



European Economic and Social Committee

INT/559
**Free movement of public
documents**

Brussels, 15 June 2011

OPINION
of the
European Economic and Social Committee
on the
**Green Paper – Less bureaucracy for citizens: promoting free movement of public documents
and recognition of the effects of civil status records**
COM(2010) 747 final

Rapporteur: **Mr Hernández Bataller**

On 14 December 2010, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Green Paper – Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records
COM(2010) 747 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 May 2011.

At its 472nd plenary session, held on 15 and 16 June 2011 (meeting of 15 June), the European Economic and Social Committee adopted the following opinion by 127 votes to two, with three abstentions.

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1. Conclusions and recommendations

- 1.1 The EESC welcomes the Commission's Green Paper and recognises the need to facilitate the movement of public documents throughout the European Union, insofar as it makes people's lives easier and helps them exercise their rights more effectively by removing the obstacles currently in place.
- 1.2 The EESC supports the Commission's initiatives to promote the free movement of public documents, since they contribute to the development of European citizenship by strengthening economic and social rights.
- 1.3 The EESC considers that, in connection with civil status records, the Commission should:
 - establish a supranational optional system for the European civil status record,
 - start the work needed to harmonise rules concerning conflicts of law, and
 - while implementing the above measures, establish mutual recognition by identifying the minimum requirements to be met by civil status records and consensus on the presumption of their general validity within the EU, once it has been verified that the relevant authority has issued them lawfully.
- 1.4 The EESC therefore calls on the other institutions and competent bodies of the EU to push forward the Commission's proposals in this area without delay so that, insofar as possible, supranational rules can be adopted during the current legislative period.

- 1.5 It therefore makes sense to call for the widespread use of administrative documents with standard and multi-lingual formats, which could be based on the models used by the CIEC. Among other advantages, this would eliminate the need for the document to be translated in the host country.

2. **Introduction**

- 2.1 The administrative procedures which have to be carried out in order to use public documents outside of the Member State in which they were issued can involve significant costs in terms of time and money for the individual concerned, stemming essentially from the need to authenticate the documents or provide a certified translation thereof.

- 2.1.1 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 take a number of different forms. They can be administrative documents, notarial acts, civil status records, miscellaneous contracts or court rulings.

- 2.1.2 In this connection, the traditional method of authenticating public documents intended to be used abroad is called "legalisation" and, under the ordinary procedure, involves the legalisation of a document by the competent authorities of the country in which it was issued and later by the embassy or consulate of the country in which it is going to be used. The simplified form of this procedure is the "apostille", where the country that issues the document also issues an authentication certificate.

- 2.1.3 Within the framework of the Stockholm programme¹, the European Council called on the Commission to press ahead with measures to guarantee full exercise of the right to freedom of movement and to this end the Stockholm programme action plan provides for two legislative proposals relating to:

- free movement of documents by eliminating legalisation formalities between Member States and;
- 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.

¹ COM(2004) 401 final.

3. **Commission Green Paper**

3.1 The Commission is launching a consultation on matters concerning free movement of public documents and recognition of the effects of civil status records.

3.2 Public documents

3.2.1 The Commission would like to launch a debate on all public documents for which administrative procedures must be carried out so that they can be used outside of the country in which they were issued. These procedures include authenticating the documents or providing a certified translation thereof. The common function of all these documents is to establish evidence of facts recorded by a public authority.

3.2.2 At the moment, administrative formalities such as legalisation and the apostille in EU Member States are characterised by a legal framework that is fragmented because it is based on several sources:

- ü National laws that differ considerably from one another
- ü 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
- ü Fragmented EU law which deals only with certain limited aspects of the matters raised.

3.3 Possible solutions to facilitate free movement of public documents among Member States

3.3.1 Abolition of administrative formalities

It is proposed that the apostille and legalisation for all public documents be abolished in order to ensure that they can circulate freely.

3.3.2 Cooperation between competent national authorities

3.3.2.1 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.

3.3.2.2 The e-Justice portal could inform citizens of the existence of civil status records and their legal implications or arrangements could be made to allow citizens to apply for and obtain a civil status record online using a secure system.

3.3.3 Limiting translations of public documents

Optional standard forms, at least for the most common public documents, could be introduced in a number of administrative sectors in order to cope with translation requests and avoid costs.

3.3.4 The European civil status certificate

This would exist alongside Member States' national civil status records, since it would be optional, not compulsory. The format of the certificate and the information given on it must be standardised using a single support, the European certificate.

3.4 Mutual recognition of the effects of civil status records

3.4.1 Civil status records are records executed by an authority in order to record the life events of each citizen such as birth or filiation.

3.4.2 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 and that the legal status recorded in a civil status record can produce the civil effects connected with the situation.

3.4.3 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.

3.4.4 Secondary law² 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. Furthermore, the EU has no competence to intervene in the substantive family law of Member States, since the Treaty on the Functioning of the European Union does not provide any legal basis for applying such a solution.

3.4.5 The Commission proposes three different solutions to these problems, namely:

3.4.5.1 Assisting national authorities in the quest for practical solutions

The EU's primary role in this area would be to help national authorities to cooperate more effectively.

3.4.5.2 Automatic recognition

Such recognition would not involve the harmonisation of existing rules and would leave Member States' legal systems unchanged, which would mean that each Member State would

² Regulation (EC) No 2201/2003, Article 21(2).

accept and recognise, on the basis of mutual trust, the effects of a legal situation created in another Member State.

3.4.5.3 Recognition based on the harmonisation of conflict-of-law rules

A body of common rules would be created at EU level, enshrining the right which would be applicable to a cross-border situation when a civil status event takes place.

4. **General comments**

- 4.1 The European Commission's Green Paper is justified from a legislative point of view, given the need to optimise and enhance the way in which the Area of Freedom, Security and Justice operates and to forge stronger ties with the exercise of rights granted to individuals as EU citizens and in fundamental economic freedoms.
- 4.2 In this connection, the Committee welcomes the Commission's initiative which, in accordance with the constitutional principles and values and with the objectives of the European Union, as enshrined in the TEU and in the TFEU following the Lisbon Treaty, gives priority to the legal approach that strengthens the role of individuals within the European integration process.
- 4.3 It is therefore up to the institutions and bodies of the European Union to enable the citizens of its Member States and all individuals in general to exercise as far as possible the rights and freedoms of which they are the beneficiaries, within the scope of the treaties and the current legal framework.
- 4.3.1 This will promote more equal treatment, in accordance with the principle enshrined in Article 9 TEU, and help to eliminate obstacles to the exercise of these rights and freedoms which are not justified on grounds of public order and which often protect purely corporate interests (which means possible interference from bureaucrats, notaries, registrars, etc.) or conceal irrational fears linked to the sovereignty of the EU's Member States.
- 4.4 However, the adoption of future measures to eliminate obstacles stemming from administrative or linguistic formalities requires careful consideration of their material scope since, notwithstanding the benefits for the individual in terms of removing obstacles and administrative constraints as well as financial costs and reducing time-limits for the use of public documents by individuals outside of the country in which they were issued, there may be serious legal clashes over the effects of these documents in very sensitive areas such as civil status.
- 4.5 Following this assessment, it would be a good idea to conduct a separate analysis of the viability of such measures, looking at merely procedural and linguistic matters, on the one hand, and more substantive matters concerning the legal situation of individuals, on the other.

- 4.6 Full implementation of the rights of freedom of movement and residence, as well as the freedom of establishment, the freedom to provide services and the free movement of workers in the internal market, among other things, requires adoption of supranational mechanisms and legislative acts which eliminate or restrict to very specific cases the administrative formalities for authenticating public documents.
- 4.6.1 Interference by the authorities of Member States other than the one in which a public document was originally issued often conceals interests which are at odds with EU law and involves discriminatory treatment and unjustified burdens for the individuals concerned.
- 4.6.2 Obviously, public order and safeguarding the financial interests of Member States can be ensured in ways that are less burdensome for the individual and that, in any case, do not affect the rights conferred by EU law. In the event of serious doubt about the authenticity of a document or if a document does not exist in another Member State, the competent national authorities can exchange information and try to find a solution.
- 4.6.2.1 However, the Committee underlines its view that public authorities have an obligation to help people secure, using all possible means, the cross-border regularisation of all public documents attesting to a status or situations which are a condition or requirement for the exercise of rights and freedoms recognised by the EU.
- 4.6.3 This is evidenced by various experiences within the EU, such as:
- administrative cooperation among civil registrars promoted by the eleven Member States party to CIEC Convention No 3³. The satisfactory results of such cooperation provide sound justification for the Committee to call for all EU Member States to sign this convention in the run-up to the expected adoption of supranational rules in this area;
 - exchange of information on professional qualifications using the electronic Internal Market Information system (IMI);
 - gradual automation and abolition of the "exequatur" as part of the widespread use of electronic procedures, e-Justice, etc.
- 4.6.3.1 In light of these experiences, it makes sense for the Commission to link its legislative proposal in the Green Paper on the free movement of public documents to other initiatives such as Digital Europe and e-2020. The EESC believes that this would be a good opportunity to promote the creation of a network of civil registers, which would facilitate application of the principle of presenting documents on just one occasion, thereby simplifying all administrative procedures.

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According to this convention, 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.

- 4.6.3.2 The EESC believes that it might also be worth exploring the possibility of creating in the near future an electronic database containing models of the public documents most commonly issued by Member States. The database would be managed by the European Commission and would be aimed at facilitating the mutual recognition and automatic validation of such documents throughout the EU, with the corresponding versions in all official EU languages.
- 4.6.4 Similarly, experiences in other areas of EU policy show that it is possible to use documents drawn up using identical or similar formats, techniques and materials, such as the European passport⁴ and the support documents provided for under Article 20(2)(c) TFEU; the model driving license for cars and motorcycles in its various forms, etc.
- 4.6.5 It therefore makes sense to call for the widespread use of administrative documents with standard and multi-lingual formats, which could be based on the models used by the CIEC. Among other advantages, this would eliminate the need for the document to be translated in the host country.
- 4.7 It goes without saying that closer administrative cooperation and the issuing of documents that are valid in all EU Member States are feasible objectives in an atmosphere of mutual trust, if not mutual respect, and are clearly desirable if the exercise of the abovementioned EU citizenship rights and fundamental economic rights is to be made easier. Adopting European rules which are fully applicable in all Member States is an institutional task which falls within the EU's remit and is necessary with a view to deepening the integration process.
- 4.8 However, the question of providing documentary evidence of civil status involves more complex issues which require the exploration of various alternatives under legislative policy.
- 4.8.1 What is important is to find a joint solution, perhaps the adoption of a European civil status certificate, to the current problem of civil status certificates issued by the competent authorities of Member States not recognising personal situations equally and their effects not being fully acknowledged in those countries.
- 4.8.2 The various legal, cultural and religious traditions of Member States create unequal elements in an individual's legal situation. This gives rise to a disparity, from "no impediment" requirements in some countries as a precondition for marriage, through recognition of same-sex marriages, to the establishment of the order of surnames or establishment of gender following a sex change.
- 4.9 Given that it is currently the Member States that have powers in this area, that the Lisbon Treaty does not provide specific legal bases to promote supranational legislative harmonisation measures on the matter and that, contrary to the provisions of Article 77(3)

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[OJ C 241 of 19.9.1981 and C 179 of 26.7.1982.](#)

TFEU regarding visas and other short-term residence permits, there is no clause compensating for the absence of clear jurisdiction, strict adherence to the subsidiarity principle is required.

- 4.10 Consequently, the hypothetical application of the principle of mutual recognition using any type of supranational legislation based on the general provisions of Article 81(1) TFEU, should be considered in light of the special legislative procedure under Article 81(3) TFEU which requires the participation of the Member States' national parliaments.
- 4.10.1 In this respect, it would not be a good idea to carry out a detailed examination or a biased assessment of the legal options to be pursued by the European Union depending on the type of civil status situation to be recognised, given that it would probably be more feasible to apply it to filiation, adoption or the order of an individual's surnames than to recognition of marriage.
- 4.10.2 In short, irrespective of the legislative option promoted by the European Union and the time required to adopt it, immediate support should be given to individuals requiring recognition of a legal situation or the effects of a civil status certificate by developing binding European rules or guidelines, which help the competent authorities of Member States to provide consistent, flexible solutions which do not discriminate on the basis of nationality.
- 4.11 Given the urgent need to facilitate the movement of public documents, the Members States and institutions of the EU should support the Commission's initiatives to promote the free movement of public documents and establish an optional supranational system for the European civil status certificate while starting the work needed to harmonise rules on conflicts of law. In the meantime, they should establish mutual recognition by identifying the minimum requirements to be met by civil status records and consensus on the presumption of their general validity within the EU, once it has been verified that the relevant authority has issued them lawfully.

- 4.12 With a view to ensuring that future measures adopted by the EU on the free movement of public documents are as effective as possible, the Committee calls on the Commission to consider the feasibility extending the scope, in its future legislative proposals, to cover citizens from the European Economic Area and from third countries with which the EU has signed association agreements currently in force (on a reciprocal basis with citizens from the Member States), and long-term residents from third countries who are legally established or domiciled in an EU Member State.

Brussels, 15 June 2011.

The President
of the
European Economic and Social Committee

Staffan Nilsson
