



**Polsko-Niemiecki
Instytut Badawczy
Deutsch-Polnisches
Forschungsinstitut**



Authentic documents and court settlements

**Dr. Martin Margonski
Omšenie, 2-3 March 2017**



**This project is co-financed by
the European Union**

Free circulation of procedural instruments

Free circulation of:

→ recognition of decisions (art 39 f.)

– defined in art. 3 par. 1 g

→ acceptance of authentic instruments (art 59 f.)

– defined in art. 3 par. 1 i

→ enforceability of court settlements (art 61)

– defined in art. 3 par. 1 h

authentic instrument

Art. 3 par. 1 i

document in a matter of succession which has been formally drawn up or registered as an authentic instrument in a Member State and 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 other authority empowered for that purpose by the Member State of origin.

authentic instruments

Death, birth, marriage certificates not covered, because of the exclusion for civil status matters in art. 1 par. 2 a

the status of natural persons, as well as family relationships and relationships deemed by the law applicable to such relationships to have comparable effects;

Regulation 2016/1191 of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012

Applicable from 16 February 2019

authentic instruments

Examples of authentic instruments:

- notarial testament
- notarial declaration including the waiver of succession
- power of attorney with a certified signature to accept or waive succession
- notarial contract on sharing-out of an estate
(problem: importance of foreign register law!)

authentic instruments

Problematic cases:

→ court instruments only confirming the status of an heir or executor of a will

eg. German certificate of inheritance (Erbschein)

→ instruments issued by non-judiciary bodies executing court functions

eg. Polish notarial certificate of inheritance (akt poświadczenia dziedziczenia)

problem of fulfilling the criteria of a court set in art. 3 par. 2

authentic instruments

Depending on the content:

→ accepting the evidentiary effects as they have in the member state of origin (or the most comparable effects) – art. 59

→ enforceability – art. 60, declaration of enforceability regulated in art. 45 to 58

evidentiary effects

authenticity can be challenged only in the state of origin (art 60 par. 2)

Rec. 62

The 'authenticity' of an authentic instrument should be an autonomous concept covering elements such as the genuineness of the instrument, the formal prerequisites of the instrument, the powers of the authority drawing up the instrument and the procedure under which the instrument is drawn up. It should also cover the factual elements recorded in the authentic instrument by the authority concerned, such as the fact that the parties indicated appeared before that authority on the date indicated and that they made the declarations indicated.

evidentiary effects

Challenging the **‘the legal acts or legal relationships recorded in an authentic instrument’** before the courts having jurisdiction (art. 60 par. 3) or as a preliminary question in a different court proceedings (art. 60 par. 4)

evidentiary effects

Rec. 62

substance recorded in the authentic instrument, for instance, the agreement between the parties on the sharing-out or the distribution of the estate, or a will or an agreement as to succession, or another declaration of intent. The legal relationships could be, for instance, the determination of the heirs and other beneficiaries as established under the law applicable to the succession, their respective shares and the existence of a reserved share, or any other element established under the law applicable to the succession.

evidentiary effects

The person using the instrument may ask the authority issuing it in the member state of origin to fill in the form relating also to the evidentiary effect under the law of issuing state (art 60 par. 1)

Forms published in the implementing regulation 1329/2014 for decisions, authentic instruments and court settlements

court settlements

Art. 3 par. 1 h

‘court settlement’ means a settlement in a matter of succession which has been approved by a court or concluded before a court in the course of proceedings;

a court may also be a “legal professional” exercising judicial functions or acting pursuant to a delegation of power by a judicial authority or acting under the control of a judicial authority, provided that they meet criteria settled in art. 3 par. 2

court settlements

Only the enforceability of court settlements is regulated in art. 61

Problems may occur when the court settlement includes transfer of immovable property in a different member state (relation to register law)

No legalisation

No apostille requirement within the scope of application of the regulation

Art. 74

No legalisation or other similar formality shall be required in respect of documents issued in a Member State in the context of this Regulation.

Thank you for your attention