia, Czechia, Slovakia & Slovenia, University of Vienna & Graz, Economic Research Institute Economia, Council of Notaries of the European Union (CNUe). Friends of the project: Chambers of Notaries of Hungary, Italy, Alsace/France, Austrian & Czech Ministry of Justice.

The Task Force has considered the following:

- Digitalisation of judicial procedures is not a question of “if” but rather of “how” and whether notaries will be a part of it (in succession procedures as courts or court commissioners);
- Notaries aim at being a full part of the digitalisation of the procedures and therefore they need to contribute actively to the process.
- In all the Hexagonale countries, the digitalisation of the notarial workflow has been developed quite far: public registers (such as Land Registers, Company Registers etc) are regularly digitalised.
- The communication with courts in non-contentious procedures is regularly possible, sometimes even mandatory.
- However, in succession procedures, such interconnected communication between the courts and notaries is lagging behind. Usually, there is no access for the notary as court commissioner to the electronic court files, but only to the paper files. This hinders the development of digitalisation in succession procedures. However, the situation is different in Hungary where the judicial administration is not involved in the workflow since the notary acts directly as court.

The Task Force proposes the following:

1. National level:

- setting-up or using an existing digital interconnection system between the judiciary and the notaries acting as court commissioners, also to meet the goals of the proposed EU Regulation on the digitalisation of cross-border judicial procedures. This needs to be implemented at the national level in all Member States in which notaries act as court commissioners and where an

interaction between the courts and notaries is required in such non-contentious judicial procedures.

- The need for a secure and efficient service-of-documents system for delivering decisions to and exchanging documents with the parties electronically since in most Hexagonale countries, notaries have decision making powers (except in Austria).

2. EU level, taking into account the EU Succession Regulation¹:

- To avoid conflicts of competence in practice under the EU Succession Regulation, a registration mechanism for succession cases is proposed (data based on the information contained in the death certificate such as name, date of birth and date of death). This would allow verifying, if a succession procedure has already been launched in another EU Member State. Such a system should be efficient, secure, easy to use and could work on the basis of websites interconnected with interfaces.
- The European Certificate of Succession should be digitalised.
- The EU-wide registration of European Certificates of Succession would be useful, to have ECSs registered at least for their duration of validity.
- The RERT (European Network of Registers of Wills) should be implemented in all EU Member States.
- Establishing a secure gateway for transferring a testament/last will from one Member State to another via secure electronic means.
- Establishing (or expanding an existing) secure platform for electronic communication between competent authorities (notary to court, notary to notary). This could also be useful for the taking of evidence, asking for information on applicable law and the transfer of documents. In that respect,

¹ 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

between notaries the functionalities of the European Notarial Network (ENN) of the Council of the Notariats of the EU (CNUE) should be even further developed to complement the future use of eCodex.

- There should be a system for checking the identity of the deceased person and involved parties in a succession procedure.
- There should be a system for checking the validity of notarial qualified electronic signatures and electronic seals as well as the provenance of documents, e.g. via a digital certificate by the chamber of notaries.
- Secure video-conferencing systems are considered essential and should be developed in the eCodex framework to which notaries should have full access.
- Whenever parties make declarations in front of a notary in their Member State, the electronic transmission of such declarations to the notary competent for the succession procedure should be possible.
- The interconnection of registers needs to be advanced.
- All systems used should have the highest level of security possible.

Any developments in the field of digitalization should take into account persons who are not able to use digital tools.

In summary, the Task Force considers the intentions of the EU Succession Regulation not entirely fulfilled, because some essential (digital) tools for the efficient implementation of the Regulation are missing today.

3. Proposal for an EU-Regulation on the digitalisation of cross border judicial procedures²

- As to the Commission's proposal for a Regulation on the digitalisation of cross border judicial procedures which, based on EU-instruments referred to in the

² Proposal of 1.12.2021 for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (COM(2021) 759 final)

annex includes succession procedures in its scope, the general aim of this proposal is supported, in particular the inclusion of succession procedures is welcomed. However, important questions and details need to be adjusted in the negotiation process in the European Parliament and the Council.

- The Task Force suggests adding a recital to explicitly clarify that notaries acting in court functions (such as court commissioners) may be considered as competent authorities under Article 2 par. 1.
- Also, digitalisation should not touch upon existing national formal requirements (the form of authentic instruments, notarial protocols). Article 10 needs to be complemented in that respect.
- Explicit reference should be made to Article 47 of the EU Charta of Fundamental Rights to ensure access to justice and fair trial principles in a digitalised framework.

Vienna, 3 June 2022