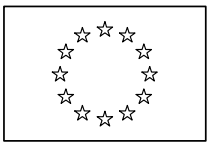

EUROPEAN COMMISSION

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GREEN PAPER

Less bureaucracy for citizens:

promoting free movement of public documents and recognition of the effects of civil status records

1. INTRODUCTION

The mobility of European citizens is a practical reality, evidenced in particular by the fact that some 12 million people study, work or live in a Member State of which they are not nationals[1]. This mobility is facilitated by the rights attached to citizenship of the European Union: in particular the right to freedom of movement and, more generally, the right to be treated like a national in the Member State of residence. These rights are enshrined in primary EU law and implemented by means of secondary legislation.

However, as stated in the 2010 EU report on citizenship adopted by the Commission on 27 October 2010[2], European citizens are still confronted each day with many obstacles to the exercise of these rights.

One reason for these problems is that citizens are required to present public records to the authorities of another Member State in order to provide the proof needed to benefit from a right or to comply with an obligation.

These documents can vary considerably. They can be administrative documents, notarial acts such as property deeds, civil status records such as birth or marriage certificates, miscellaneous contracts or court rulings.

Very often these documents are not accepted by the authorities of a Member State without bureaucratic formalities that are cumbersome for citizens.

Citizens are then faced with very specific questions, the answers to which are often uncertain. Which authorities are competent when it comes to complying with such formalities? How much do such formalities cost? Must people appear in person? Will the necessary formalities be completed within a reasonable period of time? Will documents need to be translated?

The uncertainty surrounding the answers to these questions is a source of frustration and irritation, and is not conducive to achieving a Europe of citizens.

Moreover, civil status records raise a question of quite a different magnitude concerning not the actual documents themselves, but their effects.

Civil status records used by a Member State's authorities to record the main events governing people's status (birth, marriage, death) do not necessarily have an effect in another Member State. Each Member State applies its own rules in this respect, and they vary from one State to another. For example, paternal filiation established in one Member State with respect to a child born there will not necessarily be recognised in another Member State because of the difference in national rules applicable to the matter.

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[1] Further proof of this fact is the number of marriages and divorces recorded in the EU: by way of example, out of a total of roughly 122 million marriages, some 16 million (13%) have a crossborder dimension.

[2] COM(2010) 603 final, EU Citizenship Report 2010 – Dismantling the obstacles to EU citizens' rights.

In response to these concerns, the Commission is launching, by means of this Green Paper, a broad consultation on matters relating to freedom of movement of public documents (Part 3) and recognition of the effects of civil status records (Part 4). The consultation aims to gather contributions from interested parties and the general public with a view to developing EU policy in these areas together with the relevant legislative proposals.

2. BACKGROUND

In 2004, the Commission underlined the importance of facilitating recognition of different types of documents and mutual recognition of civil status[3].

To this end two studies were published by the Commission[4] in 2007 and 2008 on the problems encountered by citizens as a result of the requirement to legalise documents used between Member States and on the problems relating to civil status records.

Within the framework of the Stockholm programme[5] the Council has asked the Commission to pursue the work on the follow-up to be given to these studies in order to ensure full exercise of the right to freedom of movement.

In this connection, two legislative proposals are envisaged in the Stockholm programme action plan.

Scheduled for 2013, these proposals will concern

- free movement of documents by eliminating legalisation formalities between Member States and
- recognition of the effects of certain civil status records (for instance relating to filiation, adoption, names), so that legal status granted in one Member State can be recognised and have the same legal consequences in another.

The European Parliament has already stated on several occasions[6] that it is in favour of the recognition of public documents and civil status records, the last time being in November 2010[7].

3. FREE MOVEMENT OF PUBLIC DOCUMENTS

3.1. Issues

The Eurobarometer results on civil justice dating from October 2010 show that three-quarters of EU citizens (73%) consider that measures should be taken to facilitate the movement of public documents between Member States.

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3 COM(2004) 401 final, Communication "Area of Freedom, Security and Justice: assessment of the Tampere programme and future orientations", p. 11.

4 The results are available at http://ec.europa.eu/civiljustice/publications/publications_en.htm

5 The Stockholm Programme — An open and secure Europe serving and protecting citizens, OJ C 115, 4.5.2010, p. 1.

6 Resolution with recommendations to the Commission on the European Authentic Act, December 2008.

7 Report on civil law, commercial law, family law and private international law components of the action plan implementing the Stockholm Programme of 22 November 2010.

European citizens who move to a Member State other than the one of origin are faced with all kinds of bureaucracy involving requests that public documents be presented, for instance the birth certificate of a child, or proof of nationality or of a parental or family relationship.

The same applies to European citizens returning to their Member State of origin after a period in a host Member State. They encounter the same type of problems when it comes to providing evidence of life events which occurred in the host Member State.

The Commission would like to launch a debate on all the public documents that require administrative formalities in order to be used outside the Member State in which they were issued. These formalities include proof of authenticity or a certified translation.

Public documents vary considerably and cover all the official records drawn up by a Member State authority. Examples include administrative documents such as diplomas or patents; notarial acts such as sales deeds for property and marriage contracts; civil status records such as birth, marriage or death certificates; plus judicial documents such as court rulings or documents issued by a court.

The common function of all these documents is to establish evidence of facts recorded by an authority. In most cases they must be produced to obtain access to a right, to receive a social service or to comply with a tax obligation.

Administrative formalities are necessary to authenticate public documents so that they can be used outside the Member State where they have been issued. These formalities are a means of preventing fraud. They concern for example the authenticity of the signature and the capacity in which the person signing the document has acted.

The traditional way of authenticating public documents designed for use abroad is *legalisation.* Legalisation consists of a chain of individual authentication procedures for a document. In the ordinary legalisation procedure, a document must be legalised by the competent authorities of the Member State which issued it and then by the embassy or consulate of the Member State in which it will be used. The legalisation process is often slow and costly because of the number of authorities involved[8].

Another formality, which simplifies the traditional legalisation process, consists of the provision by the State issuing the document of an authentication certificate called an *apostille.* The apostille has the same objective as legalisation but involves a simplified procedure. An apostille is provided by the competent authorities only of the State which issued the document. Intervention by the authorities of the Member State in which the document is presented is no longer necessary.

However, although the apostille facilitates the movement of public documents compared with the legalisation procedure, it also requires administrative steps and involves some loss of time and a quite considerable cost which varies greatly from one Member State to another[9].

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8 The amount and scale of the fee involved differ widely from one Member State to another (equal to or lower than EUR 20 in some Member States, variable in others, depending on the document; the fee can amount to up to EUR 50).

9 The apostille also costs money: a fee must be paid in a number of Member States. which varies considerably from one to another. In some, the apostille is provided free of charge or for less than EUR 5, while in others it can cost up to EUR 50.

During the above-mentioned Eurobarometer survey on civil justice, citizens were asked about all the possible formalities which they had had to fulfil when presenting documents in a Member State other than the one which had issued the document. Six out of every ten questioned replied that they had had to fulfil several formalities when presenting a document in the Member State of residence. These included translation (26%), legalisation (24%), and producing an apostille (16%) or a certified copy (19%).

Another problem is that some Member States can require documents which do not always exist in the citizen's Member State of origin. A certificate of no impediment is a good example of this.

A Cypriot citizen living in Finland wants to marry a Finnish citizen, but he is required to produce a certificate of no impediment, which does not exist in Cypriot law. He is thus unable to produce this document in his Member State of residence and the only solution appears to be to refer the matter to the judicial authorities of the Member State of residence.

But is such a solution satisfactory for citizens? Referring cases to courts is not easy and involves an investment in terms of time and money. Getting married in a Member State other than the one of origin should be easy, not a source of worry for the future spouses.

All of these formalities make freedom of movement less attractive for European citizens and can even prevent them from exercising their rights fully.

3.2. Legal framework

At the moment, administrative formalities such as legalisation of public documents and the apostille in EU Member States are characterised by a legal framework that is fragmented because it is based on several sources: national laws that differ considerably from one another; a number of international multilateral and bilateral conventions which have been ratified by a varied and limited number of countries and which are unsuitable when it comes to providing the solutions needed to ensure the free movement of Europeans; fragmented EU law which deals only with certain limited aspects of the matters raised.

The result is a lack of clarity and regulation which does not provide the legal certainty European citizens need to cope with matters that have a direct impact on their everyday lives.

The principle whereby public documents must be legalised by the competent authority of the Member State in which the document is issued or be the subject of an apostille by the authority of the Member State of origin is accompanied by exceptions set out in the international conventions or in EU law.

It is difficult for citizens to know which exceptions could be applied to their own situations.

Several conventions can be quoted to demonstrate just how many international rules exist. Some of these conventions concern public documents in the broad meaning of the term, while others concern a specific type of document such as civil status records or certificates issued by diplomatic or consular officials.

The 1961 Hague Convention abolishes the requirement of legalisation for the foreign public documents set out in Article 1, replacing this with the apostille[10]. All EU Member States are parties to this Convention, as are a number of non-EU countries. It applies to public documents, in other words administrative documents, notarial acts, official certificates and documents emanating from a court or tribunal, but not to documents executed by diplomatic and consular authorities.

In the case of a document issued by a diplomatic or consular authority, the 1968 Council of Europe Convention may be applied**.** It abolishes the legalisation of documents executed by diplomatic or consular agents. However, not all European citizens can benefit from this Convention as only fifteen Member States are contracting parties to it.

In order to promote international cooperation on civil status records and improve the functioning of civil status authorities, an intergovernmental organisation, the International Commission on Civil Status (CIEC) was set up in 1949 by five founding members[11]. Twelve EU Member States are now members of this organisation[12].It plays an important role, in particular in the development of international conventions for ratification by countries. Several Conventions concern the legalisation of civil status records: the 1957 Convention on the issue free of charge and exemption from legalisation of copies of civil status records, the 1976 Convention on the issue of multilingual extracts from civil status records, and the 1977 Convention on the exemption from legalisation of certain records and documents[13].

EU law itself contains several provisions which completely abolish legalisation between Member States.

The 1987 Convention[14] completely abolishes legalisation for several categories of documents: documents emanating from an authority or official, including a public ministry, a clerk of a court or a process-server, administrative documents, notarial acts, official certificates, in particular official certificates which are placed on documents signed by persons in their private capacity, and documents executed by diplomatic or consular agents. However, this Convention has been ratified by only a very small number of Member States and has not therefore entered into force, except with regard to six of them[15], which have decided to apply it provisionally in their mutual relations.

Some instruments adopted by the EU on judicial cooperation in civil matters, in particular Regulations (EC) No 44/2001 and (EC) No 2201/2003, also provide for the abolition of legalisation for documents coming within their scope[16].

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10 Convention of 5 October 1961 abolishing the requirement of legalisation for documents by foreign authorities: http://www.hcch.net/index_en.php?act=conventions.text&cid=41. It does not apply to documents executed by diplomatic or consular agents or to administrative documents dealing directly with commercial or customs operations. The apostille is defined in Articles 4 and 5 of the Convention.

11 The five founding members are Belgium, France, Luxembourg, the Netherlands and Switzerland.

12 CIEC website: http://www.ciec1.org/. In addition to the above four EU Member States who are founding members of the CIEC: Germany, Greece, Italy, Portugal, Spain, Poland, the United Kingdom and Hungary.

13 Conventions No 2, 16 and 17.

14 Convention of 25 May 1987 abolishing the legalisation of documents in the Member States of the European Communities.

15 The six Member States are Belgium, Denmark, France, Italy, Ireland and Latvia.

16 The provisions in question are: Article 56 of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and Article 52 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the

3.3. Possible solutions to facilitate the free movement of public documents between Member States

a) The abolition of administrative formalities for the authentication of public documents

The administrative formalities relating to the presentation of public documents, originally based on consular and intergovernmental practices, are still causing problems for European citizens and no longer meet the requirements or correspond to the state of development of contemporary society, in particular in an area of common justice.

The need for these formalities, which are not suitable for relations between Member States based on mutual trust or for increased mobility of citizens, can legitimately be questioned.

In 1997, the European Union Court of Justice indicated the path that should be followed. In the *Dafeki*[17] case between a Greek national working in Germany and the pension fund of that Member State, the recognition of documents issued in one Member State and presented in another in a professional context was affirmed by the Court. In this judgment, the Court found that a Member State's authorities must accept certificates and analogous documents relative to personal status issued by the competent authorities of the other Member States, unless their accuracy is seriously undermined by concrete evidence relating to the individual case in question.

It is time to consider abolishing the apostille and legalisation for all public documents in order to ensure that they can circulate freely throughout the EU.

This could cover all public documents; a sectoral approach might not produce sufficient results. The apostille might be abolished as well as legalisation.

In practice, the abolition of these formalities would mean that citizens could present an original document issued by a Member State's authorities, without having to take any additional steps, as though they were in the same Member State.

The Commission therefore proposes that thought be given to abolishing all these obsolete formalities, and that a modern, uniform European legislative framework be introduced that takes account of the reality of crossborder situations.

Question 1 *Do you think that the abolition of administrative formalities such as legalisation and the apostille would solve the problems encountered by citizens?*

b) Cooperation between the competent national authorities

The abolition of administrative formalities could be accompanied by cooperation between the competent national authorities.

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recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

[17] Case C-336/94 *Eftalia Dafeki* v *Landesversicherungsanstalt* [1997] ECR I-06761, paragraph 19.

Civil registrars in certain Member States currently engage in administrative cooperation on an informal basis and on the basis of the CIEC Conventions[18], something which could be developed.

In the event of serious doubt about the authenticity of a document or if a document does not exist in a Member State, the competent national authorities could exchange the necessary information and find an appropriate solution.

This exchange of information should also allow the civil registrar of the Member State of origin of a person to be informed of the fact that a record concerning this person has been made in another Member State. This would also be useful in terms of updating civil status records. A central registration point could also be envisaged to record civil status events occurring in Member States other than the citizen's Member State of origin. This grouping together of data would facilitate the issuing and updating of certificates.

Such applications could be implemented by using suitable electronic means[19].

The projects carried out and results achieved in the context of online justice (e-Justice) could contribute to this exchange of information. The e-Justice portal could inform citizens of the existence of civil status records and their legal implications (for instance, the need to obtain a death certificate from the competent authority before asking a court for an inheritance certificate). Arrangements could also be made to allow citizens to apply for and obtain a civil status record online using a secure system.

Moreover, given the very diverse administrative structures in the Member States, it would be useful to inform citizens more systematically as to which authorities are competent for entries in civil registers and the issuing of certificates. In this connection, the Commission has announced[20] the transformation of the "Your Europe" portal into a one-stop-shop for information on the rights of citizens and companies in the European Union, which is user-friendly and easily accessible[21].

Question 2 *Should closer cooperation between Member States' authorities be envisaged, in particular as regards civil status records, and if so, in what electronic form?*

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18 See in particular Conventions No 3, 8 and 26. According to Convention No 3, when civil registrars make a record of marriage, they must give notice of this to the civil registrar for the place of birth of each one of the spouses, using a standard form. This Convention is in force in eleven Contracting States, six of which are EU Member States. The EU Members are Austria, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Poland, Portugal and Spain.

19 The Internal Market Information System (IMI), currently used for the exchange of information between authorities in the field of professional qualifications and services, could prove to be a suitable electronic tool to improve cooperation between the competent Member State authorities and could also prevent recourse to requests for the translation of documents. See http://ec.europa.eu/imi-net. In addition, the "*CIEC platform"* project co-financed by the Commission could form a very useful basis for the future. It involves the development and use of electronic means in relation to judicial matters and, in particular, the organisation of a network of civil registrars which will be of great benefit to citizens. The *CIEC platform* also underpins the best practices developed in the context of intergovernmental cooperation.

20 COM(2010) 603 final, cited above, and COM(2010) 608 final, Communication, "Towards a Single Market Act - For a highly competitive social market economy".

21 See http://ec.europa.eu/youreurope.

Question 3 *What do you think about the registration of a person's civil status events in a single place, in a single Member State? Which place would be the most appropriate: place of birth, Member State of nationality or Member State of residence?*

Question 4 *Do you think that it would be useful to publish the list of national authorities competent to deal with civil status matters or the contact details of one information point in each Member State?*

c) Limiting translations of public documents

In parallel with the administrative formalities such as legalisation and the apostille, the translation of a public document issued by another Member State is another procedure citizens may have to deal with. Just like the abovementioned administrative formalities, translation also represents a cost in terms of time and money[22].

Optional standard forms, at least for the most common public documents (for example a declaration of the loss or theft of identity papers or a wallet), could be introduced in a number of administrative sectors in order to cope with translation requests and avoid costs.

The standard forms could be based on the multilingual forms produced by the CIEC. These forms are very successful: the advantage is that there is no need to translate the certificate in the country of destination[23].

Question 5 *What solutions do you recommend in order to avoid or at least limit the need for translation?*

d) The European civil status certificate

European driving licences and passports already exist. A European certificate of inheritance has been proposed by the Commission. Thought might be given to introducing a European civil status certificate.

This would exist alongside Member States' national civil status records. It would be optional, not compulsory. Citizens could continue to ask for a national certificate. The European certificate would not therefore replace Member States' civil status certificates.

A couple consisting of partners of German and Spanish nationality settle in Spain with their child. The parents need the child's birth certificate in order to apply for family allowances and to register the child in a Spanish school. The parents could ask the civil registrar in Germany (Member State of birth) to issue a European birth certificate in order to present it to the competent authorities in Spain. The certificate could be issued in Spanish. When presenting it to the Spanish authorities, the certificate would not have to be translated, which would avoid the considerable translation costs. The parents could also ask for a national birth certificate, in other words a German certificate. In this case, the Spanish authorities would probably ask for it to be translated.

It should also be possible to use the certificate in the Member State where it was issued.

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22 The average cost of translating a simple document can range from EUR 30 to EUR 150.

23 Convention No 16 is in force in 20 countries, including 12 EU Member States.

The parents could also use the European certificate for any administrative formalities in Germany, which would avoid further procedures involving the civil registrar.

At the moment, the information given on civil status certificates differs considerably from one Member State to another. For instance, over forty different details are given on Member States' birth certificates. These details are not given in every country. Such differences cause problems for civil registrars faced with details that are unknown in their legal systems. As a result of these differences, civil registrars often have to request additional information and citizens face additional problems, such as loss of time.

As well as the content, the form differs from one Member State to another. The variety of forms causes problems in understanding and identifying documents, for both authorities and citizens, in particular when the language is not known.

The format of the certificate and the information given on it must be standardised using a single support, the European certificate. This would greatly facilitate the understanding of the civil status data shown and would prevent the kind of questions that are raised about the details on national certificates that are unknown in the Member State where the certificate is presented.

Question 6 *What kind of civil status certificates could be the subject of a European civil status certificate? Which details should be mentioned on such a certificate?*

4. MUTUAL RECOGNITION OF THE EFFECTS OF CIVIL STATUS RECORDS

4.1. Issues

Of all public documents, civil status records give rise to a specific problem linked to their effects.

Civil status, for which each Member State has developed its own concept, based for instance on its history, culture and legal system, makes it possible to find out the status of a person and determine his or her position in society. It forms the basis of his or her legal status. Civil status records are records executed by an authority in order to record the life events of each citizen such as birth, filiation, adoption, marriage, recognition of paternity, death and also a surname change following marriage, divorce, a registered partnership, recognition, change of sex or adoption.

In a crossborder situation, the main question is whether a legal situation recorded in a civil status record in one Member State will be recognised in another.

A French couple married for three years move to Denmark. They will live in Denmark for four years for professional reasons. After living together for several years, their first child is born. In attributing a surname to a child, the Danish authorities apply the law of Denmark, the child's and the parents' Member State of residence. On the family's return to France, the French authorities refused to recognise the name attributed to the child according to the rules laid down in Danish law. This situation will create legal uncertainty for the child as he or she will not be identified in the same way in Denmark and in France, which will have an impact on the exercise of the right to free movement.

The attribution of surnames is a basic element in a person's identification, the rules of which are influenced by historical, religious, linguistic and cultural factors, which differ widely from one Member State to another. The problems encountered by citizens as a result of the difference in national rules on attributing names are illustrated in the case-law of the Court of Justice[24], which describes the serious drawbacks that differences in the attribution of family names can have for individuals in their professional and private lives[25].

It should be possible to guarantee the continuity and permanence of a civil status situation to all European citizens exercising their right of freedom of movement. In deciding to cross the border of a Member State to go and live, work or study in another Member State, the legal status acquired by the citizen in the first Member State (for instance change of surname for a married woman who has legally adopted her husband's surname) should not be questioned by the authorities of the second Member State since this would constitute a hindrance and source of objective problems hampering the exercise of citizens' rights.

The second question which arises is whether – in a crossborder case – the legal status recorded in a civil status record can produce the civil effects connected with the situation.

> *Two citizens, one of Swedish nationality and the other of German nationality, are living together in Finland and are not married. After living together for several years, their first child is born. How will the Finnish authorities in the Member State of residence establish the filiation of the child, in other words the family relations binding this child to the biological parents? What rules will the Finnish authorities apply to the establishment of filiation? Will it be Swedish law, the law of the Member State of origin of the father; German law, the law of the Member State of origin of the mother, or Finnish law, the Member State of residence of the parents and the country where the event took place? If Finland applied its own law on filiation, would the filiation be recognised in the parents' Member States of origin, in this case Sweden and Germany, and in the rest of the EU? Since each Member State applies its own rules, it could happen that the German authorities would not recognise the filiation determined on the basis of Finnish rules.*

Each Member State determines which law is applicable in a crossborder situation based on the connecting factor set out in its private international law. The connecting factor can, in principle, be nationality or habitual residence. The applicable law, thus determined, varies considerably from one Member State to another. The unavoidable consequence of such diversity is that a civil status situation created in one Member State is not automatically recognised in another because the result of the applicable law differs depending on the Member State in question.

The question is whether there is a need for EU action to provide Europeans with greater legal certainty in relation to civil status matters and to remove the obstacles which they face when asking for a legal situation created in one Member State to be recognised in another. Such recognition is requested in order to benefit from the civil rights connected with the situation in the Member State of residence.

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[24] Case C-168/91 *Christos Konstantinidis* 1993, ECR [1993] I - 01191; Case C-148/02 *Carlos Garcia Avello* C-48/02, [2003] ECR I-16613; Case C-353/06 *Grunkin-Paul,* [2008] ECR I-07639, Case C-208/09 *Ilonka Sayn Wittgenstein* C-208/09**,** pending at the CJEU.

[25] Case C-353/06, cited above, paragraphs 22, 23, 25 and 27 and Case C-148/02, cited above, paragraph 36.

4.2. Legal framework

Civil status questions are not new to the European legislator, who has conferred a series of rights on European citizens in primary and secondary law. The EU has already dealt with issues relating to civil status, in particular marriage. Article 21(2) of the abovementioned Regulation (EC) No 2201/2003 states that "no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State". However, secondary law measures by the EU have to date remained very specific and there are no rules yet on recognition by a Member State of civil status-related situations created in another Member State.

There are international conventions that enable civil status questions to be solved in crossborder situations, mainly the CIEC Conventions, the aim of which is to introduce uniform rules on conflicts of laws connected with people's rights[26]. However, these Conventions are generally ratified by only a small number of countries, usually not more than ten. This contributes to the fragmentation in legal terms of the rules applicable in crossborder situations. In addition, the EU Member States which are also members of the CIEC are not all parties to all of this organisation's conventions. Not a single CIEC convention has been ratified by all EU Member States which are also members of the CIEC.

4.3. Possible solutions for recognition of the effects of civil status records

Several solutions could be considered to ensure recognition of the effects of a civil status record or legal situation connected with civil status created in a Member State other than the one in which it is invoked.

In this context, it is important to stress that the EU has no competence to intervene in the substantive family law of Member States. Therefore, the Commission has neither the power nor the intention to propose the drafting of substantive European rules on, for instance, the attribution of surnames in the case of adoption and marriage or to modify the national definition of marriage. The Treaty on the Functioning of the European Union does not provide any legal base for applying such a solution.

Against this background, several practical problems arising in the daily lives of citizens in cross-border situations could be solved by facilitating recognition of the effects of civil status records legally established in other EU Member States. The European Union has three policy options to deal with these problems: assisting national authorities in the quest for practical solutions; automatic recognition and recognition based on the harmonisation of conflict-of-law rules.

a) Assisting national authorities in the quest for practical solutions

It can be argued that the problems faced by citizens in their daily lives with regard to their civil status in cross-border situations are matters best left to the Member States, as national authorities can identify practical solutions within the parameters of their national law. Until,

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[26] See Convention No 12 on the legitimation of natural children by marriage, Convention No 18 on the voluntary recognition of children born out of wedlock and Convention No 19 on the law applicable to names and surnames. Convention No 7 to facilitate the celebration of marriages abroad also contains a conflict-of-law rule on prior notices for marriage.

for example, there is further harmonisation of the rules on the law applicable to civil status situations, or until there is greater convergence of Member States' substantive family law, the EU's primary role would be to help national authorities to cooperate more effectively.

> ***Question 7*** *Do you think that civil status issues for citizens in cross-border situations in the EU could be effectively solved by national authorities alone? In this case, should not the EU institutions provide at least some guidance to national authorities (possibly in the form of EU recommendations) to ensure minimum consistency of approaches with a view to finding practical solutions to the problems faced by citizens?*

b) Automatic recognition

Another option is automatic recognition, in a Member State, of civil status situations established in other Member States. Such recognition would not involve the harmonisation of existing rules and would leave Member States' legal systems unchanged.

This would mean that each Member State would accept and recognise, on the basis of mutual trust, the effects of a legal situation created in another Member State. In the examples mentioned above, the child's name and the filiation should be recognised by the authorities of the Member State of origin of that child, even if the application of that State's law would have resulted in a different solution.

Ensuring automatic recognition throughout the EU of a legal situation created in a Member State would involve a number of advantages for European citizens.

First of all, this solution would be simple and transparent with respect to all citizens exercising their right of freedom of movement throughout the European Union. All citizens whose civil status changes or is affected by a civil status situation created in a Member State would know in advance that their civil status need not be questioned if they crossed a border or decided, for instance, to spend several years in a Member State other than the one of origin. The permanent nature of their civil status would be guaranteed and the situation created in the Member State of origin would be recognised automatically in the other Member States on the basis of the Treaty.

In ensuring automatic recognition of a legal situation created in another Member State, the host Member State (in other words, the one which the citizen decides to go and live or work in) would not have to change its substantive law or modify its legal system.

This recognition would also have the advantage of providing the legal certainty which citizens can expect when they exercise their right to freedom of movement. It can be argued that legal uncertainty and the various problems a citizen could encounter in terms of recognition of the legal situation established in the Member State the citizen is leaving should not act as a disincentive or constitute an obstacle preventing the exercise of European citizens' rights.

In this case, this possibility should, however, be accompanied by a series of compensatory measures to prevent potential fraud and abuse and take due account of the public order rules of the Member States. Moreover, automatic recognition might, where appropriate, be better suited to certain civil status situations such as the attribution or change of surnames. This might prove to be more complicated in other civil status situations such as marriage.

Question 8 *What do you think of automatic recognition? To which civil status situations might this solution be applied? In which civil status situations might it be considered unsuitable?*

c) Recognition based on the harmonisation of conflict-of-law rules

Harmonisation of the conflict-of-law rules might be another possible way of allowing citizens to exercise fully their right to freedom of movement while providing them with greater legal certainty in relation to civil status situations created in another Member State.

A body of common rules developed in the European Union would enshrine the right which would be applicable to a crossborder situation when a civil status event takes place.

This right would be defined on the basis of one or more connecting factors taking into account citizen mobility. The rules would thus be foreseeable and known in advance. For instance, citizens living in a Member State other than their Member State of origin could have the law of this country, to which they have developed ties, applied to them rather than the law of their Member State of origin, which they had perhaps left many years before.

Moreover, it would have to be decided whether the connecting factor chosen should be the same for several civil status situations or whether different factors would be more appropriate depending on each situation.

Question 9 *What do you think of recognition based on the harmonisation of conflict-of-law rules? To which civil status situations might this solution be applied?*

Determination of the applicable law on the basis of one or more connecting factors laid down in European legislation might be the approach taken if no choice is expressed by citizens. In principle, citizens in crossborder situations might be allowed to choose the law applicable to a civil status event. This possibility could satisfy the legitimate interests of citizens who, in making this choice, would express their attachment to their own culture and Member State of origin or to another Member State. Making such a choice would also allow individual freedom to be taken into account in relation to civil status matters where this does not undermine the interests of a third party and does not infringe public order. This freedom of choice would be regulated, however, and would have to lead to the application of a law with which the citizen has close links.

Question 10 *What do you think of the possibility of citizens choosing the applicable law? In which civil status situations might such a choice be applied?*

Question 11 *In addition to automatic recognition and recognition based on the harmonisation of conflict-of-law rules, do you think that there are other solutions which could provide a response to the crossborder effects of legal situations linked to civil status?*

5. CONCLUSION

This Green Paper is intended to launch a public consultation in order to gather guidelines and opinions from the players concerned on ways of improving the lives of citizens in terms of the movement of public documents and the application of the principle of mutual recognition in relation to civil status matters.

It will be published on the Commission's website.

The consultation will take place from 14 December 2010 to 30 April 2011. The Commission asks interested parties to send their contributions to the following address:

European Commission
Directorate-General for Justice
Unit A1 - Judicial Cooperation in Civil Matters
B-1049 Brussels
Fax No: + 32-2/299 64.57

E-mail: JUST-COOP-JUDICIAIRE-CIVILE@ec.europa.eu

All public and private sector contributions will be published on the Commission's website unless the authors object explicitly to publication of their personal data on the grounds that such publication would harm their legitimate interests.

The Commission might hold a public hearing on the issues covered by the Green Paper.