

EU answers to the questionnaire on the practical operation of the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Documents (Apostille Convention).

Question 2 : Are foreign public documents exempted from legalisation by virtue of your internal law, practice, or any bilateral/multilateral agreements?

Answer The EU has adopted the Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents (hereafter the “Public Documents Regulation”) on 6 July 2016, which abolishes legalisation (and apostille) in respect of certain public documents issued by the public authority of a Member State and submitted to the public authority of another Member State.

Detailed information on the scope and provisions of the Public Documents Regulation is provided in the overview of the Regulation (revised version of the Annex provided in preparation of the 2016 Special Commission) in Annex.

Question 5 : Is the concept of ‘public document’ defined in your internal law?

For the purposes of the Public Documents Regulation (Article 3(1)(a)), “public documents” means :

- a) 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 a court or a judicial officer (‘huissier de justice’);
- b) administrative documents;
- c) notarial acts;
- d) 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 authentication of signatures;
- e) documents drawn up by the diplomatic or consular agents a Member State acting in the territory of any State in their official capacity, 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.

Question 26 : Under your internal law, do you recognise electronic/digital signatures as functionally equivalent to handwritten signatures (i.e. can a public document be signed electronically)?

Regulation (EU) n°910/2014 of 23 July 2014 on electronic identification and trust services for electronic transaction in the internal market (the eIDAS Regulation) has, *inter alia*, established the principle that an electronic signature should not be denied legal effect on the sole grounds that it is in electronic format (Article 25 (1)). Furthermore, under the eIDAS Regulation, qualified electronic signatures have the equivalent legal effect of handwritten signatures (Article 25 (2)).

The eIDAS Regulation, however, has a scope limitation – it does not apply to “closed systems”, but only to trust services provided to the public having effects on third parties (Article 2 and Recital 21).

Question 27: Under your internal law, are public documents executed, or able to be executed, in electronic form (whether or not they are to be used abroad under the Convention)?

[Regulation \(EU\) 2018/1724 establishing a single digital gateway to provide information, procedures, assistance and problem solving services](#) (Single digital gateway Regulation) will facilitate administrative procedures undertaken by individuals or businesses in another EU Member State. It will, in particular, oblige Member States to digitalise, by 12 December 2023, 21 administrative procedures listed in Annex II to this Regulation. Article 6 of the Single digital gateway Regulation lays down the criteria for a procedure to be considered as fully online. For example, users should be able to provide information and supporting evidence, required in a procedure, electronically, at a distance. Moreover, the output of the procedure must be delivered electronically. Public documents may only be executed by physical means where necessary to comply with applicable Union or national law.

Out of the 21 procedures listed in Annex II, many procedures may result in the issuance of public documents, in particular:

- a) Proof of registration of birth or birth certificate;
- b) Confirmation of registration at the current address;
- c) Confirmation of deregistration at the previous address and of the registration of the new address.

The Single digital gateway Regulation **will thus oblige all Member States to execute these documents in electronic form, subject to specific exceptions provided by Union or national law**. These documents are often used as evidence in other procedures, which are already digital on the basis of Union law :the Directive 2006/123/EC on services in the internal market, Directive 2005/36/EC on the recognition of professional qualifications and Directive 2014/24/EU on public procurement, as well as procedures listed in Annex II to the Single digital gateway Regulation.

In addition, the Single digital Gateway Regulation (Article 14) sets up a technical IT system for the cross-border automated exchange of evidence, which will be operational in December 2023. It will allow users to request the electronic exchange of evidence between the authority issuing evidence (for instance the competent authority for issuing a birth certificate) and the authority responsible for an administrative procedure (such as admission to public tertiary education institution or pension benefits claim) where both authorities are in different EU Member States. This mechanism will allow the direct cross-border transmission of evidences in between public authorities, and therefore eliminate the need for the user to request an apostille. Under Article 14(8) of the Single digital Gateway Regulation, “the evidence exchanged through the technical system shall, for the purposes of the requesting competent authority, be deemed to be authentic”.

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 has 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 legalisation and other formalities (apostille);
- 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 (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.

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.

The Regulation covers electronic versions of public documents and multilingual standard forms suitable for electronic exchange. However, each Member State decides 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 legalisation and other formalities

Legalisation and apostille are 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.

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 a public document issued in that State, 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 is issued when requested 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.

The Commission has produced electronic versions of the multilingual standard forms, which are available to the authorities of the Member States on 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 enables 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 can check a repository of models of national public documents. If a doubt remains, the authority can 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).
