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#### NOTE

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From:	Presidency
To:	Council
No. prev. doc.:	6599/15 JUSTCIV 37 FREMP 31 CODEC 256
No. Cion doc.:	9037/13 JUSTCIV 108 FREMP 70 CODEC 952 + ADD 1 (en) + ADD 2
Subject:	Proposal for a Regulation of the European Parliament and of the Council 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 <b>(First reading)</b> - Partial General approach (on the provisions)

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#### I. INTRODUCTION

1. On 26 April 2013 the Commission submitted its proposal for a Regulation of the European Parliament and of the Council 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.
2. The European Parliament adopted its report on the proposal on 4 February 2014<sup>1</sup>.

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<sup>1</sup> 5905/14.

3. The Council (Justice and Home Affairs), at its meeting on 4 and 5 December 2014, adopted a set of orientation guidelines on certain key elements of this proposal, as set out in 15843/14, to serve as a basis for continuing the more detailed technical discussions at Working Party level.
4. The Latvian Presidency has placed the Regulation on legalisation at the top of its agenda; five meetings of the Civil Law Working Party (Legalisation) have already taken place in 2015. On the basis of the orientation guidelines approved by the Council in December 2014, substantial progress has been made in the discussions in the Civil Law Working Party during January and February 2015.
5. In light of that progress, the Presidency takes the view that a partial general approach can be achieved on the text of Chapters I, II, III, V and VI as presented in Addendum 1 to this note<sup>1</sup>. The remaining Articles<sup>2</sup>, the recitals and the multilingual standard forms set out in the Annexes still remain subject to further discussion.
6. The Presidency remains confident that the Member States are willing to accept this compromise solution to allow further progress on this file during the first half of 2015.
7. Coreper has already examined the text at its meetings on 25 February and on 4 March. Some adjustments have been made to the text as a result of those discussions.
8. The Presidency submits to the Council a final compromise proposal, as set out in Addendum 1 to 6812/15, for the adoption of a partial general approach.

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<sup>1</sup> The Presidency suggests this compromise solution in the understanding that taking into account the interlinked nature of the articles in this Regulation, the text proposed for a partial general approach may be subject to further technical revision in the light of ongoing discussions on the rest of the proposal.

<sup>2</sup> Articles 1(2), 6, 6a, 6b, 6c, 20[x](1)(a), 20b and 22

## II. SPECIFIC ELEMENTS OF THE COMPROMISE

### A. Chapter I - Subject matter, scope and definitions

#### a) *Subject matter (Article 1)*

9. The Presidency suggests providing for a system of dispensation from legalisation or similar formality between the Member States in respect of certain public documents issued by the authorities of the Member States.
10. In addition, persons must continue to be able to use any other system existing between the Member States, as stipulated in Article 1(1a).
11. This suggested solution has been designed as a response to the concerns expressed during the discussions at technical level by certain Member States, which wish to allow a person to optionally use other systems applicable in a Member State on legalisation or similar formality, including the choice to use the apostille system set up under the 1961 Apostille Convention. This solution also allows for the continued use of possible bilateral agreements between the Member States under the conditions defined in Article 18.

#### b) *Scope (Article 2)*

12. As set out in the orientation guidelines endorsed by the Council in December 2014, the scope of the proposed Regulation should be narrowed to cover civil status matters only.
13. The aim in the December 2014 orientation guidelines was to define only the *areas* covered by the proposal. Each individual item within each of the areas would still be examined in detail at technical level taking into account the national situation in each Member State.

14. During the discussions in the Civil Law Working Party in 2015, the scope of the proposal has been examined in further detail. The Presidency has also asked the Member States to provide a list of national public documents falling under the scope of the proposal.
15. As a result of these discussions, the scope has been redefined by adding certain types of public documents to the initial Commission proposal.
16. Based on the results of this technical examination at Working Party level, the Presidency suggests as a compromise the text of Article 2 and the relevant footnotes as set out in Addendum 1.

*c) Definitions (Article 3)*

17. Discussions at technical level on the definitions of public documents as contained in Article 3 have continued on the basis of the orientation guidelines endorsed by the Council in December 2014.
18. The Presidency has tried to find a commonly acceptable solution which would also encompass the concepts of public documents as defined in the 1961 Apostille Convention.
19. The Presidency suggests the compromise solution as set out in the Addendum regarding Article 3.

## **B. Chapter III - Requests for information and administrative cooperation**

### *d) Internal Market Information system (Articles 8 and 8a)*

20. The Civil Law Working Party has discussed extensively the possible options for a verification mechanism at EU level when public documents are being presented in cross-border situations between the Member States and there is a reasonable doubt as to their authenticity.
21. The Presidency suggests using the Internal Market Information (IMI) system proposed by the Commission as the electronic tool for administrative cooperation between the Member States' authorities in the area of civil status as set out in Addendum 1.
22. In addition, as set out in Article 21(1)(c), the Presidency suggests reviewing at a later stage the issue of the use of electronic systems for the direct transmission of public documents and the exchange of information between Member States.

## **C. Chapter V - Relations with other instruments**

### *e) Article 18*

23. In the light of the discussions in the Civil Law Working Party, it has become clear that the system to be set up under this Regulation has to accommodate the concerns expressed by several Member States who wish to give the persons the choice to continue using other multilateral or bilateral Conventions in this field, in particular the ICCS Conventions or - for example - the 1961 Apostille Convention.
24. Therefore the Presidency suggests firstly, as a compromise solution as set out in Article 18(1), that it be made clear that this Regulation will not affect the application of international conventions to which one or more Member States are party at the time of adoption of this Regulation and which concern matters covered by this Regulation.

25. Secondly, the Presidency suggests that this Regulation should, in relation to matters to which it applies and to the extent stipulated in it, prevail over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States, in relations between the Member States party thereto.
26. Thirdly, the Presidency considers that it should be made clear that this Regulation shall not preclude the Member States from negotiating, concluding, acceding to, amending and applying international agreements and arrangements with third States in the area of legalisation or similar formality of public documents covered by this Regulation, nor from deciding on accessions by new Contracting Parties to such agreements and arrangements.
27. Therefore, the Presidency suggests adding a specific paragraph in Article 18 and a specific recital which clarifies the situation, in particular, with regard to the 1961 Apostille Convention and the 1968 Convention on diplomatic and consular documents<sup>1</sup>. In order to allow the Member States and the Commission more time for internal reflection as to how best to accommodate this solution, it is suggested to finalise the technical discussions at Working Party level after the Council meeting on 12 and 13 March.
28. Therefore, as the intention is now to solve the issue of the external competence of the Union in matters relating to legalisation or similar formality in the area covered by this Regulation in the body of the Regulation itself, the Presidency is of the view that this solution should give the necessary safeguards to the Member States. As a consequence, the Presidency considers that the need for a political declaration in this context should be reassessed.

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<sup>1</sup> Corresponding technical adjustments have been made in the new version of Article 18 as suggested by the Presidency in Addendum 1.

29. However, as part of the overall compromise package and in response to the Member States' concerns regarding this issue, the Presidency suggests, as part of the partial general approach, continuing to reflect until June 2015 on the need to submit a joint political declaration of the Council and the Commission on the external competence in matters relating to legalisation or similar formality in the area covered by this Regulation at the time of adoption of this Regulation<sup>1</sup>.

### III. CONCLUSION

30. The Council (Justice and Home Affairs) on 12 and 13 March 2015 is invited as an overall compromise solution:

a) to agree on a partial general approach as set out in Addendum 1 to 6812/15

b) to agree that the technical work on the new provision in Article 18 and the corresponding recital should continue at Working Party level after the Council meeting; and

c) to agree that reflection on the need for a joint political declaration by the Council and the Commission on the issue of external competence of the Union in matters relating to legalisation or similar formality in the area covered by this Regulation should continue until June 2015.

31. The Council is also invited to agree that the work at technical level should continue with a view to reaching a general approach on the body of the Regulation in June 2015.

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<sup>1</sup> In case the Member States still consider it necessary, the key elements of such a declaration should be agreed prior to any general approach on the text, which should take place at the Council (Justice and Home Affairs) in June 2015.