

N° 1117.

ALLEMAGNE ET POLOGNE

Accord concernant les propriétés de
famille, signé à Berlin, le 16
décembre 1925.

GERMANY AND POLAND

Family Estates Agreement, signed at
Berlin, December 16, 1925.

¹ TRANSLATION.

No. III7. — AGREEMENT BETWEEN GERMANY AND POLAND CONCERNING FAMILY ESTATES, SIGNED AT BERLIN, DECEMBER 16, 1925.

THE PRUSSIAN JUDICIAL ADMINISTRATION, acting on behalf of the GERMAN REICH, and THE POLISH JUDICIAL ADMINISTRATION have agreed, on the basis of the authorisation conferred by paragraph 9 of Article 3 and paragraph 6 of Article 4 of the Germano-Polish Agreement relating to the transfer of the administration of justice of September 20, 1920, and on the basis of the authorisation conferred by paragraph 9 of Article 3 and paragraph 6 of Article 5 of the Germano-Polish Agreement relating to the transfer of the administration of justice in the Upper Silesian plebiscite area of April 12, 1922, to regulate the legal position of trust estates in cases in which such estates are situated partly in Prussia and partly in Poland, and have appointed as their Plenipotentiaries :

THE PRUSSIAN JUDICIAL ADMINISTRATION :

M. Carl GOES, Doctor of Laws, Vortragender Legationsrat in the Foreign Office, and

M. Ernst KUEBLER, Doctor of Laws, Wirklicher Geheimrath, a former Ministerial Director, Head of the Prussian National Office for Family Estates ;

THE POLISH JUDICIAL ADMINISTRATION :

M. Włodzimierz JABŁOŃSKI, Director of Department in the Ministry of Justice, and

M. Konstanty OSTROWICZ, President of the Senate at the Court of Appeal in Kattowitz.

The Plenipotentiaries, after communicating their full powers found in good and due form, have agreed as follows :

Paragraph 1.

If a trust estate (a family estate — Familiengut) is situated entirely in one of the two States, it shall be subject, in accordance with paragraph 9 of Article 3 of the Germano-Polish Agreements of September 20, 1920, and April 12, 1922, relating to the transfer of the administration of justice, to the control of the State in question.

Paragraph 2.

If the immovable property belonging to the family estate is situated entirely in one of the two States, such immovable property shall be subject to the control of the State in question ; control over movable property shall be governed by the following rules :

- (a) Control over movable objects which are intended to be used permanently for the economic exploitation of the immovable property, together with control over funds directly connected with the economic exploitation of the immovable property, such as stock and equipment funds, improvement funds and insurance money for

¹ Translated by the Secretariat of the League of Nations.

- damage done to the immovable property, shall be taken over at the expiration of one year after the coming into force of the present Agreement by the State in which the immovable property is situated.
- (b) Control over funds employed for purposes of maintenance or assistance shall continue to be exercised by the State which exercises control at the time of the coming into force of the present Agreement, provided that the sums payable at that time are payable predominantly in the said State.
- As regards cases arising under paragraphs (a) and (b), requests for exceptional treatment may be made within one year after the coming into force of the present Agreement to the authorities who have hitherto exercised control. Such requests may be made by members or representatives of the family concerned. A request can only be granted provided that the supervising authorities of the other State give their consent.
- (c) Control over the remaining movable property shall be taken over on the expiration of one year from the coming into force of the present Agreement by the State in which the immovable property is situated, unless within that period the authorities who have hitherto exercised control are in communication with the supervising authorities of the other State, with a view to the granting of exceptional treatment. If no agreement is reached in regard to such exceptional treatment, it shall be permissible for the Prussian and Polish Judicial Administrations to conclude special agreements with regard to the settlement of such cases.

Paragraph 3.

(1) If the immovable property is situated partly in one State and partly in the other, each of the two States shall retain control over the property situated in its territory.

(2) At the request of members or representatives of the family concerned, the control over movable property may be transferred to the supervising authorities of the other State, subject to the consent of such authorities. Applications to this effect may be made within one year after the coming into force of the present Agreement.

(3) If part of the immovable property situated in one of the two States be alienated within two years after the coming into force of the present Agreement, and if the equivalent received therefor becomes an integral part of the family estate, the owner of the family estate may, within six months after alienation, submit an application to the supervising authorities for the transfer of the whole or part of the equivalent to the control of the other State. The application may only be granted if the supervising authorities of the other State give their consent, and if the equivalent in question is employed in furthering the economic development (*e. g.* the construction of farm buildings or the purchase of equipment and stock or land) of the family estate situated in the other State.

¶ Paragraph 4.

(1) If the family estate consists entirely of movable property, the constituent parts thereof shall remain, in so far as they have not already been dispersed, under the control of the State which exercises control at the time of the coming into force of the present Agreement.

(2) The provisions of paragraph 3, paragraph 2, shall apply *mutatis mutandis*.

Paragraph 5.

(1) If mining property or mining shares (*Kuxen*) instituted under the old legal system form part of a family estate, family estate control over the mines or the mining shares shall be exercised by the

State which is responsible for the police supervision of the mine under the terms of the Germano-Polish Agreement relating to the mines of Upper Silesia of June 22, 1922.

¶* If mining shares (*Kuxen*) instituted under the new legal system form part of a family estate, the regulations concerning control over movable property shall apply to family estate control over such shares.

Paragraph 6.

(1) Amortisation funds, in particular those of the "Landschaften" shall, until the position of the credit institutions with which they are connected has been regulated, remain under the control of the State in which they are deposited; control over them shall subsequently be exercised in accordance with such regulations as may be agreed upon with regard to the said funds.

(2) The provisions of paragraph 1 shall apply *mutatis mutandis* to rights in respect of other agricultural funds and to the cash assets in the hands of the liquidation authorities.

Paragraph 7.

The transfer of control shall not affect the rights of third parties.

Paragraph 8.

(1) If at the time of the transfer of control, proceedings are pending before the supervising authorities with regard to property which is subject to the control of the other State, the case shall be transferred as it stands to the supervising authorities of the other State.

(2) If the proceedings relate to property which is partly subject to the control of the one State and partly to the control of the other, the case shall only be proceeded with as regards that part of the family estate which is subject to the control of the State in which the proceedings are pending. The proceedings with regard to the other part of the family estate may, at the request of the person who instituted them, be transferred to the competent authority of the other State.

Paragraph 9.

(1) If an action with regard to an object forming part of the family estate is pending at the time of the transfer of control, the provisions of the Germano-Polish Agreements of September 20, 1920, and April 12, 1922, relating to the transfer of the administration of justice shall apply *mutatis mutandis*.

(2) If after the transfer of control an action with regard to an object forming part of the family estate is pending in the State in which the object is situated, the competence of the courts of the State in question shall not be affected by the transfer of control.

Paragraph 10.

(1) In cases in which control is not transferred automatically to the other State at a given date by virtue of the present Agreement, the transfer shall take place on the day on which the decision in question took effect.

(2) The supervising authorities who have hitherto been competent must notify the transfer of control to the persons concerned, in particular to the offices in whose official custody the objects belonging to the family estate have been deposited. These offices must comply with the instructions of the new supervising authorities in the same manner as with those of the authorities who have hitherto exercised control.

Paragraph 11.

Liquidation measures taken before the conclusion of the present Agreement by the supervising authorities of the two States shall, in so far as they relate to objects situated in their State or transferred to their control, remain in force.

Paragraph 12.

(1) Objects which have been transferred from the control of the one State to the control of the other may be transferred by virtue of an order of the supervising authorities to the territory of the other State, provided that the rights of third parties are not infringed thereby. The application of the owner of the family estate must be attached to the order. The supreme family estate authorities of the State in which the objects are situated may be used as intermediaries in connection with the transfer.

(2) The owner of the family estate will be permitted by the supervising authorities to transfer other equivalent securities in place of the deposited funds.

Paragraph 13.

(1) The regulations issued in the German Reich or in Poland, prohibiting, restricting or imposing duties in respect of exportation, shall not apply to the transfer of the objects, provided that the application for such transfer be presented in the case of cash assets within five years and in the case of other objects within two years after the transfer of control (paragraph 10).

(2) The provisions of paragraph 1 shall not apply to the cases mentioned in paragraph 3 of paragraph 3.

(3) Both parties agree that objects which are transferred to Poland on the basis of the present Agreement shall not be subject to liquidation.

Paragraph 14.

(1) No fees or stamp duty shall be charged in respect of the operations of the supervising authorities in connection with the transfer of control and the transfer of the objects; each State shall be responsible for its own expenses.

(2) The owner of the family estate shall bear the costs of the transfer of the objects. He may with the consent of the supervising authorities charge them against the family estate.

Paragraph 15.

(1) If funds are invested in securities which are suitable for the investment of trust funds (*mündelsicher*) under the laws of the State in which they are placed, such investments shall also be deemed to be trustee investments under the laws of the State which takes over control.

(2) The method of investment hitherto in force may also be retained after the transfer of such funds to the other State.

(3) These funds may not be subject to treatment less favourable in any way in consequence of control having been transferred to the other State.

Paragraph 16.

(1) If there is a family representative (a family administrator, a family council, a committee of agnates, a curator, an executor, etc.) for a family trust estate divided by the Germano-Polish frontier, the fact that the family representative only possesses the nationality of, or is only domiciled in, one of the two States shall not prevent his continuing to exercise his functions in the other State.

(2) The same rule shall apply in cases in which a family representative is to be appointed in future in both States and application is made for the appointment of the same person.

(3) On the expiration of five years after the coming into force of the present Agreement the provisions of paragraphs 1 and 2 shall only apply in so far as they are not contrary to the laws of either of the two States.

Paragraph 17.

(1) The records kept by the family estate authorities in respect of individual family estates — in Prussia the liquidation office for family estates and the provincial courts of appeal (*Oberlandesgerichte*) which acted as family estate authorities — shall, in the case of family estates of which the immovable property is entirely situated in one of the two States, belong to the State in question and be handed over to it.

(2) If the immovable property is situated partly in one State and partly in the other, the records shall remain in the possession of the State in which they are deposited. The said State shall at any time, on request, furnish the other State with copies of the documents required for purposes of investigation or allow it to examine the records.

Paragraph 18.

All land :

(a) Belonging to the family estates " von Wilckens-Sypniewo " and " Graf Hochberg-Krutsch " and situated in Prussia ; or

(b) Belonging to the family estates of " Graf Reichenbach-Goschütz " and " Freiherr von Puttkammer Schön-Steine " and situated in Poland,

shall be declared by the supervising authorities, without liquidation procedure, to belong free of conditions to the holder of the family estate, provided that he makes application to that effect within one year after the coming into force of the present Agreement.

Paragraph 19.

(1) The picture by Sandro Botticelli entitled " Madonna and Child, surrounded by a choir of singing angels ", belonging to the family trust estate " Graf Athanasius von Raczynski " which is in the picture gallery of the Kaiser Friedrich Museum in Berlin, shall be transferred to Polish control.

(2) Inasmuch as the Prussian revenue authorities assert contractual rights to the possession of the picture in question while the Polish Government contests these rights, the parties reserve the right to conclude a special agreement with regard to the legal questions involved and with regard to the question whether, and under what circumstances, the transfer of the picture is to be effected.

Paragraph 20.

(1) The German and Polish judicial authorities and supervising authorities shall accord to each other direct legal assistance to the greatest possible extent in connection with the matters referred to in the present Agreement.

(2) If applications are made to the supervising authorities of the other State, the supreme family estate authorities of the other State may be used as intermediaries. Legal assistance shall be governed by the provisions of the Germano-Polish Treaty with regard to legal relations.

Paragraph 21.

In the event of difficulties arising in connection with the application of the present Agreement in individual cases, it shall be the duty of the Prussian and Polish judicial administrations to come to an agreement directly with regard to their settlement.

Paragraph 22.

The provisions of Article 3, paragraph 9, paragraph 3 of the Germano-Polish Agreements of September 20, 1920, and April 12, 1922, relating to the transfer of the administration of justice shall remain in force.

Paragraph 23.

The present Agreement shall come into force two months after the date of signature.

In witness whereof the Plenipotentiaries have signed the present Agreement in a German and a Polish copy and have attached their seals thereto.

Done at Berlin on December 16, 1925.

(L. S.) DR. CARL GOES.

(L. S.) DR. ERNST KUEBLER.

(L. S.) WŁODZIMIERZ JABŁOŃSKI.

(L. S.) KONSTANTY OSTROWICZ.