



Council of the
European Union

Brussels, 24 November 2014

15843/14

LIMITE

JUSTCIV 303
FREMP 217
CODEC 2319

**Interinstitutional File:
2013/0119 (COD)**

NOTE

From: the Presidency
To: Coreper/Council

No. prev. doc.: 14049/14 JUSTCIV 242 FREMP 167 CODEC 1975
No. Cion prop.: 9037/13 JUSTCIV 108 FREMP 70 CODEC 952 + ADD 1 (en) + ADD 2

Subject: Proposal for a Regulation of the European Parliament and of the Council on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012
- Orientation guidelines

I. Introduction

1. The Commission's proposal, as set out in 9037/13, has been extensively examined in the Working Party on Civil Law under successive Presidencies since June 2013; the last meeting under the Italian Presidency took place on 6 November 2014. This proposal has already been subject to an exchange of views three times at ministerial level - in March, July and October 2014.
2. The European Parliament adopted its report on the proposal on 4 February 2014¹.

¹ 5905/14

3. In the light of the results of the JHA Council meeting on 10 October 2014 and the discussions in the Civil Law Working Party during the second half of 2014, as well as the results of the Coreper meeting on 19 November 2014, the Presidency invites the Council to have a policy debate on this item on the basis of the following guidelines:

1. Scope

4. After extensive examination of the proposal, it has become apparent that the majority of the delegations are not able to accept the wide scope of the proposal as presented by the Commission in its initial text. Therefore the Presidency suggests narrowing the scope of the proposed Regulation to civil status matters only¹.
5. The aim at this stage is to define only the scope, that is, the areas covered by the proposal. Each individual item within each of the areas will still be examined in detail at the technical level taking into account the national situation in each Member State. Based on the results of this technical examination, the Member States should be in capacity to take a final decision on the items.

¹ Based on this approach, the text of Article 2(1), which currently reads as follows, would be adjusted in light of the future technical discussions in the Civil Law Working Party:

*"Article 2
Scope*

1. *This Regulation applies to [...] public documents issued by the authorities of a Member State which have to be presented to the authorities of another Member State relating to:*

- (a) birth;*
- (b) death;*
- (c) name;*
- (d) marriage;*
- (di) registered partnership;*
- (e) filiation;*
- (f) adoption¹;*
- (g) domicile and/or residence;*
- (h) citizenship;*
- (hi) nationality."*

[...]

6. In addition, the definitions of public documents as contained in Article 3(1)(i) to (v) would constitute the basis for continued discussions on this matter¹.

2. Translation (Article 6)

7. The majority of delegations have expressed a negative opinion on the principle that non-certified translations should be accepted in the context of this Regulation. The Presidency therefore suggests that a translation should not be required in cases where the public document is in the official language or, if that Member State has several official languages, in the official language of the place where it is presented or in any other language that the Member State has expressly accepted.
8. In addition, certified translations of public documents made by a person qualified to do such translations under the law of a Member State should be accepted in all Member States. The question of the possible transliteration rules to be followed in cases where a transliteration from a different alphabet is needed should be examined at the technical level at a later stage.

¹ Based on this approach, the text of Article 3(1), which currently reads as follows, would be adjusted in light of the future technical discussions in the Civil Law Working Party:

*"Article 3
Definitions*

For the purposes of this Regulation:

(1) *"public documents"¹ means [...]:*

- (i) documents emanating from an authority or an official connected with the courts or tribunals of a Member State, including those emanating from a public prosecutor, a clerk of the court or a judicial officer ('huissier de justice');*
- (ii) administrative documents¹;*
- (iii) notarial acts;*
- (iv) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date, and official and notarial authentications of signatures;*
- (v) documents drawn up in their official capacity by the diplomatic or consular agents of a Member State acting in the territory of any State, where such documents have to be presented in the territory of another Member State or to the diplomatic or consular agents of another Member State acting in the territory of a third State."*

9. It is also suggested that, where such lists exist, the Member States make publicly available through the European e-Justice Portal a list of persons qualified to do certified translations in a given Member State.
10. In addition to the specific provisions on translation of public documents in Article 6, the Presidency suggests including a new Article 20 [x], which would provide that the Member States should communicate to the Commission after the entry into force of this Regulation the languages they can accept for public documents to be presented to their authorities. This would be without prejudice for the Member States' authorities to accept another language or languages.

3. Multilingual standard forms (Articles 11, 12, 15 and 15a)

11. In view of the reservations that a large number of delegations have expressed on the establishment of common multilingual standard forms at EU level in the area of civil status matters as autonomous public documents and taking into account the impact of the ECJ opinion 1/13 as well as practical issues, the Presidency suggests to reflect on a possible solution where these multilingual standard forms could be used as a translation aid attached to the corresponding national public documents. These forms would simply have a harmonised common content without any autonomous legal value. The forms would be filled in by a competent national authority and, if necessary under the national law of each Member State, stamped or sealed to prove that it has been issued by that authority.
12. Depending on the final decision on this possible solution, it should also still be further considered at a technical level whether the forms should be annexed to the Regulation or adopted separately by means of a specific committee procedure.

4. Relations with other instruments (Article 18)

13. In the light of the discussions during the Italian Presidency, it has become apparent that several delegations wish to continue managing other multilateral or bilateral Conventions in this field, in particular the ICCS Conventions. Also, several delegations wish to clarify the relationship between the 1961 Apostille Convention and the proposal within the EU after the adoption of this Regulation.
14. The Presidency acknowledges that there is a need to clarify the relationship between this Regulation and international agreements concluded by the Member States, in particular in the area of civil status and legalisation. Further reflection is needed on the issue of external competence in light of the recent opinion 1/13 of the European Court of Justice.
15. Moreover, the Presidency also suggests that as regards the issue of Apostille, further reflection is needed on the possible inclusion of a new recital consistent with the requirement to exempt public documents from the Apostille formality clarifying that the application of the proposed Regulation does not prevent the Member States from issuing an Apostille in case a citizen still requests an Apostille from the competent national authorities. In line with the above, it should also be clearly stated that citizens can continue to use an Apostille in another Member State.

II. Conclusion

16. Coreper/the Council is invited:
 - a) to endorse the guidelines set out in paragraphs 4 to 15 at the JHA Council on 4 and 5 December 2014 and
 - b) to request the Working Party on Civil Law Matters to continue work on the proposed Regulation.
