

**Committee of the Regions****CIVEX-V-021****93rd plenary session
14 and 15 December 2011****OPINION
of the
Committee of the Regions****LESS BUREAUCRACY FOR CITIZENS:
PROMOTING FREE MOVEMENT OF PUBLIC DOCUMENTS AND
RECOGNITION OF THE EFFECTS OF CIVIL STATUS RECORDS****THE COMMITTEE OF THE REGIONS**

- notes that civil status records such as birth, marriage and death certificates, divorce registrations, name changes and so on are fundamental to a person's identity and ability to fully participate in social, economic and political life;
- underlines the fact that public documents fulfil an essential function in ensuring that EU rights can be exercised effectively by their beneficiaries;
- stresses the fact that civil status legislation is exclusively within the competence of Member States and their constituent local and regional authorities; emphasises that adherence to the principles of subsidiarity and proportionality are required;
- shares the Commission's broad objective of identifying and removing obstacles to exercising EU rights particularly in cross-border situations and enabling citizens to experience further practical and visible benefits from ongoing EU integration and urges that addressing the needs of citizens be the primary focus of policy development in this area;
- concurs that the legalisation of public documents between Member States should not be necessary, however given that there is unreliable and incomplete information exchange, suggests that in advance of introducing legislation, facilities for administrative cooperation may need to be established so that registrars can seek to authenticate documents should they need to do so; in the interim and to facilitate dealings with non-EU countries, considers that Member States should examine with a view to adoption, the e-APP for the issuance and use of electronic apostilles;
- considers that the possibility for a European Civil Status Office should not be ignored if it could be shown to be more efficient and more effective than establishing a multitude of new offices or maintaining similar offices in Member States;
- would propose that the introduction of best practice guidance for Member States be considered to facilitate the provision of civil status documentation on a cross-border basis.

Rapporteur

Patrick McGowan (IE/ALDE), Member of Donegal County Council and Border Regional Authority

Reference Document

Green Paper: Less Bureaucracy for Citizens: Promoting free movement of public documents and recognition of the effects of civil status records
COM(2010) 747

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

1. welcomes the European Commission's initiative towards achieving a Union of citizens by launching the Green Paper for an EU-wide debate on the opportunities for legislative proposals on two distinct but related areas:
 - (a) the free movement of public documents by eliminating legalisation formalities between Member States, and
 - (b) recognition of the effects of certain civil status records so that legal status granted in one Member State can be recognised and have the same legal consequences in another;
2. notes that public documents include various administrative, notarial, judicial acts and documents and incorporates civil status records that define and represent milestones over a lifetime; further notes that civil status records such as birth, marriage and death certificates, divorce registrations, name changes and so on are fundamental to a person's identity and ability to fully participate in social, economic and political life;
3. underlines the fact that public documents fulfil an essential function in ensuring that EU rights can be exercised effectively by their beneficiaries. These rights include the free movement of citizens and their family members, free movement of workers, freedom of establishment, social security, free movement of goods and services and effective justice for citizens in civil and commercial matters; indeed a very wide variety of public documents are relevant in the recognition of EU rights;
4. shares the Commission's broad objective of identifying and removing obstacles to exercising EU rights particularly in cross-border situations and generally cutting red-tape to facilitate cross-border cooperation and enabling citizens to experience further practical and visible benefits from ongoing EU integration and urges that addressing the needs of citizens be the primary focus of policy development in this area;
5. emphasises that the fundamental diversity of civil status systems (event-based, person-based and population register) and varying procedures in effect across the EU reflects the constitutional and legislative arrangements of their public authorities and represents their differing societal values, the diversity is exemplified by the fact that civil status records possess different legal effects in different Member States;
6. believes that provision for civil status registration is generally efficient within Member States but that problems arise largely from dealing with cross-border issues; notes, however, that about one third of all civil status registrations in the EU have a cross-border aspect and with increasing mobility, administrative problems will correspondingly increase; a further

complicating factor facing citizens with cross-border issues is the diversity of applicable law, where each country has its own rules on conflicts of law;

7. stresses the fact that while some public documents (e.g. professional qualifications) may be subject to EU law, civil status legislation is exclusively within the competence of Member States and their constituent local and regional authorities and emphasises that adherence to the principles of subsidiarity and proportionality are required in the evolution of EU policy and legislation in this area;
8. underlines that the competent authorities for document legalisation range widely between and within Member States with an even wider array of competent authorities responsible for civil status records; these range from judicial to religious to administrative responsibility at different levels of governance; nevertheless points out that it is most frequently at local and regional level that citizens come into contact with these authorities with an estimated 80 000 local registry offices across the EU;
9. believes that the issues must not be seen purely in isolation but also considered in the context of wider Union policies, such as economic policy, the Digital Agenda, social policy and external policy with a view to reinforcing the coherence, effectiveness and consistency of the Union's actions;

Free Movement of Public Documents

10. notes that legalisation is normally used to establish the presumption of authenticity of a foreign public document given that authorities in one country may be unfamiliar with the seals, stamps and signatures of the authority issuing the public document, acknowledges however that certain public documents such as passports, driving licences and judgements are recognised without further legalisation measures;
11. believes that legalisation costs time, money and effort and by itself, is not a suitable measure to prevent fraud in the cross border use of public documents; concurs with the terms of the Stockholm Programme that the EU should actively use its membership of the Hague Conference on Private International Law to promote relevant Conventions (also referring to the International Commission on Civil Status), as heretofore Member States have not taken a collaborative approach when dealing with Conventions on the legalisation of documents;
12. recognises that the application of existing Conventions dealing with document legalisation and the patchwork of bilateral treaties is fragmented, for example, the 1987 Brussels Convention abolishing the legalisation of public documents between Member States has been signed by less than half of EU Member States with even fewer ratifying and provisionally implementing it;

13. concurs with the view that the legalisation of public documents between Member States should not be necessary in a EU built on mutual trust and similarly considers that other administrative formalities that act as barriers to European Union citizenship and the right of free movement, such as the "certificate of no impediment" and "certificate of law" may equally become unnecessary between Member States;
14. however given that there is unreliable and incomplete information exchange between the civil registry offices of Member States (indeed some Member States neither transmit nor receive information about "foreign" civil status events), suggests that in advance of introducing legislation, facilities for administrative cooperation between registrars in Member States may need to be established so that registrars can seek to authenticate documents should they need to do so, similarly channels for cooperation may need to be established to facilitate authentication of other official documents e.g. educational qualifications and notarial acts; incidentally such facilities for cooperation may also assist officials in verifying the accuracy of document contents as well as the authenticity of the document;
15. moreover, believes that the reasons underlying the reluctance to ratify existing relevant Conventions (such as the 1987 Brussels Convention) must be examined as should the experiences of those Member States that provisionally implement that Convention;
16. in the interim and to facilitate dealings with non-EU countries, considers that Member States should examine with a view to adoption, the e-APP¹ for the issuance and use of electronic apostilles together with the e-Register with online accessibility, recently launched in Europe by Spain under the *e-APP for Europe* project supported by the European Commission;

Cross Border Issues and the Recognition of the Effects of Civil Status Records

17. highlights that a significant problem for many citizens is the cross-border transmission of civil status documentation. In some Member States, personal attendance can be required for an individual to access their own civil status records or obtain apostilles, such undue bureaucracy can cause significant costs to persons who may now reside outside the particular Member State; and while respecting subsidiarity principles, would propose that the introduction of best practice guidance for Member States be considered to facilitate the provision of civil status documentation on a cross-border basis, with adequate safeguards to reduce the risk of fraud;
18. emphasises that each Member State has developed its own *acquis* on citizenship and civil status based on its history, culture, political and legal system and that the introduction of major change could have significant constitutional, legislative and economic implications for authorities within Member States and require wholesale legal and administrative changes to

¹

Under the electronic Apostille Pilot Program (e-APP), the Hague Conference on Private International Law (HCCH) and the National Notary Association of the United States (NNA) are, together with any interested State (or any of its internal jurisdictions), developing, promoting and assisting in the implementation of low-cost, operational and secure software technology for the issuance of and use of electronic Apostilles (e-Apostilles) and the creation and operation of electronic Registers of Apostilles (e-Registers).

structures and processes; similarly it could introduce significant social and cultural change for citizens and society;

19. recognises nevertheless that EU citizens, particularly those living and working in "another" Member State will expect that their lives should not become unnecessarily complicated by red tape in dealing with cross-border civil status issues;
20. recognises that the logistics and costs of providing ongoing training to the estimated 125 000 registrars in the EU on the civil status systems and processes of other Member States is unrealistic; hence underlines the need to develop other more feasible solutions to address the actual problems that citizens face;
21. accepts that the current incomplete and ad hoc contacts between registrars of Member States may arise from legal, procedural, logistical and above all language difficulties; thus would suggest that the European Commission should move to establish an expert group of registry specialists from each Member State so that proposals to address cross-border issues can benefit from a wide input and to facilitate the EU working in a more collaborative way in international fora;
22. considers that the costly and time-consuming need for translations and certified translations of public documents should be reduced with greater use of standardised forms and the application of electronic encoding and reading systems; believes that such developments could be progressed within wider international fora;
23. accepts that there is widespread appetite for bureaucratic simplification, not simply transferring paper-based processes online, and this, coupled with the possibilities offered by electronic data storage and transmission, provides an opportunity and an impetus for modernising and centralising information systems;
24. considers that the registration of all of a person's civil status events at a central location is a worthwhile objective for those Member States that do not do so, in addition it should facilitate the recording of "extra-national" civil status events but realises that it may have significant cost implications and subsidiarity concerns for the responsible authorities and may not be politically feasible in all cases;
25. recognises however that centralised registration does exist in many Member States and a single contact point could help minimise practical problems faced by registrars and citizens, but depending on issues such as electronic availability of records, size of country, division of legislative responsibilities, language issues and so on within Member States, considers that such central information points could be established at regional levels;
26. believes that there is a need to demonstrate that pilot schemes developed for the electronic exchange of civil status documents can work effectively and efficiently and can be adapted

for wider use and would welcome a review of the existing electronic tools that facilitate cooperation between EU public authorities; considers it a priority that safeguards would be introduced to prevent fraud and to protect citizens' privacy and personal data;

27. considers that linkages could be strengthened between EU information sources and relevant information providers within the Member States with regard to the provision of information to citizens about their EU rights generally and believes that local and regional authorities are well placed to assist in this regard;
28. recognises that the idea of a harmonised European Civil Status Certificate is very ambitious as Member States have very different concepts of the nature, form and content of civil status certificates; for example, aside from differences of their probative value and how they may be amended, birth certificates across the EU may contain information on the legitimacy and religion of the child and on the marital and socio-economic status of the parents;
29. as mooted, it appears that European Civil Status Certificates would initially require the simultaneous operation of national and EU schemes, this could lead to problems of legal interpretation of the consistency and relativity of different systems given that there are already many combinations and permutations of civil, religious and foreign laws that may need to be adjudicated upon by courts in Member States;
30. given the diverse legal and administrative structures and processes regarding civil registration across the EU, a proposal to automatically recognise civil status certificates issued by other Member States is similarly problematic and could not work without accompanying significant change to domestic legislation within the Member States to eliminate inconsistencies in how citizens would be treated;
31. considers that given the differences between Member States on the issues, believes that the European Commission could proceed, even on the basis of enhanced cooperation, to seek to standardise conflict of law and jurisdictional issues for further civil status matters to enable more clarity for citizens;
32. believes however that permitting citizens to choose the applicable law of one Member State over another in relation to civil status events could be fraught with difficulty, for example, a couple may disagree over jurisdiction and it could lead to "civil status shopping" where individuals seek out practices that best suit their own circumstances;
33. considers that the possibility for a European Civil Status Office should not be ignored if it could be shown to be more efficient and more effective than establishing a multitude of new offices or maintaining similar offices in Member States; further believes that it could:
(a) assist in developing a more collegiate EU approach to international conventions;
(b) improve administrative cooperation by gathering and exchanging best practices and experiences e.g. for compatibility in IT-related areas as well provide guidance to national authorities on international issues; (c) act as a central contact point for civil status queries

with a cross-border dimension that can benefit registrars and of course, help address persistent problems that citizens experience in their legitimate expectations of exercising their rights within the EU; and (d) potentially act as a centralised EU back-up or reference register for civil status documentation;

34. urges the more timely transposition and application of existing legislation that affects the enjoyment of EU citizenship rights and encourages further collaboration by Member States through their participation in existing inter-governmental organisations to facilitate international cooperation in civil status matters and the wider ratification of existing conventions;
35. encourages registration authorities within Member States to provide samples (with translations) of their civil status documents online so that "foreign" registrars may establish at least some familiarity with them, the European Commission could possibly assist in coordinating or facilitating this initiative;
36. would promote the establishment of a network of registrars/consular experts from all Member States by the European Commission to examine if sufficient administrative cooperation can be instituted to work towards the elimination of legalisation formalities and would support work towards the elaboration of proposals relating to the harmonisation of conflict of law issues. However believes that issues of mutual recognition and European Civil Status Certificates may need further in-depth consideration;
37. considers that while the Green Paper necessarily addresses issues from an EU 27 and a longer-term perspective, the CoR emphasises that more localised solutions can also be brought to bear in addressing problems that citizens face on a regular basis, particularly those living in border areas who may live and work in different jurisdictions. In this regard would encourage further bilateral and multilateral agreements between Member States and with other countries as well as sub-national level initiatives analogous to the EGTC projects for territorial cooperation;
38. underlines that impact assessments of any proposed legislation must be conducted particularly with reference to social, economic and legislative implications within Member States;

39. given the relevant responsibilities of local and regional authorities, the CoR wishes to fully participate in the debate as it evolves and would like to make its consultative networks² available to the European Commission in this regard.

Brussels, 14 December 2011

The President
of the Committee of the Regions

Mercedes Bresso

The Secretary-General
of the Committee of the Regions

Gerhard Stahl

²

The European Grouping of Territorial Cooperation (EGTC), the Europe 2020 Monitoring Platform and the Subsidiarity Monitoring Network (which carried out a consultation on the Green Paper from 13 July to 2 September 2011).

II. PROCEDURE

Title	Less bureaucracy for citizens: Promoting free movement of public documents and recognition of the effects of civil status records
Reference(s)	COM(2010) 747
Legal basis	TFEU 307 (1)
Procedural basis	RoP 39 (a)
Date of Commission letter	14 December 2010
Date of Bureau's decision	3 March 2011
Commission responsible	Commission for Citizenship, Governance, Institutional and External Affairs (CIVEX)
Rapporteur	Patrick McGowan (IE/ALDE), Member of Donegal County Council and Border Regional Authority
Analysis	19 May 2011
Discussed in commission	6 June 2011
Date adopted by commission	18 October 2011
Result of the vote in commission	Adopted by a majority
Date adopted in plenary	14 December 2011
Previous Committee opinions	Own Initiative Opinion on Citizens' Rights: Promotion of Fundamental Rights and Rights Derived from European Citizenship (CdR 78/2008 fin) ³ Opinion of the Committee of the Regions on non-discrimination, equal opportunities and the implementation of the principle of equal treatment between persons (CdR 321/2008 fin) ⁴ Opinion of the Committee of the Regions on Interoperability Solutions for European Public Administrations (ISA) (CdR 10/2009 fin) ⁵ Opinion of the Committee of the Regions on the Stockholm Programme: challenges and opportunities in view of a new multi-annual programme on the EU area of freedom security and justice (CdR 201/2009 fin) ⁶ Opinion of the Committee of the Regions on Youth on the Move (CdR 292/2010 fin) ⁷ Opinion of the Committee of the Regions on the EU Citizenship report 2010 (CdR 355/2010 fin) ⁸

³ OJ C 325, 19.12.2008, p. 76–80.

⁴ OJ C 211, 4.9.2009, p. 90–95.

⁵ OJ C 200, 25.8.2009, p. 58–62.

⁶ OJ C 79, 27.3.2010, p. 37–44.

⁷ OJ C 104, 2.4.2011, p. 26–30.

⁸ OJ C 166, 7.6.2011, p. 3–8.