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From:	Presidency
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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 (First reading) - Recitals

1. Delegations will find in the Annex the text of the recitals which the Presidency proposes as a compromise with a view to the adoption of a general approach by the Council (JHA) at its meeting on 15 and 16 June 2015.
2. In comparison with the Commission proposal, all deletions are marked by (...) and newly inserted text is **in bold**.

Proposal for a

REGULATION (EU) ... /2015

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on promoting the free movement of citizens [...] by simplifying the [...] requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 21(2) (...) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured. In order (...) **to ensure the free movement of public documents within the Union and, thereby, promote the free movement of Union citizens (...)**, the Union should adopt concrete measures simplifying the existing administrative (...) **requirements** related to the (...) **presentation in a Member State** of certain public documents **issued by the authorities of another Member State.**

¹ OJ C , , p. .

- (1a) All Member States are Contracting Parties to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (the "Apostille Convention"), which introduced a system of simplified circulation of public documents issued by Contracting Parties to that Convention.**
- (2) (...)**
- (2a) In accordance with the principle of mutual trust and in order to promote the free movement of persons within the Union, this Regulation should set out a system of further simplification of administrative formalities for the circulation of certain public documents and their certified copies when issued by a Member State authority for presentation in another Member State.**
- (2b) The system set out in this Regulation should be without prejudice to persons being able to continue to benefit, if they so wish, from other systems exempting public documents from legalisation or similar formality applicable between Member States. In particular, this Regulation should be regarded as a separate and autonomous instrument from the Apostille Convention.**

- (2c) **Coexistence between the system set out in this Regulation and other systems applicable between Member States should be safeguarded. As regards the Apostille Convention, while authorities of Member States must not require an apostille when a person presents to them a public document issued in another Member State, this Regulation should not prevent Member States from issuing an apostille when a person chooses to request it. Moreover, this Regulation should not prevent a person from continuing to use in one Member State an apostille issued in another. This implies that the Apostille Convention could still be used, at the person's request, in relations between Member States. Where a person requests an apostille on a public document covered by this Regulation the issuing national authorities should inform that person that the system set out in this Regulation does not require an ex-ante authenticity check and that an apostille is no longer necessary if the document is intended to be presented in another Member State or, where this is not possible, make that information available through any available means.**
- (3) (...)
- (4) (...)
- (5) (...) **This Regulation should cover public documents (...) issued by the authorities of (...) a Member State (...) in accordance with the national law thereof the primary purpose of which is to establish one of the following facts: birth, death, name, marriage, including capacity to marry and marital status, divorce, legal separation or marriage annulment, (...) registered partnership, including capacity to enter into a registered partnership and registered partnership status, dissolution, legal separation² or annulment of a registered partnership, parenthood, adoption, domicile and/or residence, (...) or nationality (...). This Regulation should not oblige Member States to issue public documents that do not exist in accordance with their national law.**

² Therefore Article 2(1) point (d3) set out in document 6812/15 ADD1 should read as follows: "(d3) dissolution, legal separation or annulment of a registered partnership."

(5a) For the purposes of this Regulation, the concept of "notarial act" should be interpreted as referring to an instrument or certificate drawn up by a notary that sets out or perfects a legal obligation or formally records or verifies a fact or something that has been said, done or agreed; this instrument or certificate, when authenticated by the signature and official seal of the notary, is a public document under Article 3 (1) (iii) of the Regulation.

In cases where the term "notarial act" does not refer to an instrument or certificate drawn up by a notary, but rather to a function that the notary is authorised to perform under national law, such as taking an acknowledgment or administering an oath, documents certifying the performance of the function (e.g. jurats and acknowledgments) are not "notarial acts" for the purposes of Article 3 (1) (iii) of the regulation; instead, documents issued by notaries should fall under Article 3 (1) (iv).

(5b) This Regulation should also apply to certified copies of public documents made by a competent authority of the Member State in which the original public document was issued. However, this Regulation should not cover copies of certified copies.

(5c) This Regulation should also cover electronic versions of public documents and multilingual standard forms suitable for electronic exchange. However, each Member State should decide in accordance with its national law whether and under which conditions public documents and multilingual standard forms in electronic format may be presented.

(5d) This Regulation should not apply to passports and identity cards issued in a Member State as these documents are not subject to legalisation or similar formality when presented in another Member State.

- (5e) **This Regulation, and in particular the mechanism of administrative cooperation set out herein, should not apply to civil status records issued on the basis of the relevant International Commission on Civil Status ("ICCS") Conventions.**
- (5f) **The category of public documents the primary purpose of which is to establish an individual's name should also be regarded as including public documents on a change of name.**
- (5g) **The concept of "marital status" should be interpreted as referring to an individual's status of being married, separated or unmarried, including being single, divorced or widowed.**
- (5h) **The concept of "parenthood" should be interpreted as meaning the legal relationship between a child and the child's parents.**
- (5i) **For the purposes of this Regulation, the concepts of "domicile", "residence" and "nationality" should be interpreted in accordance with national law.**
- (5j) **Simplification of the requirements for presenting in a Member State (...) public documents (...) issued in another Member State (...) should bring tangible benefits to Union citizens (...). Because of their different legal nature, documents (...) issued by private persons should be excluded from (...) the scope of this Regulation. Public documents (...) issued by authorities of third (...) countries should likewise fall outside the scope of this Regulation, including when they have already been accepted as authentic by the authorities of a Member State. The exclusion of public documents issued by the authorities of third countries should extend to certified copies made by the authorities of a Member State of public documents issued by the authorities of a third country.**

- (6) The aim of this Regulation is not to change the substantive law of the Member States relating to birth, death, name, marriage, **divorce, legal separation or marriage annulment, registered partnership, dissolution, legal separation or annulment of a registered partnership**, parenthood, adoption, **domicile and/or residence, or (...) nationality (...)**. **Furthermore, this Regulation should not affect the recognition in one Member State of the legal effects relating to the content of a public document issued in another Member State.**
- (7) In order to promote the free movement of **Union** citizens (...), the (...) public documents **covered by this Regulation and their certified copies** should be exempted from all forms of legalisation or similar formality.
- (8) Other formalities (...), namely the requirement to provide **in each instance** certified copies and certified translations **of public documents**, should also be simplified to further facilitate the (...) **circulation** of public documents between the Member States.
- (8a) (...) **In order to overcome language barriers and thereby further facilitate the circulation of public documents between the Member States**, multilingual standard forms should be established in **each of the** official languages of the **institutions of the** Union for public documents concerning birth, death, marriage **and** registered partnership (...).
- (8b) **The exclusive purpose of the multilingual standard forms should be to facilitate the translation of the public documents to which they are attached. Hence they should not circulate autonomously between the Member States. They should not have the same purpose nor pursue the same objectives as extracts or verbatim copies of civil status records, multilingual extracts from civil status records, multilingual and coded extracts from civil-status records or multilingual and coded civil-status certificates established by ICCS Convention No. 2 on the issue free of charge and the exemption from legalisation of copies of civil status records, ICCS Convention No. 16 on the issue of multilingual extracts from civil status records and ICCS Convention No. 34 on the issue of multilingual and coded extracts from civil civil-status records and multilingual and coded civil-status certificates.**

- (8c) **The multilingual standard forms should reflect the content of the public documents to which they are attached and should eliminate, to the extent possible, the need for a translation of those public documents. However, for a number of public documents the content of which may not be properly reflected in a multilingual standard form, such as certain categories of court decisions, this objective is not reasonably achievable. The Member States should communicate to the Commission the public documents to which multilingual standard forms may be attached as a suitable translation aid. The Member States should endeavour to attach a multilingual standard form to the greatest possible number of public documents.**
- (8d) **The person presenting a public document accompanied by a multilingual standard form should not be required to produce a translation of the public document. However, the authority to which the public document is presented should ultimately decide whether the information included in the multilingual standard form is sufficient for the purpose of processing the public document.**
- (8e) **The authority to which a public document is presented may require, where necessary for the purpose of processing the public document, the person presenting that public document accompanied by a multilingual standard form also provide a translation or a transliteration of the content of the multilingual standard form into the official language of its Member State or, if that Member State has several official languages, the official language or one of the official languages of the place where the public document is presented which correspond to one of the official languages of the institutions of the Union.**
- (8f) **Multilingual standard forms should be issued upon request to persons (...) entitled to receive the (...) public documents (...) to which the multilingual standard forms are to be attached. (...) Multilingual standard forms should not produce legal effects as regards the recognition of their content in the Member States where they are presented.**

- (8g) **When completing a multilingual standard form to be attached to a specific public document, the authority issuing that form should be able to select from the model multilingual standard form only the country-specific entries which are relevant for the public document concerned, so that the multilingual standard form will contain only the information included in the public document to which the form will be attached.**
- (8h) **It should be possible to embed the electronic version of a multilingual standard form from the European e-Justice Portal in a different location, available at national level, and to issue it from that other location.**
- (8i) **The Member States should have the possibility to build electronic versions of multilingual standard forms using a technology other than the one used by the European e-Justice Portal, provided that the multilingual standard forms issued by the Member States using that technology contain the information required by this Regulation.**
- (9) Appropriate safeguards for the prevention of fraud and forgery of public documents **and of their certified copies** circulating between the Member States should be established.
- (10) In order to allow for fast and secure cross-border information exchanges and to facilitate mutual assistance, this Regulation should establish **an effective mechanism of administrative cooperation** between the authorities designated by the Member States. **The use of that mechanism of administrative cooperation (...) should strengthen mutual trust between the Member States within the internal market and** should be based on the Internal Market Information System ("IMI"), established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council³.

³ Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

- (11) Regulation (EU) No 1024/2012 should therefore be amended in order to add **certain provisions of this Regulation** to the list of provisions that are implemented by means of (...) **IMI as set out in the Annex to Regulation (EU) No 1024/2012.**
- (11a) **In order to guarantee a high level of security and data protection in the context of the application of this Regulation and to prevent fraud, the Commission should ensure that the IMI system guarantees the security of public documents and provides a safe means of electronic transmission of those documents. The Commission should make a tool available in IMI that certifies information exchanged through the system when exported outside the system. Furthermore, the authorities exchanging information regarding public documents should take the necessary measures to ensure that, in line with Regulation (EU) No 1024/2012, the public documents and the personal data exchanged through IMI are collected, processed and used for purposes in line with those for which they were originally transmitted. Regulation (EU) No 1024/2012 sets out the necessary provisions to ensure the protection of personal data and a high level of security and confidentiality of information exchanges in IMI and defines the responsibilities of the Commission in this regard. Regulation (EU) No 1024/2012 also stipulates that IMI actors shall exchange and process personal data only for the purposes defined in the Union law on which the exchange is based and in line with the purpose for which they were originally transmitted.**

- (11b) Directive 95/46/EC of the European Parliament and of the Council⁴ governs the processing of personal data carried out in the Member States in the context of this Regulation and under the supervision of the public independent authorities designated by the Member States. Any exchange or transmission of information and documents by **the authorities of the** Member States (...) should be in accordance with Directive 95/46/EC. Furthermore, such exchanges and transmissions should serve the specific purpose of verifying the authenticity of public documents by **those** authorities through (...) **IMI** and only within the sphere of their competences in each individual case. **This should not preclude Member States from applying their laws and regulations concerning public access to official documents.**
- (11c) **The authorities of the Member States should provide each other with mutual assistance in order to facilitate the implementation of this Regulation, in particular as regards the application of the mechanism for administrative cooperation between Member States where the authorities of the Member State to which a public document or its certified copy is presented have a reasonable doubt as to the authenticity of the public document or its certified copy.**

⁴ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 319.).

- (12) **Where the authorities of (...) the Member State (...) to which a public document or its certified copy is presented (...) have a reasonable doubt as to the authenticity of these documents, they should have the possibility to check the templates of documents available in the repository of IMI and, if a doubt remains, to submit requests for information through IMI to the relevant authorities of the Member State where (...) those documents were issued, either by (...) sending the request directly to the authority that issued the public document or made the certified copy, or by contacting the central authority of (...) that Member State (...). (...) The requested authorities should reply to such requests within the shortest possible period of time and in any case within a period not exceeding (...) five working days or 10 working days when the request is processed through the central authority. The time limit of 10 working days may in particular cover situations where the requested authorities are not yet registered in IMI. When those time limits cannot be complied with, an extension of the time limit should be agreed upon between the requested authority and the requesting authority.**
- (12a) **For the purposes of calculating time limits as provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council⁵ should apply.**
- (12b) **In exceptional circumstances Member States' authorities may not be able to verify the authenticity of a public document. That should occur only where, due to circumstances such as, for example, the physical destruction or loss of copies of national documents (e.g. due to destruction of archives of a certain civil status office or a court) or the absence of a register, their verification may not be possible. Therefore, there should be a reply option in the IMI system which reflects this possibility.**

⁵ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

- (12c) If the reply (...) **from** the requested authority does not confirm the authenticity of the public document or of its certified copy **or if no reply is received from that authority**, the requesting authority should not be obliged to (...) **process (...) that public document or certified copy. Furthermore, in such cases, the requesting authority or the person who presented the public document or the certified copy should be free to use any available means to verify or to prove the authenticity of the public document or its certified copy. To secure the effectiveness of this Regulation, situations where no reply is received via IMI should remain exceptional.**
- (12d) **Where necessary, the IMI coordinator or the central authorities may assist in finding a solution to the difficulties that national authorities may encounter when using IMI, including in cases where no reply to a request for information is received or where it is not possible to agree an extension of the time limit to reply as referred to in recital (12).**
- (13) The authorities should benefit from the available IMI functionalities, including the provision of a multilingual system for communications, the use of pre-translated and standard questions and answers, as well as from a repository of templates of public documents used within the internal market.
- (14) The central authorities of the Member States should provide assistance in relation to requests for information, **and should**, in particular, (...) transmit, (...) receive **and, where necessary, answer** such requests and (...) supply (...) the information (...) **necessary** in respect of those requests, **particularly in situations where either the requesting or the requested authority is not registered in IMI.**
- (14a) **For the purposes of this Regulation, central authorities should communicate with each other and exercise their functions by using IMI. National situations should be dealt with internally according to national procedures.**

- (14b) The **relationship** between this Regulation and existing Union law should be clarified. In that regard, this Regulation should (...) **be without prejudice to** the application of Union law which contains provisions on legalisation, similar formality or other formalities - **such as Regulation (EC) No 2201/2003**⁶. This Regulation should also (...) **be without prejudice to** the application of Union law on electronic signatures and electronic identification. **If the provisions of this Regulation conflict with a provision of another Union act governing specific aspects of simplification of the requirements for presenting public documents simplifying such requirements even further, such as Directive 2005/36/EC of the European Parliament and of the Council**⁷ **and Directive 2006/123/EC of the European Parliament and of the Council**⁸, the provision of the other Union act should prevail.
- (14c) **Moreover**, this Regulation should not prejudice the use of other systems of administrative cooperation established by Union law which provide for exchange of information between the Member States in specific areas. This Regulation (...) **may** be applied in synergy with such specific systems.
- (14d) Consistency with the general objectives of this Regulation requires that, as between **or among** Member States, it should, **in relation to matters to which it applies and to the extent provided for therein**, take precedence over bilateral or multilateral **agreements or arrangements** (...) to which the Member States are party and which concern matters covered by it.

⁶ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1)

⁷ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

⁸ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

- (14e) Furthermore, Member States should be able to maintain or conclude arrangements between two or more of them in matters which do not fall within the scope of this Regulation (e.g. evidentiary value of public documents, multilingual standard forms with legal value and dispensation from legalisation of such forms, dispensation from legalisation of public documents in areas other than those referred to in Article 2(1)) or in order to further simplify the circulation of public documents covered by this Regulation between Member States.**
- (14f) Public documents issued by the authorities of third countries do not fall within the scope of this Regulation. Moreover, agreements and arrangements concerning legalisation or similar formality in respect of public documents on matters covered by this Regulation issued by the authorities of Member States or third countries to be used in relations between the Member States and the third countries concerned may not affect the application of this Regulation. Therefore, this Regulation should not preclude Member States from concluding bilateral and multilateral international agreements with third countries concerning legalisation or similar formality in respect of public documents on matters covered by this Regulation issued by the authorities of Member States or third countries to be used in relations between the Member States and the third countries concerned.**

Member States are also not precluded, to the extent that one or more Member States are or may decide to become party to such agreements and arrangements, from deciding on the acceptance of the accession of new Contracting Parties, in particular as regards the right to raise and notify objections to new accessions as referred to in Article 12, paragraph 2, of the Hague Convention of 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, nor from applying, amending and deciding on accessions of new Contracting Parties to the European Convention of 1968 on the Abolition of Legalisation of documents executed by Diplomatic Agents or Consular Officers.

- (14g) Since the multilingual standard forms under this Regulation do not have legal value and do not overlap with the multilingual standard forms provided for in ICCS Conventions No. 16, 33 and 34, this Regulation should not affect the application of those Conventions as between Member States or between a Member State and a third country.**
- (15) (...) An ad hoc committee, composed of representatives of the Commission and of the Member States and chaired by the Commission, should be set up with a view to (...) taking (...) any (...) measures necessary to facilitate the application of this Regulation, in particular to exchange best practices concerning (...) the application of the Regulation between Member States, the prevention of fraud of public documents, certified copies and certified translations thereof, the (...) use of electronic versions of public documents (...), and the use of multilingual standard forms and detected forged documents.**
- (15a) To facilitate the application of this Regulation, Member States should, with a view to making the information available to the public through any available means and, in particular, through the e-Justice Portal, provide the Commission via IMI with the contact details of their central authorities (...), the templates of the most commonly used public documents under their national law or, where no such template exists for a certain document, information about its specific features.**
- (15b) Member States should also communicate via IMI anonymised versions of forged documents which have been detected and which could serve as useful and typical examples of possible forgeries. The communication of such forged documents should be limited to forged documents the disclosure of which is allowed by national law and should be without prejudice to Member States' rules on disclosing evidence collected in the course of criminal proceedings. The information communicated by Member States in relation to forged documents should not be made public.**

- (15c) Likewise, to facilitate the application of this Regulation, the Member States should, with a view to making the information available to the public through the e-Justice Portal, communicate to the Commission the language or languages they can accept for the presentation of public documents issued by the authorities of another Member State; an indicative list of public documents falling within the scope of this Regulation; the public documents to which multilingual standard forms may be attached as a suitable translation aid; the lists of persons qualified, in accordance with national law, to make certified translations, where such lists exist; an indicative list of the types of authorities competent, under national law, to make certified copies; information relating to the means by which certified translations and certified copies can be indentified; and the specific features of certified copies.**
- (15d) Information regarding the templates of the most commonly used public documents or the specific features of such documents or of their certified copies should be made available to the public only to the extent that such information is already publicly available under the law of the Member State whose authorities issued the public document or made the certified copy. For that purpose, the Member States should communicate to the Commission what documents are publicly available under their national law. Furthermore, for the purposes of this Regulation, the specific features of a public document or of a certified copy that should be communicated by the Member States to the Commission should not include the specific security features of such documents that are not publicly available under the law of the Member State whose authorities issued the public document or made the certified copy.**
- (15e) The notification by a Member State to the Commission of language or languages other than its own that it can accept for the presentation of public documents issued by the authorities of another Member State should be without prejudice to the possibility for its authorities to accept, in accordance with national law or where so allowed by the Member State concerned, any additional language or languages when a public document issued by the authorities of another Member State is presented to them.**

- (16) [Text moved to Recital 8a above.]
- (17) [Text moved to Recital 8f above.]
- (18) [Text moved to Recital 5c above.]
- (19) [Text moved to Recital 14b above.]
- (20) [Text moved to Recital 14d above.]
- (21) [Text Moved to Recital 15a above.]
- (22) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8), the right to marry and found a family (Article 9), (...) **and the** freedom of movement and of residence (Article 45). This Regulation should be applied in accordance with those rights and principles.
- (23) [Text moved to Recital 11b above.]
- (23a) [Text moved to Recital 12a above.]
- (24) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States (...) **but** can **rather** be better achieved at **the level of the** Union (...), the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve (...) **those** objectives,

HAVE ADOPTED THIS REGULATION:
