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The Director

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Mr Christophe Bernasconi
Secretary General
Hague Conference on Private
International Law
Churchillplein 6b
2517 JW THE HAGUE
The Netherlands

E-mail: secretariat@hcch.nl

Dear Mr Bernasconi, *Dear Christophe,*

The European Union welcomes the opportunity to provide a contribution in connection with The Hague Conference questionnaire relating to the 1961 Hague Apostille Convention.

The matters covered by the 1961 Hague Apostille Convention fall within the competence of the Member States. However, the Union adopted, on 6 July 2016, a Regulation aimed at simplifying the circulation of certain public documents¹ which abolishes the apostille requirement in relations between Member States. The Regulation entered into force on 15 August 2016 and will become applicable on 16 February 2019.

We are providing, next to the individual responses of the Member States to the questionnaire, an overview of the Regulation in an annex to this letter.

Yours sincerely,

Salla Saastamoinen
Director
European Commission

Miloš Haťapka
Chairperson
Working Party on Civil Law Matters
(General Questions) of the Council of the
European Union

Enclosure: Overview of the Regulation simplifying the circulation of certain public documents

¹ Regulation (EU) 2016/1191 of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012, OJ L 200 of 26 July 2016, p. 1.

ANNEX

Overview

of

Regulation (EU) 2016/1191 of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012

On 6 July 2016, the Union adopted a regulation aimed at simplifying the circulation of certain public documents¹. The Regulation entered into force on 15 August 2016 and will become applicable on 16 February 2019.

Aim of the Regulation

The Regulation aims to promote the free movement of citizens by simplifying the circulation of public documents in certain areas. The circulation of public documents in the areas covered by the Regulation is simplified by means of:

- the abolition of the apostille requirement where still applicable;
- the simplification of formalities concerning certified copies and certified translations;
- the introduction of multilingual standard forms to be used as translation aids.

Scope of the Regulation

The Regulation applies only to public documents issued by the authorities of a Member State for presentation to the authorities of another Member State. It does not apply to public documents issued by the authorities of third countries, even if such documents have already been accepted as authentic by the authorities of a Member State. It also does not apply to certified copies made by the authorities of a Member State of public documents issued by the authorities of third countries.

The areas covered by the Regulation are the following: birth; a person being alive; death; name; marriage, including capacity to marry and marital status; divorce, legal separation or marriage annulment; registered partnership, including capacity to enter into a registered partnership and registered partnership status; dissolution of a registered partnership, legal separation or annulment of a registered partnership; parenthood; adoption; domicile and/or residence; nationality; absence of a criminal record and the right to vote and stand as a candidate in municipal elections and elections to the European Parliament.

The Regulation does not concern the recognition of the content or effects of a public document issued in another Member State, which continues to be governed by national law. The Regulation also does not deal with the substantive law of the areas covered by it

¹ Regulation (EU) 2016/1191 of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012, OJ L 200 of 26 July 2016, p. 1.

(for example, marriage). The Regulation finally does not regulate the content, form or security features of public documents, which continue to be governed by national law.

The Regulation covers electronic versions of public documents and multilingual standard forms suitable for electronic exchange. However, each Member State will decide in accordance with its national law whether and under which conditions public documents and multilingual standard forms in electronic format may be presented.

Public documents covered by the Regulation

The public documents covered by the Regulation are the following:

- court documents
- administrative documents
- notarial acts
- official certificates placed on private documents
- diplomatic and consular documents

Exemption from the apostille

The apostille requirement is abolished in respect of original public documents and their certified copies.

While the authorities of the receiving Member State cannot require an apostille for a public document issued in another Member State, citizens can continue to present in a Member State existing public documents issued by the authorities of another Member State bearing an apostille.

The authorities of a Member State can also issue an apostille where a person chooses to request it. However, where a person requests an apostille, the issuing authority should use appropriate means to inform that person that an apostille is no longer necessary if the public document is to be presented in another Member State. Both the European Commission and the Member States must make information on the content of the Regulation available through appropriate means, including relevant websites.

Simplification of other formalities

i) Certified copies

The authorities of the receiving Member State cannot require the presentation of both the original of the public document and its certified copy.

Where the authorities of the receiving Member State allow the presentation of only a certified copy of the public document, they will have to accept a certified copy made by a competent authority of the Member State in which the original public document was issued.

ii) Translations

The authorities of the receiving Member State cannot require a translation of the public document where (i) the public document is in one of the official languages of the receiving Member State (or in one of the languages it can accept), or (ii) the public document is accompanied by a multilingual standard form, provided the receiving authority considers that the information included in the form is sufficient to process the public document.

When a certified translation needs to be presented, the receiving authority will have to accept a certified translation made by a person qualified to do so under the law of another Member State.

Multilingual standard forms

The Regulation introduces optional multilingual standard forms in all Union languages for use in another Member State as translation aids attached to the public document. The forms have no autonomous legal value and their objective is to avoid translation requirements.

A multilingual standard form will be issued on request by the person entitled to receive the public document in the following areas: birth; a person being alive; death; marriage (including capacity to marry and marital status); registered partnership (including capacity to enter into a registered partnership and registered partnership status); domicile and/or residence and absence of a criminal record.

The fee for obtaining a form cannot exceed the production cost of the form or of the public document to which the form is attached, whichever is lower.

On the basis of the information provided by the Member States on the content of the forms, the Commission will produce electronic versions of the multilingual standard forms and will make them available to the authorities of the Member States in the European e-justice Portal.

Fight against fraudulent public documents

The Regulation strengthens the fight against fraud by introducing a system of administrative cooperation between Member States based on a software application (the Internal Market Information system - IMI) that will enable Member States to communicate with each other in case of reasonable doubt about the authenticity of a public document or its certified copy.

In case of reasonable doubt, the authority of the receiving Member State will be able to check a repository of models of national public documents and, if a doubt remains, it will be able to submit a request for information to the issuing authority. If the authenticity of the public document or of its certified copy is not confirmed, the receiving authority will not be obliged to process them.

As the Regulation is based on mutual trust, requests for information should not be systematic.

Relationship with other Union instruments

The Regulation is a horizontal instrument that complements other Union instruments which contain provisions on legalisation, apostille and other formalities (such as Regulation No 2201/2003 concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility).

Other Union instruments which simplify the circulation of public documents further than the Regulation (for example, Union instruments dealing with the recognition of professional qualifications, services and social security) will prevail over the Regulation.

Relationship with international agreements

In relations between Member States and with regard to matters covered by the Regulation, the Regulation will take precedence over agreements to which the Member States are party. Member States will be able to maintain or conclude agreements which simplify the circulation of public documents between Member States further than the Regulation.

In relations between Member States and third countries and with regard to matters covered by the Regulation, Member States will be able to (i) conclude agreements with third countries, and (ii) continue to accept new parties to existing agreements with third countries (such as the 1961 Hague Apostille Convention).

Review of the Regulation

Two years after the Regulation becomes applicable, the Commission will draft an assessment report and propose, as appropriate: (i) the extension of the scope of the Regulation to public documents concerning the legal status and representation of a company, educational records and recognised disabilities; (ii) the adoption of additional multilingual standard forms; and (iii) the use of electronic systems for the direct transmission of public documents between Member State authorities to exclude any possibility of fraud on the matters covered by the Regulation.

Five years after the Regulation becomes applicable, the Commission will draft an evaluation report on the application of the Regulation and propose, as appropriate, an extension of the scope to new areas, the adoption of additional multilingual standard forms and the use of electronic systems for the direct transmission of public documents between Member State authorities.