

Legalisation of Public Documents within the EU Member States

GERMANY

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**PART I – Documents operating cross-border: Current legal practice as regards
legalisation or other similar or equivalent requirements**

OVERVIEW OF PART I

PART I.A. General

I.A.1. European Community Law

I.A.1.1. Introduction

I.A.1.2. Implementation of specific measures

Area of Justice - judicial cooperation in civil matters (Article 61(c) EC)

Article 19 of Regulation (EC) No 1346/2000

No legalization is required. A German insolvency court can only require a German translation of the decision opening the insolvency proceedings in the other Member State.

*The implementation of Reg. 1346/2000 is dealt with in Art. 102 et seq EGInsO
(introductory law to the insolvency code)*

Article 4(4) of Regulation (EC) No 1348/2000

According to Art. 2 (1) Reg. 1348/2000 every Member State designates the authorities competent for the cross boarder transmission of documents.

a) Competent authorities:

aa) Transferring authorities

See §§ 1067 et seq. ZPO. According to § 1069 ZPO are competent as German

transmitting authorities

1. in case of judicial documents: the court pursuing the service and
2. in case of non judicial documents: the local court (Amtsgericht) where the person requesting the service is domiciled (Wohnsitz / gewöhnlicher Aufenthalt) or headquartered (businesses)

However, the Governments of the Laender can designate by executive regulation a local court to be competent for a whole region (in order to concentrate knowledge and experience in foreign matters).

bb) Receiving authorities (Art. 2 (2) Reg. 1348/2000)

Competent is the Amtsgericht where the document is supposed to be served. The Governments of the Laender can designate by executive regulation a local court to be competent for a whole region however they have used this power only very sparingly.

b) Procedure

The procedure is governed by the Rechtshilfeordnung für Zivilsachen (ZRHO). The ZHRO is an internal administrative regulation (without external legal force) adopted jointly by the federal and state governments, containing the general rules on rendering legal assistance to foreign procedures. According to § 3 (2) lit a) ZRHO, legal assistance is also granted with respect to Reg. 1348/2000.

aa.) Incoming documents

The documents need not be transmitted in original, as long as the original remains available for authentication; transmission by fax or email is therefore possible (§ 31 n ZHRO. The document has to be accompanied by the standard form provided by the Regulation (in German language).

c) Documents emanating from Germany

Between the local courts, acting as transmitting authorities, and the foreign receiving authority, § 9 ZRHO adds inspection authorities (Pruefstelle) as an additional layer. According to § 28 ZHRO their task is to check whether the request is conform to the (formal) requirements of EU law, international (treaties) law and the ZRHO. After remedying potential problems, they will transmit the documents.

Article 56 of Regulation (EC) No 44/2001

Decisions under Art 32 Reg 44/2001 and documents under Art 55 (2) Reg 44/2001 do not require any legalization or Apostille. Following Art 56, such documents are equated to German documents (i.e. § 437 ZPO applies, see below ???).

a) Competent authorities: - Incoming requests

According to § 3 (1) AVAG (law on the implementation of international treaties and the law of the European Communities in the area of recognition and enforcement of judgments in civil law matters) jurisdiction rests with the district court (Landgericht)

where the debtor has his residence. If the debtor has no residence in Germany, it is competent the Landgericht in the district of which enforcement of the foreign title is sought. Within the Landgericht, it is the president of one of the civil divisions who is competent.

b) Procedure

The request for recognition must either be in writing or can be made orally at the court's office. The request must be made in German. If the request is made in another language, the judge can require a German translation. Participation of a lawyer is not necessary.

Article 57 of Regulation (EC) No 44/2001

a) Incoming Requests

In principle, the request has to be made in German (§ 184 GVG [Judicature Act]). If the request is made in another language, a (certified) translation will be needed to complete the request, § 4 III AVAG. In addition, the requirements of Art. 57 (4), 54 Reg have to be fulfilled.

Competent authorities: See Annex II to Reg 44/2001.

b) Emanating from Germany

Art. 57 Reg applies to the German documents and is implemented by §§ 55 et seq. AVAG.

According to § 55 (1) AVAG, the general rules of jurisdiction under the AVAG do not apply. Instead, § 57 AVAG declares that the courts (i.e. usually the court clerk) or other authorities competent for issuing the enforceable copy of the document are also competent to issue the certification under Art. 54, 57 and 58 Reg (if a court of appeal is competent for issuing the enforceable copy, the certification will be made by the court of first instance).

Possible remedies are the same as in case of the Klauselverfahren (cf. Hess/Mack, Ch.9: Germany, in Andenas/Hess/Oberhammer, Enforcement Agency Practice in Europe, at p. 182 et seq, esp. FN 54,55)

According to § 55 (3) AVAG, German notaries can also declare enforceable notarial documents. In such a case, the rules concerning courts apply mutatis mutandis.

Article 58 of Regulation (EC) No 44/2001

Under Art 58 Reg 44/2001, enforceable court approved settlements can be enforced in other Memberstates under the same conditions as authentic instruments.

a) Incoming Requests

With respect to jurisdiction and procedure, the above written (Art. 57 Reg) applies

accordingly.

b) Requests emanating from Germany

The above written (Art. 57 Reg) applies accordingly (=> § 56 AVAG). As ordered in Art. 58 Reg, the court will issue on request a certificate using the standard form of Annex V.

Article 46 Regulation (EC) No 2201/2003

a) Incoming Request:

Following Art 29, 68 Reg 2201/2003, Germany notified the Commission about the competent courts, see OJ EheVO 2005, No. C 40, p. 2 t, which is for most Länder the Family Court located at the place where the OLG (Court of Appeals) is located. (In Berlin: Familiengericht Pankow /Weißensee).

b) Emanating from Germany

Applicable is the Law on International Proceedings in Family Law matters (Internationales Familienrechtsverfahrensgesetz – IntFamRVG, of 26. January 2005 (cf. BGBl I No. 7 of 31.01.2005).

According to § 16 IntFamRVG, the document will be made enforceable in Germany on request by adding of a so called Vollstreckungsklausel (see above; cf. Hess/Mack, Ch.9: Germany, in Andenas/Hess/Oberhammer, Enforcement Agency Practice in Europe, at p. 182). [This does not apply to cases falling under Art. 41, 42 Reg 2201/2003.]. The other party won't be heard at this stage, § 18 IntFamRVG.

According to § 16 (1) IntFamRVG is normally **competent** the Family Court (Familiengericht; a division of the local court) at the place of habitual residence (gewöhnlicher Aufenthalt) of the respondent (or the child that constitutes the subject matter of the proceeding) ; special rules apply if no such residence is in Germany (cf. § 10 No. 2+3 IntFamRVG). With respect to proceedings regarding Art 21 (3), jurisdiction is concentrated at the Family courts located in the city where the Courts of Appeal are located, § 12 IntFamRVG.

The request should be written in German (but can also be made orally at the court's office), else a certified translation will be demanded, § 16 (3) IntFamRVG.

Article 52 of Regulation (EC) No 2201/2003

No legalization required with respect to documents mentioned in Art. 37, 38, 45 Reg., as well as with respect to documents regarding power of attorney of the lawyer.

**Article 52 Regulation (EC) No 2201/2003, certificates drawn up in the standard forms of ANNEX I (Article 39), II (Article 39), III (Article 41) or IV (Article 42)
Regarding Art 39:**

A certification under Art 39 EheVO is issued on request by the office of the court

(Urkundsbeamter der Geschäftsstelle), where the case is pending , § 48 (1) IntFamRVG (no limitation to courts of first instance).

Standing to request the certification is dependant on party status (/ similar involvement) in the main proceedings.

Regarding Art 41:

A certification under Art 39 EheVO is issued on request by the judge of the family court where the case is pending , § 48 (2) IntFamRVG. In the courts of appeal and the BGH, the certificate will be issued by the presiding judge of the family law senate.

Regarding Art 42:

The above said regarding Art. 41 applies accordingly, § 48 (2) IntFamRVG.

Article 27 of Regulation (EC) No 805/2004

a) Documents emanating from Germany

Competent authorities:

According to § 1079 ZPO those authorities competent to issue the certificate are also competent to issue the enforceable copy of the title. This question is governed by §§ 724, 797 ZPO court decisions and settlements in court:

courts of first instance (court officers [Rechtspfleger]; § 20 No. 11 RpfLG); if the case is still pending on (further) appeal is competent the higher court where the case is currently pending; § 724 (2) ZPO.

Procedure:

According to § 1080 ZPO the certificate will be issued without the debtor being heard. The debtor will be sent a copy of the certificate ex officio.

If the issuance is refused, § 1080 (2) allows for the same remedies as in the case of a refusal of the issuance of the enforceable copy. (cf. Hess/Mack, Ch.9: Germany, in Andenas/Hess/Oberhammer, Enforcement Agency Practice in Europe, at p. 182 et seq, esp. FN 54,55)

§ 1081 ZPO implements Art 10 Reg 805/2004. The debtor can request revocation of the certificate within one month of service of the (copy) of the certificate (2 months if certificate has been served abroad). The request must be motivated.

b) Incoming documents

§ 1082 ZPO states that a title under the regulation will be enforced in Germany without an additional issuance of an enforceable copy (“ohne dass es einer Vollstreckungsklausel bedarf”). In the case of Art. 20 (2) c Reg, if the certificate is not in German, a certified translation is required, § 1083.

The local court (Amtsgericht /Vollstreckungsgericht) of the district where the debtor is

residing (or where he has assets if he does not live in Germany) is competent according to §§ 1085 et seq. ZPO for denial, stay or limitation of enforcement (Art. 21, 23 Reg).

ANNEXES I (Article 9 - judgments), II (Article 24 – court settlements) and III (Article 25 – authentic instruments) of Regulation (EC) No 805/2004

First, see Art 27 Reg.

German titles: §§ 1079-1081 ZPO apply, see above.

Incoming: §§ 1082- 1084 ZPO, see above.

Article 13(5) of Directive 2002/8/EC

§§ 1076-1078 ZPO apply.

a) Incoming Requests:

§§ 1076-1078 ZPO apply.

Competent is a judge of the German court of first instance where the case shall be pending (or the Amtsgericht/Vollstreckungsgericht if only execution proceedings are concerned; in this case the court officer is normally competent), § 1078 ZPO. The general rules for legal aid (§§ 114 – 116 ZPO) apply. The request must be in German (or accompanied by a certified translation).

§ 1078 (1) expressly states that *with respect to incoming requests legalization or similar formalities may not be required.*

Deviating from §§ 114 et seq. ZPO, which generally require a renewed request for legal aid on (further) appeal, § 1078 (3) ZPO states that after legal aid has been demanded and granted, legal aid is considered to be demanded for possible proceedings on appeal, too.

b) Requests emanating from Germany:

§§ 1076-1078 ZPO apply. However, competent for reception of the request is not a judge but the court officer (Rechtspfleger) of the court where the applicant has his residence, § 1077 (1) ZPO. The standard forms of Art. 16 (1) Reg shall be implemented into German practice; as soon as they are implemented, they have to be used by the applicants, § 1077 (2) ZPO.

The transmission authority (the above mentioned court or a court of the same level designated by state law to be competent for a whole district) will ex officio translate the documents into the standard form in the required language of the receiving Member State and makes sure the request is complete, § 1077 (4) ZPO.

The transmission authority (court officer) is also competent to certify the neediness of the applicant in case the neediness had been denied in the receiving Memberstate (cf. Art 5 (4) Reg).

Free movement of goods (Article 23 EC)

Article 250 of Regulation (EEC) No 2913/92 applies.

Free movement of workers - social security (Article 42 EC)

Article 85 Regulation (EEC) No 1408/71 read in conjunction with Regulation (EEC) No 574/72

I.A.1.3. Judicial control

See annexed cases

I.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

I.A.2.1. Status

Germany signed the Hague Convention of 5 October 1961 on 5 October 1961. The Convention was ratified on 21 June 1965 and entered into force on 13 February 1966 (cf. Bundesgesetzblatt 1965 II 875; 1966 II 106).

I.A.2.2. Scope

Geographical Scope:

The convention applies in relation to Germany to the following states:

Andorra; Antigua and Barbuda; Argentina; Armenia; Australia; The Bahamas; Barbados; Belarus; Belgium; Belize; Bosnia-Herzegovina; Botswana; Brunei Darussalam; Bulgaria; China (only for documents, which are used in the special administrative regions of Hong Kong and Macau); Cook islands; Dominica; Ecuador; El Salvador; Estonia; Fiji; Finland; Frankreich*; Grenada; Griechenland*; Honduras; Ireland; Iceland; Israel; Italien*; Japan; Kazakhstan; Colombia; Croatia; Lesotho; Latvia; Liechtenstein; Lithuania; Luxemburg*; Malawi; Malta; Marshall Islands; Mauritius; Macedonia; Mexico; Monaco; Namibia; New Zealand (without Tokelau); The Netherlands (also for Aruba and the Netherlands Antilleses); Niue; Norway; Österreich*; Panama; Poland; Portugal; Romania; Russian federation; Samoa; San Marino; Sweden; Schweiz*; Serbia and Montenegro; Seychelles; Slowakei; Slovenia; Spain; Pc. Cement and Nevis; Pc. Lucia; Pc. Vincent and the Grenadinen; South Africa; Suriname; Swaziland; Tonga; Trinidad and Tobago; Czech republic; Turkey; Hungary; Venezuela; United kingdom (also for Anguilla, Bermuda, Caymaninseln, Falklandinseln, Gibraltar, Guernsey, Isle OF one, jersey, British young remote islands, Montserrat, sank Helena, Turks and Caicosinseln); United States; Cyprus.

* additional bilateral agreements (cf. below II.) waiving the legalization / Apostille requirement for certain documents:

Albania, Azerbaijan, India, Liberia and the Ukraine likewise joined the Apostille agreement. However, Germany raised objections against the entry of these states, so that the convention does not apply between Germany and the countries mentioned.

Material Scope:

No relevant restrictions could be found.
The contacted authorities could not name any relevant court decisions besides those mentioned below.

I.A.2.3. Legislative implementation

The convention has been ratified by the Bundestag (with approval of the Bundesrat = Upper House) by passing the „Gesetz zu dem Haager Übereinkommen vom 05.10.1961 zur Befreiung ausländischer öffentlicher Urkunden von der Legalisation“ of 21.06.1965 (BGBl. 65 II S. 875). The act empowers the Laender (states) to regulate questions of competence for their territory with respect to documents emanating from the Laender authorities.

Documents of federal authorities:

The federal government issued a regulation (Verordnung) on 23. Feb 1966 (BGBl. 1966 II, p. 138) regarding the issuance of the Apostille under Art 3 Hague Convention.

According to this regulation are competent

- the Bundesverwaltungsamt with respect to all documents issued by federal authorities;
- exception: The president of the Deutsches Patent und Markenamt is competent for documents relating to patents.

Documents of Laender - authorities:

With respect to documents issued by Laender authorities (including most courts), every single Land has issued its own regulation dealing with competence. Usually have been competent the Presidents of the District Courts (Landgerichte) with respect to most judicial and notarial documents (including judicial documents emanating from Administrative Law Courts (Verwaltungsgerichte, Sozialgerichte, Finanzgerichte)) and Ministries and district authorities (Regierungspräsidium / Bezirksregierung) with respect to their own documents and those of their subordinated administrative authorities.

With respect to judicial documents, many higher authorities (ministries etc) reported very few issuances of Apostilles during the last years, which led in some cases to the transfer of competency downward to the Langerichte.

An instructive example is the Saarland: While the Landgericht Saarbrücken is competent for issuing the Apostille with respect to its own documents (+lower courts) and documents issued by notaries, the Ministry of Justice of the Saarland is – up to now - competent for all other judicial documents (including its own and documents coming from the court of appeal, OLG). The Ministry of Justice reported 0 (zero) issuances within the last 20 years. Therefore, it is planned to make the Landgericht competent for the other judicial documents, too. (Nota bene: With respect to documents issued by the administration, the Ministry of the Interior of the Saarland remains competent)

The regulations regulating competence on the Länder level are available in Geimer/Schütze, Internationaler Rechtsverkehr, Vol. IV, Part D II (loose-leaf, last update: July 2006). However, the recent changes are not all included.

I.A.2.4. Practical implementation

1. Methods to request an Apostille

The Apostille can be requested in writing or personally, by sending / presenting the original document to the competent authority. In case of written requests, most authorities require a self-addressed, prepaid envelope.

An electronic procedure is not possible today (exception: if the original document is already present at the certifying authority for other purposes; in such cases, the application could also be in electronic form). The reason usually given for this is that the nature of the procedure requires presentation of the original document as such, which is not compatible with an electronic procedure (but see below 9.).

2. Methods to verify the authenticity of the signature, the capacity in which the person signing the document has acted, and the identity of the seal or stamp which the document bears

If the issuing authority is well known to the certifying authority, verification often takes place (notably in the judicial area) simply by looking at the signature and the seal.

Else, verification of the signature and the seal is done by comparing them to central registers (usually on the state level), where example signatures are deposited. In some Laender (e.g. Bremen), the register is not kept centrally but with diverse supervising authorities. The signatures often can be accessed by the certifying authorities via internet; else current lists with the example signatures are distributed regularly. In some Laender, the register is for internal use only. Many but not all Laender allow interested parties to check the register at the place of the authority that is keeping the register.

In case of doubt, many authorities will call the issuing authority by phone.

3. Form of the Apostille used

The Apostille is usually issued in paper form (see below). Form and content follow the specifications of the Convention.

The German text reads:

*APOSTILLE
(Convention de La Haye du 5 octobre 1961)*

1. Land:
- Diese öffentliche Urkunde*
2. ist unterschrieben von
3. in seiner Eigenschaft als
4. sie ist versehen mit dem Siegel/Stempel des (der)

- Bestätigt*
- 5 in 6. am
 7. durch
 8. unter Nr.
 9. Siegel/Stempel 10. Unterschrift

4. The place of Apostille

The practice varies between the Laender and the document to be certified (whether there is enough free space on the sheet to add an Apostille or not).

The Apostille is either put on the last side of the document or will be put on an additional sheet which is then attached to the original document (different methods used) If a second sheet is added or if there is more than one page in the first place, the authority either puts an additional seal across all the pages in the top corner (folded, of course ...) or the sheets will be bound together by a sealed cord.

5. Issuance of the Apostille when the public document consists of multiple pages

The Apostille is put on the last page (or an extra sheet, see above), the pages get attached to on another and the authority then puts an additional seal across all the pages in the top corner (folded) or the sheets will be bound together by a sealed cord.

6. Use of language on the Apostille

German; official language according to § 184 GVG (Gerichtsverfassungsgesetz, Judicature Act).

In special cases, some authorities also issue the Apostille in English on request (e.g. Landgericht Bremen).

7. Mechanical or electronic system to issue the Apostille

At most authorities, both mechanical systems and computer-printouts are available. Some authorities (notably in Bavaria) use adhesive labels.

8. Measures to avoid fraud

See nos. 3-5.

Usually, the seal used for the Apostille is kept in a tresor; in case of computer print outs, the relevant data form is usually pass word protected.

9. Plans to modernize the system used to issue Apostilles?

According to the replies we received, no specific plans exist at the moment. However, in many Laender there seems to be a steady exchange of experience happening between the authorities involved (also across the Laender border lines). In the state of Baden-Wuerttemberg, e.g., there are plans to centralize the proceeding at one or more central authority.

With respect to the e-apostille as debated at the Hague, the Federal Ministry of Justice is currently considering how and to which extent Germany can participate in a model project.

10. Duration of total process

Written requests:

The answers we received vary between 1-2 days (+ time of postal transfers) and up to 2 weeks.

Personal presentation of the document at the authority:

Most authorities will issue the Apostille on the spot (5-20 minutes), unless doubts with respect to the document cannot be dispelled at once. Others will do so within 1-2 days. (+time of postal transfer if the requerant does not want to return in person).

11. Fee payable for the issuance of an Apostille

The fee varies; usually 13- 15 € per document / Apostille (Hamburg: 9 EUR). Many authorities differentiate between documents issued for private purposes and documents issued for business purposes (higher fee). With respect to documents issued by courts, Nr. 100 of the annex to § 2 (1) JVKostO applies (*fee depending on the value of the documented deal / decision; Min: 10 EUR, Max: 130 EUR*).

As far as we have been told, the described procedures are consistently applied to all documents without regard to the country in which they will be used which. *Exception:* If the document is exempt from legalisation due to a bilateral agreement, the issuance of an Apostille might be denied.

Due to insufficient training of staff, foreign authorities often demand legalization of documents despite the fact that the country is a member of the Apostille Convention. In such cases the competent German authorities usually notify the Foreign Office to exert pressure so that the Apostille will be accepted.

I.A.2.5. Judicial control

See annexed cases.

I.A.2.6. Empirical analysis

Most problematic points:

- a.) For the citizen: Finding out the competent authority
- b.) Citizens are very reluctant to give away their original documents (and rightfully so, considering the risk of loss of the documents on the transport)
- c.) The possibility to present the document in person often is not known to them
- d.) The fee usually has to be paid upfront. Unless the applicant requests the Apostille in person, the transfer of the money and its proof require additional time.
- e.) Due to insufficient training of staff, foreign authorities often demand legalization of documents despite the fact that the country is a member of the Apostille Convention.
- f.) Some applicants use non certified translators (or translators only certified in another district)
- g.) In case of old documents, the signature might not be in the registry anymore and is therefore hard to verify

I.A.3. Parallel international agreements

I.A.3.1. Status Error! Reference source not found.

1. 1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers

a) in force (19 September 1971, BGBl. II 1971, p. 1023)

2. 1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities

b) not ratified in Germany due to considerations of competence under the EU Treaty

3. Agreements abolishing the requirement of legalisation for foreign public documents generally between two or more countries

Germany has entered into bilateral agreements abolishing the requirement of legalisation with several states in- and outside the European Union. It has entered into such agreements with the following European countries:

Most of them are available in Geimer/Schütze, Internationaler Rechtsverkehr, Vol. IV, Part D III (loose-leaf, last update: July 2006).

Austria:

- Deutsch-österreichischer Beglaubigungsvertrag of 21. June 1923, RGBl. 1924 II, p. 61. Reapplicable since 01. January 1952, BGBl. 1952 II p. 436.

According to Art. 3 of the treaty, notarial documents issued with the signature and the seal of the notary are exempt from any legalization or Apostille. Regarding private documents bearing a sealed notarial authentication (Beglaubigungsvermerk), the same holds true with respect to the authentication (i.e. the authentication by a Austrian notary is likened to one made by German notary), Art. 4.

- With respect to documents regarding the personal status applies the deutsch – österreichische Vertrag über den Verzicht auf die Beglaubigung und über den Austausch von Personenstandsunterlagen sowie über die Beschaffung von Ehesfähigkeitszeugnissen, of 18 November 1980 (BGBl. 1981 II, p. 1050), in force since 1. May 1982.

According to Art. 1, sealed documents issued or authenticated by a registrar of a registry office (regarding the personal status) do not require legalization for use in the other member state. Also, certifications of no impediment / the legal ability to marry (Ehesfähigkeitszeugnis) are exempt from consular certification of competence [of the registrar].

- With respect to other documents, the Apostille Convention applies.

Belgium:

Treaty of 13. May 1975 (zwischen der Bundesrepublik Deutschland und dem Königreich Belgien über die Befreiung öffentlicher Urkunden von der Legalisation), German ratification act of 25. June 1980, BGBl. II p. 813:

Public documents issued and officially sealed in one of the two countries are not subject to any legalization or Apostille or other similar formal requirement for use in the respective other country.

Danemark:

Treaty of 17. June 1936, Dänisch-Deutsches Beglaubigungsabkommen, RGBl. II, p. 213, suspended during WW II, reapplicable since 01. September 1952.

Waiver of the legalization requirement with respect to most public documents.
In addition, waiver of the Apostille requirement with respect to documents of public notaries.

France:

Treaty of 13. September 1971, Deutsch- Französisches Abkommen über die Befreiung öffentlicher Urkunden von der Legalisation, BGBl. 1974 II p. 1074; in force since 01. April 1975, BGBl. II p. 353.

Public documents issued and officially sealed in one of the two countries are not subject to any legalization or Apostille or other similar formal requirement for use in the respective other country. The treaty trumps the Apostille Convention.

Greece:

Deutsch-griechisches Abkommen über die gegenseitige Rechtshilfe in Angelegenheiten des bürgerlichen und Handelsrechts, of 11. May 1938 (RGBl. 1939 II, p. 848).
Suspended during WW II. Reapplicable since 26. June 1952 (BGBl. II p. 634).

Legalization of notarial acts and local court documents is no longer required; instead: authentication by the president of the district court (Landgericht). Documents issued by district courts or higher courts do not require any additional authentication.

The treaty and the Apostille Convention are currently both applicable; in practice, the Apostille is used more.

Italy:

Deutsch- Italienischer Vertrag über den Verzicht auf die Legalisation von Urkunden of 07. June 1969 (BGBl. 1974 II p. 1069); in force since 05. May 1975.

Public documents issued in one of the two countries can be used in the other country as public documents without legalization (Art. 1 (1)). Most kinds of public documents (as listed in Art. 1 (2)) are to be accepted without any further authentication. For others, the treaty creates an authentication mechanism which resembles the Apostille procedure (Art. 2). The competent authorities in Germany are mostly identical with the ones competent for the Apostille. The treaty also covers consular documents and documents issued by embassies. *For details, see Arnold, Deutsche Notarszeitung 1975, p 581.*

In addition, the German – Italian treaty of 9 March 1936 covers the recognition and enforcement of judgments (in most respects superseded by Reg. 44/2001).

Switzerland

Deutsch-schweizerische Vertrag über die Beglaubigung öffentlicher Urkunden of 14. February 1907, RGBl. 1907 p. 413; 1911 p.907, 1912 p. 535, 1928 II p. 608, 1943 II p. 361.

According to this treaty, court documents do not require any legalization or other authentication.

Notarial documents are covered by the Apostille Convention of 5. October 1961.

Informal agreements seem to exist with Benin and Jamaica who accept all documents (Benin) / judicial and notarial documents (Jamaica) without legalization if they are certified by the president of a German Landgericht and accompanied by a certified English translation.

4. Agreements abolishing the requirement of legalisation for categories of documents relating to a specific subject matter, for example:

- a) The Hague Convention concerning the Recognition and Enforcement of Decisions relating to Maintenance Obligations Towards Children (1958)

Signature: 08 October 1958
Ratification: 02 November 1961
Entry into force 01 Januaray 1962

- b) The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

Signature: 15 December 1965
Ratification: 27 April 1979
Entry into force 26 June 1979

- c) The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters

Signature 18 March 1970
Ratification: 27 April 1979
Entry into force: 26 June 1979

- d) Convention of 2 October 1973 concerning the International Administration of the Estates of Deceased Persons

Neither signed nor ratified by Germany.

- e) The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

Signature: 09 September 1987
Ratification: 27 September 1990
Entry into force 01 December 1990

- f) The Hague Convention of 25 October 1980 on International Access to Justice

Signature: 25 October 1980. Not ratified. No entry into force.

- g) Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children

Signature: 01 April 2003. Not ratified. No entry into force.

Treaties in the area of personal status: CIEC conventions

See below specific areas.

Consular Treaties

A number of bilateral treaties regarding consular matters regulate that certain documents issued or certified by foreign consuls in Germany (and vice versa) are exempt from legalization. Such treaties exist e.g. in relation to Great Britain, Fidschi, Grenada, Jamaika, Malawi, Mauritius, Soviet Union (Successor States). Spain, Turkey, USA. Details vary. Due to most favored nation clauses, the principle also seems to apply to Columbia, Iran, Ireland and Japan.

Treaties on enforcement of judgments

A German – Israeli treaty of 20. February 1977 (BGBl 1980 II p. 925) covers recognition and enforcement of court decisions; decisions covered by the treaty are recognized without further legalization. Enforcement.

Similar treaties exist with respect to Norway (BGBl. 1981 II, p. 341), Spain (BGB 1987 II p. 34) and the United Kingdom (BGBl. 1961 II, p. 301 ff.), but are largely preempted by the Brussels Regulation / Lugano Convention.

A similar treaty exists also with respect to Tunesia (BGBl. 1969 II, p. 889).

I.A.3.2. Scope

As far as we could ascertain, there has been no relevant extension of said agreements via legislative or other means.

I.A.3.3. Legislative implementation

- ⇒ The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

Entry into force on 26 June 1979 (BGBl 1979 II p. 779)

- ⇒ The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters

Entry into force on 26 June 1979 (BGBl. 1979 II p. 780) .

- ⇒ The Hague Convention of 25 October 1980 on the Civil Aspects of International

Child Abduction is entry into force on 01 decemeber 1990.

The convention has been implemented by the Sorgerechtsüberkommens-Ausführungsgesetz (SorgRÜbkAG).(BGBL. 2005 I, p. 162). Its first part designates the Generalbundesanwalt as central authority in Germany. The second part regulates the procedure (§ 5: jurisdiction; § 6 general procedural requirements; § 7: recognition and enforcement; § 8: effect of the decisions and remedies).

I.A.3.4. Practical implementation

- a) The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters - entry into force on 26 June 1979 (BGBl 1979 II S. 779) and The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters - entry into force on 26 June 1979 (BGBl. 1979 II S. 780) .**

According to Artikel 3 (2) of the "Gesetz zu dem Haager Übereinkommen vom 15. November 1965 über die Zustellung gerichtlicher und außergerichtlicher Schriftstücke im Ausland in Zivil- oder Handelssachen und zu dem Haager Übereinkommen vom 18. März 1970 über die Beweisaufnahme im Ausland in Zivil- oder Handelssachen (BGBl. 1977 II S.1452)" of 22. December 1977 Germany declared on the 21.06.1979:

Requests for service have to be directed to the central authority of each Land. Central Authorities according to Art. 2, 18 (3) of the Convention are:

Baden-Württemberg: Justizministerium Baden- Württemberg Justizministerium

Schillerplatz 4
70173 Stuttgart
Tel.: 00-49-711-279-0
Fax: 00-49-711-279-2264
www.jum.baden-wuerttemberg.de

Bayern Bayer: Staatsministerium der Justiz

Bayer: Staatsministerium der Justiz
Prielmayerstr. 7
80335 München
Tel.: 00-49-89-5597-01
Fax: 00-49-89-5597-2332
E-Mail: poststelle@stmj.bayern.de
www2.justiz.bayern.de

Berlin: Senator für Justiz
Senatsverwaltung für Justiz
Salzburger Str. 21-25
10825 Berlin
Tel.: 00-49-30-9013-0
Fax: 00-49-30-9013-2000
E-Mail: poststelle@senjust.verwalt-berlin.de

www.berlin.de/senjust

Bremen: Präsident des Landgerichts Bremen
Hanseatisches Oberlandesgericht Bremen
Sögestr. 62/64
28195 Bremen
Tel.: 00-49-421-361-4437
Fax: 00-49-421-361-4451
E-Mail: verwaltung@oberlandesgericht.bremen.de
www2.bremen.de/justizsenator

Hamburg: Präsidenten der Amtsgerichte Hamburg
Es gibt folgende Amtsgerichte:
[Amtsgericht Hamburg \(-Mitte\)](#)
[Amtsgericht Hamburg-Altona](#)
[Amtsgericht Hamburg-Barmbek](#)
[Amtsgericht Hamburg-Bergedorf](#)
[Amtsgericht Hamburg-Blankenese](#)
[Amtsgericht Hamburg-Harburg](#)
[Amtsgericht Hamburg-St. Georg](#)
[Amtsgericht Hamburg-Wandsbek](#)

Link zu den Gerichten:

<http://fhh.hamburg.de/stadt/Aktuell/justiz/gerichte/amtsgerichte/start.html#headline3>

Hessen: Hessischer Minister der Justiz
Hessisches Ministerium der Justiz
Luisenstr. 13
65185 Wiesbaden
Tel.: 00-49-611-32-0
Fax: 00-49-611-32-2763
E-Mail: poststelle@hmdj.hessen.de
www.hmdj.justiz.hessen.de

Niedersachsen: Niedersächsischer Minister der Justiz
Nieders. Justizministerium
Am Waterlooplatz 1a
30169 Hannover
Tel.: 00-49-511-120-0
Fax: 00-49-511-120-5181
E-Mail: poststelle@mj.niedersachsen.de
www.mj.niedersachsen.de

Nordrhein-Westfalen: Justizminister des Landes Nordrhein-Westfalen
Justizministerium
Martin-Luther-Platz 40
40212 Düsseldorf
Tel.: 00-49-211-8792-0
Fax: 00-49-211-8792-456
E-Mail: poststelle@jm.nrw.de
www.jm.nrw.de

Rheinland-Pfalz: Ministerium der Justiz
Ministerium der Justiz
Ernst-Ludwig-Str. 3
55116 Mainz
Tel.: 00-49-6131-16-0
Fax: 00-49-6131-16-4887
E-Mail: poststelle@min.jm.rlp.de
<http://cms.justiz.rlp.de>

Saarland: Minister der Justiz
Ministerium für Justiz, Gesundheit und Soziales
Zähringerstr. 12
66119 Saarbrücken
Tel.: 00-49-681-501-00
Fax: 00-49-681-501-5868
E-Mail: poststelle@justiz.saarland.de
www.justiz-soziales.saarland.de

Schleswig-Holstein: Justizminister des Landes Schleswig-Holstein
Ministerium für Justiz, Frauen, Jugend und Familie Urkundenkategorie I, III
Lorentzdamm 35
24103 Kiel
Tel.: 00-49-431-988-0
Fax: 00-49-431-998-3804
E-Mail: poststelle.mjf@jumi.landsh.de
<http://landesregierung.schleswig-holstein.de>

b) The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction - entry into force on 01 December 1990.

see : I.A.3.3. lit c.)

Generalbundesanwalt beim Bundesgerichtshof
Adenauerallee 99 - 103 53113 Bonn

Telefon: (0 18 88) - 410 - 40
(0 22 8) - 410 - 40
Telefax: (0 18 88) - 410 - 5050
(0 22 8) - 410 - 5050

I.A.3.5. Judicial control

I.A.4. National Law

I.A.4.1. Legislative framework

a) Outgoing:

German documents may be legalized. Legalization is carried out by the diplomatic or consular mission of the country in which the document is to be used. It is up to the foreign mission to choose how it shall decide that a document is authentic. If they themselves do not have an up-to-date sample signature or seal from all potential issuing authorities, or do not look at the register of the issuing authority for each legalization, then they will have to develop special procedures. This is especially the case in states like Germany that have a very large number of issuing authorities which are particularly hard for the consular missions of other states to keep track of. Normally missions will demand prior certification of the document by a German authority, and sometimes further certification, known as validation, is also required.

Currently, validation is required by the following countries (according to the website of the Bundesverwaltungsamt, http://www.bva.bund.de/cln_046/nn_538912/DE/Aufgaben/Abt_II/Legalisation/merblatt_endbeglaubigung.html_nnn=true#doc684178bodyText7 :

1. Algeria
2. Bahrain
3. Bangladesch
4. Myanmar (Birma)
5. (People's Republic of) China
6. Iraq (but see III.A.3.2 for outgoing documents)
7. Iran (excepte university degrees)
8. Jordan
9. Kambodscha
10. Lebanon (only with respect to school documents)
11. Mali
12. Nepal
13. Ruanda
14. Saudi Arabia
15. Somalia (but see III.A.3.2 for outgoing documents)
16. Sudan

17. Syria
18. Taipeh-Trading Office, Visa-Division (only with respect to judicial documents)
19. Togo

The Federal Foreign Office has delegated the task of validating German documents to the *Bundesverwaltungsamt* (Federal Office of Administration) (directive of 21 February 1969). Since transferring this competence to the Federal Office of Administration, the Federal Foreign Office no longer certifies documents. The foreign missions in Germany have been informed to this effect.

The postal address of the Federal Office of Administration is:

Bundesverwaltungsamt
Referat II B4

50728 Köln.

The Office is located in Cologne Braunsfeld, Eupener Strasse 125.

Tel. 01888 358 4045 or 4046.

The Federal Office of Administration can only validate documents for which prior certification has already been obtained from the relevant agency (see above). Fee for validation is 10 EUR /document.

If foreign countries agree to not require additional validation by the Foreign office / the Bundesverwaltungsamt, the Ministries of Justice of the Länder usually transmit specimen signatures of the competent certifying authorities (see directly below) to the embassies (see Annex V).

In addition, if such an agreement exists, the foreign consulate (/ embassy) might even legalize the original document without such a certification, if the issuing authority (and the signature) are known to the consulate. In practice this only seems to happen with respect to documents issued by German notaries who made direct contact with the consulate.

Despite such an agreement, the foreign consulate can still make its own inquiries with respect to the authenticity of a certified document. This happens very rarely.

Documents are usually not legalized by the foreign embassy unless prior certification (*Zwischenbeglaubigung*) of the document has been obtained (prior certification is also required before validation by the Bundesverwaltungsamt). The agencies (usually) empowered to provide prior certification are listed in the table below. Cf.

[http://www.auswaertiges-
amt.de/diplo/de/Laender/Konsularisches/Urkundenverkehr/UrkundenverkehrTeilA.html](http://www.auswaertiges-amt.de/diplo/de/Laender/Konsularisches/Urkundenverkehr/UrkundenverkehrTeilA.html)

a) judicial documents (including documents of the judicial administration “Justizverwaltung”) and notarial documents President of the Regional Court, Landgericht (sometimes Local Court, Amtsgericht; notably in the City States of Berlin and Hamburg)

b) administrative documents (including certificates of civil status

[Personenstandsunterlagen]) Chief Administrative Officer of the district (President of the administrative district/district authority = Regierungspräsidium / Bezirksregierung)

In Länder without district authorities, the Land Ministries of the Interior are responsible, in Bremen and Hamburg the Senate Department for the Interior and Department for the Interior respectively.

In the Land of Berlin, the Registry Office (Standesamt Berlin I), in Rhineland-Palatinate, the Supervisory and Service Directorate in Trier, and in Thuringia, the Landesverwaltungsamt (Land Office of Administration) in Weimar.

c) school and university certificates: as above for administrative documents

Exception: In the following Länder different offices to those named above are responsible:

in Baden-Württemberg, the Ministry for Culture and Sport (school exams) and the Ministry for Science and Research (university exams); in Bavaria, the Bavarian State Ministry for Science, Research and the Arts and the Bavarian State Ministry for Education and Culture; in Brandenburg, the Ministry for Science, Research and Culture; in Saarland, the Ministry for Education, Culture and Science.

As a re-exception, in some Länder (e.g. Baden-Württemberg) the domestic competence for specific areas is concentrated with a Regierungspräsidium, notably for medical and law degrees, which are issued not by the university but by the state (Staatsexamen). In such cases, said Regierungspräsidium is usually also competent for questions of recognition of foreign diplomas and for questions of legalisation.

(d) commercial papers (e.g. certificates of origin, trade accounts) Chambers of Commerce and Industry and Chambers of Crafts and Trades

(e) certificates of clean criminal record

Federal Public Prosecutor – Federal Central Criminal Register (in Bonn)

For samples of the two most often used versions of certificates used, see Annex IV.

In addition, German consular agents are empowered by § 14 KonsG to certify the authenticity of German public documents for use in their respective country. They shall only issue the certificate, if they do not doubt the authenticity of the document. § 14 KonsG is usually applied, if the consular agents of the foreign country in Germany denied legalization. In such cases, the authorities in the respective countries often still accept the certification made by the German consular agent.

Particular problems exist, if there are no diplomatic relations with the country in question. Often, consular offices of third states are used for legalization in these cases. As this does not concern the relations between Member states of the EU, and considering the purpose of this study, we refrain from covering these problems

b) Incoming:

Legalization of foreign documents by German Consular Agents is governed by § 13 of the Konsulargesetz (KonsG).

§ 13 (2) defines legalization in the narrower sense in line with this questionnaire. In addition, if there is no doubt as to the factual and legal situation, § 13 (4) gives the consular agent leave to also certify that the issuer was competent for issuing the document and that the issuance was made in the proper form.

§ 13 (5) states that documents which are exempt from legalization under an international convention/agreement should not be legalized.

In practice, details vary according to the country of origin. General rules:

- a) Normally, the original documents are required. Certified copies usually do not suffice (exception: if the certified copy has been issued by the same authority as the original).
- b) In most countries, pre-certification / validation by the Foreign Ministry or other (high ranking) authorities of the foreign country is necessary.
- c) Documents signed with an automated signature can only be legalized, if either an additional signature of the competent authority is later added by hand or the document has been additionally authenticated by hand by the issuing authority.
- d) The request for legalization has to show that the document is relevant for legal issues in Germany (Bezug zum deutschen Rechtsverkehr); e.g. by presenting a letter of a German authority declaring the need for certain documents in legalized form.
- e) Written requests are possible, if the applicant can not come to the consulate in person; or family members / friends etc can be used to request by proxy (power of attorney must be proven). In both cases, an a copy of the passport of the applicant should be added to the request.
- f) Fees: usually EUR 20,- but up to EUR 80,- / document (+expenses). If legalization is not possible because the document has proven to be false, 75% of the normal fee are applied.

I.A.4.2. Scope

See under I.A.4.1.

I.A.4.3. Practical implementation

See under I.A.4.1.

I.A.4.4. Judicial control

PART I.B. Specific

I.B.1. Introduction

Documents regarding personal status - General Remarks

1. Many of the below mentioned documents fall in the category of documents regarding personal status (Personenstandsunterlagen). In most areas, common legal rules apply to all such documents under German law (see below 3.).

2. "International documents"

Germany is a party to the conventions of the Commission Internationale de l'État Civil (CIEC).

Cf. <http://www.ciec1.org/>

The conventions notably cover certificates of birth, certificates of marriage, and certificates of death (1976 convention) as well as certificates of no impediment (1980 convention) and provides for their issuance in multiple languages.

With respect to documents issued under these conventions, no further legalization etc is required.

In addition, bilateral agreements with some European countries do away with the legalisation requirement, see above.

3. Personenstandsunterlagen

Events causing family relationships are recorded in the Personenstandsregister (civil status records). These registers are governed by the (federal) Personenstandsgesetz (PerStdG, Act on civil status records) of 3. Nov. 1937, last amended by law of 21. August 2002 (BGBl. I p. 3322). Technical details are dealt with various regulations on the Länder level.

The records are kept by the Standesbeamte, a city official competent inter alia for concluding marriages. The Standesbeamte keeps distinct records on marriages (Heiratsbuch), family relations (Familienbuch), births (Geburtenbuch) and deaths (Sterbebuch), denominated in their entirety „Personenstandsbücher“ (civil status records), see §§ 1,2 PerStdG.

Going beyond the below (II A 4.2.) mentioned rules of §§ 415, 437 et seq. ZPO, §§ 60 et seq. PersStdG give additional probative value to (German) civil status records and documents.

According to § 60 (1) PersStdG, the records provide full proof of the fact of a persons birth and death as well as of a marriage and of all additional entries made with respect to these facts. According to § 66, § 60 (1) applies accordingly to documents on personal status, issued by the Standesbeamte on the basis of these records (proof of the contrary remains possible but when such a document is presented, the burden of proof switches to the opposing party).

With respect to foreign civil status documents, the general rules with respect to §§ 415 et seq. , 437 et seq. ZPO as described below apply. Conversely, the courts and legal doctrine hold that §§ 60 et seq. PersStdG do not apply. Instead, the appreciation of their content and probative value is left to the discretion of the court (freie Beweiswürdigung). This discretion will be guided by the probative value given to the document in its own legal system (the same idea is implemented by Art. 5 (1) of the CIEC convention of 27. Sept 1956).

4. Apostille and (prior) certification (Zwischenbeglaubigung) - Outgoing

Competent for the issuance of an Apostille and the certification before legalisation are in most Länder the district authorities (Regierungspräsidium/Bezirksregierung); in Sachsen-Anhalt and Thuringia the respective Landesverwaltungsamt. In Länder without such districts (e.g. Saarland): the Ministries of the Interior; in the city states of Hamburg and Bremen the Interior department of the Senate. In Berlin: Standesamt Berlin I; in Rheinland Pfalz: Aufsichts- und Dienstleistungsdirektion. (Validation by the Bundesverwaltungsamt, cf. above)

5. Birth and death

Birth and death of Germans occurring abroad can be entered within 6 months after the fact into the German records. Competent for all such cases is the Standesamt I, Berlin (after the 6 months have run out, the fact can still be certified (usually) by the district authority where the returning German national makes his residence). Generally, foreign civil status documents documenting these facts will be accepted as such (accompanied by a certified translation). Only in cases of doubt, Apostille / legalization will be required.

6. Free movement of nationals of EU member states:

Since 1.12.2005, according to the Freizügigkeitsgesetz EU, nationals of EU member states do not require a (declaratory) residence permit any more (family members from third countries still do). They simply have to register with the Einwohnermeldeamt, satisfactorily showing (Glaubhaftmachung) the factual basis of their right to free movement. On request, they can receive a certification asserting their right to reside in Germany.

For nationals of 8 of the 10 new memberstates (Estland, Lettland, Lithuania, Poland, Slovakia, Slovenia, Czech Rep., Hungary) seeking to work in Germany, the FreizG does only apply if employment in Germany has been authorized by the (Federal) Bundesagentur für Arbeit (cf. § 284 I SGB III).

City authorities competent for the issuance of of the certificate told us that they in practice do not require an Apostille or legalisation with respect to documents issued by authorities of other EU member states: Most cases are covered by the CIEC

conventions (which also cover Turkey), or by bilateral treaties anyway. With respect to the remaining countries (notably Great Britain, Ireland, Sweden, Finland and the new member states), in practice they said they just accept the original documents (unless they strongly suspect a forgery). However, a certified translation will often be required, unless the CIEC conventions apply.

With respect to change of names, we were told that usually the passport will suffice as proof of the existing family relationship.

The situation is different with respect to documents issued by third countries (notably for family members of EU citizens). In such cases, the practice depends on the issuing country. Normally, the German embassy granting the visam for entry already pre checks this question and makes recommendations which are usually followed.

I.B.2. Specific documents

1. Documents proving involuntary unemployment

According to § 2 (3) Freizügigkeitsgesetz (law on freedom of movement) the competent „Agentur für Arbeit“ (employment office) will issue a certification regarding times of involuntary unemployment (and times of involuntary incapacity of work of self employed persons).

(however, there seems to be very scarce practice in this respect; an official at an employment office we contacted could not remember a single case having occurred while he was competent for them)

Since this kind of document is required for a prolonged stay in the country where the person has already worked (here: Germany), legalisation (of a German document) does not seem to be an issue.

For nationals of most of the 10 new member states (Estland, Lettland, Lithuania, Poland, Slovakia, Slovenia, Czech Rep., Hungary) the FreizG does only apply if employment in Germany had been authorized before by the Agentur für Arbeit (cf. § 284 I SGB III).

The documents needed for an application of such an authorization are mostly forms to be filled out by the worker or the German employer (no need for legalisation). In addition, professional qualification must be proven; in this respect a certified translation of the diploma is usually required, but – according to the official we contacted - no legalisation / Apostille (*the situation might be different in the rare cases where the diploma was issued in a (non –EU) third country*).

2. Documents proving a family relationship or other durable relationship

See above I b 0 General Remarks

3. Documents proving or contesting a parent-child relationship

a) See above I b 0 General Remarks

b) CIEC Convention of 14.9.1961 (über die Erweiterung der Zuständigkeit der Behörden, vor denen nichteheliche Kinder anerkannt werden können / on the extension of the

jurisdiction of authorities in front of which illegitimate children can be recognized)

Ratified, BGBl 1965 II p. 17. According to this convention, the recognition of fatherhood does not need to be legalized.

4. Documents proving the name and forenames of a child or adult

See above I b 0 General Remarks

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

See above I b 0 General Remarks

With respect to court decisions, the Brussels Regulation applies.

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

See I b 7 b)

With respect to certificates of clean criminal record is competent the Federal Public Prosecutor – Federal Central Criminal Register (in Bonn).

7. Documents proving a person's professional qualifications (diplomas)

a) School diplomas, academic degrees:

- 1) Competent authorities.

School diplomas and academic degrees: District authorities (Regierungspräsidium/Bezirksregierung) (but see above I.A.4.1. for exceptions). In detail, competence for recognition is often distributed in an even more complicated way between the Regierungspräsidien within some Laender, in order to concentrate knowledge on certain countries.

The Anabin database (in German) www.anabin.de contains an extensive list of the German authorities competent for recognition of foreign diplomas, split by professions and Laender. (link „Zuständige Stellen in Deutschland“)

They all use the services of the Central Office for Foreign Education to evaluate foreign degrees:

- 2) Zentralstelle für ausländisches Bildungswesen (ZAB)

<http://www.kmk.org/zab/txt-eng.htm> :

a) Status

On behalf of the Standing Conference of the Ministers of Education and Cultural Affairs the Central Office for Foreign Education is the official agency for the evaluation and recognition of foreign educational qualifications.

The Central Office for Foreign Education provides advisory and information services to the authorities concerned with the recognition of foreign diplomas (e.g. ministries, universities, courts etc.), but has no rights to make decisions itself.

b) Functions

The main tasks of the Central Office for Foreign Education are:

- to assess foreign educational qualifications of individual applicants upon request from those authorities that are legally empowered to decide on individual cases of recognition;
- to elaborate general equivalence schemes and placement recommendations for foreign educational qualifications; these recommendations may eventually become statutory regulations when approved by a joint resolution of the Ministers of Education and Cultural Affairs;
- to assist the authorities concerned in the preparation of bilateral agreements with the governments of foreign countries on the mutual recognition of educational qualifications;
- to act as general information and documentation centre with regard to educational systems abroad;
- Development and management of a data base for recognition of foreign credentials.

Cooperating authorities [...] Information sources [...]

c) Publications

The Central Office for Foreign Education has installed a database www.anabin.de which serves as information medium for evaluation of foreign certificates and contains a multitude of additional data.

In its function as information centre for the directives of the European Union the Central Office publishes information leaflets for the application of the EU directives e.g. for physicians, dentists, veterinarians, pharmacists, architects, and for the two general directives 89/48/EEC and 92/51/EEC. These leaflets can be ordered at the Central Office.

See also <http://www.enic-naric.net/members.asp?country=Germany>

The ZAB will usually receive a simple copy of the foreign document in its original language. In case of doubt, it will require the original from the competent authority.

3) Whether or not legalisation or an Apostille are required before recognition depends very much on the country and the degree in question, as well as on the recognizing authority.

There seem to be no (externally) binding legal rules in this respect, only internal administrative guidelines.

Even with respect to EU Member states, differences seem to exist (no clear pattern, probably more trust with respect to „old“ EU member states. We would assume that within this subgroup Austrian documents most probably get preferential treatment also with respect to documents not covered by the bilateral treaty, due to similar administrative traditions + same language, but we have received no evidence for this assumption)

One Regierungspräsidium competent for the recognition of foreign medical exams explained: „We usually do not require an Apostille. For some countries, we are ourselves able to see whether the document is correct and an Apostille will not help us too much with respect to the problematic countries.“

On the other hand, the ZAB told us that they receive many requests for evaluations in this area (medical degrees) – so it seems that the ZAB will be contacted for the “problematic” countries.

Some countries (e.g. Bulgaria) insist themselves that foreign countries should only accept their diplomas if they are accompanied by an Apostille or other legalisation.

In practice it often seems to be accepted that the foreign student first sends a simple copy of his degree when applying for a place to study. He will have to present the original (with legalisation or not, depending on the above said) only at the time of immatriculation.

According to the ZAB- official we spoke to, the general impression seems to be that German authorities are not very demanding with respect to legalisation formalities.

5) A special case is China:

Germany has installed a special office at its Peking embassy checking and certifying the authenticity of Chinese diplomas (as part of a broader process including a 20 min interview testing the applicants skill level) for use in applications to German universities. http://www.deutschebotschaft-china.org/de/kultur/studieren/akademische_pruefstelle.html

This is due to the the high number of Chinese applicants to German universities [currently almost 25000 Chinese study in Germany] and a high degree of forgeries in the preceding years. But, while the amount of forged Chinese degrees has since declined, the new trend seems to be an increased load of forged German degrees circulating in China. The ZAB issues opinions on such German degrees on request.

b) Documents proving professional training:

- a) Competence for professional training and the recognition of foreign professional training – to the extent that such recognition is necessary – varies wildly.

The Anabin database (in German) www.anabin.de contains an extensive list of the German authorities competent for recognition of foreign diplomas, split by professions

(link „Zuständige Stellen in Deutschland“).

General rules:

Public health sector: usually special divisions of district authorities (sometimes special agencies on the same level); occasionally Ministries of Health.

Educational professions: District authorities (for school teachers: usually special authorities of the same level: Oberschulamt) or Ministries of Culture

(other) Public service (Beamte, Angestellte im Öffentlichen Dienst): the hiring authority
- most others: Chambers of Commerce and Chambers of Trades, cf. (3).
- special cases – e.g. Lawyers - Ministries of Justice; tax advisors: Ministries of Finance

- b) To the extent that district authorities or Ministries are competent, the above said (a) applies mutatis mutandis. The ZAB issues opinions on such degrees, too. (Usually, a ZAB-official will specialise with respect to a country (or a group of countries) and will be competent for all kinds of diplomas from this country).

A department of a Ministry of Justice responsible for recognition of foreign law degrees and foreign legal training received in EU members states [and Eastern Europeans of German origin (cf. below (4))] told us they only require certified translations of the relevant documents (unless in English or French), but no form of legalisation.

- c) With respect to crafts (Handwerk), the directives have been implemented by the "EU/EWR-Handwerk-Verordnung" of 4. August 1966 (BGBl. I p. 469), last change: 22. June 2004 (BGBl. I S. 1314) <http://www.gesetze-im-internet.de/ewghwv/BJNR004690966.html>; [regulation by the federal minister for economic affairs, implementing regulations 42/99 and 19/2001, based on § 9 Handwerksordnung]

While this regulation deals with the recognition of foreign (European) professional diplomas, questions of legalisation are not covered. E.g. § 2 Handwerksverordnung only requires a certificate by the country of origin regarding the time a foreign craftsman had led his own business abroad, without specifying formal requirements regarding authentication of the certificate.

The same (lack of legislative guidance) holds true for most other trades. The officials we spoke to regretted that there are no binding rules dealing with this kind of problems.

The Chambers of Commerce (Industrie- und Handelskammern) and the Chambers of Crafts (Handwerkskammern) we contacted told us that they only require the original document (or a certified copy), but no form of legalisation (for both, professional diplomas and certifications of time of work in a certain profession). They (almost) always require a certified translation.

One explanation given was that the applicants looking for work often don't have the time and money to apply for such formalities in their home countries (too burdensome). Still, one official of a chamber of commerce complained that they are confronted with probable forgeries from time to time but have no practical way of checking the authenticity of the documents; while they usually require a CV with the contact data of former employers, they will not contact them but in cases of very strong doubt, due to

workload and problems of communication in foreign languages.

(However, where applicable, they also require presentation of school diplomas which in turn need to be recognized by the competent German state authorities (cf. above). With respect to regulated trades/crafts, the real barrier will be the exams testing the necessary skills (or the remedial courses offered in the alternative).

- d) Special rules apply to persons of German origin from Eastern Europe (Spätaussiedler, nowadays mostly from Russia, who often lost their diplomas due to them being shipped around the old USSR).

§ 10 Bundesvertriebenengesetz grants them a special status allowing for simplified procedures. No Legalisation/Apostille is required in these cases, either.

8. Documents proving a person's death

See above I b 0 (General comments)

9. Documents proving a person's date of birth

See above I b 0 General Remarks

10. Documents proving the establishment by incorporation of a company

Such documents are issued in the form of excerpts of the company registry (Handelsregister).

The registry is governed by §§ 8 et seq of the Commercial Code (Handelsgesetzbuch, HGB), the Gerichtsverfassungsgesetz (GVG, constitution of the courts act) and to some extent by remaining influences of the the Handelsregisterverfügung of 12.08. 1937. The details of which facts have to be recorded are governed by the legal instruments covering the divers kind of companies.

The registry is kept by the registry court (a division of the local Amtsgericht). The registry is divided in two parts, Part 2 for entities incorporated under private law (AG, GmbH), Part 1 for single ownership businesses, partnerships and public law entities.

Everybody is entitled to request such an excerpt (§ 9 HBG). The fee is 10 EUR for simple excerpts (nowadays often simple printouts from the electronic registry), 18 EUR for certified excerpts (signature, seal). In some Länder, such a request is possible by electronic means, requiring pre-registration.

As a judicial document, (certified) excerpts receive an Apostille from the president of the district court (Landgericht).

Please note: The founding contract of a German limited company (GmbH) (or a corporation (Aktiengesellschaft)) must be certified (beurkundet) by a (German or

“equivalent”, disputed) Notary. For this certification, cf. below No. 11. Registration in the Handelsregister is however required for the GmbH to come into existence as a limited company; if the company acts before registration, the limitation of liability does not apply.

11. Documents proving the constitution of a company, including any official translation thereof

The above said (No. 10.) applies mutatis mutandis.

Private partnerships regarding very small non-merchant business (as defined by §§ 1 (2), 105 (2) HGB) need not be registered in the Handelsregister and can be created by a simple contract – even orally. In practice, the contract usually will be certified (beurkundet) by a Notar. In addition to the simple certification of the authenticity of the signatures (Beglaubigung) the Notar certifies that the parties agreed to the content of the contract after reading the document to the parties and explaining important issues (Beurkundung).

Competent for issuance of an Apostille (or the issuance of a prior certification [Zwischenbeglaubigung]) with respect to notarial documents are usually the Presidents of the Landgericht (district court) where the Notar is located.

12. Documents proving the latest banking accounts of a company

- a) Documents issued by the banks are not considered public documents as such.

In theory, the authenticity of the signature can be certified by notaries (though rare in practice). This certification in turn is a public document which can be legalized or combined with an Apostille (competent for the Apostille is normally the President of the Landgericht of the district where the notary is located).

- b) The Chambers of Commerce and Industry are competent to certify commercial papers (e.g. certificates of origin, trade accounts) for export purposes. The documents can then receive further validation by the Bundesverwaltungsamt.

Legal basis: § 1 (3) of the Gesetz zur vorläufigen Regelung des Rechts der Industrie und Handelskammern of 18.12.1956; the designation of the Chambers of Commerce as competent authorities to the Secretary of the League of Nations by a declaration of the German Empirical Government in 1923 and the „Statut für die Ausstellung von Ursprungszeugnissen“ adopted by the general assembly of the German chambers of commerce (and subsequently in practically identical form by the diverse local chambers of commerce; below the version of the Chamber of Commerce of Frankfurt/Oder) in 1994.

In order to be certified by the Chamber of Commerce,

- the document needs to show the address of the applicant (proving him domiciled in the district of the particular chamber)
- the applicant is obliged to give all necessary information and must allow the chamber to check his books

- must present the original document

The certificate can be issued in a foreign language if needed (if the chamber official knows the language).

The Statut is drafted with respect to the export of goods. But according to § 9 of the Statut these rules apply accordingly with respect to other documents needed for cross border commerce.

However, the chamber of commerce we contacted has not yet have had any cases involving the certification of bank documents.

Statut für die Ausstellung von Ursprungszeugnissen und anderen dem Außenwirtschaftsverkehr dienenden Bescheinigungen

Die Vollversammlung der Industrie- und Handelskammer Frankfurt (Oder) hat gemäß § 1 Abs. 3 in Verbindung mit § 4 Abs. 1 des Gesetzes zur vorläufigen Regelung des Rechts der Industrie- und Handelskammern vom 18. Dezember 1956 (BGBl. I, 920), in der Neufassung nach dem Stand vom 21. Dezember 1992, zuletzt geändert aufgrund des Artikels 2 des Gesetzes zur Änderung von Gesetzen auf dem Gebiet des Rechts der Wirtschaft vom 21.12.1992 (BGBl. I, 2133), am 28.11.1994 folgendes Statut für die Ausstellung von Ursprungszeugnissen und anderen dem Außenwirtschafts- verkehr dienenden Bescheinigungen beschlossen:

§ 1

(1) Die Kammer stellt auf Antrag die für den Außenwirtschaftsverkehr erforderlichen Ursprungszeugnisse aus, soweit nicht die Ausstellung anderen Stellen zugewiesen ist.

(2) Ein Ursprungszeugnis wird nur ausgestellt, wenn der Antragsteller seinen Sitz oder eine Betriebsstätte oder, falls er kein Gewerbe betreibt, seinen Wohnsitz im Kammerbezirk hat oder wenn die örtlich oder sachlich zuständige Kammer der Ausstellung zustimmt.

(3) Ist dem Antragsteller für die betreffenden Waren bereits ein Ursprungszeugnis erteilt worden, so zieht die Kammer das frühere Ursprungszeugnis bei der Ausstellung des neuen ein. Falls dies nicht möglich ist, kennzeichnet sie das neu ausgestellte Ursprungszeugnis durch das Wort „Neuausfertigung“.

(4) Ein Ursprungszeugnis wird nicht ausgestellt, wenn der Versand der Waren, deren Ursprung bescheinigt werden soll, noch ungewiss ist.

§ 2

(1) Der Antragsteller hat die vorgeschriebenen Vordrucke des Ursprungszeugnisses, des Antrags auf Ausstellung eines Ursprungszeugnisses und, soweit erforderlich, der Durchschriften auszufüllen und der Kammer einzureichen. Der Antrag ist vom Antragsteller mit Orts- und Datumsangabe zu versehen und rechtsverbindlich zu unterzeichnen.

(2) Blanko-Ursprungszeugnisse werden nicht ausgestellt.

§ 3

(1) Der Antrag auf Ausstellung eines Ursprungszeugnisses muss mindestens die Angaben enthalten, die nach der Verordnung (EWG) Nr. 2913/92 des Rates vom 12.

Oktober 1992 zur Festlegung des Zollkodex der Gemeinschaften und den zu ihrer Durchführung ergangenen Rechtsakten, so vor allem der Verordnung (EWG) 2454/93 der Kommission mit Durchführungsvorschriften zum Zollkodex, in der jeweils gültigen Fassung vorgeschrieben sind.

(2) Außerdem muss der Antrag die von den zuständigen deutschen Behörden geforderten Angaben enthalten.

(3) Der Antrag darf zusätzlich nur folgendes enthalten:

- a) Angaben über Wert und Menge der Waren;
- b) Angaben über das Akkreditiv;
- c) Angaben über die Einfuhrlizenz;
- d) Angaben aufgrund zwischenstaatlicher Vereinbarungen.

(4) Der Ursprungsbegriff richtet sich nach den Bestimmungen der in Absatz 1 erwähnten Verordnung (EWG) und den zu ihrer Durchführung ergangenen Rechtsakten in der jeweiligen Fassung.

§ 4

Das Ursprungszeugnis muss in Übereinstimmung mit dem Antrag die Angaben gemäß § 3 Abs. 1 und 3 enthalten.

§ 5

(1) Die Kammer kann zur Prüfung der Richtigkeit der vom Antragsteller gemachten Angaben alle ihr erforderlich erscheinenden Ermittlungen anstellen und mündliche oder schriftliche Auskunft verlangen. Sie kann insbesondere die Vorlage der Hersteller- oder Lieferantenrechnungen, der Lieferscheine, der Auftragsbestätigung des Herstellers und der Ursprungszeugnisse anderer zur Ausstellung von Ursprungszeugnissen befugter Stellen sowie die Einsichtnahme in die entsprechenden Geschäftsunterlagen verlangen.

(2) Die Kammer kann außerdem vom Antragsteller, falls daran Zweifel bestehen, den Nachweis der Versandbereitschaft fordern.

(3) Für die Erteilung der geforderten Auskünfte und Vorlage der verlangten Unterlagen kann die Kammer dem Antragsteller eine Frist setzen.

(4) Reichen die Unterlagen oder Auskünfte nicht aus, so muss die Kammer die Erteilung des Ursprungszeugnisses ablehnen.

(5) Stellt sich nachträglich heraus, dass die gemachten Angaben unrichtig sind, so hat die Kammer ein bereits erteiltes Ursprungszeugnis für ungültig zu erklären und dafür zu sorgen, dass es eingezogen wird.

§ 6

(1) Die Kammer erteilt das Ursprungszeugnis, indem sie den vom Antragsteller mit den erforderlichen Angaben versehenen Vordruck mit ihrer Bezeichnung, Ortsangabe, Datum, Siegel und Unterschrift des mit der Ausstellung Beauftragten versieht. Der Name des Unterzeichners muss in Druck- oder Maschinenschrift wiederholt werden.

(2) Die von der Kammer ausgestellten Ursprungszeugnisse sind öffentliche Urkunden.

§ 7

Auf dem Antrag werden Ort und Datum der Ausstellung des Ursprungszeugnisses, die vorgelegten Unterlagen, die Zahl der Durchschriften und der Name des mit der Ausstellung Beauftragten vermerkt; der Antrag verbleibt bei der Kammer.

§ 8

Der Antrag und diejenigen Unterlagen zur Erteilung des Ursprungszeugnisses, die dem Antragsteller nicht zurückgegeben werden, sind mindestens zwei Jahre aufzubewahren. Die Aufbewahrungsfrist beginnt mit Ablauf des Tages, an dem das Ursprungszeugnis ausgestellt wurde.

§ 9

(1) Stellt die Kammer auf Antrag sonstige dem Außenwirtschaftsverkehr dienende Bescheinigungen aus oder gibt sie auf Handelsrechnungen oder anderen dem Außenwirtschaftsverkehr dienenden Papieren Erklärungen ab, so sind die Bestimmungen dieses Statuts sinngemäß anzuwenden. Eine Ausfertigung der Bescheinigung oder der Erklärung verbleibt bei der Kammer.

(2) Bescheinigungen und Erklärungen werden in deutscher Sprache erteilt; bei nachgewiesenem Bedürfnis können sie auch in einer Fremdsprache erteilt werden.

(3) Eine Bescheinigung kann nicht ausgestellt, eine Erklärung nicht abgegeben werden, wenn der mit ihr verfolgte Zweck oder der beantragte Inhalt gegen ein Gesetz oder Grundsätze der öffentlichen Ordnung verstoßen.

§ 10

Zur Durchführung dieser Bestimmungen können Richtlinien als Verwaltungsvorschrift erlassen werden.

§ 11

Für die Ausstellung von Ursprungszeugnissen, Bescheinigungen und Erklärungen erhebt die Kammer Gebühren nach Maßgabe ihrer Gebührenordnung.

§ 12

Dieses Statut tritt am 28.11.1994 in Kraft.

13. Documents proving the deposit of cash or certificates of deposit

See above 12 b.

Electronic letters of credit (e-Akkreditive):

The ICC has been working toward the introduction of electronic forms. However, the proposed system seems not to have been implemented in practice as far as the final documents are concerned; electronic means are only used for preparation.

With respect to the free movement of individuals, the amounts of money to be proven are no longer defined by law (it only requires "sufficient means"), allowing direct implementation of changes of European (case) law by administrative / court practice.

PART II – Incoming documents: Effects in the Member State’s legal order

OVERVIEW OF PART II

II.A.1. European Community Law

II.A.1.1. The effect of the implementation of Community law

There are no specific rules on the status of foreign documents that are exempt from legalisation under EU law. Where EU law does not directly regulate the status of such foreign documents, the general domestic rules apply. In principle, this means that legalized foreign documents are granted the same status in Germany as domestic public documents (see below II.A.4).

With respect to admissibility and evidentiary weight of foreign documents, German law is in accordance with the obligations created by Community law, as it grants legalized foreign documents the same value as German documents.

II.A.1.2. Admissibility and evidentiary weight in judicial proceedings

See below II. A. 4

II.A.1.3. Admissibility and evidentiary weight in administrative matters

See below II. A. 4

II.A.2. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

II.A.2.1. The effect of completion of the requirements of the Hague Convention

Completion of the requirements renders the document equivalent to a German document, see below II A 4.

II.A.2.2. Admissibility and evidentiary weight in judicial proceedings

II.A.2.3. Admissibility and evidentiary weight in administrative matters

II.A.3. Parallel international agreements

II.A.3.1. The effect of completion of the requirements of parallel agreements

Completion of the requirements renders the document equivalent to a German document, see below A 4.

II.A.3.2. Admissibility and evidentiary weight in judicial proceedings

II.A.3.3. Admissibility and evidentiary weight in administrative matters

II.A.4. National Law

II.A.4.1. The effect of the completion of the requirements of national law

With respect to the effect of foreign public documents in the German legal order, German law in principle does not distinguish between documents falling under the "Apostille" convention, documents falling under one of the parallel international agreements or documents to which none of the international instruments applies. The rules described in the following are relevant for all these categories of documents. If all requirements are completed, the document is, in principle, recognized as equivalent to a German public document (cf. II.A.4.2. and II.A.4.3). However, a certified translation will often be still necessary.

a) German public documents

According to § 437 (1) ZPO [Code of Civil Procedure], documents that appear on their face to be German public documents are presumed to be authentic (created by the purported signee), i.e. the party who doubts the authenticity has to positively prove the document not to be authentic. Cf. below II A.4.2.

This presumption does not apply to foreign documents, see directly below.

For a translation of the German Code of Civil Procedure in English see Rützel/Wegen/Wilske (ed.) Commercial Dispute Resolution in Germany (2005).

b) Not legalized foreign public documents

Under § 438 (1) ZPO it is left to the discretion of the court to decide upon the circumstances of the specific case whether or not a foreign public document can be considered to be authentic without further proof. (To the extent European law might require equal treatment of a EU document with a German document, the discretion of the court would be completely reduced, due to the primacy of European Law.)

Otherwise, the party will have to produce further evidence to convince the court of the authenticity of the document.

All kinds of evidence is admissible to verify the authenticity of the document, including request for information by the court directed at German embassies / consulates (via the German Foreign Office), Landesarbeitsgericht Hamm (Court of Appeal in Labor Law), BB 1989, 2191.

c) Legalized foreign public documents

According to § 438 (2) ZPO, authenticity can be proven by legalization by a German consular officer. § 438 (2) ZPO refers to legalization in the narrower sense as used in this questionnaire and defined in § 13 (2) of the KonsG (Consular Act); see above I.A.4. Legalization puts the foreign document on the same footing as German documents (a) as far as authenticity is concerned.

d) The same effect (presumption of authenticity) applies if the legalization is replaced by an Apostille under the Apostille Convention.

II.A.4.2. Admissibility and evidentiary weight in judicial proceedings

Admissibility:

In normal court proceedings, all kind of documents are admissible; only their evidentiary weight might vary. Documents in foreign language in principle require certified translation.

Evidentiary weight:

a) German public documents

The following is mostly based on Geimer/Schütze-Schmidt, Internationaler Rechtsverkehr, Vol. IV Part D I (looseleaf, last update: July 2006)

This area is mostly covered by two sources: the Beurkundungsgesetz (Certification Act, detailing the certification process) and §§ 415 et seq. ZPO (covering the procedural effects of public documents). Together, they form the basis of a general law on certification, as the rules of the ZPO also apply in administrative court proceedings to the extent that the Verwaltungsgerichtsordnung (VwGO) does not deviate from it (cf. §§ 98, 173 VwGO).

1) The basic rule: § 415 ZPO:

According to § 415 (1) ZPO, documents issued in the required form by:

- a public authority, within its competency / jurisdiction or
- a person vested with public faith, within its area of responsibility with respect to a declaration made in front of the authority / person provide full evidence of the occurrence of this declaration.

Proof to the contrary is possible, § 415 (2)

(§ 415 does not cover the question whether the content of the document is correct, this question is left to the free appreciation of the judge, § 286 (1) ZPO).

Documents issued by a Germany notary also provide full proof of the identity of the participating persons (§ 10 BeurkG; the notary is required to check the identity (passport, identity card) of persons making declarations in front of him).

As it is very difficult for private parties to verify these conditions in detail (especially the authenticity of the signature), the presumption of authenticity of § 437 (1) ZPO (see above) applies to documents which “according to their form and content” appear on their face to be documents issued by the competent authorities (this notably requires a authentic looking seal). It follows, that in effect the party using such a document does not have to proof that the document was issued by the authority within its competency and in the proper form.

This presumption is justified by 3 arguments:

- The usual recipient of a German public document will normally be able to discover himself if a document is carrying the seal of the wrong authority
- Public seals get rarely stolen and are difficult to forge
- Public authorities abide by the law and therefore usually do not issue documents outside of the scope of their authority

As these arguments do not necessarily apply to foreign documents, the presumption of § 437 (1) ZPO does not apply to non legalized foreign documents.

- 2) According to § 417 ZPO, documents issued by public authorities containing a ruling / decision / command of this authority provide full evidence of their content.
- 3) According to § 418 (1) ZPO, other public documents provide full evidence of the facts attested in them – but only if the attesting authority witnessed the facts (§ 418 (3) (the Länder are empowered to legislate differently in this respect).

Proof to the contrary is possible, unless the law of the Länder commands otherwise, § 418 (2).

b) Not legalized foreign public documents

§ 438 (1) ZPO does apply, see above.

If the court considers the document to be authentic under this rule, §§ 415 et seq ZPO apply ; i.e. the foreign document has the same evidentiary weight * as a German one (cf. the decision of the Bundesverwaltungsgericht, NJW 1987, p 1159 [case GER 10], with further references; notably referring to a decision of the Bundesgerichtshof, BGH LM § 418 ZPO Nr. 3).

As mentioned above, this does not apply to the question whether the content of the document is true; this question remains within the real of free appreciation by the judge.

With respect to § 415 ZPO (declarations made in front of the authority), the court must also be convinced that the document was issued within the area of competence of the foreign authority and in the prescribed form; this question is of course governed by the foreign law (OLG Düsseldorf, IPRax 1996, p 423 (regarding an Iranian notary public)). The court can be convinced by any means that the foreign authority acted within their competence and in the prescribed form; this includes request for information by the court directed at German embassies / consulates (via the German Foreign Office), Landesarbeitsgericht Hamm (Court of Appeal in Labor Law), BB 1989, 2191.

c) Legalized foreign public documents

§ 438 (2) ZPO does apply, see above. The court will consider the document to be authentic and apply §§ 415 et seq ZPO.

With respect to § 415 ZPO, this only holds true if the legalization includes the fact that the document was issued within the area of competence of the foreign authority and in the prescribed form (cf. above A I 4.1. b) ; § 13 (4) KonsG); else, § 438 (1) applies (see above b).

However, as § 438 (2) does not cover the extended legalization as such, even in case of such an extended legalization, the court can still conclude that the document was outside the competence of the authority or not made in the prescribed form; then, the requirements of § 415 are not met (in practice, court usually accept the statement of the consular agent).

II.A.4.3. Admissibility and evidentiary weight in administrative matters

In principle, the above said applies accordingly in administrative proceedings and in the administrative courts. Since in administrative court proceedings it is –unlike in civil proceedings - the task of the court to find out all the facts (Amtsermittlungsgrundsatz; 108 (1) VwGO), with respect to § 438 (2) ZPO the court can not decided on a “non liquet” basis but has to come to a conclusion on the authenticity of the document, one way or the other. (Decision of the Bundesverwaltungsgericht, NJW 1987, p 1159).
[According to parts of the legal literature, this applies also in civil matters (Zöller-Geimer § 438 ZPO No. 2, citing the BVerwG); not convincing]

Amtliche Beglaubigungen, § 65 BeurkG

The Beurkundungsgesetz does not apply to public certifications, where a administrative authority certifies the identity of a copy and the original (private) document. In such a case, the probative value of the certification is restricted to the purpose of the certification mentioned in the certification; § 65 S.2 BeurkG.

This restriction does not, however, apply to certifications made by public authorities with respect to documents issued by themselves or other public authorities, § 65 S. 3 BeurkG.

PART III – Incoming documents: Difficulties

OVERVIEW OF PART III

PART III.A. General

III.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

III.A.1.1. Legal

The (federal) ratification act aside, there is no general legal framework for implementing the Apostille Convention in the different Länder. On the Länder level, there are only:

- regulations designating the competent authorities and (sometimes)
- implementation rules (Ausführungsvorschriften), which are administrative regulations without force of law (but usually applied consistently).

III.A.1.2. Practical

Practical problems arise mostly with respect to documents written in other signs (Chinese, Russian etc.).

In general, if German authorities require an Apostille, they control very closely whether the formal requirements of the Apostille Convention are fulfilled (heading in French, size etc.). They usually require that the Apostille is issued and signed by the person designated by the other country; a signature made by a agent of this person (e.g. secretary etc.) will not be accepted.

III.2. Parallel international agreements

III.A.2.1. Legal

III.A.2.2. Practical

III.3. National law

III.A.3.1. Legal

See above II A 4.

III.A.3.2. Practical

Special problems exist with respect to some (mostly African and Asian) countries which the German foreign office considers to lack orderly administration (Problemstaaten “problematic countries”). In such cases, since the year 2000, the embassy / consulates refrain from legalisation in the usual sense (i.e. checking the authenticity of the document). Instead, the embassies use so called Vertrauensanwaelte (liaison counsels) which try to verify whether the content of the document is correct. Such a procedure is time consuming (3-6 months or more) and expensive. With respect of Somalia and Iraq, not even such a procedure is available at the moment; in such cases, a sworn declaration by the Somali / Iraqi will be the only way of proof available (but not always sufficient).

For additional problems arising out of this procedure in the area of applications for marriage in Germany and reunification of families see the 6. *Report on the Situation of Foreigners in Germany by the Commissioner for Migration of the Federal Government, Bundestag Drucksache 15/5826 p 205.*

PART III.B. Specific

1. Documents proving involuntary unemployment

See above Part I.

2. Documents proving a family relationship or other durable relationship

Marriages concluded abroad (general situation):

If a couple married abroad, the non German partner will have to present the certificate of marriage (either a certificate recognized under the CIEC conventions, or a legalized document *) in order to receive a residence permit

The legal situation does not require them to start a new family book ** (cf. §§ 12–15 Personenstandsgesetz, PStG) Still, in some areas the emigration office will ask the couple to do so before they process the application for the residence permit. Since starting the Familienbuch requires the presentation of many (legalized) documents, this can keep the alien spouse in legal limbo for quite some time (the situation is less problematic if on of the spouses is from a EU member state, since in such a case the right of residence of the third country spouse is not dependant on the (declaratory) residence permit).

* It can be argued that legalisation cannot be demanded at this stage any more if the emigration authority / embassy had allowed the entry of the spouse into Germany based on the non-legalised document, cf. the 6. *Report on the Situation of Foreigners in Germany by the Commissioner for Migration of the Federal Government, Bundestag Drucksache 15/5826 p 207.*

** The Familienbuch is kept at the Standesamt of the domicile of the husband (not to be confused with the Familienstammbuch, which is a bundle of personal status documents kept by the family). Certified excerpts of it are used in various proceedings.

Applicants for marriage or same sex unions usually receive a checklist from the Standesamt detailing the needed documents and which documents need to be legalized. Cf. e.g. the Bavarian checklist for same sex unions available http://www.notare.bayern.de/content/th_ehe/Checkliste.pdf

The question of which additional documents need to be presented and legalized before a marriage can be concluded at a German *Standesamt* is in practice answered by reference to a list edited by the Court of Appeal (Oberlandesgericht) of Cologne. This

„Kölner Liste“ is based on the current case law of the diverse Oberlandesgerichte and the information circulated by the Foreign office. The problem with this list lies in the fact that it is only for internal purposes and will not be distributed to applicants / lawyers.
Cf. the criticism in the 6. Report on the Situation of Foreigners in Germany by the Commissioner for Migration of the Federal Government, Bundestag Drucksache 15/5826 p 205.

3. Documents proving or contesting a parent-child relationship

See above Part I

An important discussion exists with respect to the legal effects the recognition of fatherhood should have with respect to the right of residence of the mother and child
Cf. the 6. Report on the Situation of Foreigners in Germany by the Commissioner for Migration of the Federal Government, Bundestag Drucksache 15/5826 p 209. However, the discussion does not turn on questions of legalisation of the document but rather the effect of the declaration as such.

4. Documents proving the name and forenames of a child or adult

See above Part I

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

See above Part I

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

The central problem in this field with respect to Germany does not seem to be the question of legalisation. Rather, the 6. Report on the Situation of Foreigners in Germany by the Commissioner for Migration of the Federal Government, Bundestag Drucksache 15/5826 p 46 criticizes the German law of regulated professions as such, which creates high material hurdles for recognition of equivalence of foreign training.

In addition, the authorities competent for recognition vary wildly depending on the profession (inter alia chamber of commerce and industry, chamber of trade, Ministry of Culture, Regierungspräsidium).

7. Documents proving a person's professional qualifications (diplomas)

In some Laender (e.g. North-Rhine-Westfalia) the competence for recognition of foreign degrees is split between different district authorities /Regierungspräsidium / Bezirksregierungen) according to countries in order to allow some degree of specialization and accumulation of knowledge; this makes it even more complicated for

the citizen to find the competent authority.

8. Documents proving a person's death

See above Part I

9. Documents proving a person's date of birth

Special problems exist if the foreign parents of the child cannot prove their personal data because they lost / "lost" their passport (notably refugees / asylum seekers). In such cases, some German authorities refuse to enter the child into the registry, as they are unable to verify the data. They only make an entry like "A women, who's identity cannot be verified, today declared the birth of a newborn baby, name not known." The issuance of a certificate of birth is not possible based on such an entry. This can cause grave problems; even if a German national is ready to recognize the child as his, his declaration arguably cannot be entered in the book of births (to this effect: Landgericht Berlin, decision of 10. Nov. 2003, published StaZ 2004, p. 203). As a consequence, the child will factually be stateless.

Cf. the 6. Report on the Situation of Foreigners in Germany by the Commissioner for Migration of the Federal Government, Bundestag Drucksache 15/5826 p 207, criticizing this practice and arguing (convincingly) that even if the passport has been lost, the presentation of a marriage certificate of the parents or birth certificates of the parents should suffice to enter the child into the register. Of course such documents often are not available either; in such cases other means of proof must be accepted, cf. § 258 (3) 3 of the Dienstanweisung für Standesbeamte (internal administrative regulation). The BGH has decided (Az. 1 StR 127/96, published NJW 1996, p. 950) that certain types of residence permits can be used as identification documents in such cases.

10. Documents proving the establishment by incorporation of a company

See above Part I

11. Documents proving the constitution of a company, including any official translation thereof

If (e.g.) English limited companies have their head office in Germany, they must register this head office as "branch office" with the Handelsregister (Germany has to recognize the English company as such according to the case law of the ECJ). The registry judge will require that the necessary documents have received an Apostille and are accompanied by certified translations. The advantages of the less formal incorporation procedure in England are thereby lost.

See also case GER 4

12. Documents proving the latest banking accounts of a company

See above Part I

13. Documents proving the deposit of cash or certificates of deposit

See above Part I

PART IV – Outgoing documents: Difficulties

OVERVIEW OF PART IV

PART IV.A. General

IV.A.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

IV.A.1.1. Legal

Cf. III A.1.

IV.A.1.2. Practical

Due to insufficient training of staff and / or inefficient organisation of administrative structures, foreign authorities often demand legalization of documents despite the fact that the country is a member of the Apostille Convention.

In such cases the competent German authorities usually notify the Foreign Office to exert pressure via the embassies of the foreign country so that the Apostille will be accepted.

In addition, German consular agents are empowered by § 14 KonsG to certify the authenticity of German public documents for use in their respective country. They shall only issue the certificate, if they do not doubt the authenticity of the document. § 14 KonsG is usually applied, if the consular agents of the foreign country in Germany denied legalization. In such cases, the authorities in the respective countries often still accept the certification made by the German consular agent.

Some authorities report that in rare cases other convention member countries require an additional translation of the document in their language, including an additional Apostille regarding the signature of the certified translator. In the case of judicial documents, this Apostille is usually given by the president of the district court.

IV.A.2. Parallel international agreements

IV.A.2.1. Legal

IV.A.2.2. Practical

IV.A.3. National law

IV.A.3.1. Legal

IV.A.3.2. Practical

PART IV.B. Specific

1. Documents proving involuntary unemployment

See above Part I

2. Documents proving a family relationship or other durable relationship

See above Part I

3. Documents proving or contesting a parent-child relationship

See above Part I

4. Documents proving the name and forenames of a child or adult

See above Part I

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

See above Part I

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

See above Part I

7. Documents proving a person's professional qualifications (diplomas)

See above Part I

8. Documents proving a person's death

See above Part I

9. Documents proving a person's date of birth

See above Part I

10. Documents proving the establishment by incorporation of a company

See above Part I

11. Documents proving the constitution of a company, including any official translation thereof

See above Part I

12. Documents proving the latest banking accounts of a company

See above Part I

13. Documents proving the deposit of cash or certificates of deposit

See above Part I

PART V – Justification of legalisation or other similar or equivalent requirements identified in Part I

OVERVIEW OF PART V

PART V.A. General

V.A.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

V.A.1.1 Requirements and procedures

Regarding the Apostille convention, we could not discern any relevant discrimination with respect to the issuance of the Apostille in Germany (cf. I A 2. 4.)

However, differences exist with respect to the cases in which an Apostille will be required before accepting a document as authentic. The relevant legal rules give much discretion in this regard to the competent authorities / courts. Generally speaking, documents from EU members get a special (positive) treatment in this respect, including the 10 “new” members. Therefore, no problems with respect to European law seem to occur. Whether the same attitude will prevail with respect to Bulgaria and Romania and other possible new members is slightly doubtful, considering that Bulgaria itself has urged foreign authorities to insist on a Apostille with respect to diplomas issued in Bulgaria (see above I.B.2. - 7. a) (4)).

V.A.1.2 Effects rules

See A II 4. As incoming documents having received an Apostille are treated like German public documents, no justification seems necessary.

V.A.2. Parallel international agreements

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V.A.2.2 Effects rules

See A II 4. To the extent that bilateral agreements waive the legalisation requirement, the foreign documents are put on an equal footing with German documents. No justification for disparate treatment is therefore necessary.

V.A.3. National law

V.A.3.1 Requirements and procedures

See directly below. With respect to non-legalised documents, § 438 ZPO grants courts (and administrative agencies) discretionary power to decide whether to request legalisation / Apostille. This allows to take into account diverse factors (e.g. the reliability of the administration in a certain country, the familiarity of the deciding authority with similar documents, the importance of the matter, the likelihood of a forgery, the cost / possibility / delay caused obtaining legalisation). Different treatment should be a function of these facts and justified by the existing factual differences. (but see below VI.3.)

V.A.3.2 Effects rules

See A II 4.

Incoming:

- legalised documents and
- non legalized documents considered to be authentic

are treated like German public documents, no justification seems necessary.

The non application of §§ 60 et seq PersStG to foreign register excerpts (see above I B 1. 3)) is justified by the fact that foreign registers might be kept in different ways, depending on the probative value in their home country. The later question is to be taken into account by the discretionary decision of the judge. .

PART V.B. Specific

1. Documents proving involuntary unemployment

2. Documents proving a family relationship or other durable relationship

3. Documents proving or contesting a parent-child relationship

4. Documents proving the name and forenames of a child or adult

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

7. Documents proving a person's professional qualifications (diplomas)

8. Documents proving a person's death

9. Documents proving a person's date of birth

10. Documents proving the establishment by incorporation of a company

11. Documents proving the constitution of a company, including any official translation thereof

12. Documents proving the latest banking accounts of a company

13. Documents proving the deposit of cash or certificates of deposit

PART VI – Suggested action

OVERVIEW OF PART VI

VI.1. European

The idea to abolish legalisation in the EU seems tempting. However, a general solution in this respect would go too far, in our view, notably considering the current incoming enlargements of the Union. A combination of a sectoral approach * at the EU level with additional bilateral agreements (+ enlarging their scope) seems to be more appropriate.

Considering the recognition of judicial decision under the Brussels Regulation, it does not seem far fetched to exclude any form of Apostille / legalisation with respect to documents issued by these same courts (in civil and commercial matters). Of course, such an approach will have to overcome problems defining the concept of a court /judicial document.

With respect to administrative documents:

- In the area of civil status documents, member states should be urged to join the relevant CIEC conventions. If this fails, community action in this area mirroring these conventions would make sense. Community actions in this field may be covered by articles 65 and 300 EC-Treaty.
- In the area of diplomas, the current structures assembling knowledge on foreign diplomas (like the ZAB) are an important step which reduces the need to require legalisation.

Considering the close relation with the question of the evaluation of the content of the degree, we do not think that further community action with respect to legalisation would be helpful without a very strong harmonization of the diplomas and their requirements involved. Such a step, however, would infringe very much on the competencies of the Member States.

VI.2. Intergovernmental

Cf. VI.1.

VI.3. National

In general, the German system seems to work efficiently. Reforms would seem to be helpful notably in the area of recognition of foreign diplomas regarding the sheer number of authorities involved and the availability of clearer rules on when an Apostille will be required.