

N° 665.

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## ALLEMAGNE ET POLOGNE

Accord concernant le règlement des affaires de dépôts judiciaires pendantes devant les tribunaux du Territoire plébiscitaire de Haute-Silésie, signé à Dresde le 24 février 1923.

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## GERMANY AND POLAND

Agreement concerning the procedure in connection with Legal Deposits in cases *sub judice* in the Upper Silesian Plebiscite Area, signed at Dresden, February 24, 1923.

## TEXTE ALLEMAND. — GERMAN TEXT.

No. 665. — DEUTSCH-POLNISCHES ABKOMMEN ÜBER DIE BEHANDLUNG SCHWEBENDER GERICHTLICHER HINTERLEGUNGSSACHEN AUS DEM OBERSCHLESISCHEN ABSTIMMUNGSGEBIETE. GEZEICHNET ZU DRESDEN, DEN 24. FEBRUAR 1923.

*Textes officiels allemand et polonais communiqués par le Consul d'Allemagne à Genève et par la Délégation Polonaise auprès de la Société des Nations. L'enregistrement de cet accord a eu lieu le 18 juillet 1924.*

Die preussische Justizverwaltung, handelnd im Namen DES DEUTSCHEN REICHS, und die POLNISCHE Justizverwaltung sind übereingekommen,

im Interesse der beiderseitigen Bevölkerung die durch die Teilung Oberschlesiens beeinflussten gerichtlichen Hinterlegungssachen auf Grund der im Artikel 5 § 6 des deutsch-polnischen Abkommens, betreffend die Ueberleitung der Rechtspflege im oberschlesischen Abstimmungsgebiete, vom 12. April 1922 von der Deutschen Regierung und der Polnischen Regierung erteilten Ermächtigung durch Vereinbarungen zu regeln,

und haben zu diesem Zwecke zu ihren Bevollmächtigten ernannt :

DIE PREUSSISCHE JUSTIZVERWALTUNG :

den Geheimen Oberjustizrat, Ministerialrat Herrn Dr. Georg CRUSEN,

DIE POLNISCHE JUSTIZVERWALTUNG :

den Bezirksgerichtsvizepräsidenten Herrn Tadeusz ZAJĄCZKOWSKI.

Die Bevollmächtigten haben ihre Vollmachten gegenseitig vorgelegt, diese in guter und gehöriger Form befunden und sich danach über folgende Bestimmungen geeinigt :

*Artikel 1.*

§ 1.

Angelegenheiten, in denen bei Gerichten in dem polnischen Teile des oberschlesischen Abstimmungsgebiets in der Zeit vor Übergang der Rechtspflege Werte der im § 1 der Preussischen Hinterlegungsordnung vom 21. April 1913 (Preussische Gesetzsammlung S. 225) bezeichneten Art hinterlegt worden sind, werden nach Massgabe der folgenden Bestimmungen erledigt.

§ 2.

1. Soweit Geld (§ 6 der Preussischen Hinterlegungsordnung) hinterlegt ist tritt an die Stelle der bisherigen als nunmehr zuständige Hinterlegungsstelle das Amtsgericht in Beuthen.

2. Das gleiche gilt im Falle des § 8 der Preussischen Hinterlegungsordnung, wenn vor Uebergang der Rechtspflege die hinterlegten Zahlungsmittel in kassenmässiges Geld umgesetzt worden sind.

<sup>1</sup> Cet accord est entré en vigueur le 1 mars 1923.

## TEXTE POLONAIS. — POLISH TEXT.

No. 665. — POLSKO-NIEMIECKI UKŁAD<sup>1</sup> W SPRAWIE TRAKTOWANIA POZOSTAJĄCYCH W ZAWIESZENIU SĄDOWYCH DEPOZYTÓW POCHODZĄCYCH Z GÓRNOŚLĄSKIEGO OBSZARU PLEBISCYTOWEGO, PODPISANY W DREŹNIE 24 LUTEGO 1923R.

*German and Polish official texts communicated by the German Consul at Geneva and by the Polish Delegation accredited to the League of Nations. The registration of this agreement took place July 18, 1924.*

Pruski Zarząd wymiaru sprawiedliwości działający w imieniu Państwa Niemieckiego i Polski Zarząd wymiaru sprawiedliwości, zgodziły się, aby na podstawie upoważnienia, udzielonego im przez Rząd Polski i Rząd Niemiecki w artykule 5 § 6 układu niemiecko-polskiego z dnia 12 kwietnia 1922 w przedmiocie przejścia wymiaru sprawiedliwości na górnośląskim obszarze plebiscytowym, uregulować zgodnie z interesami obu ludności sądowe sprawy depozytowe, na które miał wpływ podział Górnego Śląska i mianowały w tym celu swymi pełnomocnikami :

PRUSKI ZARZĄD WYMIARU SPRAWIEDLIWOŚCI :

Tajnego Nadradcę Sprawiedliwości, Radcę Ministerjalnego p. Dr. Georg CRUSEN,

POLSKI ZARZĄD WYMIARU SPRAWIEDLIWOŚCI :

Wiceprezesa Sądu Okręgowego p. Tadeusza ZAJĄCZKOWSKIEGO.

Pełnomocnicy, po wzajemnem przedłożeniu sobie pełnomocnictw i po uznaniu ich za wystarczające i należyte co do formy, ugodzili się co do następujących postanowień :

*Artykuł 1.*

§ 1

Sprawy, w których przed przejściem wymiaru sprawiedliwości złożono w sądach, położonych w polskiej części obszaru plebiscytowego, wartości, wymienione w § 1 pruskiej ustawy depozytowej z dnia 21 kwietnia 1923 (Zbiór ustaw pruskich str. 225), załatwiać się będzie wedle następujących postanowień.

§ 2

1. Jeżeli złożono pieniądze (§ 6 pruskiej ustawy depozytowej), wstępuje w miejsce dotychczasowego urzędu depozytowego sąd powiatowy w Bytomiu jako odtąd właściwy urząd depozytowy.

2. To samo stosuje się w przypadku § 8 pruskiej ustawy depozytowej, jeżeli złożone środki płatnicze przemieniono przed przejściem wymiaru sprawiedliwości na pieniądze kasowe.

<sup>1</sup>This agreement came into force March 1st, 1923

<sup>1</sup> TRANSLATION.

No. 665. — GERMANO-POLISH AGREEMENT CONCERNING THE PROCEDURE IN CONNECTION WITH LEGAL DEPOSITS IN CASES *SUB JUDICE* IN THE UPPER SILESIAN PLEBISCITE AREA, SIGNED AT DRESDEN, FEBRUARY 24, 1923.

The Prussian Judicial Administration, acting on behalf of the German Reich, and the Polish Judicial Administration have agreed,

in the interests of the inhabitants of the two countries, and by virtue of the powers conferred upon them by the GERMAN GOVERNMENT and the POLISH GOVERNMENT in Article 5, paragraph 6, of the Germano-Polish Agreement of April 12, 1922, regarding the Transfer of the Administration of Justice in the Upper-Silesian Plebiscite Area, to settle by means of agreements cases relating to legal deposits affected by the partition of Upper Silesia,

and have appointed as their Plenipotentiaries for this purpose :

## THE PRUSSIAN JUDICIAL ADMINISTRATION :

Dr. Georg CRUSEN, Councillor in the Ministry of Justice (Geheimer Oberjustizrat and Ministerialrat),

## THE POLISH JUDICIAL ADMINISTRATION :

M. Tadeusz ZAJĄCZKOWSKI, District Court Vice-President ;

The Plenipotentiaries, having communicated their full powers, found in good and due form, have agreed upon the following provisions :

*Article 1.*

## Paragraph 1.

Cases in which securities of the nature specified in paragraph 1 of the Prussian Deposit Regulations (Preussische Hinterlegungsordnung) of April 21, 1913 (Prussian Collection of Laws, page 225) (Preussische Gesetzsammlung) have been deposited with the Courts in the Polish part of the Upper-Silesian Plebiscite Area before the transfer of judicial administration shall be dealt with according to the following provisions.

## Paragraph 2.

(1) In the case of deposits of money (paragraph 6 of the Prussian Deposit Regulations) the Court of First Instance (Amtsgericht) at Beuthen shall henceforth take the place of the Deposit Office hitherto competent.

(2) The same shall apply in the case provided for in paragraph 8 of the Prussian Deposit Regulations if the medium of payment deposited was converted into cash before the transfer of judicial administration.

<sup>1</sup> Translated by the Secretariat of the League of Nations.

## Paragraph 3.

In the case of securities, other documents, articles of value, or media of payment within the meaning of paragraph 8 of the Prussian Deposit Regulations, which were not converted into cash before the transfer of the judicial administration, the Polish Court which has taken the place of the former Prussian Court shall be competent as Deposit Office, unless at the time of the transfer of judicial administration the securities were deposited in offices not situated in territory ceded to Poland. In such case the Court of First Instance at Beuthen shall take the place of the Deposit Offices hitherto competent.

## Paragraph 4.

(1) The Deposit Office hereafter competent under paragraphs 2 and 3 shall, on application being made, hand over the deposit to a Deposit Office of the other State, unless otherwise laid down in the following provisions.

(2) Those entitled to make such application are :

(a) the depositor, or

(b) the other parties concerned jointly, if the depositor is not entitled to withdraw the deposit or if the deposit had been made for the purpose of finally discharging a liability.

(3) If, under the regulations in force at the time of the transfer of sovereignty, a particular authority is competent to submit an application for the surrender of a deposit in accordance with paragraph 15 of the Prussian Deposit Regulations, the deposit shall likewise be handed over, in accordance with paragraph 1, on the application of the competent authority of the other State. The competence of the authority making the application shall be examined in each case by the Deposit Office to which it is made, regard being had to the transfer of sovereignty and the Treaties concluded between the German Reich and Poland. Should the competence of the authority making the application be based upon one of the Germano-Polish Agreements concerning the transfer of the administration of justice, of September 20, 1920, or April 12, 1922, the said authority shall certify, when making such application, that the proceedings pending before it are not proceedings which must be transferred *ex officio* to a judicial authority of the other State, and also that, if the case is one in which the proceedings may be transferred at the request of the parties or persons concerned, a request for such transfer has not been made by the latter within a month after the legal demand was submitted.

(4) The Deposit Office shall only be required to surrender the deposit if the application or claim is submitted to it not later than December 31, 1925.

(5) The Parties concerned shall be notified of the issue of an Order concerning the handing over of the deposit.

## Paragraph 5.

(1) Should it come to the knowledge of the Deposit Office in the cases mentioned in paragraph 4 that a third party lays claim to the object deposited, the Deposit Office shall make the handing over of the deposit conditional on the consent of such third party. The Deposit Office may, however, require the third party to substantiate his claim or to prove its validity by taking legal proceedings within a given period, in default whereof the deposit shall be handed over without his consent. The period appointed shall be adequate, but as brief as possible. The Deposit Office shall issue such an order if requested to do so by the authority of the other State applying for the transfer of the deposit.

(2) In criminal cases, deposits shall be surrendered only with the consent of the Public Prosecutor's Office (Staatsanwaltschaft) in accordance with whose instructions the criminal proceedings are pending or are to be continued, in virtue of the Germano-Polish Agreements concerning the transfer of the administration of justice of September 20, 1920, or April 12, 1922.

(3) No deposit shall be handed over in virtue of paragraph 4, if the object deposited or the claim submitted to the Deposit Office for the surrender of the deposit is connected with an estate in respect of which bankruptcy proceedings are pending in the State where the Deposit Office is situated.

Paragraph 6.

The deposit shall be surrendered in virtue of paragraph 4 :

- (a) in cases in which, in accordance with paragraph 2 or paragraph 3, the Court of First Instance at Beuthen is henceforth competent as Deposit Office, to such Polish Deposit Office situated in the ceded portion of Upper Silesia as is mentioned in the application.
- (b) in cases in which, in accordance with paragraph 3, a Polish Court is henceforth competent, to the Court of First Instance (Deposit Office) at Beuthen.

Paragraph 7.

In the cases governed by paragraphs 4-6, the deposit shall be handed over to the Deposit Office of the other State under the same legal conditions as applied at the time when the Order concerning the handing over of deposits was issued. More especially, the rights of third parties, who contest the surrender of entire deposits to the depositor or other persons entitled thereto, shall not be affected by this surrender of the deposit, without prejudice to the provisions of paragraph 5, paragraph 1. This shall also apply in the case of liens acquired in virtue of compulsory execution. In so far as such liens are based on a title admitting of merely provisional execution or, according to the provisions of the law, only give temporary security to the creditor, decisions likely to affect the ultimate confirmation of these rights given by the Courts of the State surrendering the deposit after it has been handed over, shall be treated by the Deposit Office of the State taking over the deposit as decisions of its national Courts.

Paragraph 8.

(1) The Courts named in paragraphs 2, 3 and 6 shall alone be competent for all decisions devolving upon Deposit Offices in virtue of the Prussian Deposit Regulations.

(2) Any appeal against the decisions of a Polish Deposit Office hereafter competent shall, in accordance with paragraph 3 of the Prussian Deposit Regulations, be submitted through the regular official channels to the Polish Offices, to which it is henceforth subordinate.

(3) Appeals pending at the time of the coming into force of this Agreement shall be handed over for decision, if, under the provisions of the Agreement, a Court of the other State is competent as Deposit Office, to the superior authority responsible for hearing such appeals.

Paragraph 9.

(1) The declarations referred to in paragraph 14, paragraph 1, sub-paragraph 1, of the Prussian Deposit Regulations may also be made and inserted in the record of the proceedings before a Court or Court Registrar of the other State in the language admitted by the said Court.

(2) The same shall apply to the claims mentioned in paragraph 4 of this Agreement for the handing over of deposits to a Deposit Office of the other State.

(3) Should a Deposit Office make use of the right conferred under paragraph 18 of the Prussian Deposit Regulations, the authentication of the signature or the official attestation of the documents may also be carried out in the territory of the other State. Certification of the authenticity of the signature of such documents, where required by the general regulations, shall only be demanded if legitimate doubts exist as to the authenticity of such signature.

## Paragraph 10.

(1) Should the deposit be or have been the subject of legal proceedings, the decisions of the German or Polish Court by which judgment was given shall be held to be legal decisions within the meaning of paragraph 14, paragraph 1, sub-paragraph 2, of the Prussian Deposit Regulations.

(2) Should the legal proceedings have been instituted after the transfer of judicial administration, decisions of a Court belonging to the other State shall have force of law in respect of the Deposit Office, if, when the proceedings were first instituted, there was no Court which had local competency in the matter or there was a Court which only had competency in regard to place where the property was situated (paragraph 23 of the German Rules of Civil Procedure). The local competency of a Court within the country shall be recognised by the Deposit Office, if it is proved by the application itself or by the documents submitted in support thereof, or if the contesting party contends that it has been established. The contesting party shall be heard, unless it is considered that the claim should be rejected for other reasons or unless hearing is impossible on material grounds.

## Paragraph 11.

Polish Authorities shall be regarded as competent Authorities within the meaning of paragraph 14, paragraph 1, sub-paragraph 3, and paragraph 15 of the Prussian Deposit Regulations, if they are competent to hear cases in consequence of the transfer of sovereignty or in accordance with the provisions of the Agreements already concluded or to be concluded at some future date between the German Reich and Poland.

## Paragraph 12.

A Court of the other State shall be held to be a Court of Chancery (*Vormundschaftsgericht*) within the meaning of paragraph 21 of the Prussian Deposit Regulations, if the competency of such Court rests upon the provisions of the Germano-Polish Agreements concerning the Transfer of the Administration of Justice of September 20, 1920, or April 12, 1922, or if the person affected by the proceedings is a national of the other State and trusteeship (guardianship) is not established within the country.

## Paragraph 13.

A Polish Authority shall be held to be a Controlling Authority (*Aufsichtsbehörde*) within the meaning of paragraph 22 of the Prussian Deposit Regulations, if, in consequence of the transfer of sovereignty or in accordance with the provisions of the Agreements already concluded or to be concluded at some future date between the German Reich and Poland, they are competent to exercise control.

## Paragraph 14.

In the cases coming under paragraph 28, paragraph 2, sub-paragraph 2, of the Prussian Deposit Regulations, limitation orders (*Ausschlussurteile*) issued by Courts of the other State within their own jurisdiction shall be binding on the Deposit Office. Limitation orders shall be notified to the Deposit Office even when the latter belongs to the other State.

## Paragraph 15.

(1) Should the Deposit Office be notified of any obstacle to the surrender of a deposit arising out of the terms of this Agreement after the despatch of the order to the pay-office, paragraph 23 of the Prussian Deposit Regulations shall be applicable.

(2) The same shall apply to any obstacle to the handing over of a deposit arising out of paragraphs 4, 5 and 7 of this Agreement.

## Paragraph 16.

(1) Whenever, in accordance with the provisions of this Agreement, a Polish Office is competent hereafter, or becomes competent in the future in lieu of a Prussian Office, or *vice versa*, the State taking over the deposits shall assume in relation thereto the functions of the State surrendering them.

(2) The assumption of functions shall date, in the case of paragraph 3, from the coming into force of this Agreement, and in the case of paragraph 4 from the publication of the Order concerning the transfer of deposits. The State surrendering the deposits shall at the same time be released from all liability in respect thereof towards the persons entitled to receive them, but shall in cases coming under paragraph 4 remain responsible for them to the State taking them over until their complete and regular transfer has been effected.

(3) The transfer of liability to the State taking over the deposits shall not affect the rights of the parties concerned or of third parties as against the State surrendering them, in so far as such rights are based upon the Law of August 1, 1909 (Preussische Gesetzsammlung, Prussian Collection of Laws, p. 691), concerning the liability of the State and other bodies for neglect of duty on the part of officials in the exercise of public authority or the rights of the said parties as against the officials themselves.

(4) Similarly, legal proceedings instituted against the Deposit Office surrendering the deposits shall not be invalid by reason of the fact that, in consequence of the publication of the Order concerning the handing over of deposits, a Deposit Office of the other State has become competent, unless the State surrendering the deposits has been released from all obligations towards the other State.

## Article 2.

Paragraphs 4, 5 and 7 of Article 1 shall likewise apply to all deposits which have been or may be made, at whatever date, at Deposit Offices in the German part of the Upper Silesian Plebiscite Area or after the transfer of judicial administration at Deposit Offices in the Polish part of the Upper Silesian Plebiscite Area and which have reference to some matter connected with judicial administration which, in virtue of the Germano-Polish Agreement of April 12, 1922, concerning the Transfer of the Administration of Justice in the Upper Silesian Plebiscite Area, has been or may be transferred to a judicial authority of the other State. The deposit shall in such cases be surrendered to the Deposit Office of the other State named in the application or petition. Paragraphs 8-16 of Article 1 shall also apply, in so far as they may be appropriate.

## Article 3.

## Paragraph 1.

Cash (paragraphs 1, 6 and 8, paragraph 2, of the Prussian Deposit Regulations) shall, according as it is deposited in German or Polish currency, be handed over in the same currency to the Deposit Offices of the other State. The same shall apply to the handing over of deposits to the parties entitled to receive them. The provisions of Article 306 *et seq.* of the Germano-Polish Agreement concerning Upper Silesia concluded at Geneva on May 15, 1922, shall not be affected.

## Paragraph 2.

(1) The German and Polish Judicial Authorities shall give each other all possible legal assistance in cases coming under this Agreement.

(2) Documents and relevant papers used in matters relating to deposits shall be handed over to the Deposit Office hereafter competent under Article 1, paragraphs 2, 3 and 6.



## Paragraph 3.

(1) No fees, stamp duty or costs shall be levied in respect of the transfer of a deposit under the terms of Article 1, paragraph 4, or in respect of the granting of legal assistance under the terms of Article 3, paragraph 2.

(2) In cases in which a deposit passes or is to be handed over under the provisions of this Agreement to a Deposit Office of the other State, no fees, stamp duty or costs shall be levied up to the date of such passing or handing over.

## Paragraph 4.

Regulations restricting the export of capital or prohibiting or imposing taxes in connection with payments to foreign countries by the Contracting States already issued or issued hereafter shall not apply to the surrender of deposits to Deposit Offices of the other State.

## Paragraph 5.

The date of the transfer of the administration of justice within the meaning of this Agreement shall be that upon which the Transfer Protocol of the Court (Deposit Office) is executed.

*Article 4.*

## Paragraph 1.

The provisions of this Agreement shall only apply to deposits made with Courts of First Instance (Kreis Courts).

## Paragraph 2.

Should special difficulties not dealt with in the above provisions arise in individual cases in the application of the present Agreement, the Prussian and Polish Judicial Administrations reserve the right to settle such cases by means of special Agreements.

## Paragraph 3.

The present Agreement regarding competence and procedure in the settlement of cases *sub judice* concerning deposits leave undetermined the question as to which State is to bear the burden of the repayment of such sums as were deposited, in the form of cash, at Deposit Offices in the Upper Silesian Plebiscite Area during the administration of that territory by the Inter-Allied Governing and Plebiscite Commission at Oppeln. This point will be decided on the occasion of the general financial settlement.

*Article 5.*

This Agreement shall come into force on the expiration of the calendar month in which it is signed.

In faith whereof the Plenipotentiaries have signed this Agreement and have affixed their seals thereto.

Done in duplicate.

DRESDEN, *February 24, 1923.*

DR. GEORG CRUSEN.  
TADEUSZ ZAJACKOWSKI.