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Commission for Citizenship, Governance, Institutional and External
Affairs
on
LESS BUREAUCRACY FOR CITIZENS:
Promoting free movement of public documents and recognition of the
effects of civil status records

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Green Paper: Less Bureaucracy for Citizens: Promoting free movement of public documents and recognition of the effects of civil status records
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I. INTRODUCTION

The European Union facilitates citizens moving beyond national borders for reasons of travel, education, work, marriage, retirement, buying property and so on and it is estimated that 12 million EU citizens live, work or study in a Member State where they are not nationals, this international mobility is growing.

EU citizenship rights are anchored in the EU Treaties and are substantially developed by secondary and supplementary law. However, disparities remain between the applicable legal rules and the reality confronting citizens in their daily lives, particularly in cross-border situations where bureaucratic obstacles can make it difficult to exercise rights attached to EU citizenship.

One such obstacle is the need to authenticate, certify or provide some other administrative formality so that public documents of one Member State may be accepted in another. At minimum, there is a cost of money, time and effort.

A second major obstacle is that the effects of civil status records used in one Member State may not be recognised in another Member State. For example, different rules governing certain life events – parentage, adoption, change of surname, change of gender etc. may apply in different Member States and this can create enormous problems for citizens.

The objectives of the Stockholm Programme, the EU's current roadmap in the field of Justice, Freedom and Security, and subsequent EU Citizenship Reports include dismantling the obstacles facing citizens in enjoying their rights. Legislative proposals to tackle these two bureaucratic burdens are amongst those envisaged in its action plan and the *Green Paper* is a further step in that process.

II. GREEN PAPER SUMMARY

(A) Free Movement of Public Documents

The Green Paper launches a debate on issues surrounding civil registration and on the administrative formalities surrounding the use of public documents outside the issuing Member State. These administrative formalities include authentication / legalisation, certification and translation. The term public documents covers all official records drawn up by a Member State authority and includes:

- Civil status records such as birth, marriage and death certificates
- Notarial acts such as property transaction deeds and marriage contracts
- Judicial documents such as court rulings and
- Administrative documents such as educational qualifications

The Green Paper sets out the existing patchwork of complex and fragmented provisions that apply to the legalisation of public documents between Member States. This includes international conventions

under the Hague Conference on Private International Law (HCCH) and the International Commission on Civil Status (ICCS). For instance, the 1961 Hague Convention abolishes the requirement for legalisation for (specified) foreign public documents replacing this with the apostille (a seal of authenticity attached to the original document); there are 97 parties to this Convention including all EU Member States. However, an 1987 EU Convention that abolishes the requirement for the legalisation of certain public documents has been ratified and provisionally applied by just seven Member States. As far as the ICCS is concerned, twelve Member States are amongst its fifteen members. Indeed, the EU's own laws on legalisation are also viewed as inconsistent and piecemeal.

As administrative formalities can make freedom of movement less attractive for EU citizens and may constrain them from fully exercising their rights, the Commission proposes that thought be given to abolishing all obsolete formalities, enabling citizens to present an original document issued by one Member State, in another Member State.

As the legalisation of documents is fundamentally a procedure to prevent fraud and as administrative cooperation between civil registrars in Member States is often on an informal basis, the issue of how to engender closer cooperation between authorities in Member States then arises. A central registration point is suggested for the civil status records of any individual and that could be in the place of their birth, nationality or habitual residence.

As European passports and driving licences have been successfully standardised, the question is posed as to whether there should be efforts to move towards similar standardisation of the structure and content of civil status documents. The Green Paper proposes a European Civil Status Certificate, this would be optional for citizens and exist alongside certificates issued in Member States. The format and information provided on the European Civil Status Certificate would be standardised.

Specific questions posed in the Green Paper:

Question 1. Do you think that the abolition of administrative formalities such as legalisation and the apostille would solve the problems encountered by citizens?

Question 2. Should closer cooperation between Member States' authorities be envisaged, in particular as regards civil status records, and if so, in what electronic form?

Question 3. What do you think about the registration of a person's civil status events in a single place, in a single Member State? Which place would be the most appropriate: place of birth, Member State of nationality or Member State of residence?

Question 4. Do you think that it would be useful to publish the list of national authorities competent to deal with civil status matters or the contact details of one information point in each Member State?

Question 5. What solutions do you recommend in order to avoid or at least limit the need for translation?

Question 6. What kind of civil status certificates could be the subject of a European civil status certificate? Which details should be mentioned on such a certificate?

(B) Mutual Recognition of the Effects of Civil Status Records

There are anomalies between rules of Member States regarding the attribution of children's surnames, different parentage rules can also cause enormous difficulties particularly when the child moves between such countries. Similarly the varied and increasingly complex life events of contemporary society e.g. with registered partnerships, changes of gender etc. can make cross-border recognition of civil status documents fraught with difficulty. As with legalisation issues, the existing legal framework and coverage under international conventions is patchy.

The Green Paper considers that it should be possible to recognise the effects of civil status records legally established in other EU Member States and suggests three policy options with each having advantages and disadvantages, the suggested options are:

- assist national authorities cooperate more effectively, with the EU providing non-binding guidance to ensure consistency;
- automatic recognition of a civil status situation established in another Member State on the basis of mutual trust; or
- harmonisation of conflict-of-law rules, here a body of common rules would determine which law should apply in an international situation.

The specific questions which deal with the extent of possible EU action, are detailed under 7, 8 and 9 below with related questions at 10 and 11.

Question 7. Do you think that civil status issues for citizens in cross-border situations in the EU could be effectively solved by national authorities alone? In this case, should not the EU institutions provide at least some guidance to national authorities (possibly in the form of EU recommendations) to ensure minimum consistency?

Question 8. What do you think of automatic recognition? To which civil status situations might this solution be applied? In which civil status situations might it be considered unsuitable?

Question 9. What do you think of recognition based on the harmonisation of conflict-of-law rules? To which civil status situations might this solution be applied?

Question 10. What do you think of the possibility of citizens choosing the applicable law? In which civil status situations might such a choice be applied?

Question 11. In addition to the above, could other solutions provide a response to the cross border effects of legal situations linked to civil status?

III. PREVIOUS COR POSITIONS ON RELATED MATTERS

It is primarily at local and regional level that citizens come into contact with public administration and make use of administrative structures and services and the Green Paper therefore is relevant to local and regional authorities.

The CoR has stressed that amongst the rights attributed by European citizenship, freedom of movement and residence are of key importance. The Committee shares the objective of identifying obstacles to exercising EU rights so that they can be removed, particularly in cross-border situations recognising the disparity between applicable legal rules and the realities facing citizens.

The CoR has underlined the importance of cutting red tape particularly for cross-border cooperation and the need to improve the exchange of electronic data amongst EU public administrations.

At the same time, the Committee has drawn attention to the possible conflicts between the right to individual privacy and the guarantee of other rights and the duty of national authorities to combat abuse of rights and to fight fraud.

It has also highlighted the responsibility of all levels of governance to raise citizens awareness of their rights noting that local and regional authorities are the natural channels for disseminating information on their EU rights.

IV. ISSUES THAT COULD BE CONSIDERED IN THE DEVELOPMENT OF THE COMMITTEE OF THE REGIONS OPINION

Account must be taken of the very diverse legal and administrative structures and processes regarding civil registration in Member States. Across the EU, tasks and responsibilities for civil registration may be devolved to administrative, judicial or religious authorities. While registrars may be judges or mayors, they are most often civil servants or public servants of local and regional authorities; some acts such as marriage are often conducted by a registered religious solemniser in the absence of a civil registrar.

Similarly, the information provided on civil status certificates differs considerably across Member States, for example, on birth certificates alone over forty different details may be requested or provided.

In most Member States, civil status records are updated for each relevant life-event – but not in all. In some Member States that do update their records, relevant changes are fully recorded on the birth certificate and other certificates as appropriate; in other countries, records may be annotated or partially updated. Alongside these different rules governing civil status records there are different provisions governing their access and the cost of access.

Thus any legislative proposals deriving from this consultative process would have very significant implications for authorities within Member States, particularly for local and regional authorities. There needs to be timely and adequate consultation, impact assessment and sufficient lead-in time. Any new legislation would need to be transposed and there would likely be significant financial implications with new processes, IT systems, staff training etc.

While Member States have developed their own *acquis* on citizenship and civil status based on their history, culture, political and legal systems and while the Committee of the Regions has styled itself as the guardian of subsidiarity; 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. Given that such red-tape is a cost for citizens both directly and indirectly, in costs needed to administer the bureaucracy; there is general political acceptance of the need to further reduce cross-border bureaucracy. However, how far should this process go in abolishing administrative formalities for public documents and proceeding towards cooperation, mutual recognition or harmonisation of civil status records?

The political appetite for simplification coupled with the possibilities offered by modern technology provide an impetus for change, but what safeguards could be introduced to prevent fraud and to protect citizens' privacy and personal data? Similarly, there is a need to demonstrate that the pilot schemes developed for the electronic exchange of civil status documents can work effectively and efficiently and can be adapted for wider use.

There has been significant progress in Member States in the centralised and online availability of civil status certificates. What is the most appropriate means to ensure that best practices and innovations in this area can be shared?

As noted in the Stockholm Programme, the EU should actively use its membership of the Hague Conference on Private International Law to promote relevant Conventions and it also refers to the International Commission on Civil Status. Twenty seven Member States acting in tandem would be a powerful force in advancing international Conventions. When considering the possible difficulties in introducing EU legislation, the reasons underlying the incomplete uptake of existing Conventions (such as the 1987 EU Convention) may need to be examined as should the experiences of those Member States that provisionally implement it. It must also be recalled that whether or not the EU introduces legislation, authorities in Member States will continue to deal with public documents and civil status records of non-EU citizens.

While the proposal for a European Civil Status Certificate is welcome, as suggested, it appears that it would require the simultaneous operation of both national and EU systems. This could lead to additional administrative and financial burdens and without standardisation, duplication could lead to the chance of discrepancies. While EU citizens do not possess both EU and national driving licences or passports, they can possess national and international driving permits so there are precedents and templates.

The Green Paper relates to public documents as drawn up by Member State authorities, however analogous legally binding documents drawn up by legal professionals equally face problems relating to their cross-border movement and lack of mutual recognition. Should the future scope of the proposal be expanded to cover such documents?

There have been significant advances in providing information to citizens about their EU rights. However, linkages could be strengthened between EU information sources / websites and relevant information providers in the Member States. Local and regional authorities should be able to assist in this regard. Moreover, every effort should be made to simplify language and avoid jargon.

Given the expanding number of working and official EU languages, should the costly and time-consuming need for translations and certified translations of public documents be eliminated or reduced with more use of standardised forms and codes?
