



COMPARATIVE STUDY ON AUTHENTIC ACTS AND INSTRUMENTS WITH COMPARABLE STATUS AND EFFECTS ACCORDING TO NATIONAL LEGISLATION WITHIN THE EU, CONSIDERING IN PARTICULAR THE ROLE OF LAWYERS

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The Council of Bars and Law Societies of Europe (CCBE) is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries.

With this report, the CCBE aims at delivering a comparative study about authentic acts and instruments with comparable status and effects, thus providing additional information to the earlier comparative study which was commissioned by the European Parliament, entitled: “Comparative study on authentic instruments, national provisions of private law, circulation, mutual recognition and enforcement, possible legislative Initiative by the European Union “ (based on United Kingdom, France, Germany, Poland, Romania and Sweden only), please see [here](#).

Furthermore, with this study, the CCBE would also like to underline the differences between legal cultures, and express that the overall idea of any future legislation on authentic acts or comparable instruments by the European Union, should be inspired by the wish to facilitate peoples’ lives. When considering ways to enhance legal security for cross-border users of legal acts, the differences in legal cultures and systems must be considered. The mechanisms for mutual recognition should benefit all citizens and residents of all Member States. For example, in Denmark, certain documents, in particular documents regarding immovable assets (real estate) have up until the introduction of digital registration in 2009 to be attested to by either 1) two independent witnesses or 2) one attorney. From the introduction of digital registration, the digital signature will serve as an “attestation”. Certain civil documents (e.g. separation agreements) will also be attested to by independent witnesses. Despite not recognising authentic acts per se, in Denmark if wills have not been witnessed, they have to be attested to by a notary (Court of First Instance). The absence of an attestation does not in principle affect the validity of the will, but may put into question its authenticity. If in future only authentic documents will be accepted in cross-border cases, this would present a problem for citizens of those countries which do not recognise this concept or have other forms of authentication which does not follow a strict definition of an authentic act, like for example Denmark.

It is therefore important for citizens and businesses alike that mutual recognition should not be restricted to authentic acts delivered in a notarial system but also cover analogous legal acts (deed, legal act by a lawyer or equivalent) which exist under national law. Otherwise, there would be discrimination against EU citizens and businesses exercising their freedom of choice to use alternatives to notaries, or not having access to notaries due to the absence of notaries in their Member State, as well as discrimination between legal professions.

The CCBE therefore welcomes the European Commission’s idea to recognise legal civil documents throughout Europe, irrespective of any limited notion of authentication. The documents having practical relevance to citizens will presumably consist of birth, death and marriage/partnership certificates. The overall initiative of recognising legal documents is equally echoed within the Stockholm Programme, which stressed the need of enhancing legal security for cross-border users of legal documents. With this report, the CCBE hopes to contribute to a fruitful debate in the interest of all citizens in Europe.

I. Comparative Study – Method

In order to prepare the comparative study, the CCBE drafted a questionnaire which was sent to its 41 members.

The questions were as follows:

- 1- Could you please indicate the national definition of authentic acts/comparable acts in your country?
- 2- Could you please indicate the legal basis for authentic acts/comparable acts in your country?
- 3- If there is such a position, please state the national position on the “Unibank” judgment (Judgment of the Court of 17 June 1999 in Case C-260/97, ECR 1999, p. 3715).
- 4- Please explain the scope of authentic acts/comparable acts in your country.
- 5- Please explain the enforcement of authentic acts/comparable acts in your country.
- 6- Could you please give selected examples of authentic acts/comparable acts in your country?

The CCBE received answers from the following 22 countries:

- AUSTRIA
- BELGIUM
- CZECH REPUBLIC
- CYPRUS
- DENMARK
- ESTONIA
- FINLAND
- FRANCE
- GERMANY
- HUNGARY
- IRELAND
- ITALY
- LITHUANIA
- LATVIA
- POLAND
- PORTUGAL
- SLOVAK REPUBLIC
- SLOVENIA
- SPAIN
- SWEDEN
- THE NETHERLANDS
- UK (England & Wales, Northern Ireland)

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II. Summary of the main results

1/ Concept of authentic acts or comparable instruments

In 10 countries (Cyprus, Denmark, Estonia, Finland, Hungary, Ireland, Slovak Republic, Slovenia, Sweden and UK), there is no legal definition of authentic acts, which indicates that there are other forms to establish legal documents.

In the countries where authentic acts are recognised (Austria, Belgium, Czech Republic, France, Germany, Italy, Latvia, Lithuania, Poland, Portugal, Spain and the Netherlands) the common points of the definition of an authentic or comparable act are the following:

- intervention of public officials
- restricted to specific competences or matters
- special solemnity or form
- directly recognized enforcement

2/ Legal basis of authentic acts or comparable instruments

In the majority of countries where authentic or comparable acts are recognised, the legal basis is civil legislation or substantial and procedural law (Austria, Belgium, Czech Republic, France, Germany, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Slovenia, Spain and the Netherlands).

In France, following a recent legislative reform to the legal basis underpinning authentic acts and comparable instruments, Law No. 2011-331 of 28 March 2011 provides that instruments may now be countersigned by lawyers. Some countries also mention laws regulating the profession of public officials or notaries (Hungary, Latvia, Lithuania, Poland, Portugal, Slovenia and Spain) or the profession of lawyer (Austria).

Some other countries also indicate as a legal basis the laws on enforcement (Finland, Slovenia and Hungary) and also the rules on administrative proceedings and services (Hungary and Slovenia). In Sweden, authentic acts do not exist as a concept within Swedish law; however certain agreements regarding alimony obligations are directly enforceable by the Swedish Enforcement Authority. This possibility is based on the Code of Execution.

3/ National position to “Unibank” Judgement

Few countries have a defined position on this issue. It is mainly only Austria and Poland which expressed themselves in this regard. They consider that according to this judgement, lawyers should also be included among the public officials authorised to issue an authentic or comparable act if respective competence is provided in national legislation.

The Netherlands considers that their current civil legislation, i.e. Article 431 Section 1 of the Dutch Code of Civil Procedure, is in compliance with the judgement.

Although Denmark doesn't have a position on this issue, it indicates that a lawyer doesn't have any special position when it comes to these kind of acts, since authentic acts are an unknown concept in Denmark. One should also bear in mind that the Danish rules dealt with in the *Unibank judgement* do not concern the question as to whether the document is attested by a notary or whether it should have any other form of authentication, but rather dealt with Danish rules on acknowledgment of indebtedness.

4/ Scope of authentic acts or comparable instruments

In general, the scope is limited to acts coming from the courts and the public entities or authorised by a notary or a public official.

The probative value of these acts refers to the facts laid down in the document. Their function is to give legal certainty and to be used as title of enforcement.

Under Austrian and German Law, authentic acts/comparable acts provide full evidence of what is decreed, declared or attested therein. However, they do not provide evidence of the accuracy of the decreed, declared or attested content. Accordingly, it is possible to prove the contrary to what is decreed, declared or attested in an authentic act/comparable act.

In Denmark, important agreements or legal acts are made in writing and signed by the relevant parties for evidential purposes only i.e. it is in principle possible to make a valid and binding agreement without the signature of the parties. Acts and agreements of lesser importance do not in themselves necessitate the intervention of a neutral officer to issue an authentic instrument.

In France, the probative value of an authentic act can only be rebutted in the case of forgery. However, its probative value is limited to the facts which the public officer has personally observed (e.g. date of signature, presence of the parties). On the other hand, the statements of the parties (e.g. consistency of the goods sold, any payment made outside the presence of a public officer) can still be enough to establish evidence to the contrary, without having recourse to a plea of forgery. In addition the authentic act does not bear the authority of a court decision.

In relation to comparable acts (acts which have been countersigned by a lawyer), when countersigning a deed under private seal, the lawyer certifies to have fully informed or advised the parties of the legal consequences of that act. The private act countersigned by the lawyers of both parties or by the lawyer acting for all parties establishes full proof of the document and the signatures.

Under Hungarian law, public deeds can only be issued by a court, a notary, a competent authority or administrative body. Lawyers have no competence to issue a public deed.

In Italy, the authentic act drafted by the public officer certifies proof of its origin, the parties' statements and other facts contained therein. The interpretation of authentic acts and private deeds must be done according to ordinary interpretation criteria. Any circumstances which oppose the truth of the statements contained within the authentic acts and any correspondence from such statements can be proven through ordinary means.

Under Latvia's Notary Law, a sworn notary shall make a notarial deed which shall express the intentions of the parties. Each party must be sufficiently acquainted with each legal possibility to avoid any legal ignorance or misunderstanding being used at a later stage against their best interests. To a limited extent, the Orphan's Court may draft the same deeds as notaries.

In the Netherlands, the main purpose of an authentic act is to provide legal certainty. Dutch law gives special evidence weight to authentic acts drawn up by a civil servant (including notaries, bailiffs etc.) Another important purpose of authentic acts is to provide a title to enforcement: an authenticated copy of a judgement or an authentic act can be enforced in the Netherlands. If an authentic act is drawn up by a notary, it also provides some legal protection to weaker parties. Under normal circumstances, a notary is obliged to balance the interests between the parties of an authentic act. If a legally weak and ill-informed party is involved, the notary should make sure that this weak position is not misused by the stronger party.

In Poland, there are two ways to contest an authentic act. These are provided for within Article 252 of the Civil Procedure Code. The distinction is made between an authentic act which requires the form "*ad solemnitatem*" and an authentic act being only used in the form of "*ad probationem*". The limitations are applicable only to the form "*ad solemnitatem*".

In Portugal, all facts contained within the authentic act are certified by the public officer or competent authority. The probative value of authentic documents may only be rebutted in case of forgery.

According to the Portuguese Civil Code, an authentic document is a document that is made by a public authority within its competence or by a notary or other public officer, according to the formalities legally prescribed. An authenticated document is a private document which is confirmed by the notary as being issued by the parties, with the observation of certain formalities. Under the terms of legislation which came into force in 2006, lawyers amongst other entities, also have powers to authenticate a private document.

Importantly, authenticated documents have the same probative value as authentic documents, but do not substitute them when the law requires an authentic document for the act, such as a public deed. Today only a small number of acts have to be legally subject to a public deed. Under the terms set forth in the Civil Code, both authentic and authenticated documents makes full proof of the facts referred as practiced by the authority or respective public officer.

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Prior to 2006, all acts relating to companies had to be made through public deed. Nowadays, a simple document (namely an agreement or General Meeting minutes) is sufficient to execute such acts. Also, since January 1, 2009, all acts relating to real estate can be made through an authenticated document, which lawyers may execute, as mentioned above.

In the Slovak Republic, for a large number of transactions, a notarization i.e. authentication of certain facts, signatures etc. is required by the applicable legal regulation. This is the case for almost all corporate documents where signatures must be notarized. In some specific cases, the signature of the person having power of attorney must be notarized. Furthermore, it is very common that in certain proceedings (and not always judiciary proceedings), notarized copies are often required. The rather rigorous requirements for authentication of documents and signatures are more complex in cross-border transactions. Official legal documents such as judgements must still bear an apostille in accordance with Hague Convention on International Private Law. Signatures on certain foreign documents which are to be used in certain official proceedings in the Slovak Republic must not only be notarized but also apostilled.

In Slovenia, the content of an authentic or comparable act is presumed to be real. However, shall it be proven that the content of the act is false, this presumption is to be suspended with regard to the respective act. Furthermore, in some cases, special form which gives the act authentic/comparable act status is required for the validity of the legal transaction for which the act was composed.

In Spain, authentic acts endorse the identity of the contracting parties, date and place where they were granted and the solemnity of having been authorized by a public official. In addition, Spanish public documents have probative effect of the facts, acts or state of the included act. Foreign authentic acts, invested with this solemnity under international conventions or special law, have the same probative value as Spanish internal authentic acts. Where there is no such Convention, the foreign authentic act may also be considered as such as if it meets the requirements.

In the UK and Ireland, a formal deed (as opposed to a simple document under hand) is required in relation to:

1. Powers of Attorney
2. Instruments relating to land conveyances, mortgages, charges, leases and surrenders)
3. Releases and discharges unless for consideration
4. Gratuitous assignments of choses in possession
5. Promises, covenants or bonds
6. Declarations of Trust and trustee appointments and discharges
7. Bills of sale or mortgage of British ships
8. Any instrument varying another deed

These are very similar to the areas that require a formal notarial act in many civil law jurisdictions. Broadly therefore a common law deed is very similar in its practical effects to that of a notarial instrument.

5/ Enforcement of Authentic Act or comparable instrument

In the majority of the countries where these acts are regulated, the enforceability of an authentic or comparable act requires a judicial submission or the intervention of a notary (Hungary, Poland, Portugal, Slovak Republic, Spain and the Netherlands).

In Austria, not every authentic/comparable act is enforceable. The enforceability of an act depends upon its content and on certain conditions. Article 1 of the Law on Execution (Exekutionsordnung) states that all notarial acts under Article 3 of the Law on the Profession of Latin Notaries (Notariatsordnung) are considered as executive titles. Article 3 of the Law on the Profession of Latin Notaries provides that under certain circumstances a notarial act – which is often but not always an authentic act – may be enforceable through an amicable settlement before the court. Acts that Austrian lawyers may draw up according to the law are by the nature of their content not enforceable. However, in normal practice, article 433 of the Law on Civil Procedure provides for the possibility that

amicable settlements that have been resolved by or with the help of lawyers are declared enforceable by the courts.

In Denmark, there are no specific enforcement provisions; it is left to the competent court to consider the evidence submitted. A document can be attested by a public notary, but it serves only as a certification. This notary is not responsible for the legal correctness of its content, or for the validity of the underlying agreement. Documents attested by a public notary are often used for purposes in other jurisdictions. In these cases it is not because it is required under Danish law but because it is required by law in the other country.

In Finland, the execution procedure is a form of special enforcement regulated by the Enforcement Act.

In France, the authentic act is binding. Its enforcement however may be subject to appeal to justice and the act itself can be challenged. Even though pleas of forgery are rare since they are limited to the public officer's findings, litigation between parties bound by notarial acts are very numerous in view of their limited probative value on the actual content of the agreements. Having regard to annual reports of the Advisory Council for Prevention of Abuse of Tax Law, it is evident that many operations involved are implemented through notarial acts, which demonstrates that the use of such authentic acts does not provide a guarantee against illegal operations.

The comparable act is not binding. Its execution requires prior recourse to justice, which is an additional guarantee for the parties and the community. The act is subject to certain formalities. However, as soon as the parties have been fully advised by the lawyer about the legal enforceability of their commitment, it is not necessary to request further evidence in writing to demonstrate this. The act benefits from having probative force. It attests to the capacity and identity of the parties and guarantees the advice given by the lawyer(s). The act will be countersigned by the lawyer and has similar effect as an authentic act. It will not however be directly enforceable, except by the approval of a magistrate. All countersignatures are to be retained by the lawyer and scanned electronically onto a centralised collective archive.

In Germany, not every authentic act/comparable act is enforceable. The enforceability of an act depends on its content and/or certain conditions. The content has to be enforceable, as in a contract and judgement. Normally authentic acts/comparable acts with an enforceable content need to be declared as enforceable by a judge or a notary.

A judgement is only enforceable when the notice for the legal remedy is expired and no legal remedy has been filed. Until then the enforcement of a judgment can only take place if a deposit has been paid, so that in case a legal remedy is filed and the judgement is annulled, the concerned party will be reimbursed.

In Hungary, the decisions of the courts and other judicial forums, in addition to claims based on certain documents, can be executed by judicial enforcement proceedings. Judicial enforcement has to be ordered by the court upon request by issuing an enforcement order. Regarding the enforcement of foreign resolutions, the resolutions of foreign courts and foreign arbitration tribunals can be executed in Hungary on the basis of law, international convention or reciprocity, if they comply with certain conditions.

In Italy, in general, authentic acts are not enforceable. Law 263 of 2005 nevertheless has modified Article 474 of the Civil Procedure Code to attribute enforceability to private authenticated deeds in relation to money sums contained in those deeds. The same law has introduced the principle by which the acts received by the notary can have the value as executive title in the forced executions, with the condition that those deeds are transcribed entirely in the act of "preetto" (order to pay within 10 days before the execution).

In Latvia, certain notarial deeds may be enforced by the court through the process of "undisputed compulsory execution of obligations".

In Lithuania, according to the Code of Civil Procedure, acts which are enforceable without further action include, but are not limited to court decisions and related court documents and other administrative acts.

In Poland, some notarial acts containing declarations of the parties may be enforceable – it requires however, submission to enforceability. The enforceability of authentic acts requires: a valid judgement, a court settlement, or to be drafted by a notary, whereby the debtor accepts enforcement of the

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specified obligation within a fixed timeframe. Only certain types of obligations may be enforced via an authentic act. Authentic acts may be enforceable if declared as such. The enforceability of an authentic act and a valid judgement are the same as both are granted by a judge via an enforceable clause. The procedure of granting the enforceable clause is declaratory in nature, so that the judge's control is limited only to the verification of the formal aspects of the authentic act. Additionally the judge will control if the obligation is properly specified and if the fixed time has been respected.

In Portugal, a document drafted or authenticated by a notary or competent authority may be legally enforced, provided that such document implies the constitution or the recognition of an obligation.

In the Slovak Republic, since September 1, 2009, a new legal regulation has come into force for real estate transfers. According to this new legal regulation, attorneys and notaries are entitled to authenticate transfer documents on real estate i.e. sales contracts. This is the first and only case where attorneys are given such power. However, even if a document on the sale of a real estate is not authenticated by an attorney, the signature of the seller (or transferor) must be notarized. Alternatively signatures can be authenticated by a municipal officer.

In Slovenia, some authentic/comparable acts have the quality of a title to enforcement and are directly enforceable in a simplified enforcement procedure.

In Spain, the execution procedure of authentic acts requires that the executive action must be founded on the basis of a document that authorises the execution.

In the Netherlands, the authenticated copy of a Dutch judgement or authentic act executed in the Netherlands can be enforced in the Netherlands. In relation to authentic acts this also depends on the wording of the authentic act and the kind of obligations involved. In practice it is mainly applicable to payment obligations. This means that an act executed by a Dutch notary has at that point, between the parties involved, the same force as a court decision.

6/ Examples of Authentic/Comparable acts

The common areas in which examples of authentic acts can be found are the following:

- notarial deeds/acts
- acts related to succession and wills
- judicial resolutions/decisions
- changes made to the statutes of the companies, their meetings and some acts of these legal persons
- acts relating to real estate properties
- documents granting legal powers of court representation
- acts related to changes in civil status

TABLE OF ANSWERS

1/	NATIONAL DEFINITION OF AUTHENTIC ACT/COMPARABLE ACT
AUSTRIA	<p>Articles 292 and 293 of the Austrian law on civil procedure (Zivilprozessordnung) define authentic acts/comparable acts as follows:</p> <p>Article 292 (1): Acts drawn up within the scope of application of the law on civil procedure in the required form on paper or electronically by a public authority within the limits of its authority or by a person vested with public authority within the area allocated to it, provide full evidence of what the authority officially decrees or declares in them, or what the authority or the person vested with public authority attests in them.</p> <p>The same is true for acts drawn up outside of the scope of application of the law on civil procedure but within the authority of a public organ that is subordinated to an authority that has its seat within the scope of application of the law on civil procedure.</p> <p>Article 293 (1) Other acts that are authentic acts according to special legal provisions have the same probative force.</p> <p>The legal basis for the establishment of acts through lawyers is article 10 paragraph 4 of the law on the profession of lawyers (Rechtsanwaltsordnung) in combination with the respective legal provisions regulating the area in which the act is established. The Austrian Bar considers that those acts are comparable acts to authentic acts (see answer to question 6).</p>
BELGIUM	L'acte authentique est celui qui a été reçu par officiers publics dans le lieu où l'acte a été rédigé, et avec les solennités requises.
CZECH REPUBLIC	Authentic act is a document which is either recognized and/or enforceable; without any other process we are able to describe the legal situation. Notarial deeds, extracts there from and verified documents are public documents provided they meet all essentials prescribed under the Notarial Code (the Act No.358/1992 Coll. As amended).
CYPRUS	Cyprus Law does not provide for the existence of “authentic acts” within the meaning described by other colleagues from other member states.
DENMARK	<p>Denmark has no concept of authentic acts or authentic instruments. In the Danish versions of the European regulation concerning authentic acts, the term “officielt bekræftet dokument” is used. The English translation is “officially confirmed document”.</p> <p>The Danish law system does not provide for any contractual instrument issued by a neutral official, which gives full proof of its content. If a Danish document (e.g. an agreement) contains an attestation it will (normally) only relate to 1) the authenticity of the signature, 2) the legal capacity of the person who has signed the document and 3) the correctness of the dating of the document. Such attestation will serve as proof of the said matters, but the courts may set this aside if evidence otherwise presented leads to such a conclusion.</p> <p>There is no uniform Danish definition of authentic acts, since Denmark does not operate a civil law notary system.</p> <p>Certain documents, most noteworthy documents regarding immovable assets (real estate) have up until the introduction of digital registration in 2009 been attested to by either 1) two independent witnesses or 2) one attorney. As from the introduction of the digital registration, the digital signature will serve as “attestation”</p> <p>Wills may be attested by a notary (the court of first instance) or witnesses. The</p>

	<p>absence of an attestation does not, in principle, affect the validity of the will, but may affect the possibility of challenging the authenticity of the will.</p> <p>Certain civil documents (e.g. separation agreements) will also be attested to by independent witnesses.</p> <p>Furthermore, it is customary for banks etc. to request attestation on loan agreements etc. either by two independent witnesses or one attorney. Again, the absence of such attestation will not affect the validity of the agreement.</p> <p>The attestations referred to do not relate to the content of the document but only to 1) the authenticity of the signature, 2) the legal capacity of the person signing and 3) the correctness of the dating of the document.</p>
ESTONIA	Estonia has no concept of authentic acts.
FINLAND	<p>In Finland there is no national definition of authentic acts/comparable acts.</p> <p>Therefore, for example sales contracts for immobile property, marriage or divorce agreements, testaments and wills are not legalized under Finnish law and such documents are not directly enforceable if parties of such agreements do not agree on the terms and conditions of the agreement.</p>
FRANCE	<p>L'acte authentique est celui qui a été reçu par officiers publics dans le lieu où l'acte a été rédigé, et avec les solennités requises.</p> <p>Acte comparable : l'acte contresigné par avocat</p> <p>La loi n°2011-331 du 28 mars 2011 de modernisation des professions judiciaires ou juridiques et certaines professions réglementées publiée au Journal Officiel du 29 mars 2011, a introduit l'acte contresigné par avocats, déclinée en trois articles introduits dans la loi 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques.</p> <p><i>Article 66-3-1 : « En contresignant un acte sous seing privé, l'avocat atteste avoir pu éclairer pleinement la ou les parties qu'il conseille sur les conséquences juridiques de cet acte ».</i></p> <p><i>Article 66-3-2 : « L'acte sous seing privé contresigné par les avocats de chacune des parties ou par l'avocat de toutes les parties fait pleine foi de l'écriture et de la signature de celles-ci tant à leur égard qu'à celui de leurs héritiers ou ayant cause. La procédure de faux prévue par le code de procédure civile lui est applicable.</i></p> <p><i>L'article 66-3-3 : « L'acte sous seing privé contresigné par avocat est, sauf disposition dérogeant expressément au présent article, dispensé de toute mention manuscrite exigée par la loi ».</i></p>
GERMANY	Les instruments émis par une autorité publique dans les limites de sa compétence ou qui ont été authentifiés par un officier assermenté ayant droit d'instrumenter dans le cadre de ses fonctions dans la forme requise (actes authentiques), jouissent, dans la mesure où ils portent sur une déclaration effectuée devant l'autorité ou l'officier public ayant le droit d'instrumenter, de la force probante pleine et entière de l'acte enregistré par l'autorité ou l'officier public ayant le droit d'instrumenter.
GREECE	
ITALY	<p>“Atto pubblico” (Acte public). Selon l'article 2699 du code civil, “l'acte public est le document, rédigé avec les formalités prévues, par le notaire ou par un autre officiel public autorise à attribuer la foi publique à l'acte dans le lieu où l'acte même est formé”.</p> <p>Le code civil connaît, en outre, l'écriture privée authentifiée. Selon l'article 2703 du</p>

	code civil, la signature d'une écriture privée est considérée comme reconnue par son auteur si elle est authentifiée par le notaire ou par un autre officiel public autorisé. L'authentification est l'attestation, de la part de l'officiel public, que la signature a été mise à la présence de ce dernier. L'officiel public doit vérifier l'identité de la personne qui signe l'acte, avant la signature.
IRELAND (Law Society)	Unknown
HUNGARY	<p>In our interpretation an authentic act is any deed which is recognized and/or enforceable without any further process in Hungary. However in Hungarian law there is no legal term which would exactly cover this concept.</p> <p>Deeds under Hungarian law are either considered public or private deeds. Public deeds are documents issued by a court, a notary, an authority or administrative body acting within its competence. Public deeds can be hard copies or electronic documents but they have to be issued in a form required by law (Article 195 paragraph 1 Act III of 1952 on Civil Proceedings). Every other document which does not fulfil the criteria of a public deed falls under the category of private deeds.</p> <p>Concerning documents prepared in a foreign country, Hungarian law contains rules only on the recognition of foreign public deeds (Article 195 paragraph 8 of Act III of 1952 on Civil Proceedings).</p> <p>That means that a foreign private deed has to be first attested by a notary, court or a competent authority and the so issued public deed can be recognized in Hungary. Whether the public deed can be directly recognized in Hungary or further procedural steps are needed depends on Hungary's relationship with the country where the public deed was issued. The main rule is that a foreign public deed can only be used in Hungary if it is attested by the competent foreign representative body of Hungary (embassy or consulate). Such an attestation is not necessary if Hungary has such an agreement with the country of issue. For instance there is an agreement in force between Hungary and Austria stating that deeds signed and stamped by judges, notaries or authorities in one of the two countries have to be recognized as public deeds in the other country (1961 Agreement between Austria and Hungary on mutual judicial assistance in civil matters and on deeds).</p> <p>Further, Hungary is part of the 1961 Hague Convention on Abolishing the Requirement of Legislation for Foreign Public Documents, therefore if the deed was issued in another state which is party to the convention, the Hungarian representative body does not need to attest the document but it is enough if the competent authority on the country from which the document emanates adds a certificate, a so called apostille, which certifies the authenticity of the signature, the capacity in which the person signing the document has acted, and where appropriate, the identity of the seal or stamp which the document bears.</p> <p>Concerning judicial decisions in civil and commercial matters issued in another Member State of the European Union, the 44/2001/EC Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters applies according to which "[a] judgment given in a Member State shall be recognized in the other Member States without any special procedure being required" (Article 33 paragraph 1).</p>
LATVIA	The definition is provided by the Notary law, which states that deeds, which are made by a sworn notary and recorded into a deed book, shall be known as notarial deeds.
LITHUANIA	Law on Public Administration defines administrative as an act which shall mean a legal act of the established form adopted by an entity of public administration.
POLAND	<p>Article 244 Polish Code of Civil Procedure</p> <p>(1) Authentic instruments recorded in the prescribed form by public authorities instituted for this purpose or by other state authorities within the limits of their</p>

	<p>functions (competences) constitute proof of what they officially attest.</p> <p>(2) The provision of paragraph 1 applies by analogy also to authentic instruments established by professional chambers, territorial organizations, cooperatives or other social organizations within the limits of the competences which have been entrusted to them by law within the public administration.</p>
PORTUGAL	<p>An authentic act comprehends both authentic and authenticated documents. The first is, according to the Portuguese Civil Code, the one made, according to the legal formalities, by the public authorities within its competence or by a notary or other public officer invested of public faith. An authenticated document is a private document which is confirmed by the parties before a notary, with the observation of certain formalities. Under the terms of legislation which came into force in 2006, lawyers, amongst other entities, also have powers to authenticate a private document. Authenticated documents have the same effects of authentic documents, namely regarding its scope and enforceability, as better described below.</p>
SLOVAK REPUBLIC	<p>The notion of authentic act is not, <i>stricto sensu</i>, defined in any legal regulation in the Slovak Republic. However, the Slovak legal environment is in certain extent inspired and influenced by so called Latin tradition, where rather significant importance is attributed to documents that bear official authorization stamps.</p>
SLOVENIA	<p>There is no express definition of authentic act, however it is possible to conclude on the basis of the existing legislation that an authentic act is a public act issued by a public authority or other entity exercising public powers provided it is issued within its competences and in a prescribed electronic or written form. Comparable acts are private acts given equal authenticity on the grounds of meeting particular requirements set out in specific provisions.</p>
SPAIN	<p>L'acte authentique est celui qui a été autorisé par un Notaire ou un employé public compétent, en accomplissant les formalités requises.</p>
SWEDEN	<p>The concept of authentic acts or instruments does not exist within the Swedish legal system. Hence, there is no national definition to refer to. Additionally, there are no obvious terms or expressions in the Swedish vocabulary that describe the concept.</p> <p>No area of law requires that any public authority intervenes and issues an authentic instrument for an agreement to be formed.</p> <p>In Sweden, certain types of agreements need to be in writing and signed by both parties. In some infrequent cases, there is a requirement of witnesses being present when the agreement is signed; however, witnesses are acting solely in their private capacity and cannot be compared to a public authenticating authority.</p> <p>There is an established system of Notaries Public in Sweden. These notaries, who often are members of the Swedish Bar Association, may certify signatures, transcripts, and certain other information regarding documents. However, when certifying, the notary does neither assume responsibility for the legal correctness nor, as defined in the Unibank judgment, authenticate the content of the document.</p>
THE NETHERLANDS	<p>Dutch law provides a definition of authentic acts in article 156 section 2 of the Dutch Code of Civil Procedure: Authentic acts are acts drawn up in the required form by public officials whom the law appoints to provide evidence of observations made or acts done by them. Authentic acts can be drawn up by a civil law notary, a bailiff, a clerk of the court and a registrar of births, deaths and marriages. The purposes of an authentic act are set out under question 4.</p>
UK	<p><u>England and Wales</u></p> <p>Inexistent/ unknown</p> <p><u>Northern Ireland</u></p>

	The Northern Irish legal system is a Common Law system and does not recognise a concept of authentic instruments. However the role played by deeds as the most solemn and authentic act that a man can possibly perform should be considered.
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2/	LEGAL BASIS FOR AUTHENTIC ACTS/COMPARABLE ACTS
AUSTRIA	See answer to question 1.
BELGIUM	Article 1317 du code civil belge
CZECH REPUBLIC	The Civil Code prescribes mandatory requirements of a notarial deed. The Civil Proceedings Code provides that evidence may be produced in a form of notarial deed or public executor's deed asserting a factual action or a condition of a thing, if such an action or ascertainment of condition has happened in presence of notary or if it was verified by notary in his presence. Section 125 of Civil Proceedings Code provides namely that notarial deeds (or public executor's deeds) may serve (among other instruments) as an evidence before civil court.
CYPRUS	
DENMARK	This depends on the document in questions. In some instance, e.g. with regard wills the requirement arises of applicable laws, whereas in other instances (e.g. debt instruments) the requirement is based on the request of e.g. a bank.
ESTONIA	
FINLAND	<p>For the purpose of this memorandum, authentic acts can be construed as documents that are not drafted by a court or by an arbitral tribunal, but are nevertheless directly enforceable.</p> <p>The grounds for enforcement that can be construed as authentic acts are listed in chapter 2 section 2 of the Enforcement Act (705/2007, in Finnish "Ulosottoaari") as follows:</p> <ul style="list-style-type: none"> - A bailiff's protocol on ✓ the settlement of account in a sale-by instalment, ✓ a confirmed child support agreement, and ✓ an obligation or debt instrument the enforcement of which in accordance with this Act has been provided in some other Act (paragraph 4) - A decision of the Government, a Ministry, an agency in the central administration of the State and a State Provincial Office, as well as another administrative decision the enforcement of which in accordance with this Act has been provided in some other Act. (paragraph 6)
FRANCE	<p>Acte authentique :</p> <p>Article 1317 alinéa 1^{er} du code civil</p> <p>Acte comparable : l'acte contresigné par avocat</p> <p>La loi n°2011-331 du 28 mars 2011 de modernisation des professions judiciaires ou juridiques et certaines professions réglementées publiée au Journal Officiel du 29 mars 2011, a introduit l'acte contresigné par avocats, déclinée en trois articles introduits dans la loi 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques.</p>
GERMANY	Paragraphe 415 du code de procédure civil allemand
GREECE	

HUNGARY	<ul style="list-style-type: none"> - Article 195-196 of Act III of 1952 on Civil Proceedings - Article 11-114 of Act XLI of 1991 on Notaries - Article 10-23, 205-210 of Act LIII of 1994 on Judicial Enforcement - Article 52 of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services
IRELAND (Law Society)	
ITALY	La discipline des actes publics et de l'écriture privée est contenue dans les sections I et II du Livre VI, Titre II, Chapitre II du Code Civil.
LATVIA	<p>Article 81 Notary Law Notarial deeds (Article 82) and certifications (Article 108), which are made by sworn notaries are public documents, with the exception of documents when the sworn notary only certifies the authenticity of signatures, which are recognized as private documents.</p> <p>According to the Law On Orphan's Courts, Orphan's Court is entitled to perform several duties in the administrative territory of a local government or the name of the populated area, in which the relevant Orphan's court is located. The certification of an Orphan's court shall be equal to the notarial certification from the point of view of its legal force.</p>
LITHUANIA	The requirements for the documents which are recognized and/or enforceable without any further procedure are determined in a Civil Code, Code of Civil Procedure, Code of Administrative Offences, Law on Notary Office, Law on Bailiffs, Law on Public Administration.
POLAND	<p>Article 244 Polish Code of Civil Procedure</p> <p>(1) Authentic instruments recorded in the prescribed form by public authorities instituted for this purpose or by other state authorities within the limits of their functions (competences) constitute proof of what they officially attest.</p> <p>(2) The provision of paragraph 1 applies by analogy also to authentic instruments established by professional chambers, territorial organizations, cooperatives or other social organizations within the limits of the competences which have been entrusted to them by law within the public administration.</p> <p>Article 1 Polish Notarial Law states that the notary is called to perform acts, which the parties are obliged to or wish to authenticate in notarial form (notarial instruments).</p> <p>Article 80 Polish Notarial Law</p> <ol style="list-style-type: none"> 1. Acts and documents should be drawn up by the notary public in a clear and transparent way. 2. When preparing a notarial act the notary is obliged to ensure due protection of the rights and legitimate interests of the parties and other persons to whom the act may have legal effects. 3. The notary is obliged to provide the necessary clarifications to the parties participating in the notarial acts. <p>Article 81 Polish Notarial Law</p> <p>The notary must refuse to carry out any authentication contrary to the law.</p> <p>Article 94 Polish Notarial Law</p> <ol style="list-style-type: none"> 1. The notarial instrument has to be read by the notary or by another person in the notary's presence prior to the signing. While reading the notarial

	instrument, the notary should ascertain whether the parties involved in the transaction understand the content and legal consequences of the act, and whether the instrument is consistent with their will. At the request of the parties, also the annexes to the instrument should be read.
PORTUGAL	Article 363 of the Civil Code, article 35 of the Notary Code (Decree Law nr. 207/95) and article 38º of Decree Law nr. 76-A/2006 (which has granted the capacity for lawyers to authenticate private documents).
SLOVAK REPUBLIC	
SLOVENIA	Legal basis are to be found in a wide circle of civil and public laws: <ul style="list-style-type: none"> - Civil Procedure Act - General Administrative Procedure Act - Execution of Judgments in Civil Matters and Insurance of Claims Act - Notary Act
SPAIN	<p>L'article 1216 du Code Civil espagnol établit que les actes authentiques ou documents publics sont ceux qui ont été autorisés par un Notaire ou un employé public compétent, en accomplissant les formalités requises.</p> <p>Ainsi, l'article 317 du Code de la Procédure Civile espagnole, ajoute une liste des documents qui sont considérés publics. Ces documents sont les suivants :</p> <ul style="list-style-type: none"> - Décisions, diligences et témoignages développés dans les procédures judiciaires et établies par les Secrétaires Judiciaires. - Les actes authentiques notariaux. - Les certifications délivrées par les Registres de la Propriété et du Commerce. - Les documents délivrés par les fonctionnaires publiques autorisés par la loi pour donner foi en ce qui concerne l'exercice de leurs fonctions. <p>Le Règlement de l'organisation et régime juridique des Notaires expose, dans son article 1, que les notaires sont des fonctionnaires publics et des professionnels du Droit.</p> <p>Ainsi, l'article 139 du même Règlement dit que les notaires ne peuvent pas autoriser des actes qui consistent à consentir des droits pour eux-mêmes ; et l'article 143 établit que les documents publics autorisés par un Notaire sont dotés de la foi publique, et on peut présumer leur contenu véridique.</p> <p>L'article 144 de ce Règlement sépare les documents notariaux en les suivantes catégories :</p> <ul style="list-style-type: none"> - Acte authentique (Escritura Pública) - Police intervenue (Póliza Intervenida) <p>L'article 1217 du Code Civil espagnol et les articles 318 et 319 du Code de la Procédure Civile espagnol, octroient force probatoire, digne de foi, aux dits documents.</p> <p>Compte tenu du caractère implicite de la présomption de véracité iuris tantum des actes authentiques, la jurisprudence de la Cour de Cassation espagnole, a établi, en différentes occasions, qu'un document public n'a pas prévalence sur les autres éléments probatoires. La doctrine jurisprudentielle considère que les actes authentiques peuvent seulement prouver sa réalisation par le fait d'être signés par celui qui certifie la réalité d'un acte.</p> <p>La valeur probatoire de la fonction notariale se limite à prouver que les contractants ont réalisé ou déclaré en présence d'un notaire mais ne prouve pas l'exactitude des</p>

	déclarations ou intention qui aurait été occultée ou dissimulée.
SWEDEN	<p>It is unlikely that any instruments exist in Swedish law that could be classified as comparable to authentic acts. However, it could be mentioned that certain agreements regarding alimony obligations are directly enforceable by the Swedish Enforcement Authority (Kronofogdemyndigheten) if they are in writing, signed and witnessed. Legally, this possibility is based on the Code of Execution (1981:774), Chapter 3 Section 19.</p> <p>The system of Notaries Public is based on the Notary Public Act (1981:1363) and the Notary Public Regulation (1982:327).</p>
THE NETHERLANDS	Article 431 section 1 of the Dutch Code of Civil Procedure stipulates that, in general, only authentic acts executed in the Netherlands and judgments of Dutch courts can be enforced in the Netherlands. Authentic acts which are not executed in the Netherlands and judgments of foreign courts can only be enforced in the Netherlands after obtaining a leave to enforce (exequatur). Dutch law stipulates furthermore that in certain situations an authentic act is the only way to execute a legal act.
UK	<p><u>England and Wales</u></p> <p>Non-existent/unknown</p> <p><u>Northern Ireland</u></p> <p>See our response to question 1.</p>

3/	<p>NATIONAL POSITION TO “UNIBANK” JUDGMENT¹</p> <p><i>“l’acte authentique est un instrument établi par une autorité publique ou tout autre autorité habilitée à ce faire par l’Etat membre d’origine, dressé dans la forme requise, qui authentifie la signature et le contenu de l’acte authentique.”</i></p> <p><i>« the Authentic Act is the instrument (which) must have been established by a public authority or another authority empowered for that purpose by that state, the authenticity must relate to the content of the instrument and not only to the signature, an instrument can only be enforced in the receiving state, if it is enforceable in the issuing state”.</i></p>
AUSTRIA	The European Court of Justice states in its Unibank judgment that an authentic act is an instrument whose authenticity is established “by a public authority or other authority empowered for that purpose by that state”. The Austrian Bar is of the opinion that this definition does not only apply to acts established by notaries but also to acts established by Austrian lawyers as these have been empowered for that purpose by the state through the adoption of the legal provisions mentioned below in the answer to question 6.
BELGIUM	
CEZCH REPUBLIC	The Czech Republic legal order constitutes strong basis for what we can call “notarial system“. The legal acts issued by lawyers are not considered as public deeds or in other words as an authentic acts. However, the Czech Bar Association permanently promotes so that the legal documents issued by lawyers would be recognized as acts of the same validity as those executed by notaries and/or public executors, at least in certain fields of law. This requirement is based on the assumption that the legal profession is also regulated profession and there is no reason why only certain regulated professions would be entitled to issue authentic acts. Moreover, the fast development of economy and increasing demand of clients

¹ For the entire UNIBANK’s judgment see annex

	<p>proves such requirement is justifiable. In recent years lawyers profession pushed forward so that an advocate is entitled to verify the signatures of the party or the parties on legal documents either elaborated by the advocate or those which were signed before her/him. Such verification of signatures has thus the same legal effect as notarial or other public verification. Very newly, Czech Bar strongly supports inclusion of lawyers together with the notaries to new regulation regarding conveyancing, so that the contracts executed by the lawyers should have the same effect as those executed by the notaries.</p>
CYPRUS	
DENMARK	<p>The Unibank judgment related to a Danish law document, i.e. whether a debt instrument which under Danish law was directly enforceable fulfilled the requirements set out in the Brussels Convention to be directly enforceable in Germany. One should also bear in mind that the Danish rules dealt with in the Unibank judgement do not concern the question as to whether the document is attested by a notary or whether it should have any other form of authentication, but rather dealt with Danish rules on acknowledgment of indebtedness. Nevertheless there is in no “Danish position” on the judgment.</p> <p>According to the previous Danish Act on Registration of Property a signature on a document regarding registration of property had to be attested by two witnesses or by a lawyer. The attestation only served as a certification.</p> <p>Today the Land Registry is digital and registered documents are certified by the use of a digital signature.</p> <p>Attestation by two witnesses or by a lawyer is still required as for registration of documents in the Registry of Persons and Motor Vehicles and the Registry of Cooperative Housing Societies. Soon these registries will become digital as well and the documents will be certified by the use of a digital signature.</p> <p>If a lawyer takes part in a process involving several jurisdictions, he is often responsible to clarify whether there are special requirements that must be fulfilled. If that is the case the lawyer will make sure the documents are attested by a notary public and/or translated by a state-authorized translator.</p>
ESTONIA	
FINLAND	To our understanding, there is no such position.
FRANCE	
GERMANY	
GREECE	
HUNGARY	There is no national position on the matter.
IRELAND (Law Society)	
ITALY	Pas de position.
LATVIA	As far as we have been able to find there is no national position on the matter.
LITHUANIA	
POLAND	Unibank Judgment presents an open definition of an Authentic Act that recognizes the State’s competence to empower any other than public authority to produce authentic instruments. The certified by lawyers copies of documents should be treated as authentic acts because they have official probative value according to national legislation, in particular in civil and administrative proceedings.
PORTUGAL	According to article 356 of the Civil Code, an authentic document elaborated in a foreign country, according to that country’s law, makes proof as an authentic document would if it had been made in Portugal. In case the document is not legalized, and there are legitimate doubts on its authenticity its legalization may be

	requested.
SLOVAK REPUBLIC	
SLOVENIA	
SPAIN	Le Consejo General de la Abogacía Española n'a pas établi une position concrète en ce qui concerne à l'arrêt d'Unibank.
SWEDEN	As authentic acts do not exist as a concept within Swedish law, there is no national position of the Unibank judgment
THE NETHERLANDS	Dutch law, in particular article 431 section 1 of the Dutch Code of Civil Procedure, is in compliance with the "Unibank" judgment.
UK	<u>England and Wales</u> N/A <u>Northern Ireland</u> The Northern Ireland Executive has not adopted a position on the "Unibank" judgement.

4/	SCOPE OF AUTHENTIC ACT/COMPARABLE ACT
AUSTRIA	Authentic acts/comparable acts provide full evidence of what is decreed, declared or attested in them. However, they do not provide evidence of the accuracy of the decreed, declared or attested content. Accordingly, it is possible to prove the contrary to what is decreed, declared or attested in an authentic act/comparable act.
BELGIUM	
CEZCH REPUBLIC	
CYPRUS	
DENMARK	<p>Under Danish law, important agreements and similar legal acts will usually be in writing and signed by the acting person or persons. No contract or other legal act or agreement requires the involvement of a neutral official to issue an authentic instrument about the act. The written document serves only as evidence, i.e. it is in principle possible to make a valid and binding oral agreement or a written agreement without signatures of the parties. Certain exceptions to this rule apply with regard to e.g. consumer and employment agreements.</p> <p>In a few cases there are legal requirements to witness certain important acts, e.g. a will if not attested by a notary public, but it cannot be compared to the intervention of a civil law notary or other authenticating official. The witnesses are acting in their private capacity and are not involved in the drafting of or given legal advice about the act.</p> <p>(See also q1 above).</p>
ESTONIA	
FINLAND	<p>Paragraph 4 in chapter 2 section 2 of the Enforcement Act lists grounds for enforcement governed by private law. Bailiff's protocols on settlement of account in a sale-by instalment described in the Act on Hire Purchase are enforceable without a court order. Also confirmed child support agreements are directly enforceable. Enforcement of acts governed by private law can be provided in other Acts. Examples are given under question 6.</p> <p>Pursuant to paragraph 6 in chapter 2 section 2 of the Enforcement Act, decisions made by the Council of State, a Ministry, an agency in the central administration of the State and a State Provincial Office can be directly enforced even if the decision</p>

	is not made as an appeal instance. Decisions made by other administrative organs are directly enforceable only if the enforcement accordance with the Enforcement Act has been provided in some other Act. Examples are given under question 6.
FRANCE	<p>Acte authentique :</p> <p>L'acte authentique fait foi de son contenu jusqu'à inscription de faux. Mais cette force probatoire est limitée aux faits que l'officier public a personnellement constatés (par exemple : date de signature, présence des parties). En revanche, les énonciations des parties (par exemple : consistance des biens vendus, réalité d'un paiement fait hors la présence de l'officier public) peuvent toujours faire l'objet d'une preuve contraire par une procédure ordinaire, sans avoir recours à la procédure d'inscription de faux. Il en est de même des constatations de l'officier public qui n'entrent pas dans sa mission (par exemple : état mental des parties signataires). L'acte authentique n'a donc pas l'autorité d'une décision de justice.</p> <p>Acte comparable :</p> <p>En contresignant un acte sous seing privé, l'avocat atteste avoir éclairé pleinement la ou les parties qu'il conseille sur les conséquences juridiques de cet acte.</p> <p>L'acte sous seing privé contresigné par les avocats de chacune des parties ou par l'avocat de toutes les parties fait pleine foi de l'écriture et de la signature de celles-ci tant à leur égard qu'à celui de leurs héritiers ou ayants cause. La procédure de faux lui est applicable.</p>
GERMANY	<p>Under German law, important agreements and similar legal acts will usually be in writing and signed by the acting persons. Some special agreements/contracts require the involvement of an attesting notary to issue an authentic instrument about the act.</p> <p>Authentic acts/comparable acts provide full evidence of what is decreed, declared or attested in them. However, they do not provide evidence of the accuracy of the decreed, declared or attested content. Accordingly, it is possible to prove the contrary to what is decreed, declared or attested in an authentic act/comparable act.</p>
GREECE	
IRELAND (Law Society)	<p>In the UK and Ireland, a formal deed (as opposed to a simple document under hand) is required in relation to:</p> <ol style="list-style-type: none"> 9. Powers of Attorney 10. Instruments relating to land conveyances, mortgages, charges, leases and surrenders) 11. Releases and discharges unless for consideration 12. Gratuitous assignments of choses in possession 13. Promises, covenants or bonds 14. Declarations of Trust and trustee appointments and discharges 15. Bills of sale or mortgage of British ships 16. Any instrument varying another deed <p>These are very similar to the areas that require a formal notarial act in many civil law jurisdictions.</p> <p>Broadly therefore a common law deed is very similar in its practical effects as a notarial instrument.</p>

ITALY	<p>L'acte public fait preuve pleine de l'origine du document de l'officiel qui l'a formé et des déclarations des parties et des autres faits que l'officiel public certifie être passée en sa présence ou accomplis par lui même.</p> <p>L'écriture privée authentifiée fait preuve pleine de l'origine des déclarations de celui qui a souscrites.</p> <p>Toutes autres questions relatives à l'interprétation des déclarations et à leur vérité ne son pas couvertes par la foi publique. L'interprétation des actes publiques et des écritures privées doit être faite en suivant les critères d'interprétation ordinaires. Toutes circonstances contraires aux déclarations contenues dans les actes publiques et à la correspondance de ces déclarations à la vérité peuvent être prouvée avec les moyens de preuve ordinaires La jurisprudence de la Cour de Cassation est constante sur ce point (672/98, 13935/99, 6090/00, 10569/01).</p>
HUNGARY	<p>In Hungarian law public deeds can only be issued by a court, a notary, an authority or administrative body acting within its competence. Lawyers have no competence to issue a public deed.</p>
LATVIA	<p>Article 82. 1 Notary Law When certifying an expression of intent a sworn notary shall make a notarial deed. The notarial deed shall specify the expressions of intent of its participants. Participants of a notarial deed shall be persons who in the presence of a sworn notary express their intent on their own or on other person's behalf.</p> <p>Article 83. Notary Law A sworn notary shall enter notarial deeds in a notarial deed book. A sworn notary shall verify the identity, capacity to act and the right of representation of the participants of the notarial deed.</p> <p>Article 87. Notary Law Participants in the deed shall submit to the sworn notary a ready draft or request the sworn notary to draw it up.</p> <p>Article 87.1 Notary Law The sworn notary shall ascertain the intent of the participants in the notarial deed and the terms of the transaction, record notifications by persons clearly and unambiguously, acquaint the participants with the possible legal consequences of the transaction so that ignorance of laws and lack of experience is not used against their best interests.</p> <p>To a limited extent the Orphan's Courts may make the same deeds as notaries, e.g. certify a transaction if it is entered into by and between the residents of the territory of operation of the relevant Orphan's court and other persons and the amount of a transaction does not exceed LVL 6 000, or certify an agreement between the co-heirs and joint owners regarding the division of the inheritance or joint property (regardless of the value of the property), if the property to be divided or a part thereof is located in the territory of operation of the relevant Orphan's court; or certify powers of attorney (except universal powers of attorney) of the residents of the territory of operation of the relevant Orphan's court and accept revocations of the powers of attorney;</p>
LITHUANIA	
POLAND	<p>PROBATIVE VALUE: Authentic act is a consistent proof of its content.</p> <p>There are two ways to contest the authentic act:</p> <ul style="list-style-type: none"> -the party can contest it in the same form as the authentic act was made. -the party can bring an action to the court for a declaratory judgment, that can

	<p>declare the act to be invalid (binding only to the parties)</p> <p>The limitations as to the how the authentic act can be contested are provided in art. 252 Civil Procedure Code, that distinguish between the authentic act being the required form ad solemnitatem and the authentic act being only used as the form ad probationem. The limitations are applicable only to the form ad solemnitatem</p>
PORTUGAL	<p>The authentic document makes full proof of the facts referred as practiced by the authority or respective public officer, as well as of the facts which are therein certified based on the perception of the certifying entity. The proof made by authentic documents may only be rebutted by its forgery. The authenticated documents have the same proof value than that of the authentic document, but do not substitute them when the law requires an authentic document for the act, such as a public deed. Today only a small number of acts have to be legally subject to public deed.</p> <p>According to the Portuguese Civil Code, an authentic document is a document that is made by public authorities within its competence or by a notary or other public officer invested of public faith, according to the formalities legally prescribed. An authenticated document is a private document which is confirmed by the notary as being issued by the parties, with the observation of certain formalities. Under the terms of legislation which came into force in 2006, lawyers, amongst other entities, also have powers to authenticate a private document.</p> <p>Under the terms set forth in the Civil Code, both authentic and authenticated documents makes full proof of the facts referred as practiced by the authority or respective public officer.</p> <p>Prior to 2006, for instance, all acts relating to companies, such as the incorporation, by-laws' modification, head-office transfer, corporate purpose change, share capital increase or reduction, merger, de-merger, dissolution, shares assignment agreements had to be made through public deed. Nowadays, a simple document (namely an agreement or a General Meeting minutes) is sufficient to execute such acts. Also, since January 1, 2009, all acts relating to real estate can be made through authenticated document, which lawyers may execute, as mentioned above.</p>
SLOVAK REPUBLIC	<p>In the Slovak Republic, for a large number of transactions, a notarization i.e. authentication of a certain facts, signatures etc. is required by the applicable legal regulation in the Slovak Republic. This is the case of almost all corporate documents where signatures must be notarized, transfer of real-estates where signature of the seller (transferor) must be notarized etc. In some specific cases, the signature of the empowering person on a power of attorney must be notarized (e.g. in the proceedings before the antimonopoly authorities). Further, it is very common that in certain proceedings (and not always judiciary proceedings), notarized copies are often required. The rather rigorous requirements for authentication of documents and signatures reveals as more complex in cross-border transactions. Official legal documents such as judgments must still bear an apostille in accordance with Hague Convention on International Private law. Signatures on certain foreign documents (e.g. power of attorney) which are to be used in certain official proceedings in the Slovak Republic must not only be notarized but also apostatized.</p>
SLOVENIA	<p>Some authentic/comparable acts have the quality of a title to enforcement and are directly enforceable in a simplified enforcement procedure which is based upon submission of authentic/comparable act (invoices, cheques, business books and records endorsed by a responsible person, also certain public or qualified private acts).</p>
SPAIN	<p>Les actes authentiques espagnols accréditent per se : identité des parties contractantes, la date et l'endroit où ont été octroyés et la solennité d'avoir été autorisés par un fonctionnaire publique.</p> <p>De plus, les documents publics espagnols possèdent un effet probatoire des faits,</p>

	<p>actes ou état des choses.</p> <p>Les documents publics étrangers, investis de cette solennité en vertu des conventions internationales ou d'une loi spéciale, ont la même véracité au sein des procédures que les documents publics espagnols. Lorsqu'il n'existe pas de Convention, l'acte authentique étranger pourra, également, être fourni en tant que preuve s'il remplit les exigences requises. (Art. 323.2 LEC).</p> <p>Pour que les actes juridiques puissent être dûment inscrits aux Registres du Commerce ou de la Propriété, il sera nécessaire qu'ils soient constitués formellement comme des actes authentiques.</p> <p>Il y a un certain nombre d'actes que doivent revêtir de la solennité d'acte authentique pour garantir son efficacité, par exemple, les dons de Bien Immeubles (art. 633 CC), et les hypothèques (Art. 1.875 CC)</p>
SWEDEN	<p>As authentic acts do not exist as a concept within Swedish law, there is no scope of authentic acts. Written agreements generally only serve as evidence in the Swedish legal system and no procedure relating to authentication of the content add additional value to an agreement.</p>
THE NETHERLANDS	<p>(i) The main purpose of an authentic act is to provide legal certainty. Dutch law gives special evidence weight to authentic acts drawn up by a civil servant (including notaries, bailiffs etc.).</p> <p>(ii) An important other purpose of some authentic acts is to provide a title to enforcement. Article 430 section 1 of the Dutch Code of Civil Procedure stipulates that an authenticated copy of a judgment or an authentic act can be enforced in the Netherlands. The authenticated copy should bear the words: "In naam der Koningin" (In the name of the Queen).</p> <p>(iii) If an authentic act is drawn up by a notary, it also provides some legal protection to weaker parties. Under normal circumstances, a notary is obliged to balance the interests between the parties to an authentic act. If a legally weak and ill-informed party is involved, the notary should assure that this weak position is not misused by the stronger party.</p>
UK	<p><u>England and Wales</u></p> <p>In the UK and Ireland, a formal deed (as opposed to a simple document under hand) is required in relation to:</p> <ol style="list-style-type: none"> 1. Powers of Attorney 2. Instruments relating to land (conveyances, mortgages, charges, leases and surrenders) 3. Releases and discharges unless for consideration 4. Gratuitous assignments of choses in possession 5. Promises, covenants or bonds 6. Declarations of Trust and trustee appointments and discharges 7. Bills of sale or mortgage of British ships 8. Any instrument varying another deed <p>These are very similar to the areas that require a formal notarial act in many civil law jurisdictions.</p> <p>Broadly therefore a common law deed is very similar in its practical effects as a notarial instrument.</p> <p><u>Northern Ireland</u></p>

	<p>See our response to question 1.</p> <p>In Northern Ireland, in line with the position in England & Wales and the Republic of Ireland, a formal deed (as opposed to a simple document under hand) is required in relation to:</p> <ol style="list-style-type: none"> 1. Powers of Attorney 2. Instruments relating to land conveyances, mortgages, charges, leases and surrenders) 3. Releases and discharges unless for consideration 4. Gratuitous assignments of choses in possession 5. Promises, covenants or bonds 6. Declarations of Trust and trustee appointments and discharges 7. Bills of sale or mortgage of British ships 8. Any instrument varying another deed <p>As noted in the current draft of the Report these are very similar to the areas that require a formal notarial act in many civil law jurisdictions.</p>
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5/	ENFORCEMENT OF AUTHENTIC ACT/COMPARABLE ACT
AUSTRIA	<p>Not every authentic act/comparable act is enforceable. The enforceability of an act depends on its content and on certain conditions.</p> <p>Article 1 of the law on execution (Exekutionsordnung) states that all notarial acts under § 3 of the law on the profession of Latin notaries (Notariatsordnung) are considered as executory titles.</p> <p>Article 3 of the law on the profession of Latin notaries provides that a notarial act – which often but not always is an authentic act (see below answer to question 6) – may be enforceable like an amicable settlement before court if (i) an obligation to a performance or an omission is stated; (ii) the person of the beneficiary and of the obliged party, the legal title, the object, the manner, the extent and the time of the performance or omission may be extracted; (iii) an amicable settlement according to (i) is licit; or (iv) the obliged party has made a declaration in the specific act or in another act that the notarial act shall be enforceable immediately.</p> <p>The acts that Austrian lawyers may draw up according to the law (see below answer to question 6) are by the nature of their content not enforceable. However, in normal practice, § 433 of the law on civil procedure provides for the possibility that amicable settlements that have been worked out by or with the help of lawyers are declared enforceable by the courts.</p>
BELGIUM	
CEZCH REPUBLIC	<p>Notarial deeds containing permission to enforceability</p> <p>(Such notarial deed is a public act serving as European executor title if its subject is a pecuniary claim arising from civil or commercial obligation relations)</p>
CYPRUS	
DENMARK	<p>No specific enforcement provisions; it is left for the court of competence to consider the evidence submitted. In this regard, an attestation as mentioned under q1 above will make it difficult, albeit not by law impossible, to challenge e.g. the authenticity of a signature.</p> <p>A document can be attested by a notary public, but it serves only as a certification. The notary public is not responsible for the legal correctness of the content or the</p>

	<p>validity of the underlying agreement.</p> <p>According to Danish law, the only document that must be attested by a notary public to gain legal effect is a will, if not signed before two witnesses.</p> <p>Other documents attested by a notary public are often used for purposes in other jurisdictions. In these cases it is not because it is required under Danish law but because it is required by law in the other country. If required a notary public can also certify a copy of a document.</p> <p>A notary public is working at the city courts. A notary public is working in the public sector, but the attestation of a document does not make it an authentic instrument within the meaning of Article 50 of the Brussels Convention.</p>
ESTONIA	
FINLAND	<p>Execution procedure is a form of special enforcement regulated by the Enforcement Act.</p> <p>An application for enforcement is made with a written application or an electronic message. The ground for enforcement shall be attached to the application. An enforcement matter becomes pending when the enforcement application arrives to the local enforcement authority or into the Enforcement Information System.</p> <p>When the application has arrived to the bailiff-in-charge, the respondent shall be notified of the filing. The bailiff shall hear the parties and third parties if the matter is deemed to be of considerable significance to the person to be heard and if there is no impediment to the hearing.</p> <p>The execution proceedings shall be carried out without undue delay. An attachment may however not be carried out without giving prior notice to the debtor. Unless otherwise provided, the proceedings shall be held in the office of the bailiff, the place where the assets are located, the premises subject to the proceeding or in some other premises or location deemed suitable by the bailiff. A protocol shall be kept of the proceeding, if pleas or claims are made in the proceeding or if there otherwise is reason for the same. The bailiff may summon a monitor witness to the proceeding, if he or she deems this necessary.</p> <p>The pendency of an enforcement matter relating to a payment liability ends when the bailiff remits the collected funds (closing remittance). The pendency of an enforcement matter relating to an obligation other than a payment liability ends when the bailiff has completed the enforcement measures or issued a certificate of an impediment to the enforcement. If full payment has not been collected for the receivable (impediment for lack of means), a certificate to this effect shall be issued to the applicant.</p> <p>If the pendency of an enforcement matter relating to a payment liability ends with an impediment for lack of means, the matter may at the request of the applicant be entered into the Enforcement Information System as a passive receivable.</p>
FRANCE	<p>Acte authentique :</p> <p>L'acte authentique a force exécutoire. Sa mise à exécution peut toutefois faire l'objet de recours devant la justice au moyen de procédures simples. L'acte lui-même peut être contesté. Si les procédures en inscription de faux sont très rares en raison de leur domaine limité aux seules constatations de l'officier public, en revanche les procès entre les parties liées par actes authentiques notariés sont très nombreux compte tenu de leur faible force probatoire en ce qui concerne le contenu même des conventions. Par ailleurs, si l'on se réfère aux rapports annuels successifs du Conseil Consultatif pour le Répression des Abus de Droit en matière fiscale, on constate que nombre d'opérations incriminées sont concrétisées par des actes authentiques notariés, ce qui démontre que le recours à cet acte authentique ne garantit pas la collectivité contre les opérations irrégulières.</p>

	<p>Acte comparable :</p> <p>L'acte comparable n'a pas force exécutoire. Son exécution forcée nécessite un recours préalable à la justice ce qui constitue une garantie supplémentaire pour les parties et la collectivité.</p> <p>Cet acte est donc soumis à un formalisme matériel. En revanche, dès l'instant que ces personnes ont été utilement conseillées par un avocat, il devient inutile d'exiger d'elles des lignes d'écritures supplémentaires qui ont pour seul objectif de leur faire prendre conscience de la gravité de leur engagement.</p> <p>Le contreseing de l'avocat devient un substitut du formalisme informatif.</p> <p>L'acte d'avocat bénéficiera de la force probatoire et attestera de la capacité, de l'identité des parties et garantira l'efficacité juridique par les conseils donnés par le ou les avocats.</p> <p>L'acte contresigné par avocat sera conservé par l'avocat rédacteur. Il s'agira d'une obligation déontologique. La profession d'avocat en France organise un système d'archivage collectif. La conservation sera électronique et centralisée.</p> <p>Ainsi, soit l'acte sera contresigné électroniquement, soit il le sera physiquement puis scanné par l'avocat ou par l'organisme centralisateur.</p> <p>L'acte contresigné par avocat a donc un effet comparable sur le plan de la preuve à l'acte authentique. Il n'aura pas, en revanche, de force exécutoire, sauf homologation, par requête unilatérale, par un magistrat.</p>
GERMANY	<p>Not every authentic act/comparable act is enforceable. The enforceability of an act depends on its content and/or certain conditions.</p> <p>The content has to be enforceable, as in a contract and judgement, e.g minutes are not enforceable. Normally authentic acts/comparable acts with an enforceable content need to be declared as enforceable by a judge or a notary.</p> <p>A judgement is only enforceable when the notice for the legal remedy is expired and no legal remedy has been filed. Until then the enforcement of a judgment can only take place if a deposit has been paid, so that in case a legal remedy is filed and the judgement is annulled the concerned party will be reimbursed.</p>
GREECE	
HUNGARY	<p>In Hungary, the decisions of the courts and other judicial forums, furthermore, claims based on certain documents can be executed by judicial enforcement proceedings. (Article 1 Act LIII of 1994 on Judicial Enforcement). Judicial enforcement (hereinafter referred to as "enforcement") has to be ordered by the court upon request by issuing an enforcement order.</p> <p>An enforcement order can be the following:</p> <p>a) certificate of enforcement issued by the court;</p> <p>b) document with a writ of execution issued by the court;</p> <p>c) a judicial order or restraint of enforcement, or order of transfer, furthermore, a decree of direct judicial notice;</p> <p>d) judicial notice on a fine, on a fine imposed as a secondary punishment, on a penalty, on a fine for contempt, on a verdict of confiscation of assets, on a fine imposed in any Member State of the European Union in criminal proceedings in connection with the commission of a crime; and a notice on the confiscation of property applied in the territory of a Member State in connection with pending criminal proceedings;</p>

	<p>e) judicial notice on the costs of a criminal procedure or the costs of arrest or escort, furthermore, notice from the court administration office on a fine for contempt levied or costs of a criminal procedure charged by the public prosecutor, on the costs of arrest or escort charged by the public prosecutor or the investigating authority, and on the costs established by the national parole board in mediation proceedings, that were advanced by the government subject to repayment,</p> <p>f) writ of criminal attachment,</p> <p>g) the order for the freezing of assets in connection with the implementation of restrictive measures imposed by the European Union relating to liquid assets and other financial interests.</p> <p>For detailed rules of the enforcement please see Article 10-23 of Act LIII of 1994 on Judicial Enforcement attached to this questionnaire.</p> <p>Enforcement of foreign resolutions:</p> <p>The resolutions of foreign courts and foreign arbitration tribunals (hereinafter referred to collectively as "foreign resolution") can be executed in Hungary on the basis of law, international convention or reciprocity. The execution however has certain conditions. To be executable in Hungary, the foreign resolution has to be (i) a court verdict in a civil case, (ii) a clause of a court verdict in a criminal case to award judgment for the civil law claim or (iii) a court-approved settlement.</p> <p>If the foreign resolution is enforceable in Hungary, the court adopts a ruling of confirmation of enforcement in which it confirms that the foreign resolution may be executed in accordance with Hungarian law the same way as a decision of a Hungarian court (arbitration court). After the ruling has become definitive, on the basis of a foreign resolution confirmed for enforcement the court issues a certificate of enforcement, or an enforcement order of the same function. (Article 205-209 of the Act LIII of 1994 on Judicial Enforcement)</p>
IRELAND (Law Society)	
ITALY	<p>En général, les actes publique n'ont pas d'efficace exécutive. La loi 263 du 2005, toutefois, a modifié l'article 474 du code de procédure civile pour attribuer l'efficace exécutive aux écritures privées authentifiées relativement aux sommes d'argent contenue dans ces écritures. La même loi à introduit le principe que les actes reçues par le notaire peuvent valoir comme titre exécutive dans les exécutions forcées, à condition que les écritures soient transcrites entièrement dans l'acte de "prechetto" (intimation à payer dans le délai de 10 jour, préalable à l'exécution).</p>
LATVIA	<p>Certain notarial deeds may be enforced through court according to the procedure known as undisputed compulsory execution of obligations. is permitted, i.e. such notarial deeds, the liabilities of which are with set term (most common examples being agreements on money payments or return of movable property) and lease or rental of property agreements, which are notarially certified or entered in a Land Register, and which provide that the lessee or tenant has a duty, due to expiry of the term, to vacate or deliver the leased or rented property (except an apartment) and to pay the lease or rental payments; and pursuant to a protested promissory note. In the above cases these deeds are subject to enforcement without hearing the case on the merits.</p>
LITHUANIA	<p>Regarding enforcement of an Authentic acts – According to our Code of Civil Procedure enforceable without further procedure are: Court decision and related court documents, administrative decisions according to the Code of Administrative Offences, other administrative acts if the laws ascertain enforcement according to the rules of Civil procedure.</p>
POLAND	<p>Some notarial acts, containing declarations of the parties, may be enforceable – it</p>

	<p>requires however, submission to enforceability.</p> <p>The enforceability of authentic act is regulated under Polish law in art. 777 Civil Procedure Code, that enumerates: valid judgment, settlement in court or before the mediator, authentic act by notary where the debtor accepts enforcement of the specified obligation in a fixed time. Only certain types of obligations, enumerated in art. 777 Civil Procedure Code may be enforced via authentic act: covenant, enforceable bank debt security, obligation to transfer the possession of an object (in the lease contracts), mortgage loan.</p> <p>Authentic act may be enforceable if declared as such. Enforceability of an enforceable authentic act is the same as of a valid judgment because in both cases the enforceability is granted by a judge via an enforceable clause.</p> <p>The procedure of granting the enforceable clause has a declaratory nature; the judge's control is limited only to the verification of the formal aspects of the authentic act. The judge will grant the enforceable clause if the authentic act has been established according to the rules of the Public Notary law and if the obligation fit in the art 777 Civil Procedure Code. Additionally the judge will control if the obligation is properly specified and if the fixed time is respected. In this procedure the judge is not involved in the material control of the obligation. Debtor may present nothing but the defence based on the formal objections.</p> <p>Law provides another procedure, counter –writ of execution regulated by art. 840 Civil Procedure Code, where debtor can oppose the material aspects of the obligation. The main difference in the scope of the opposition is, that in opposing the enforceable authentic act debtor can argue that the obligation is inexistent from the very beginning or that the amount is smaller etc, whereas in opposing the valid judgment, debtor is limited by the res judicata rule, so his opposition can apply only to the time period after the judgment was made, consequently his defence is limited to the argument that the initially valid obligation has become invalid.</p>
PORTUGAL	<p>According to article 46, nr. 1 of the Portuguese Civil Procedural Code, a document drafted or authenticated by a Notary or other entities with competence (therefore, authentic and authenticated documents) may be legally enforced provided that such document implies the constitution or the recognition of any obligation.</p>
SLOVAK REPUBLIC	<p>In the Slovak Republic, the main role is – as far as the authentication of documents is concerned – attributed to the notaries who have status of public servants in the Slovak Republic.</p> <p>Since the September 1st, 2009, new legal regulation came into force in the field of transfer of real-estates. According to this new legal regulation, attorneys and notaries are entitled to authenticate transfer documents on real-estates i.e. sales contracts. This is the first and only case where attorneys are given such power. However, even if a document on sale of a real-estate is not authenticated by an attorney (what is facultative), still signature of seller (or transferor) on such document must be notarized. There is an alternative way for almost all situations where notarization of signature is required – signatures can be authenticated by a municipal officer (in Slovak language „matričný úrad“).</p>
SPAIN	<p>La procédure d'exécution des actes authentiques est prévue à l'article 517 du Code de la Procédure Civile Espagnol. Cet article établit que l'action exécutive doit être fondée sur base d'un titre qui entraîne l'exécution, comme par exemple les actes authentiques dans les cas suivants :</p> <ul style="list-style-type: none"> - la première copie - la deuxième copie si est octroyée en vertu du mandat judiciaire, ou si elle est octroyée avec citation de la personne qui serait affectée, le causant ou par conformité de toutes les parties.
SWEDEN	<p>As authentic acts do not exist as a concept within Swedish law, no specific enforcement procedures exist relating to domestic acts. Besides the EC-regulations,</p>

	<p>there are no national rules on the enforcement of foreign authentic instruments either.</p> <p>As no domestic instruments enjoy a special probative force, foreign authentic instruments lack such status as well; it is up to the Swedish courts to evaluate the evidence submitted, and evaluate the instruments on a case by case basis.</p>
THE NETHERLANDS	<p>As set out under question 4, the authenticated copy of a Dutch judgment or an authentic act executed in the Netherlands can be enforced in the Netherlands. Of course, in relation to authentic acts this also depends on the wording of the authentic act and the kind of obligations involved. In practice this is mainly applicable to payment obligations. This means that an act executed by a Dutch notary has at that point, between the parties involved, the same force as a court decision.</p>
UK	<p><u>England and Wales</u></p> <p>N/A</p> <p><u>Northern Ireland</u></p> <p>See our response to question 1.</p>

6/	EXAMPLES OF AUTHENTIC ACT/COMPARABLE ACT
AUSTRIA	<p>Pursuant to article 2 of the law on the profession of latin notaries notarial acts, notarisations of legally relevant acts as well as notarial minutes may be authentic acts if they are in compliance with all major formal requirements (thus, not all notarial acts are authentic acts!). Examples for transactions or declarations that must be done in the form of notarial acts in order to be valid (the legal basis is to be found in the provisions regulating the area to which the notarial act applies): certain transactions between spouses such as prenuptial agreements, sales contracts or donations without transfer as well as certain company law contracts or transactions carried out by disabled persons.</p> <p>The legal basis for the establishment of acts through lawyers is article 10 para 4 of the law on the profession of lawyers in combination with the respective legal provisions regulating the area in which the act is established. The Austrian legislator adopted Article 10 para. 4 RAO in 2006. It reads as follows: “Where the law provides for a lawyer to establish an act, the lawyer has to check the identity of the client on the basis of an official document with a photograph. The lawyer must instruct the client on the establishment of the act and on its legal effects and ascertain that the client has understood the importance and the consequences of his legal disposal. The lawyer must sign the act in order to proof that he has carried out his duty.”</p> <p>The provision was introduced into the law on the profession of lawyers shortly after a reform of a set of laws and legal provisions newly authorised lawyers to establish specific acts. Thus, Articles 284b et seqq. and 284f et seqq. of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch) such as amended in 2006 empower lawyers to establish disability care powers of attorney (Vorsorgevollmacht). Moreover article 6 of the law on living wills (Patientenverfügungsgesetz) adopted in 2006 enables lawyers to establish living wills (Patientenverfügung). The living wills established by lawyers are registered in the electronic register of living wills run by the Austrian Bar. As the registration does not only contain the fact that a living will has been established but also a scanned copy of the will, querying hospitals may gain time by immediately inspecting the content of the living will.</p> <p>In addition, a reform of Article 14 para. 5 of the law on apartment ownership (Wohnungseigentumsgesetz) provides for a lawyer to draw up an act on the agreement between spouses on the succession of their joint apartment ownership. Finally, the new Article 4 para. 2 of the law on electronic signatures</p>

	<p>(Signaturgesetz) assigns the same legal effects to acts drawn up by a lawyer as to the ones established by a notary if these acts concern either the establishment of a non-commercial guarantee or legal transactions in family law and in succession law that require at least the written form.</p> <p>Consequently, Austrian lawyers are entitled to prepare specific acts that may have the same qualities and substantial legal effects under Austrian law as notarial acts drawn up by Austrian notaries. The Austrian Bar therefore considers that acts that may be drawn up by lawyers according to article 10 para 4 of the law on the profession of lawyers are comparable acts to authentic acts.</p>
BELGIUM	
CEZCH REPUBLIC	<ul style="list-style-type: none"> ✓ Notarial deeds containing permission to enforceability (Such notarial deed is a public act serving as European executor title if its subject is a pecuniary claim arising from civil or commercial obligation relations) ✓ Testaments executed in a form of notarial deed ✓ Authentication of other facts and declarations executed in a form of notarial deed ✓ Authentication of general meetings or various other meetings of legal entities ✓ Authentication of the fact that a person is alive ✓ Authentication of other facts (i.e. course of draw, fulfilment of debt, the state of real properties) ✓ Notarial deeds on resolutions of the bodies of legal entities if prescribed by law or if there is decided on the records to public registers <p>Also other national acts determine that certain legal actions must be exercised in a form of notarial deed :</p> <ul style="list-style-type: none"> • Act on European Cooperative Company (Act No. 307/2006 Coll.) – demanding form of notarial deed in case of resolution of statutory bodies or members 'meetings (i.e. in case of transfer of registered seat, in case of mergers etc.) • Act on European Company (Act No.627/2004 Coll.) • Act on Debentures (Act No. 190/2004 Coll.) • Act on Collective Investments (Act No. 189/2004 Coll.) • Act on Churches and Religious Societies (Act No. 3/2002 Coll.) • Act on Public Auctions (Act No. 26/2000 Coll.) • Act on Foundations and Endowment Funds (Act No. 227/1997 Coll.) <p>Listing above is demonstrative. There are also other acts requiring certain actions to be executed in a form of notarial deed. Further, a number of mandatory requirements of notarial deed contains for example: Commercial Code prescribing that certain decisions of general meeting of limited liability company (SRO) and joint stock company (AS) must be executed in a form of notarial deed, as well as the changes in the articles of association of SRO and AS, constitutive meetings of different corporations, increase or decrease of basic capital. It applies inter alia also to authentication of a course of constitutive meeting of cooperatives.</p>
CYPRUS	
DENMARK	See q1 above.
ESTONIA	
FINLAND	Pursuant to chapter 15 section 14 of the Act on Co-operative Societies (1488/2001,

	<p>in Finnish “Osuuskuntalaki”), the bailiff may on the request of the administration of bankruptcy estate collect unpaid charges on the grounds of a calculation of the additional contribution to be assessed</p> <p>Pursuant to section 46 of the Act on Co-operative Banks and other Co-operative Credit Institutions (1504/2001, in Finnish “Laki osuuspankeista ja muista osuuskuntamuotoisista luottolaitoksista”), payments that have not been remitted, can be enforced on the grounds of an attested calculation of the additional contribution to be assessed.</p> <p>Pursuant to section 100 of the Act on Environmental Protection (86/2000, in Finnish “Ympäristönsuojelulaki”), decisions of authorities regarding compensating for deterioration of water systems and rights to use defined in Section 49 can be enforced.</p> <p>Pursuant to section 159 of the Employees Pensions Act (395/2006, in Finnish “Työntekijän eläkelaki”), the pension contribution imposed by the pension provider and the increased pension contribution may be distrained, including penalty interest, without a judgment or decision.</p> <p>Pursuant to section 14 of the Act on Parking Tickets (248/1970, in Finnish “Laki pysäköintivirhemaksusta”), parking tickets are directly enforced in a manner described in the Enforcement Act.</p> <p>Pursuant to section 3 of the Act on enforcement of taxes and levies (706/2007, in Finnish “Laki verojen ja maksujen täytäntöönpanosta”), taxes and levies subject to public law, including penalty interest, are directly enforceable.</p> <p>These documents/decisions are enforced in the same manner as judgements which have gained legal force.</p>
<p>FRANCE</p>	<p>Les principaux actes authentiques sont les actes d'état civil, les décisions de justice, les actes notariés et les actes des huissiers de justice. Pour les contrats et conventions, les citoyens n'ont généralement recours aux actes authentiques que dans les cas où ce recours est obligatoire du fait d'un monopole. Ainsi pour les actes de vente immobilière et les garanties hypothécaires qui ne peuvent être reçus que par des notaires.</p> <p>L'acte contresigné par avocat - non obligatoire - a pour vocation d'être utilisé par les particuliers comme par les professionnels chaque fois que le recours à l'acte authentique n'est pas imposé par un monopole (par exemple : garanties personnelles, reconnaissances de dettes, baux, contrats divers)</p> <p style="text-align: center;">L'acte contresigné par avocat</p> <p>Le législateur (ou la loi) a donc entendu renforcer la sécurité juridique des actes et notamment des contrats et diminuer les contentieux en encourageant le public à recourir à un professionnel du droit, l'avocat.</p> <p>L'avocat est donc reconnu comme conseil et rédacteur juridique.</p> <p>La signature de l'acte d'avocat attestera du devoir de conseil réalisé et des vérifications faites.</p> <p>L'avocat devra vérifier l'identité, la capacité des parties à s'engager et procédera aux vérifications utiles dans le cadre de la lutte contre le blanchiment.</p> <p>Lorsque l'avocat sera l'unique rédacteur, il devra veiller à donner une information loyale aux parties.</p> <p>La signature de l'acte par les parties devra être concomitante au contre seing de l'acte. C'est l'avocat qui a conseillé l'acte qui doit le signer personnellement.</p>

	<p>Il n'y a pas de délégation possible à un clerc. La signature atteste du conseil.</p> <p>Cet acte est donc soumis à un formalisme matériel.</p> <p>En revanche, dès l'instant que ces personnes ont été utilement conseillées par un avocat, il devient inutile d'exiger d'elles des lignes d'écritures supplémentaires qui ont pour seul objectif de leur faire prendre conscience de la gravité de leur engagement.</p> <p>Le contreseing de l'avocat devient un substitut du formalisme informatif.</p> <p>L'acte d'avocat bénéficiera de la force probatoire et attestera de la capacité, de l'identité des parties et garantira l'efficacité juridique par les conseils donnés par le ou les avocats.</p> <p>L'acte contresigné par avocat sera conservé par l'avocat rédacteur. Il s'agira d'une obligation déontologique.</p> <p>La profession d'avocat en France organise un système d'archivage collectif. La conservation sera électronique et centralisée.</p> <p>Ainsi, soit l'acte sera contresigné électroniquement, soit il le sera physiquement puis scanné par l'avocat ou par l'organisme centralisateur.</p> <p>L'acte contresigné par avocat a donc un effet comparable sur le plan de la preuve à l'acte authentique. Il n'aura pas, en revanche, de force exécutoire, sauf homologation, par requête unilatérale, par un magistrat.</p>
GERMANY	<p>Authentic acts/comparable act in Germany are:</p> <ul style="list-style-type: none"> - court decisions, court decrees, court compositions - notarial deeds - deeds issued by a competent authority (official certificates such as ID cards, marriage certificate, birth certificate) - in special cases also documents under hand
GREECE	
HUNGARY	<p>Public deeds in Hungary:</p> <ul style="list-style-type: none"> - court decisions, court decrees - notarial deeds - deeds issued by a competent authority (resolutions of the authority, official certificates such as ID cards, official instruments etc) - documents declared to be public deeds by law
IRELAND (Law Society)	
ITALY	
LATVIA	<p>Notary can draw up various agreements as notarial deeds:</p> <ul style="list-style-type: none"> • Purchase Agreement • The exchange agreements • Gift agreement

	<ul style="list-style-type: none"> • Maintenance contracts • Rental agreements • Loan Agreement • Inheritance contracts • Pledge Agreement • etc.
LITHUANIA	- Lithuanian Law does not specify the list of authentic acts.
POLAND	<p><u>Authentic (notary) Act as a required form :</u></p> <ul style="list-style-type: none"> - ante-nuptial and matrimonial agreements (art. 47§ 1 Family Code) - renunciation of a compulsory share in a future succession (art. 1048 Civil Code) - transfer of a succession (art. 1052 Civil Code) - donation (art. 890§ 1 Civil Code)- but art 890§ 2 provide for validation of an informal donation if executed - transfer and obligation to transfer of real estate (art. 158 Civil Code) - creation and transfer of limited rights in land (art. 237 and 245§ 2 Civil Code) - declaration of will by a person unable to read (art. 80 Civil Code) - extension of emphyteosis (art. 236§ 3 Civil Code) - creation of company – except the general partnership (art. 106, 131, 157§ 2, 301§2 Societes Code) - changes of the charter (art. 255§3 et 421§1 Societes Code) - transformation of companies (art. 506§5, 522§6, 541§7, 562§ 2 Societes Code) - contract between associate and company if the associate is the only member of the board (art. 210§ 2 Societes Code) <p><u>Authentic (notary) Act as one of admissible forms:</u></p> <ul style="list-style-type: none"> ✓ testaments (art. 950 Civil Code) ✓ acceptance or disclaimer of the succession (art.1018§ 3 Civil Code, art 640§ 1 Civil Procedure Code) – usually done before the judge ✓ recognition of the paternity (art. 74§ 1 Family Code) – only when the life of father or mother is endangered ✓ dividing of inheritance if include the real estate (art. 1037 § 2 Civil Code) ✓ certification of succession (art. 1025 Civil Code) <p><u>Certification by notary of the signature:</u></p> <ul style="list-style-type: none"> • transfer or emphyteosis of enterprise (art. 75 (1) Civil Code) • declaration of will by a person unable to write but able to read (art. 79 Civil Code) • objection by the partner whose authority to manage the partnership has been limited or removed (art. 137 § 4 Societes Code) • transfer of shares in company (art. 180 Societe Code) <p><u>Certification of the copy</u></p>

	<p>The law concerning the certification of the documents has been changed by the law of 23.10.2009 (Official Journal of 21.12.2009 nr 216.1676), introducing the competence of advocate/ legal counsel representing party in a particular civil, administrative or tax proceeding to certify copies of the power of attorney and of other documents presented as a proof.</p> <ul style="list-style-type: none"> ✓ Advocate has, in the limits of statutory regulations, the right to produce a certified copy of a presented to him original document. The certified copy should contain advocate's signature, date and place of certification, on the request also the hour of certification. If the document has a particular characteristics (annotations, rectifications, damages), it is certified by the advocate (art. 4§ 1b Law of the Bar) ✓ power of attorney (art. 89§ 1 Civil Procedure Code, art. 33§ 3 Administrative Procedure Code) ✓ documents as a proof (art. 129§2 Civil Procedure Code, 76a§2 Administrative Procedure Code) ✓ documents based on which the order for payment may be issued (art. 485 §4 Civil Procedure Code) ✓ power of attorney and other documents (art. 137§3 and art. 194a §3 Tax Regulation) ✓ documents based on which the vindication of a claim is made(art. 239 Insolvency and Reparation Law)
PORTUGAL	<p>Authentic (notary) acts: notary statements on real estate's original acquisition, modification of acts that have been made through public deed, incorporation of foundations and associations, modification and revocation of its by-laws and inheritance certificates (habilitação de herdeiros).</p> <p>Authenticated acts (which can be executed by lawyers): acts on real estate such as sale, purchase, donation, constitution of mortgage, horizontal property, etc. and powers of attorney, exception made (i) to those granting legal powers of court representation, which can be executed by a simple document, and (ii) to those for which the act to be executed must be done through public deed, which must have notary form. Please note that all these acts may also be executed through public deed, but the law does not require such form.</p>
SLOVAK REPUBLIC	
SPAIN	<p><u>Exemples d'actes authentiques</u></p> <p>A) Témoignage des résolutions et diligences judiciaires émises par les Greffiers :</p> <ul style="list-style-type: none"> • Pièces de témoignage et preuve des faits d écrits dans l'assignation. Art. 265, 266, 267 LEC • Document certifiant les témoignages effectués dans l'acte de la procédure. Art. 265, 266, 267 LEC <p>B) Documents authentiqués lors de l'intervention des Agents de Change en exercice et leurs certifications :</p> <ul style="list-style-type: none"> - Police de Crédit. Art. 317 LEC - Contrat de Garantie. Art. 317 LEC <p>C) Les certifications expédiés par les Conservateurs fonciers et du Commerce :</p> <ul style="list-style-type: none"> ✓ Certification comptes annuelles d'une société. Art. 366 Loi Registre du Commerce ✓ Certification du vigueur des procurations établies en faveur d'une personne

	<p>physique. Art. 32 LRJAP y PAC</p> <ul style="list-style-type: none"> ✓ Certification de plaine propriété ou des charges foncières. Art. 1216 CC <p>D) Les Certificats élaborés par fonctionnaires publics dans l'exercice de leurs fonctions :</p> <ul style="list-style-type: none"> - Permis de construire, octroyés par la Marie. Art. 122 LRBRL - Certificats d'entreprise émis par les organismes compétents de la Sécurité Sociale art. 230 LSS. <p>E) Autres exemples d'actes authentiques :</p> <p><u>E 1 Droit civil</u></p> <ul style="list-style-type: none"> ✓ Déclarations Jurées sur l'Etat Civil. 1216 CC ✓ Contrats d'achat et vente des biens immeubles, contrat de location. ✓ Contrats sur le droit de la propriété. 1216 CC ✓ Capitulations pré-nuptiaux 1327 CC ✓ Certification d'Unions hors du mariage. ✓ Testaments et donations inter vivos. Art. 633, 707 CC ✓ Procédures de partition de l'héritage. Art. 1051 CC ✓ Acceptation ou répudiation de l'héritage Art. 999, 1011 CC ✓ Déclaration d'héritiers abintestato. 912 CC ✓ Suscription d'un prête hypothécaire, novation et subrogation. 1216 CC ✓ Acte de reconnaissance de dette. 1216 CC ✓ Reconnaissance des filiations et de paternité. Art. 117, 120, 125 CC ✓ Pouvoir Notarial 1710 CC <p>Et d'autres certifications nécessaires ou facultatives dans les relations juridiques entre personnes.</p> <p><u>E2 Droit des Sociétés</u> – Régulation Code du Commerce (CCo) ; Loi des Sociétés Anonymes (LSA) ; Loi Sociétés Responsabilité Limitée</p> <ul style="list-style-type: none"> - Constitution des Sociétés. Art. 119, 133, 145 CCo. Art. 7 LSA - Dissolution des Sociétés Art 223 CCo - Scission, fusion, absorption des Sociétés. Art 187 et suivants LSRL - Augmentation et Réduction du Capital Social. Art. 151, 162 LSA - Pouvoirs Art 244 CCo. - Vente et Achat d'actions sociales ou participations sociales Art. 144 LSA - Modification des statuts sociaux. Art. 144 LSA - Acte authentique sur les accords tenus par l'Assemblée Générale des actionnaires. Art 29, 114 LSA - Apports du Capital Social Art 38 quarter LSA <p>Autres déclarations établies par le Code du Commerce.</p>
SWEDEN	Please see 1 above.
THE NETHERLANDS	<p>According to Dutch law, inter alia the following acts have to be authentic acts:</p> <ul style="list-style-type: none"> (i) deed of transfer of real estate, an airplane or a ship; (ii) mortgage deed; it is common practice that the payment obligation of the debtor

	<p>is included in the authentic act, so the deed can be enforced;</p> <p>(iii) minutes of a court hearing which contains a settlement;</p> <p>(iv) statement of a bailiff, e.g. serving a writ of summons.</p>
UK	<p><u>England and Wales</u></p> <p>N/A</p> <p><u>Northern Ireland</u></p> <p>See our response to question 1.</p>