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signed by Mr Jordi AYET PUIGARNAU, Director

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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT
Accompanying the document Proposal for a Regulation on promoting the free
movement of citizens and businesses by simplifying the acceptance of certain
public documents in the European Union and amending Regulation (EU) No
1024/2012

Delegations will find attached Commission document SWD(2013) 145 final.

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COMMISSION STAFF WORKING DOCUMENT
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Accompanying the document

Proposal for a

Regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012

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COMMISSION STAFF WORKING DOCUMENT

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1. PROBLEM DEFINITION

If EU citizens and businesses want to exercise their free movement rights or internal market freedoms by choosing to reside or do business in another Member State, they face difficulties when producing the required public documents and getting them accepted by that Member State. They have to undergo disproportionate and burdensome administrative formalities to prove the authenticity of various public documents and fight legal uncertainty. These formalities are legalization, Apostille as well as certified copies and certified translations.

The aim of this measure is twofold:

- (1) to reduce legal uncertainty, costs and lengthy procedures caused by the above-mentioned formalities complicating the exercise of the EU citizens' right to free movement and EU businesses' internal market freedoms; and
- (2) to provide necessary safeguards preventing the use of forged public documents within the EU.

The principal function of public documents is to provide factual proof of the acts of a public authority recorded therein. While domestic public documents are presumed to be authentic without additional proof, public documents originating from other Member States are accepted in the Member State in which they are presented subject to proof of authentication through Apostille or legalisation or a particular form, i.e. certified copies and certified translations.

Typical examples of public documents related to EU rights of EU citizens and businesses, which are subject to the identified administrative formalities, are

- Civil status records (e.g. documents relating to birth, death and marriage);
- Documents relating to residence, citizenship and nationality;
- Documents relating to real estate;
- Documents relating to legal status and representation of a company or other undertaking;
- Documents relating to intellectual property rights;
- Documents proving the absence of a criminal record.

The formalities of legalisation, Apostille, certified copies and certified translations are outdated and disproportionate mechanisms to establish the authenticity of public documents, whereas more effective mechanisms could be identified in cases of reasonable doubt which would allow consolidating mutual trust between the Member States within the Single Market.

The existing EU and international law instruments do not provide satisfactory solutions for an easier acceptance of public documents in the Member States.

The EU law addresses the issue of authenticity of public documents on a sectoral basis, sometimes explicitly, but generally in an inconsistent manner. Overall, three approaches can be distinguished:

- (1) the relevant instrument of EU law explicitly exempts the documents from the authentication requirement (e.g. civil justice instruments for judicial documents);
- (2) the relevant instrument of EU law contains no explicit reference to authentication, but provides for other means to verify the authenticity of public documents originating in other Member States (e.g. mutual recognition of professional qualifications); and
- (3) the instrument contains neither an explicit reference to the abolition of authentication, nor does it provide alternative means to this end (e.g. free movement of persons).

As regards certified copies and certified translations, there are examples in the existing EU law (e.g. Directive 2006/123/EC on services in the internal market) which provide that Member States may not require a document to be produced in its original form, or as a certified copy or as a certified translation.

There is, in addition, a vast body of international law instruments applying diverging approaches to these aspects of public documents, including the Hague Apostille Convention, the Brussels Convention abolishing the legalisation of documents in the Member States and different Conventions of the International Commission on Civil Status.

Nevertheless, those instruments have proved insufficient for achieving the desired facilitation of administrative burdens for EU citizens and businesses and thus still limit the exercise of fundamental rights. Due to the above mentioned shortcomings, EU citizens and businesses are in many situations still faced with time-consuming and costly procedures.

It can be estimated that over the course of one year, the cost for EU citizens and businesses for obtaining Apostille for intra-EU use amounts to over € 25 million. The estimated overall annual costs for obtaining legalisation of public documents can be between € 2.3 and € 4.6 million. In addition, annual costs for certified copies for EU citizens and businesses can be estimated in the order of € 75 – 100 million. The overall costs of certified translations for EU citizens and businesses can amount to € 100-200 million per year.

For all these reasons, a horizontal approach is required in order to facilitate and enhance the exercise of the right of EU citizens to free movement and of the right of EU businesses to freedom of establishment and freedom to provide services within the Single Market.

2. ANALYSIS OF SUBSIDIARITY

The **EU is better placed than the Member States** to take action to abolish legalisation and Apostille and to simplify the requirement of certified copies and certified translation and, at the same time, to ensure EU cross-border and cross-sector framework for a more effective level of detection of frauds and forgery of public documents.

An EU level action would help EU citizens and businesses to use different categories of public documents in cross-border situations without disproportionate, burdensome and costly administrative formalities. For these reasons, EU action would ensure **higher efficiency**.

The adoption of a directly applicable simplifying measure containing horizontal principles on the free circulation of public documents between the Member States demonstrates the **clear added value** of an EU action.

Action at EU level would respect the **proportionality principle** by focusing only on the abolition and simplification of the identified administrative formalities.

3. MAIN POLICY OBJECTIVES

Based on the problem definition, the following general and specific objectives can be identified:

General objective:

- Facilitate and enhance the full exercise of EU free movement rights by EU citizens and businesses.

Specific objectives:

- Reduce difficulties caused by administrative formalities for the acceptance of public documents originating in other Member States.
- Simplify the fragmented legal framework regulating the circulation of public documents between the Member States.
- Ensure a more effective level of detection of fraud and forgery of public documents.
- Eliminate risks of discrimination among EU citizens and businesses.

4. POLICY OPTIONS

Five options and seven sub-options under policy option 4 have been considered in detail:

Policy Option 1: **Retention of the status quo** (base-line scenario).

Policy Option 2: **A non-legislative measure promoting best practices between the Member States in order to facilitate cross-border circulation of public documents.**

Policy Option 3: **Ratification of the 1987 Brussels Convention by all Member States** encouraged by the Commission, i.e. the abolition of legalisation and Apostille for a wide range of public documents and the use of an administrative cooperation as established in the Convention.

Policy Option 4: **A legislative measure promoting the free movement of citizens and businesses by simplifying administrative formalities related to the use and acceptance of certain public documents in the EU, complemented by improved administrative cooperation between the Member States and issuance of multilingual standard forms.**

This instrument would abolish legalisation and Apostille and the scope of the initiative would be further broadened by adding provisions simplifying the cross-border use of certified copies and certified translations.

The improved administrative cooperation can be addressed by three sub-options:

Sub-option 4A: Administrative cooperation as foreseen under the policy option 3.

Sub-option 4B: Administrative cooperation based on the Internal Market Information System (IMI) in cases of reasonable doubt on the authenticity of public documents.

Sub-option 4C: The creation of a network of civil registers, built on the European Civil Registry Network (ECRN).

The multilingual standard forms can be addressed by four sub-options:

Sub-option 4D: Retention of the status quo, meaning no standard forms would be introduced.

Sub-option 4E: The introduction of compulsory standard forms for the use in a concrete cross-border case.

Sub-option 4F: The introduction of optional standard forms as annexes to national public documents for the purpose of their use in other Member States.

Sub-option 4G: The introduction of optional standard forms used independently in cross-border cases. The corresponding national public document would continue to exist at national level.

Policy option 5: Full harmonisation of public documents and rules governing their circulation within the EU.

5. ASSESSMENT OF THE POLICY OPTIONS' IMPACTS

Policy option 1: No effect of this policy option in terms of effectiveness in meeting the objectives is expected.

Policy option 2: The effectiveness of this policy option is deemed to be very low. Notwithstanding the indirect positive effect due to the reduction of delays in checking public documents originated in other Member States and better exchanges of information, the existing administrative formalities would remain and the legal framework would still be fragmented. Moreover, very low positive impact on the detection of fraud is to be expected.

Policy option 3: This policy option would not guarantee an improvement to the current situation because there is no legal obligation for the Member States to ratify that Convention. If and when ratified by all Member States, then positive impact on the full enjoyment of EU citizens' right to free movement and EU businesses' internal market freedoms due to the abolishment of legalisation and Apostille in cross-border circulation of public documents. The overall added value of this policy option for facilitating the full exercise of EU free movement rights is very limited, as certified copies and certified translations could still be required without exception.

Policy option 4: The policy option is expected to have a high positive impact in terms of effectiveness resulting from abolishing legalisation and Apostille and the additional simplification of certified copies and certified translations. As a result, the circulation of public documents between the Member States would be significantly and effectively supported and intra-EU mobility of EU citizens and businesses enhanced. This would lead to annual savings for EU citizens and businesses between € 25.8 million and € 26.2 million on

Apostilles and between € 2.3 and € 4.6 million on legalisation. There will be additional savings due to the simplification of certified copies in the order of € 100 – 200 million per year. Moreover, the removal of certified translations would also save costs between € 75 – 100 million annually for EU citizens and businesses, bearing in mind that the related cost for one page is € 30. The annual net cost savings for the Member State administrations could be estimated between € 5 million and € 7 million on Apostilles and between € 500.000 and € 1 million on legalisations.

Improved administrative cooperation

Sub-option 4A: The effectiveness of this sub-option would be low since there is no electronic support to this type of administrative cooperation and its efficiency would depend on the discretion of the Member States.

Sub-option 4B: This sub-option would have, in cases of reasonable doubt about the authenticity of a public document originating in another Member State, a positive impact in terms of effectiveness. The existing IMI provides for fast and secure communication channels for cross-border information exchanges and electronic versions of public documents. In addition, through the administrative cooperation and the secure exchange of information under IMI, a positive impact on fraud is expected. Furthermore, to provide certainty as regards certified copies, the authorities would have the same mechanism at their disposal.

Sub-option 4C: The positive effects for civil registrars, who could communicate between each other directly in case of doubt about the authenticity of a public document, would only be limited to one category of public documents, namely civil status documents. High negative economic impact and compliance costs at EU and Member State level through the establishment and operation of a new IT system.

Multilingual standard forms

Sub-option 4D: There would be no effects in terms of effectiveness in meeting the objectives.

The effectiveness of sub-option 4E is deemed to be medium positive as some difficulties and costs related to the translation and understanding of public documents originating in other Member States would remain.

The effectiveness of sub-option 4F is considered to be as high as of sub-option 4E. However, the use of these standard forms would depend on the discretion of the users and the system might appear too complex. In addition, costs might incur due to the need to provide copies of national public documents to which these forms would be attached.

The sub-option 4G is expected to have a high positive impact on EU citizens and businesses in terms of increased practical benefits and reduced difficulties when presenting public documents in cross-border scenarios.

Policy option 5: The expected impact in achieving objectives under this 'extreme' policy option would be limited, most importantly because it would have excessive intrusive impact on the national legal systems and administrative practices. Despite possible benefits for EU citizens and businesses in terms of costs, time, legal certainty and facilitation of their Treaty and Charter rights, there would be undoubtedly difficulties as regards the acceptability of the fully harmonised public documents in the Member States. Another associated disadvantage of this policy option would be its high compliance cost both at national and EU level.

6. THE PREFERRED OPTION

A comparative assessment of the impacts indicates that the legislative measure abolishing legalisation and Apostille and simplifying the use of certified copies and certified translations (policy option 4), combined with an improved administrative cooperation between the Member States through a modern communication network based on the existing Internal Market Information System (sub-option 4B) and the development of multilingual standard forms used independently in cross-border cases (sub-option 4G) would be the most effective in achieving the identified objectives.

The preferred policy option 4 is the most suitable means to achieve the policy objectives without high implementation costs, including a considerable reduction of disproportionate and burdensome administrative formalities for EU citizens and businesses. In particular, high savings due to the abolition of legalisation or Apostille and the simplification of certified copies and certified translations can be expected for EU citizens and businesses, while none of the alternative options would result in an equal level of savings.

The preferred sub-option 4B, which results in using existing IT infrastructure with minimal budgetary impact, would represent an effective and secure means for assessing the authenticity of public documents or their certified copies, preventing fraud and forgery, and, at the same time, for simplifying the administrative burdens placed on EU citizens and businesses. Through secure electronic means and reduced language barriers it would be easy to identify the relevant interlocutors in other Member States. The preferred sub-option 4G would lead to cost and time savings for EU citizens, businesses and national public officials, favour the mutual understanding of public documents across the Member States, reduce the remaining translations requirements as multilingual forms would exist, and allow the parallel existence of the underlying national public documents at Member State level.

As regards the legislative form of the instrument, a Regulation appears as the most appropriate taking into account both the problems and objectives identified.

7. MONITORING AND EVALUATION

Providing for a solid monitoring and evaluation mechanism is crucial to ensure that the rules in the instrument are complied with in practice. A transitional period will be provided in the instrument in order to allow Member States to prepare for its implementation and communicate to the Commission the requested information. A review clause will also be inserted in the instrument in order to evaluate its application by the Member States and ensure the possibility for follow-up amendments.