

Recommendations to eliminate obstacles to validate and register the foreign public document in the Land registry

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Citizens living in an EU country other than their own often need to present a public document to the authorities of the EU country where they live.

Such public documents can be, for example, a birth certificate to get married, or a certificate on the absence of a criminal record to get a job. Also Land Registries in EU countries may desire some documents e.g. these concerning matrimonial property regimes to fulfill legal requirements for an entry in a land book.

The European regulation about this issue is the Regulation (eu) 2016/1191 of *the European Parliament and of the Council 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*

To remember few facts about the Regulation on Public Documents:

The Regulation on Public Documents (Regulation 2016/1191), which was adopted on 6 July 2016 and applies in all EU countries as from **16 February 2019**, simplifies the circulation of:

- certain public documents
- and their certified copies

where those public documents and the certified copies are issued by a Member State authority (A) for presentation in another Member State (B).

Regulation should not cover copies of certified copies. Regulation also covers electronic versions of public documents and multilingual standard forms suitable for electronic exchange.

It is crucial point for land registries which use public documents to regulate real estate status in a land book. Which documents – it is always stated by national law.

The Regulation's scope

It applies to public documents issued by the authorities of a Member State in accordance with its national law which have to be presented to the authorities of another Member State and the primary purpose of which is to establish one or more of the following facts:

- birth
- a person being alive
- death
- name
- marriage, including capacity to marry and marital status
- divorce, legal separation or marriage annulment
- registered partnership, including capacity to enter into a registered partnership and registered partnership status
- dissolution of a registered partnership, legal separation or annulment of a registered partnership
- parenthood
- adoption
- domicile and/or residence

- nationality
- absence of a criminal record
- the right to vote and stand as a candidate in municipal elections and elections to the European Parliament.

„Public documents” means documents issued by a public authority, such as:

- documents emanating from a court or a court official;
- administrative documents;
- notarial acts;
- official certificates placed on private documents;
- diplomatic and consular documents.

Prior to the Regulation, citizens that needed to present above mentioned public document in another EU country had to obtain an authenticity stamp (the so-called apostille) to prove that their public document was authentic as well as certified copy and a translation of their public document.

Core facilities:

1. Exemption from legalisation and similar formality (art. 4)

Public documents covered by this Regulation and their certified copies shall be exempt from all forms of legalisation and similar formality.

News for land registry:

Land Registry as public authority accepts the public document issued by foreign authority without authentication procedure (any special stamps)

Land Registrar acts as public authority which issues the certified copy of public document.

Core facilities:

2. Simplification of other formalities relating to certified copies (art. 5)

1. where a Member State requires the presentation of the original of a public document issued by the authorities of another Member State, the authorities of the Member State where the public document is presented shall not also require the presentation of a certified copy.
2. Where a Member State permits the presentation of a certified copy of a public document, the authorities of that Member State shall accept a certified copy made in another Member State

News for land registry:

Land Registry as public authority accepts also the certified copies of public document issued by foreign authority and cannot require a certified copies if it is stated so in its procedural law

Core facilities:

3. Simplification of other formalities relating to translations (art. 6)

A translation shall not be required where: a public document concerning **birth, a person being alive, death, marriage (including capacity to marry and marital status), registered partnership (including capacity to enter into a registered partnership and registered partnership status), domicile and/or residence, or absence of a criminal record**, is accompanied, in accordance with the conditions set out in this Regulation, by a **multilingual standard form. Multilingual standard forms shall be attached to the public documents, be used as a translation aid and have not autonomous legal value.**

It may be developed.

News for land registry:

Land Registry as public authority accepts also the multilingual standard form attached to the public document or its certified copy issued by foreign authority and cannot require a translation

Core facilities:

Lets' take example of Poland for the three core facilities of Regulation 2016/1191:

Exemption from legalisation and similar formality (art. 4)

Simplification of other formalities relating to certified copies (art. 5)

Simplification of other formalities relating to translations (art. 6)

What about national law to accept foreign documents in land registry procedures ?

In Poland the supplementary law was established – it is the *Law of 4 April 2019 on the submission of certain public documents in the Member States of the European Union* which defines:

- 1) public documents to *Regulation (EU) 2016/1191*
- 2) the method of submitting applications for a multilingual standard form referred - art. 7 sec. 1 of *Regulation 2016/1191*,
- 3) rules for issuing multilingual forms
- 4) the amount of fees for issuing multilingual forms and the manner of their payment
- 5) competent authorities in the implementation of tasks resulting from *Regulation 2016/1191*.

Art. 2 of Polish law indicates the names of the documents e.g.

- 1) odpis skrócony aktu urodzenia (eng. *an abridged copy of the birth certificate*)
- 2) odpis zupełny aktu urodzenia (eng. *full copy of the birth certificate*)
- 3) orzeczenie sądu o ustaleniu treści aktu stanu cywilnego (eng. *a court decision establishing the content of the marital status certificate*)
- 4) poświadczenie pozostawania osoby przy życiu (eng. *confirmation of the person's being alive*),
- 5) odpis skrócony aktu zgonu (eng. *an abridged copy of the death certificate*),
- 6) odpis zupełny aktu zgonu (eng. *full copy of the death certificate*)

The matter of fee:

In Poland fee for issuing a multilingual form:

- fee of PLN 17 is payable for issuing a multilingual form.
- for the issuance of a multilingual form by a consul, a consular fee of the equivalent of EUR 30 is payable.

The fee of PLN 17 is the income of:

- the authority issuing the multilingual form in all the cases apart from certificate of no criminal record of a person, issued from the National Criminal Register at the request of that person,
- state budget - in the case of above mentioned certificate of no criminal record

The fee of PLN 17 shall be paid into the account of the authority issuing the multilingual form

The fee of EUR 30 shall be paid in accordance with the regulations issued on the basis of the Consular Law

For the implementation of the activities there is no specific subsidy from the state budget.

National structure – for the purposes of the Regulation, each Member State shall designate at least one central authority (art. 15)

In Poland there are designated two central authorities:

1) Ordinance of the Minister of Justice of April 30, 2020 on the appointment of delegated coordinators in the justice department and the scope of tasks delegated to the delegated coordinators for implementation

The locally competent President of the Court of Appeal acts as a coordinator delegated to the supervised courts. In Poland there are 11 Presidents of the Court of Appeal - https://pl.wikipedia.org/wiki/S%C4%85d_apelacyjny

The president of the Board of the competent Chamber of Notaries shall act as a delegated coordinator for the notaries supervised by this council. In Poland there are 11 of the Chambers of Notaries
https://www.krn.org.pl/1196/lzby_notarialne

Acting as a delegated coordinator, the locally competent President of the Court of Appeal and the President of the Board of the competent Chamber of Notaries perform the following tasks:

- 1) receive and transmit requests for information referred to a reasonable doubt as to the authenticity of that public document or its certified copy in, responding to requests in the situation referred to transmission, receiving and, where necessary, answering such requests
- 2) register users in the ICT System for Information Exchange in the Internal Market (IMI) made available by the European Commission, hereinafter referred to as "IMI system,,
- 3) grant users rights in IMI
- 4) provide explanations and assistance in the field of the use of the IMI system and its operation in the performance of tasks specified in Regulation 2016/1191,
- 5) ensure the efficient flow of information in the scope specified in Regulation 2016/1191.

2) Ordinance of the Minister of the Interior and Administration of 2 July 2019 on the appointment of a delegated coordinator in the internal affairs department and the scope of tasks delegated to the delegated coordinator

The voivode (wojewoda) acts as a coordinator delegated to the supervised local community authorities and heads of registry offices.

Poland is divided into 14 voievodship and 2 separate cities.

e.g. Podlaskie voivodship, Mazowieckie voivodship

Acting as a delegated coordinator, the voivode performs the following tasks:

1) ensures the receipt and transmission of requests for information referred to a doubt remains, submission a request for information through IMI: to the authority that issued the public document or, where applicable, to the authority that made the certified copy, or to both or to the relevant central authority,

2) in exceptional circumstances, it responds to requests for information referred to a doubt remains, submission a request for information through IMI: to the authority that issued the public document or, where applicable, to the authority that made the certified copy, or to both or to the relevant central authority, addressed to the supervised municipal authorities and heads of registry offices,

- 3) register users in the ICT System for Information Exchange in the Internal Market (IMI) made available by the European Commission, hereinafter referred to as the "IMI system",
- 4) grant users rights in IMI,
- 5) provide explanations and assistance to the supervised municipal authorities and managers of civil registry offices in the field of using the IMI system and its operation,
- 6) ensures the efficient flow of information in the scope specified in Regulation 2016/1191.

Additional core facilities:

4. Internal Market Information System (IMI) art. 13

The Internal Market Information (IMI) System is a secure, multilingual online information exchange tool.

It was developed to facilitate the exchange of information between public administrations across the EEA and the European Institutions and Bodies involved in the practical implementation of EU law.

Some examples:

https://beta.e-justice.europa.eu/551/EN/public_documents?clang=en

Repository of public documents (samples)

[Poland](#), [Croatia](#), [Spain](#), [Portugal](#) or others to request

Core facilities:

4. Internal Market Information System (IMI) art. 13

If the authorities of a Member State in which a public document or its certified copy is presented have a reasonable doubt as to the authenticity of that public document or its certified copy, they shall take the following steps:

- check the available models of documents in the repository of IMI
- if a doubt remains, submit a request for information through IMI:
 - (i) to the authority that issued the public document or, where applicable, to the authority that made the certified copy, or to both
 - (ii) to the relevant central authority.

Exchange of best practice (art. 23)

Ad hoc committee composed of representatives of the Commission and the Member States and chaired by a representative of the Commission shall be established – regular meetings.

Tasks are fulfilled by facilitating the exchange and regular updating of best practice concerning:

- (a) the application of this Regulation between the Member States;
- (b) the prevention of fraud involving public documents, certified copies and certified translations;
- (c) the use of electronic versions of public documents;
- (d) the use of multilingual standard forms;

Thank You for Your attention!

Round table discussion

1. Do you have any practical problems to use the foreign documents indicated in the art. 2.1 of the *Regulation (EU) 2016/1191* as the document of an entry in the LR?

Is it useful legal tool to prove established right or obligation for LR proceedings in your country ?

2. Do you have any practical problems to use the multilingual standard forms in terms of assessment of the content of the document (art. 8, 9 of the *Regulation (EU) 2016/1191*)? Is it easy to obtain fee according the rule by art. 11 of the *Regulation (EU) 2016/1191* (fee for obtaining a multilingual standard form does not exceed the production cost of the multilingual standard form or of the public document to which the form is attached, whichever is lower).

3. Do you have national legislation supplementing *the Regulation (EU) 2016/1191* or the Regulation itself is enough to regulate the issue?

If yes, what is the content of national law act?