

Legalisation of Public Documents within the EU Member States

NETHERLANDS

National Rapporteur:
mr. drs. Sabine Verbeek-Meinhardt

PART I – Documents operating cross-border: Current legal practice as regards legalisation or other similar or equivalent requirements

OVERVIEW OF PART I 0

PART I.A. General

I.A.1. European Community Law

I.A.1.1. Introduction [I.A.1.1](#)

In the Netherlands the legalisation requirements applicable by law are very limited. Reference to legalisation is made in one paragraph of the Code of Civil Procedure which is dealt with in more detail in part I.A.4.1.

Since 1992 there are policy rules on the legalisation of documents dictated by the minister Justice in cooperation with other Ministers, that are mainly used by the municipalities for the registration of inhabitants. For a detailed description of the policy rules on the legalisation of documents please be referred to I.A.4.1 and potential difficulties arising from the application of these policy rules next to the directly applicable Community measures and the various treaties are dealt with in Part III.

The absence of legislation has led to there being no references to (the abolishment of) legalisation requirements in the laws implementing the Community measures indicated or the various treaties to which the Netherlands are a party.

I.A.1.2. Implementation of specific measures [I.A.1.2](#)

Area of Justice - judicial cooperation in civil matters (Article 61(c) EC)

Article 19 of Regulation (EC) No 1346/2000

Article 14 paragraph 4 of the Dutch Insolvency Law ("Faillissementswet") states that the registrar of the court of first instance in The Hague (griffier van de rechtbank te 's-Gravenhage) upon request of an administrator from another EU- Member State publishes the decision to open insolvency proceedings in a particular case without delay in the Official Gazette ("Staatscourant"). Such decision may be sent to the registrar in Dutch, German, English or French.

Article 4(4) of Regulation (EC) No 1348/2000

The regulation is implemented by the law of December 13th 2001 (Stb 2001, nr. 622). The law does not impose or abolish any legalisation requirements. For information on other legalisation requirements applicable in the Netherlands, please be referred to I.A.4.

Article 56 of Regulation (EC) No 44/2001

The regulation has been implemented by the law of July 2nd 2003 which was changed by the law of November 6th 2003 and the implementation law of Regulation (EC) No 2201/2003 mentioned below (Stb 2003, nr. 444 and Stb 2006, nr. 123). The law does not impose or abolish any legalisation requirements. For information on other legalisation requirements applicable in the Netherlands, please be referred to I.A.4.

Article 57 of Regulation (EC) No 44/2001

According to article 993 of the Netherlands Code of Civil Procedure (“Wetboek van Burgerlijke Rechtsvordering”, referred to hereinafter as “Rv”) authentic instruments originating in a foreign state may be executed in the Netherlands if this is stipulated by treaty or by law. It follows from article 992 Rv read in conjunction with article 2 of the above-mentioned implementation law that in deviation of the rules of the Netherlands Code of Civil Procedure authentic instruments originating in a foreign state may be executed in the Netherlands as stipulated by the Regulation (EC) No 44/2001. (See Polak in “T&C”, pp. 1163-1183). Please be referred to part I.A.4.1. and part V.

Article 58 of Regulation (EC) No 44/2001

To court settlements the same applies as to the authentic instruments mentioned above (See Polak in “T&C”, pp. 1180).

Article 46 Regulation (EC) No 2201/2003

The regulation has been implemented by the law of February 16th 2006 which entered into force on May 1st 2006 (Stb 2006, nr. 193 en 123). The recognition and enforceability of court decisions from another Member State is dealt with in the articles 18-23 of this law. Article 18 states that the general rules of the Netherlands Code of Civil Procedure on the execution of foreign decisions are not applicable to requests based upon article 21 paragraph 3, article 28 or article 48 of the Regulation (EC) No 2201/2003. In the explanatory report of this law (TK 29 980, nr. 3, p.15) it is stated that according to article 46 Regulation (EC) No 2201/2003 the rules on the recognition of the court decisions also apply to authentic instruments originating in another Member State.

Article 52 of Regulation (EC) No 2201/2003

According to articles 18 and 21 of the implementation law the general rules of the Netherlands Code of Civil Procedure and the procedure mentioned in article 25 Book 1 Civil Code on the recognition and/or execution of foreign decisions in the Netherlands legal order are not applicable on court decisions falling under the regulation, this means that the only provision under Netherlands law referring to legalisation (article 986 paragraph 3 Rv) cannot be applied in these cases. This means that no national legalisation requirements are applicable.

Article 52 Regulation (EC) No 2201/2003, certificates drawn up in the standard forms of ANNEX I (Article 39), II (Article 39), III (Article 41) or IV (Article 42)

See above.

Article 27 of Regulation (EC) No 805/2004

The regulation has been implemented by the law of September 28th 2006 which entered into force on October 21st 2005 (Stb 2005, nr. 485). When implementing the regulation, the Dutch authorities have taken into account that the execution of court decisions from other Member States according to this regulation serves as an alternative to execution according to Regulation (EC) No 44/2001 (TK 30069, nr. 3, MvT, p.1).

ANNEXES I (Article 9 - judgments), II (Article 24 – court settlements) and III (Article 25 – authentic instruments) of Regulation (EC) No 805/2004

According to article 9 of the implementation law judgments, court settlements and authentic instruments accompanied by the corresponding form in the annex are in combination deemed to be ready for execution within the meaning of the Netherlands Code of Civil Procedure

("aangemerkt als grosse").

Article 13(5) of Directive 2003/8/EC

The directive has been implemented by the law of February 19th 2005 (Stb. 2005, nr. 90) which changed the law on legal assistance ("Wet op de Rechtsbijstand"). In the explanatory report on the proposed law (TK 29712, nr. 3, Mvt, p. 3) the minister pointed out that this article did not have to be implemented in the Netherlands, because in the Netherlands it was understood that legalisation of documents was only necessary, if the legalisation was prescribed by law. In the case of subsidized legal aid, there was no legalisation requirement applicable for the documents in question, such as requests for legal aid.

Free movement of goods (Article 23 EC)

Article 250 of Regulation (EEC) No 2913/92

There are no formal legalisation requirements applicable, nor are there implementation measures for this article.

Free movement of workers - social security (Article 42 EC)

Article 85 Regulation (EEC) No 1408/71 read in conjunction with Regulation (EEC) No 574/72

There are no formal legalisation requirements applicable, nor are there implementation measures for this article. There is no information as to what extent the social security authorities make use of the policy rules on legalisation (the circular letter mentioned in I.A.4.1).

I.A.1.3. Judicial control [I.A.1.3](#)

No relevant case law with respect to the recognition of such documents available.

I.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

I.A.2.1. Status [I.A.2.1](#)

Signature: 30-XI-1962

Ratification: 9-VIII-1965

Entry into force: 8-X-1965. For the Netherlands Overseas Territories: 30-IV-1967 Netherlands Antilles and 1-I-1986 for Aruba (the date of entry into force of the "Status Aparte" -partial independence- for Aruba).

See for information on this treaty, the legislative implementation and publications [losbladige Kluwer Rechtsvordering, Verdragen&Verordeningen, Part 2, p. J-1-174](#).

I.A.2.2. Scope [I.A.2.2](#)

The scope of application of the provisions of the 'Apostille' Convention has not been extended geographically or materially.

I.A.2.3. Legislative implementation [I.A.2.3](#)

This convention is implemented by a law of March 10th 1965 (Stb.1965, nr. 105). The law only has three articles and entered into force on the same date as the Convention for the Netherlands (article III of the implementation law). Article I appoints the registrars of the courts of first instance as central authority for the Netherlands. Article II inserts a paragraph on the fee for the issuance of an apostille in the Law on Tariffs for Civil Cases ("Wet Tarieven Burgerlijke Zaken").

I.A.2.4. Practical implementation [I.A.2.4](#)

The central authority for the Netherlands Overseas Territories is the Lieutenant Governor of an island or a group of islands (Trb. 1989, 100 and Trb. 1996, 280, [losbladige Kluwer Rechtsvordering, Verdragen&Verordeningen, Part 2, p. J-156a](#)).

The central authorities for the kingdom of the Netherlands in Europe are the registrars of the courts of first instance (rechtbanken). There are 19 courts of first instance, each responsible for a district that is described in the law of Court Organisation ("Wet op de Rechterlijke Organisatie"). The contact details of the courts of first instance can be found at the general courts site of the Netherlands (www.rechtspraak.nl), but there is no uniform information on the way the registrars of the courts of first instance exercise their competence as central authority. Nor are there any general rules applicable in this respect, with the exclusion of the fee of an apostille. On the web page of each court on the site mentioned above, the legalisation of documents is indicated as one

of the services provided by the information desk of the court. In most cases no reference is made to the issuance of an Apostille. Only two courts have published more detailed information on this subject.

We have not been able to reach all central authorities by email, but we have been able to submit the questions mentioned in the Explanatory memorandum to a number of courts. The results show that although there are no uniform rules, the methods used by the various central authorities do not differ significantly from each other.

A *Issuance of an Apostille*

1. By which methods can an Apostille be requested (in person, by registered mail, mail, email, fax, etc.)? Requests can only be made by (registered) mail or in person (including by courier).
2. How, in practice, does the competent authority verify the authenticity of the signature, the capacity in which the person signing the document has acted, and the identity of the seal or stamp which the document bears? The registrars of the courts keep paper files of all signatures of notaries public, civil servants, judges, sworn translators and members of the chamber of commerce within their district. Each signature for which an Apostille is requested is then compared with the signature in the file. One central authority stated that in case a signature deviates substantially from the signature in the file, a new signature is requested.
3. What is the form of the Apostille used (please provide a copy, with English translation of any parts in a foreign language)? Some of the central authorities use a word document with the text from the annex to the treaty in Dutch, German, French, Spanish or Italian in combination with the official court seal and a mechanical stamp with the signature of the court's president. The others use a mechanical print with the text from the annex to the treaty in Dutch, German, English, French, and either Spanish or Portuguese in combination with the official court seal and a mechanical stamp with the signature of the court's president. One central authority pointed out that the use of the different languages varied according to the kind of document and the professional group requesting the Apostille.
4. Is the Apostille issued by the competent authority placed on the public document itself or is the Apostille placed on a so-called allonge? Both methods are used, depending on the available amount of space on the document in question.
5. How is the Apostille issued when the public document consists of multiple pages? The Apostille is issued on the page with the signature which is usually the last page of the document.
6. Which language is used on the Apostille? See above under no. 3.
7. Is the system used for the issuance of an Apostille mechanical or electronic? See above under no. 3.
8. What are the main measures taken in order to avoid fraud? This question was interpreted differently by the various central authorities. One pointed out that each Apostille is given a unique number and the official court seal. Another saw the comparison of the signatures with the original signature in the file of the central authority as a method preventing fraud. The third specified that the authenticity of the signature and the authority of the signatory are controlled visually by comparison with the information and the signature in the files and the identity and the authenticity of a seal or a stamp on a document is controlled visually as well.
9. Are there any plans to modernize the system used to issue Apostilles? No.
10. How long does the total process generally take? 10 minutes. One central authority specified: 5 minutes for issuance and 5 minutes for payment.
11. What is the fee payable for the issuance of an Apostille? Who sets the fees? How is the level of the fees determined? Are they purely covering costs or can they also be said to be aimed at bringing revenue? The fee is set in the Law on Tariffs for Civil Cases ("Wet Tarieven Burgerlijke Zaken"). The fee for the issuance of an apostille is presently € 16,- (according to article 13 paragraphs 7 and 8 of the Law on Tariffs for Civil Cases. One central authority pointed out that this is to cover the costs only, the others had no information as to the relation between fees and costs.
12. The same procedure is used for documents to be used in any State party to the convention. The legalisation of certificates from the Netherlands is only done by the registrars of the courts of first instance in Groningen.

B *registration or card index requirement*

1. Is the system used electronic? No. One central authority is working on an electronic system.
2. Are there any plans to modernize the system used? Only according to the one authority

working on an electronic system.

3. By which methods can the register or card be consulted in accordance with Article 7 of the Convention? By hand, upon request. According to one central authority also by telephone.

I.A.2.5. Judicial control [I.A.2.5](#)

There is no case law on the application of the treaty in the Netherlands. Reference is made to the treaty in a number of cases, see for example Annexes NL-1, NL-2 and NL-4.

I.A.2.6. Empirical analysis [I.A.2.6](#)

The registrar of the court of first instance in the Hague ("Griffie van de rechtbank te 's-Gravenhage) as one of the central authorities has conducted the empirical analysis during week 26 (june 26th to 30th). The results are to be found in the Annex.

I.A.3. Parallel international agreements

I.A.3.1. Status [I.A.3.1](#)

1. 1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers

Signature: 16-IX-1969

Ratification: 9-VII-1970

Entry into force: 11-X-1970

2. 1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities

Signature:

Ratification: -

Entry into force: -

3. The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958)

Signature: 25-V-1959

Ratification: 28-II-1964

Entry into force: 28-IV-1964

4. The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969)

Signature: 15-XI-1965

Ratification: 3-XI-1975

Entry into force: 2-I-1976

See for information on this treaty, the legislative implementation and publications [losbladige Kluwer Rechtsvordering, Verdragen&Verordeningen, Part 2, p. G-1-554.](#)

5. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972)

Signature: 28-II-1979

Ratification: 8-IV-1981

Entry into force: 7-VI-1981

See for information on this treaty, the legislative implementation and publications [losbladige Kluwer Rechtsvordering, Verdragen&Verordeningen, Part 2, p. H-1-656.](#)

6. The Hague Convention concerning the International Administration of the Estates of Deceased Persons (1973)

Signature: 2-X-1973

Ratification: -

Entry into force: -

7. The Hague Convention on Civil Aspects of International Child Abduction (1980)

Signature: 11-IX-1987

Ratification: 12-VI-1990

Entry into force: 1-IX-1990

8. The Hague Convention on International Access to Justice (1988)

Signature: 15-IX-1989

Ratification: 2-III-1992

Entry into force: 1-VI-1992

See for information on this treaty, the legislative implementation and publications **losbladige Kluwer Rechtsvordering, Verdragen&Verordeningen, Part 2, p. K-1-177.**

9. The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (2002)

Signature: 10-IX-1997

Ratification: -

Entry into force: -

The Netherlands is also party to the following conventions:

10. Convention on the issue of certain extracts from civil status records for the use abroad (Paris, 1956)

Ratification: 13-II-1958

Entry into force: 13-III-1958

11. Convention on the issue free of charge and the exemption from legalisation of copies of civil status records (Luxemburg, 1957)

Ratification: 4-XII-1959

Entry into force: 3-I-1960

12. Convention extending the competence of authorities empowered to receive declarations acknowledging natural children (Rome 1961)

Ratification: 29-VI-1963

Entry into force: 29-VII-1963

13. Convention on legitimation by marriage (Rome 1970)

Ratification: 1-VII-1977

Entry into force: 31-VII-1977

14. European Convention on Social Security (Paris, 1972)

Signature: 5-XI-1975

Ratification: 8-II-1977

Entry into force: 9-V-1977

15. Convention on the issue of multilingual extracts from civil status records (Vienna, 1976)

Ratification: 27-III-1987

Entry into force: 26-IV-1987

16. Convention on the exemption from legalisation of certain records and documents (Athens, 1977)

Ratification: 9-VI-1978

Entry into force: 1-V-1981

17. Convention on the issue of a certificate of legal capacity to marry (Munich, 1980)

Ratification: 5-X-1984

Entry into force: 1-II-1985

18. Convention on the recognition and the enforcement of decisions concerning custody of children and on restoration of custody of children (Luxemburg, 1983) (Trb. 1980, nr. 134).

Ratification:
Entry into force: 1-IX-1990

19. Convention on international co-operation in the matter of administrative assistance to refugees (Basle, 1985)

Ratification: 28-XI-1986
Entry into force: 1-III-1987

20. There are various bilateral agreements still in force, but their significance is minimal after the entry into force of the various multilateral European treaties.

I.A.3.2. Scope [I.A.3.2](#)

I.A.3.3. Legislative implementation [I.A.3.3](#)

1. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972)

The convention has been implemented by a law of December 11th 1980, Stb. 1980, 653, as amended by law of December 2nd 1981, Stb. 1981, 702. The law entered into force on June 7th 1981, Stb. 1981, 280.

2. The Hague Convention on International Access to Justice (1988)

The convention has been implemented by a law of October 28th 1991, Stb. 1980, 679 which entered into force on June 1st 1981, Stb. 1992, 155.

3. The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969)

The convention has been implemented by a law of January 8th 1975, Stb. 1980, 679 which entered into force on January 2nd 1976. The law has been amended several times, latest amendment the law of May 13th 2004, Stb. 2004, 215, modernising the judiciary in the Netherlands (Veegwet modernisering rechterlijke organisatie).

4. The Hague Convention on Civil Aspects of International Child Abduction (1980)

The convention has been implemented by a law of May 2nd 1990, Stb. 1990, 202 which entered into force on September 1st 1990, Stb. 1990, 407.

5. Convention on the recognition and the enforcement of decisions concerning custody of children and on restoration of custody of children (Luxemburg, 1983) (Trb. 1980, nr. 134)

The convention has been implemented by a law of May 2nd 1990, Stb. 1990, 202 which entered into force on September 1st 1990, Stb. 1990, 407.

Practical implementation [I.A.3.4](#)

As regards the practical implementation of the various conventions the Netherlands is a party to, it has to be mentioned that the foreign ministry publishes information on its website for each country concerning the legalisation requirements applicable with regard to that state. The site can be accessed through the following link: <http://www.minbuza.nl/nl/reizenlanden/landen> (in Dutch only). The site mentions information as to which treaties abolishing legalisation requirements are applicable between the Netherlands and the respective country. The legalisation authorities of the respective country are also mentioned. EC regulations are however not taken into account. This means that the website cannot be used as an exhaustive source of reference by the Netherlands authorities as regards the legalisation requirements applicable in question. Unfortunately we do not have access to information on the practical implications that this may have.

I.A.3.4. Judicial control [I.A.3.5](#)

To the best of our knowledge there is no relevant case law available.

I.A.4. National Law

I.A.4.1. Legislative framework [I.A.4.1](#)

Legalisation of foreign court decisions

The legislation on legalisation in the Netherlands is very limited. In 1964 the Code of Civil Procedure was amended, introducing rules on the enforcement of foreign courts in the articles 985-992 Rv. Article 985 Rv stipulates that decisions of foreign courts may only be enforced in the Netherlands if this is provided for by law or by treaty. According to article 986 paragraph 3 Rv the court receiving the request for enforcement may demand legalisation of the decision of the foreign court as well as of the underlying documents. Article 992 Rv stipulates that the enforcement procedure of the articles 985-991 Rv is only applicable in case there are no deviating provisions of law or treaty. One year after the introduction of these rules, the Apostille treaty entered into force. Vlas in his commentary on article 986 Rv points out that in his view since October 8th 1965 other forms of legalisation than an Apostille may no longer be demanded for court decisions from members to this treaty (Kluwer, *Burgerlijke Rechtsvordering*, part 4, book III, title 9, p. art. 986 2-6; see also Polak, *Tekst&Commentaar Burgerlijke Rechtsvordering*, 2005, p. 1171). It follows from the articles 985 and 992 Rv that on the one hand there has to be a national or international legal requirement allowing the enforcement of foreign court decisions and on the other hand it may follow from another national or international legal requirement that the enforcement procedure of the articles 985-991 Rv is not applicable in a particular case.

Legalisation of foreign documents on personal status

As far as documents concerning the personal status are concerned, it was believed for a long time that civil registrars for example could accept foreign documents without verifying their authenticity (Plasschaert, p. 212). In 1992 the Minister of Justice in cooperation with the Minister of Foreign Affairs has for the first time issued a "circulaire" (circular letter) on legalisation requirements of foreign documents in the Netherlands (Van Arnhem, B&R 1994, p.229). The reason for issuing this policy document was that the growing amount of false documents being registered in the Netherlands. It even appeared that some of the documents had been drawn up in the Netherlands (Tomson, B&R 2000, p.103). The Netherlands policy towards certain countries where the authenticity of documents could not be trusted, became very strict over the years. In 1996, the authorities introduced a procedure of verification for a number of states (Ghana, Nigeria, India, Pakistan and the Dominican Republic) that had to be followed before any document on personal status originating in these countries could even be legalised. In a decision of 4 November 1999 the highest administrative judge in the Netherlands, the "Raad van State", hereinafter "RvS" confirmed the authority of the Minister of Foreign Affairs in this respect. This court decision is discussed in more detail in (Annex I-4).

The policy of standard verification before legalisation for specific countries was criticised in a decision by the RvS of 8 September 2004, (Annex I-2). The effect of the court decision is discussed in more detail in part III.A.3.1 below. It has led to the introduction of a new circular letter on legalisation that came into effect on May 15th 2006 (Official Gazette, 2006, nr. 91, p. 13). The circular letter is accompanied by a ministerial decision on a line of conduct with regard to the assessment of foreign documents (Official Gazette, 2006, nr. 91, p. 11).

In the policy document the legalisation of a foreign authentic instrument ("openbare akte") is being described as the formality giving a confirmation as to the authenticity of a signature, the authority of the signatory of the instrument and, if applicable the authenticity of the stamp or seal of the document (B.1). The main rule is that any document on the status of a person originating in a foreign state has to be checked by legalisation (B.2). Exceptions are documents issued in the former Dutch colonies before independence (B.3.2), documents that have been legalised and accepted by Dutch authorities before (B.3.3) or documents from asylum seekers (B.3.4). For the purpose of a legalisation the representations of the Netherlands in a foreign state provide a questionnaire that has to be answered by the person in question. In this way additional information is provided on the person for whose benefit the legalisation takes place (C.1). Answering the questionnaire is also mandatory with respect to documents originating in states that are members to the Apostille treaty, unless no visa requirements are applicable for entry into the Netherlands (C.2). For documents originating in the European Union, Liechtenstein, Norway, Iceland, Australia, Japan, Monaco, New Zealand, the US or Switzerland, answering the questionnaire is not required (C.3).

In case of doubts as to the accuracy of the contents of the document in question, verification is possible (D). The new policy rules no longer make a distinction as to specific countries for which verification is applicable, but in the following three cases any foreign document may be sent to

the minister of foreign affairs for verification (D.2):

- A document that has been legalised but gives rise to doubts as to the contents
- A document with an Apostille that gives rise to doubts as to the contents
- A document that is exempted from legalisation requirements which gives rise to doubts as to the contents.

The policy rules contain instructions for the authorities on how to act, in case verification provides insufficient certainty (E). The main rule is that in that case the authorities involved have to issue an official decision through which they refuse to accept the document in question for entry into the official registers (burgerlijke stand (E.2) of GBA (E.3), please see I.B.2.2). The policy rules point out that according to the above mentioned court case, decisions with regard to verification or legalisation do not give recourse to an administrative judge in the Netherlands. In the case of possible fraud, a criminal investigation has to be opened (E.4). Specific attention is being paid to the possibility that a parentage cannot be proven by documents registered in the Netherlands (F). Under certain circumstances and conditions the authority in question may offer that scientific evidence such as DNA proof be provided instead of official documentation.

I.A.4.2. Scope [I.A.4.2](#)

Legalisation of foreign court decisions

As to the material scope of the abovementioned articles 985-992 Rv, the provisions are limited to court decisions, but article 993 Rv extends its scope to other authentic instruments (“authentieke akte”) originating in a foreign state if this is provided for by law or by treaty. The term authentic instrument has not been defined by the authorities, but according to **Polak (Tekst&Commentaar Burgerlijke Rechtsvordering, 2005, p. 1179)** a definition can always be found in the treaty allowing for the enforcement of authentic instruments originating in a foreign state. He mentions in particular documents made up by a notary public and court settlements (p. 1180).

The geographical scope of the articles 985-992 Rv is limited to instruments originating in another state than the Netherlands or the overseas territories, such as Curaçao and the Netherlands Antilles.

Legalisation of foreign documents on personal status

The material scope of the circular letter is limited to documents on the personal status issued in a foreign state, including those documents on the personal status of Dutch nationals that have been issued abroad. The geographical scope comprises any state other than the Netherlands or the overseas territories.

I.A.4.3. Practical implementation [I.A.4.3](#)

For an explanation in English on the process of legalisation of foreign documents please be referred to: http://www.minbuzanl.econom-i.com/default.asp?CMS_ITEM=MBZ453928#top. Note however that the text on the site has not yet been adapted to the new circular letter on legalisation of May 2006.

I.A.4.4. Judicial control [I.A.4.4](#)

See Annexes NL-1, NL-2 and NL-4.

PART I.B. Specific

I.B.1. Introduction [0](#)

I.B.2. Specific documents

1. Documents proving involuntary unemployment [1](#)

Not applicable for the Netherlands.

2. Documents proving a family relationship or other durable relationship [2](#)

This answer covers documents 2, 3, 4 and 5, 8 and 9.

When a foreigner comes to live in the Netherlands, there are three levels of legislation he has to

deal with: the immigration rules concerning visa, residence permits, etc, the legislation on the administrative registration of data on personal status and the civil register. As has been mentioned above, the Netherlands authorities use legalisation requirements, but none of these requirements are based on a law and can, if at all, only be found in policy rules.

As far as immigration rules are concerned: these are laid down in the *Vreemdelingenwet 2000*, the *Vreemdelingenbesluit* and the *Vreemdelingencirculaire*. The *Vreemdelingencirculaire*, a policy document, makes mention of legalisation requirements with regard to the submission of the various documents on personal status, see B.2.2.3, B.2.4.5, B.2.6.3, B.2.8.4. Paragraph B.2.12 explains the legalisation policy of the immigration authorities (see also II.A.2.3). With the coming into effect of directive 2004/38/EC, as of 1 May 2006 the Netherlands immigration authorities have implemented a new policy on immigration. On its website www.ind.nl detailed information is published on the various requirements for entry and/or stay in the Netherlands. The various application forms and brochures can be downloaded from the site and most of the information is also available in English. Legalisation requirements are mentioned for example in the brochure concerning "The residence permit and authorisation for temporary stay" and in the "Application for verification against EU community law (proof of lawful residence)".

As regards the administrative registration of data on personal status: In 1994 the *Wet gemeentelijke basisadministratie persoonsgegevens* ("GBA", law of 9 June 1994, Stb, 1994, 494, as amended by law of 6 October 2005, Stb 2005, 525) was introduced. It was intended to create a central administration of information on the personal status of each person registered in the Netherlands. The information is held by the municipality where the person in question is registered and can be accessed by all administrative authorities. A foreigner entering into the Netherlands first has to register with the municipality where he intends to stay, before contacting the immigration authorities. The documents that have to be provided for immigration purposes can also be used for the GBA. The personal data of a person that are entered into the GBA have to be evidenced by documents which are ranked in order of preference (article 36 GBA). As regards changes in the personal status that have occurred outside the Netherlands the ranking is: A certificate issued by the Civil Registrar; a judgement of a Netherlands court; a certificate issued by a foreign authority for the purpose of being used in evidence of the fact stated therein; a written document drawn up by the competent authorities in compliance with the foreign law in question; a sworn declaration by the person in question before a specially appointed civil servant of the municipality. It is necessary to always use the highest ranking document possible. For more information on this law and the application thereof, please be referred to the law edition of **Schuurman&Jordens, 2006, number 48**. Please also see II.A.4.3.

The Netherlands civil register: Each municipality in the Netherlands has a civil register where the certificates proving birth, marriage, registered partnerships or deaths are kept (article 17a Book 1 Civil Code). The Civil Registrar of the community is the authority assigned with keeping the register (article 16a Book 1 Civil Code) and the issuance of the certificates from this register. The Civil Registrar may only keep such information in the register as is prescribed by law (article 18 section 1 Book 1 Civil Code). A birth certificate is drawn up by the Civil Registrar ex article 19 Book 1 Civil Code, a death certificate ex article 19f Book 1 Civil Code and a marriage certificate ex article 67 section 2 Book 1 Civil Code. According to article 20 Book 1 Civil Code the Civil Registrar may add the following amendments to the register: changes of name or of sex, the proving or contesting of a parent-child relationship (such as adoption, recognition or denial of paternity), divorce or annulment of marriage or of a registered partnership. The Civil Registrar may demand documentary proof of the information noted in the register and retrieve information from other Dutch public registers (article 18 section 2 Book 1 Civil Code).

Foreign judgments or certificates may also be used for amending the register, unless this would be against the Netherlands public order (article 20b Book 1 Civil Code). See also II.A.4.3.

Article 25 Book 1 Civil Code provides for the registration of foreign documents in the civil register of The Hague. This procedure is meant for persons closely linked to the Netherlands legal order (see 25 section 1 a and b, meaning that the person referred to in the document must be (or have been) a Dutch national or a person recognized by the Dutch authorities as a refugee. After such registration the civil register can subsequently issue duplicates and extracts from the register on request. This means the document no longer needs to be requested from the issuing authorities abroad and be legalised. For purposes of evidence in the Netherlands, the effect of this registration makes the document stronger than the original.

For more detailed information on the issuance and the registration of documents on personal status in the Netherlands, please be referred to [Plasschaert](#), 2002, and [T&C Personen- en Familierecht](#), 2006.

3. Documents proving or contesting a parent-child relationship [3](#)

See under number 2 above.

4. Documents proving the name and forenames of a child or adult [4](#)

See under number 2 above.

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship [5](#)

See under number 2 above. Furthermore, article 21 Book 1 Civil Code stipulates that judgments by a Netherlands court concerning the divorce or annulment of a foreign marriage or a registered partnership concluded abroad which has not been entered into a the civil register in the Netherlands, is registered by the civil registrar of The Hague.

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities [6](#)

The central authorities and information on the issuing of declarations of recognition for the various professions is to be found at <http://www.professionalrecognition.nl/english.html>.

7. Documents proving a person's professional qualifications (diplomas) [7](#)

In the Netherlands, two centres of expertise work together on evaluating foreign diplomas (IDW): Nuffic and Colo. They set up an Information Centre for Credential Evaluation (IcDW). Information on how to apply for recognition and what documents have to be provided can be found at <http://www.idw.nl/pages/work.html>.

According to article 7.23 section 3 of the law on higher education and scientific research ("Wet op het hoger onderwijs en het wetenschappelijk onderzoek", 'WHV") it is possible to carry official titles in the Netherlands with a foreign educational certificate. In view of this article policy rules have been issued which entered into of force as of 5 August 2005: "Verzoeken tot het voeren van Nederlandse titulatuur op grond van een buitenlandse opleiding" ([Official Gazette 2005, nr. 150, p. 8](#)). The policy rules provide that verification and legalisation of the foreign documents to be submitted may be requested. Legalisation is not required for documents originating from members of the Apostille Convention, in that case an Apostille will be asked. In the case of documents originating from one of the EU Member States, the documents will be verified directly with the issuing authority. The material conditions to be fulfilled in order to obtain permission to official titles in the Netherlands with a foreign educational certificate are equal to those of the Lisbon Convention on the Recognition of Qualifications Concerning Higher Education in the European Union, even though this Convention has not yet been ratified by the Netherlands.

8. Documents proving a person's death [8](#)

See under number 2 above.

9. Documents proving a person's date of birth [9](#)

See under number 2 above.

10. Documents proving the establishment by incorporation of a company [10](#)

Dutch companies as well as companies established in a foreign state, but having an office in the Netherlands have to register with the Chamber of Commerce (articles 3 and 5 of the law on the Register of Commerce "Handelsregisterwet" 1996, Stb, 1996, 181, "HRW"). Article 8 HRW read in conjunction with chapter 3 of the Ministerial Decision on the Register of Commerce ("Handelsregisterbesluit" 1997, Stb, 1997, 417) provides which information has to be submitted and kept up to date under the responsibility of the management of the company in the Netherlands.

There is a special form to be filled in by foreign companies. With it the company has to submit proof of registration certified within the past 30 days by the official foreign registry. Furthermore a certified copy of the deed of incorporation and of the Articles of Association (in case they are subject of a separate deed. The trade register requires either the original document or copies signed for true by the director(s). All documents have to be drawn up in Dutch, English, German or French or be translated into one of these languages, filling in the Dutch version of the registration form is mandatory however. There is no information as to legalisation requirements, but at the end of the registration form it is mentioned that in certain cases the Chamber of Commerce may require additional proof.

The register kept by the Chamber of Commerce is open for the public inspection and the information on foreign companies can be accessed in the same way as companies established in the Netherlands.

11. Documents proving the constitution of a company, including any official translation thereof [11](#)

See above (10).

12. Documents proving the latest banking accounts of a company [12](#)

Not applicable for the Netherlands.

13. Documents proving the deposit of cash or certificates of deposit [13](#)

Not applicable for the Netherlands.

PART II – Incoming documents: Effects in the Member State's legal order**OVERVIEW OF PART II [0](#)****II.A.1. European Community Law****II.A.1.1. The effect of the implementation of Community law [II.A.1.1](#)**

The Community instruments mentioned in that paragraph are all regulations and therefore take direct effect in the Netherlands legal order. Since there are no mandatory rules of law on legalisation in place in the Netherlands, there seems to be no need to abolish legalisation

requirements in the various implementation measures. It is however difficult to establish the effect of the policy that is used in practice by the various authorities. The fact is however that there is practically no case law involving the acceptance of instruments drawn up by authorities from other Member States. This may indicate that in legal practice in the Netherlands few problems arise.

II.A.1.2. Admissibility and evidentiary weight in judicial proceedings [II.A.1.2](#)

Under certain conditions mentioned in the Netherlands Code of Civil Procedure, authentic instruments originating in a foreign state which are designed for execution may be executed in the Netherlands. This process is described in II.A.4.2 below. Formally only authentic instruments drawn up by authorities originating in the Netherlands (notaries public or the civil registrar) have to be accepted as compulsory evidence, any other instrument can only be evaluated as free evidence at the discretion of the Netherlands judge in question. It is understood however that international treaties or other international instruments (such as EC-regulations) may stipulate that certain instruments drawn up by authorities from another state foreign have equal effect as Netherlands authentic instruments. This can be derived from article 992 Rv read in conjunction with article 993 Rv: in the cases to which these treaties or regulations apply execution is possible in the Netherlands without applying the procedure on the enforcement of foreign authentic instruments.

Only the implementation measures of Regulation (EC) 805/2004 mention explicitly that for the limited effect of that regulation the instruments originating in other Member States have to be given the same weight as authentic instruments drawn up by authorities originating in the Netherlands.

The provisions of the Netherlands Code of Civil Procedure are expressly excluded for the applicability of Regulation (EC) 2201/2003 (see I.A.1.2 above). For the other Community measures mentioned in paragraph I.A.1.2 it follows from article 992 and 993 Rv that the effect of instruments drawn up by the authorities of another Member States equals that of an authentic instrument from one of the Netherlands authorities.

II.A.1.3. Admissibility and evidentiary weight in administrative matters [II.A.1.3](#)

See Annexes NL 1-5 and NL 1-6 for case law on the effect of EU-law on national legalisation requirements. Annex NL 1-5 is mentioned by [H. Luijendijk \(2005, p. 302\)](#) in her dissertation as an illustration for her criticism that rights granted under EU law are not always respected by the Netherlands authorities with regard to family members from third countries.

II.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

II.A.2.1. The effect of completion of the requirements of the Hague Convention [II.A.2.1](#)

This question is difficult to answer as there is no formal implementation of the Convention in the Netherlands legal system, nor are there formal rules (other than policy rules) on legalisation. Article 986 section 3 Rv (see II.A.4.2. below) is in fact the only reference in a rule of Netherlands law mentioning legalisation. This means that under Netherlands law no special legal effect is established for a foreign document with an Apostille in the Netherlands. See below for the effect of an apostille issued upon request in administrative matters. Compare also the comments under II.A.4.1. below.

According to articles 93 and 94 of the Netherlands constitution ("Grondwet") rules of international treaties or decision of international organisations can take direct effect in the Netherlands. Van Hoogstraten in his comments on the Apostille Convention ([WPNR 1961, p.369](#)) was of the opinion that the courts should decide whether the Convention could have such direct effect without formal implementation of the rules set out therein.

II.A.2.2. Admissibility and evidentiary weight in judicial proceedings [II.A.2.2](#)

The general rules for the acceptance of foreign documents in judicial proceedings before a court in the Netherlands are described in II.A.4.2. below. Only authentic instruments drawn up by authorities originating in the Netherlands (notaries public or the civil registrar) have to be accepted as compulsory evidence, any other instrument can only be evaluated as free evidence at the discretion of the Netherlands judge in question.

As far as the execution of a foreign judgment in the Netherlands is concerned, one author explicitly mentions that no legalisation may be asked by a court of documents issued with an Apostille under the treaty ([Vlas in losbladige Kluwer Rechtsvordering, comments on article 986 Rv, page 2-6, under number 3](#)). The Court Rules on Divorce Cases that have entered into force in

revised form (taking into account the regulation) on April 1st 2005 ([Official Gazette 2005, nr. 52, p. 19](#)) do not impose or mention any legalisation requirements. The Court Rules on Adoptions 2005 ([Official Gazette 2005, nr. 52, p. 25](#)) and the Rules Other Cases of Family Law ([Official Gazette 2005, nr. 52, p. 27](#)), both of which also entered into force on April 1st 2005 however contain the following note in annex 2 titled “Overview of documents to be submitted”: “In general copies of authentic instruments, (court) decisions or declarations have to be in original form and/or legalised according to the ‘circular letter on legalisation’ “.

II.A.2.3. Admissibility and evidentiary weight in administrative matters [II.A.2.3](#)

No special requirements are by law applicable as to the admissibility and evidentiary weight. This means on the one hand that the admission of foreign documents is not restricted, but on the other hand that no official legal status is given to such documents either. There is one exception: article 25 Book 1 Civil Code which has been mentioned in I.B.2.2 above.

In practice administrative authorities such as the IND (“Immigratie- en Naturalisatiedienst”, service responsible for the admission of foreigners into the country) and the municipalities follow the policy rules set out by the ‘circular letter on legalisation’ mentioned in I.A.4.1 above. The ‘circular letter on foreigners’ (Vreemdelingencirculaire, hereinafter “VC”) refers to “legalised authentic documents” (gelegaliseerde akten) in order to prove the existence of a certain personal status evidenced by a foreign document (VC, paragraphs B.2.2.3 and B.2.4.5 (marriage, unmarried status), B.2.6.3 and B.2.8.4 (family relationship)). Paragraph B.2.12.1- B.2.12.6 VC contains further information as to what requirements have to be fulfilled for entry into the Netherlands. It is stated that the personal status has to be proven by officially legalised documents and that it is the responsibility of the foreigner seeking admission, to fulfil these requirements. It is pointed out that legalisation only contains a confirmation of the formal authenticity of the foreign document, but that it does not guarantee that the information contained in the document is correct. In case there are doubts as to the contents of the document, verification by the foreign ministry may be asked. Paragraph B.2.12.3 states that documents originating in a state party to the Apostille treaty are exempted from legalisation. No reference is made to the fact that the Apostille treaty introduces a special procedure for documents issued by a state party to the treaty, i.e., the Apostille. Paragraph B.2.12.3 makes no reference to other treaties abolishing legalisation requirements.

II.A.3. Parallel international agreements

II.A.3.1. The effect of completion of the requirements of parallel agreements [II.A.3.1](#)

Please be referred to II.A.4 below.

II.A.3.2. Admissibility and evidentiary weight in judicial proceedings [II.A.3.2](#)

Please be referred to II.A.4 below and Annex NL-3. Annex NL-3 is one of the very few examples in Netherlands case law where reference is made to the abolishment of legalisation requirements by an international convention (the 1977 Athens Convention) concerning the acceptance of foreign documents in the Netherlands legal order.

II.A.3.3. Admissibility and evidentiary weight in administrative matters [II.A.3.3](#)

Please be referred to II.A.4 below and Annex NL-3.

II.A.4. National Law

II.A.4.1. The effect of the completion of the requirements of national law [II.A.4.1](#)

In a number of specific laws on Netherlands private international law reference is made to the recognition of foreign documents in the Netherlands legal system. Various rules of conflict state that foreign documents are recognised in the Netherlands legal order, if they have legal effect in the state of origin. Some of these laws explicitly contain the restriction that the effect of the foreign document may not be contrary to the Dutch public order. No reference is made to legalisation requirements. Examples of such conflict rules are to be found in:

- article 5 of the law on conflict rules concerning marriage (Wet Conflictenrecht Huwelijk of 7 September 1989, Stb. 1989, 392, latest amendment 8 March 2001, Stb. 128);
- article 2 of the law on conflict rules concerning divorce (Wet Conflictenrecht Echtscheiding of 25 March 1981, Stb. 166;
- article 10 of the law on conflict rules concerning descent (Wet Conflictenrecht

Afstamming of 14 March 2002, Stb. 153;

- article 7 of the law on conflict rules concerning adoption (Wet Conflictenrecht Adoptie of 3 July 2003, Stb. 283.

Boeles (2003, p. 24) points out that no reference is made to these rules of private international law in the policy rules on legalisation that have been issued by the minister of Foreign Affairs (see I.A.4.1 above). It is therefore somewhat unclear what additional status legalisation of a foreign document can add as to the admissibility and the effect of such documents under Netherlands law, since legalization is only a formal procedure and it neither confirms nor contradicts the effect that a foreign document may have in its state of origin.

However the acceptance of a foreign document in the Netherlands does not mean that a particular legal status is given to such a foreign document. This means for example that there is no legal certainty for the person submitting such a foreign document that once it has been accepted, it can be relied upon in future. L. Jordens-Cotran (FJR 1995, blz. 147) mentions several cases where the application of a married Moroccan man for the Netherlands nationality was refused by the immigration authorities, because no evidence could be produced of the fact that his former wife in Morocco had consented into a divorce. For this reason the man is believed to be polygamous which means that he is not integrated into the Netherlands culture.

II.A.4.2. Admissibility and evidentiary weight in judicial proceedings [II.A.4.2](#)

There is no restriction on the admissibility of foreign documents in judicial proceedings before a Dutch court. As far as evidentiary weight in judicial proceedings is concerned, authentic instruments originating in a foreign state can be admitted in judicial proceedings before a Dutch court, but can only have the effect of free evidence to be evaluated at the discretion of the Netherlands judge in question (articles 152-157 Rv). As regards the execution of authentic instruments originating in a foreign state: articles 985-994 Rv: please be referred to paragraph I.A.4.1.

The Dutch judge will have to take into account the specific rules set out by the above-mentioned rules of private international law as well as the various international treaties and or European regulations. In legal doctrine and the various comments on the Dutch Code of Civil procedure no reference is made to these rules of private international law and references to the various international treaties and European regulations are limited to what has been mentioned in paragraphs II.A.1 and II.A.2.

II.A.4.3. Admissibility and evidentiary weight in administrative matters [II.A.4.3](#)

In the court decision of the RvS of 4 November 1999 (described in Annex NL-4) it is stated that a legalised foreign document has evidentiary effect and it can be used in evidence. The RvS also stated in this decision that legalisation meant that the respective administrative authority in the Netherlands accepts the document to be authentic in order to admit the foreign document to the Netherlands legal order. Boeles (2003, p. 27) has pointed out that "admission to the Netherlands legal order" as such does not have any meaning. According to the above-mentioned rules of Netherlands private international law, foreign documents have to be accepted in the Netherlands if they have legal effect in the state of origin.

Furthermore the following is relevant as to the effect of foreign documents in administrative matters. According to article 1:20b and 1:25 of the Dutch Civil Code foreign documents and foreign court decision can be added as an amendment to the civil register, unless this would be against the Netherlands public order. This implies of course, that there is an entry in the Netherlands civil register which is only the case in case a Dutch national is concerned or a change in the personal status of the person(s) in question (birth, death, marriage, etc.) has taken place in the Netherlands. In effect article 20b of the Dutch Civil Code opens the possibility for Dutch nationals or persons closely linked to the Netherlands achieve the same effect for their foreign document on personal status as if it were a document drafted in the Netherlands.

Finally the following has to be mentioned. According to article 36 paragraph 2 GBA there is a ranking of documents that may be used in evidence of a fact on personal status to be entered into the administrative system of the GBA. Formally documents not mentioned in the ranking cannot be used for evidence Schuurman & Jordens, 2006, number 48, p. 157. Another formal effect of the ranking is that the availability of a higher ranking document prevents changes in the administration being added by a document with a lower ranking. For example for a child born in the Netherlands a birth certificate is issued by the Netherlands authorities. This is a document with the highest ranking. If the parents of the child get married abroad, this does not automatically lead to a change of name of the child, because the foreign marriage certificate has a lower

ranking [Schuurman & Jordens, 2006, number 48, p. 155](#). The Netherlands public order may prevent the acceptance of a foreign document (article 37 paragraph 2 GBA). However, according to information from municipal authorities in practice this does not appear to be a great problem, since official documents from authorities abroad can be used to effect the requested change even if a document with a lower ranking is presented.

PART III – Incoming documents: Difficulties

OVERVIEW OF PART III 0

PART III.A. General

III.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

III.A.1.1. **Legal** [III.A.1.1](#)

III.A.1.2. **Practical** [III.A.1.2](#)

III.2. Parallel international agreements

III.A.2.1. **Legal** [III.A.2.1](#)

III.A.2.2. **Practical** [III.A.2.2](#)

III.3. National law

III.A.3.1. **Legal** [III.A.3.1](#)

- There are policy rules in effect in the Netherlands that provide very strict procedures in case a document is submitted to the Netherlands authorities and there are doubts as to the authenticity of the document or to its contents. In practice this may mean that the rules are only applied on documents from certain third countries, but this may equally affect citizens from EU Member States or their family members who are in the possession of such documents.
In the past there has been strong criticism on the Netherlands policy on legalisation and verification (see for example the book by [P. Boeles, Mensen&Papieren, 2003](#)) and it has also been pointed out that as far as EU nationals of their family members are involved, the policy is contrary to EU law ([H. Luijendijk, Nederlandse Gemeenten en het Europese Personenverkeer, 2005, p. 302](#)). It is yet unclear whether the new circular letter on legalisation that took effect from 1 May 2006 will lead to a policy that is more in line with EU law.
- The policy rules on legalisation have in effect been amended because of the 2004 decision by the Raad van State (Annex 1 NL-2). The ratio of the new policy rules is that the foreign ministry legalises a foreign document upon request by a person as long as it is issued by the competent foreign authority. In case there are doubts as to the contents of the document, the administrative authority for whom the legalised document has to be produced, may ask the foreign ministry for verification. This is a change in policy by the foreign ministry, because there used to be no legalisation of documents from “problem countries” if the process of verification had been unsuccessful. It has to be pointed out that municipalities in practice used documents which could not be legalised for the registration of information on personal status under the system of the GBA. They were however entitled to refuse the use of the documents because of lack of legalisation. There used to be two ways of seeking legal recourse: 1. with the Raad van State against the refusal of the foreign ministry to legalise the document and 2. with the civil court against the refusal of the municipalities to register the facts mentioned in the document.

This was seen as costly and inefficient.

- The effect of the above mentioned decision of the Raad van State and the new policy rules is that now there is only the second legal remedy left. This means that the administrative process of legalisation (and verification) as such which is carried out by the foreign ministry is at the moment beyond judicial control in the Netherlands. It is difficult to say whether this in practice will lead to problems for people having to rely on foreign documents in the Netherlands.

III.A.3.2. Practical [III.A.3.2](#)

- The revised version of the policy rules on legalisation and verification has only been in effect since 1 May 2006, so it remains to be seen what effect this new policy will have in practice.
- Also the policy on the acceptance of documents from “states not to be trusted” (probleemlanden) for registration in the civil register or in the GBA has changed since 1 May 2006. Here equally, it remains to be seen what the practical effects will be.

PART III.B. Specific

1. Documents proving involuntary unemployment

Such documents are unknown in the Netherlands and consequently would not have to be submitted.

2. Documents proving a family relationship or other durable relationship

For difficulties concerning documents on personal status, please be referred to the general comments given above.

3. Documents proving or contesting a parent-child relationship

For difficulties concerning documents on personal status, please be referred to the general comments given above.

4. Documents proving the name and forenames of a child or adult

For difficulties concerning documents on personal status, please be referred to the general comments given above.

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

For difficulties concerning documents on personal status, please be referred to the general comments given above.

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

No comment

7. Documents proving a person's professional qualifications (diplomas)

No comment

8. Documents proving a person's death

For difficulties concerning documents on personal status, please be referred to the general comments given above.

9. Documents proving a person's date of birth

For difficulties concerning documents on personal status, please be referred to the general comments given above.

10. Documents proving the establishment by incorporation of a company

No comment.

11. Documents proving the constitution of a company, including any official translation thereof

No comment.

12. Documents proving the latest banking accounts of a company

Such documents are unknown in the Netherlands and consequently would not have to be submitted.

13. Documents proving the deposit of cash or certificates of deposit

Such documents are unknown in the Netherlands and consequently would not have to be submitted.

PART IV – Outgoing documents: Difficulties**OVERVIEW OF PART IV 0****PART IV.A. General**

Please note that only those paragraphs are filled in that give rise to comment from the Netherlands point of view.

IV.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention) 0**IV.A.1.1. Legal [IV.A.1.1](#)****IV.A.1.2. Practical [IV.A.1.2](#)**

- Central authorities notice frequently that Dutch nationals having to submit documents originating in the Netherlands in another state, are not adequately

informed on what documents they need, so that they have to come back several times before the process of legalising documents through an Apostille is complete.

- The fact that legalisation may be quite a burden on a free movement of persons within the EU is evidenced by the number of professional organisations that can be hired for the fulfilment of the various requirements. They do however charge a significant price for their services. In many cases the costs will be taken on by the company that is deploying the person in question to another Member State, but in those cases where the movement is not inspired by economic reasons, like in the case of students, the process of legalisation may be seen as a barrier to a free movement of persons within the EU.

IV.A.2. Parallel international agreements [0](#)

IV.A.2.1. Legal [IV.A.2.1](#)

IV.A.2.2. Practical [IV.A.2.2](#)

IV.A.3. National law [0](#)

IV.A.3.1. Legal [IV.A.3.1](#)

IV.A.3.2. Practical [IV.A.3.2](#)

PART IV.B. Specific

1. Documents proving involuntary unemployment

2. Documents proving a family relationship or other durable relationship

3. Documents proving or contesting a parent-child relationship

4. Documents proving the name and forenames of a child or adult

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

--

7. Documents proving a person's professional qualifications (diplomas)

8. Documents proving a person's death

9. Documents proving a person's date of birth

10. Documents proving the establishment by incorporation of a company

11. Documents proving the constitution of a company, including any official translation thereof

12. Documents proving the latest banking accounts of a company

13. Documents proving the deposit of cash or certificates of deposit

PART V – Justification of legalisation or other similar or equivalent requirements identified in Part I

OVERVIEW OF PART V 0

PART V.A. General

V.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

V.A.1.1 Requirements and procedures [V.A.1.1](#)

As pointed out before there is no formal implementation of the convention under Netherlands law. The Netherlands do however apply the Convention in practice through policy rules. These policy rules however are not set within the wider context of other national law (such as rules of private international law) or international obligations (such as EU-law). This raises the question whether the Netherlands fulfils its international obligations in this respect.

V.A.1.2 Effects rules [V.A.1.2](#)

V.A.2. Parallel international agreements

V.A.2.1 Requirements and procedures [V.A.2.1](#)

V.A.2.2 Effects rules [V.A.1.2](#)

As pointed out under paragraph I.A.3.4. above the information published by the ministry of foreign affairs on legalisation requirements, nor its policy document on legalisation (paragraph I.A.4.1.) makes any mention of the various EU-rules in place. This is justified from the point of view that such rules are part of national law and the foreign ministry is concerned with international law, but nevertheless this means that the information of the ministry of foreign affairs on legalisation requirements is not an exhaustive source of reference. This impression is being created however, since whenever legalisation is mentioned in the Netherlands, the foreign ministry is mentioned as the competent authority.

V.A.3. National law

V.A.3.1 Requirements and procedures [V.A.3.1](#)

The fact that the various conventions concerning the recognition of foreign documents with or without legalisation to which the Netherlands is party have not been implemented, but are applied because of their direct effect and through policy rules is questionable from a point of view of the rule of law. The fact that there is little case law available in this respect does not necessarily mean that there are no problems in practice.

As far as the issue of legal protection is concerned, please be referred to paragraph III.A.3.1 concerning the possibility of effective legal recourse with respect to the way the process of legalisation is carried out by the competent Netherlands authority.

V.A.3.2 Effects rules [V.A.3.2](#)

The effect of foreign documents in the Netherlands is unclear. The various rules applicable and the way in which they are applied is not transparent. Under national law there are rules of private international law in place concerning the acceptance of foreign documents into the Netherlands legal order. They make no reference to (additional) legalisation requirements, but legalisation is the way in which the authenticity of a document can be established. The legalisation requirements are set out in policy rules and those policy rules are silent on the effect that legalisation has.

Furthermore various conventions abolish legalisation requirements and EU-law demands that a number of foreign documents and/or instruments have equal effect as national documents and/or instruments. All these legal instruments exist next to each other and neither the legislator, nor the courts or legal doctrine seem to have a comprehensive and consistent overview. From a point of view of legal certainty this is an unfavourable situation for persons having to rely on foreign documents in the Netherlands.

The Netherlands authorities had a very strict policy towards third countries seen as "problem countries". For these countries verification of the facts stated in the document was demanded before legalisation was possible. This policy had been widely criticised, also from a point of view of EU-law as regards their application to family members of EU-nationals from such "problem countries" (see for example Annexes NL 1-5 and NL 1-6). The rules have now been replaced by a policy where verification for documents originating in any state is possible upon demand by an authority to whom a document is submitted, but it is no longer a condition to be fulfilled prior to legalisation. The new policy rules have only been in effect since 1 May 2006, so there is as yet no information available as to their practical effect.

PART V.B. Specific

1. Documents proving involuntary unemployment

2. Documents proving a family relationship or other durable relationship

3. Documents proving or contesting a parent-child relationship

4. Documents proving the name and forenames of a child or adult

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

7. Documents proving a person's professional qualifications (diplomas)

8. Documents proving a person's death

9. Documents proving a person's date of birth

10. Documents proving the establishment by incorporation of a company

11. Documents proving the constitution of a company, including any official translation thereof

12. Documents proving the latest banking accounts of a company

--

13. Documents proving the deposit of cash or certificates of deposit

<u>PART VI – Suggested action</u>
--

OVERVIEW OF PART VI 0

VI.1. European 0

The fact that the Netherlands have a legalisation policy without this policy being embedded in national law may give rise to the question whether the Netherlands is in compliance with the various EC-rules trying to facilitate a free movement of persons.

VI.2. Intergovernmental 0

No comment.

VI.3. National 0

The study shows that the various rules applicable in the Netherlands are not always consistent for example with regard to legal protection. Also the rules of private international law in place are more liberal than the policy rules used by the administrative authorities. From a point of view of legal certainty (the legal effect of foreign documents is unclear), legal protection (of the persons having to use foreign documents in the Netherlands) and the rule of law (there are in effect only policy rules on legalisation) a lot may be said for the introduction of a law on legalisation.
--

1. <u>NATIONAL BIBLIOGRAPHY format sheet</u>
The National Rapporteurs are kindly requested to provide the information on the literature they have used in the process of writing the report by use of the format sheet in ANNEX III 74

EXPLANATORY MEMORANDUM

PART I – Documents operating cross-border: Current legal practice as regards legalisation or other similar or equivalent requirements

OVERVIEW OF PART I 0

Part I is aimed at establishing a comprehensive description of the different sources of national law and their implementation comprising the current legal practice as regards legalisation or other similar or equivalent requirements for foreign public documents. The description of the current legal practice is to include the legislative implementation, practical implementation and judicial control. Part I contains a General Part and a Specific Part. The General Part contains four sections: on European Community Law, the Hague Convention of 1961, other International Agreements to which a Member State may be party, and National Law. The Specific Part aims at the provision of a more comprehensive description of the current legal practice as regards legalisation or other similar or equivalent requirements for twelve specifically identified public documents.

Part I is concerned with the whole process of legalisation and other similar or equivalent requirements. It is of particular importance to note here, as mentioned in the Introduction to the questionnaire, see under C 'Working definition', that 'legalisation' implies both the process of legalisation carried out by the authorities of the State of a public document's origin, and the process of legalisation carried out by the authorities of the State of a public document's destination. Part I will produce an overview of the legal practice of legalisation of public documents operating cross-border in general: the process of legalisation as regards *incoming public documents* and the process of legalisation as regards *outgoing public documents*.

In this connection, it is recognised that the practical implementation of legalisation or other similar or equivalent requirements may differ radically from the black letter text of legislation. If this project is to draw useful conclusions, it is vital that such variances and anomalies in practice are fully understood.

For example, it may well be that certain Member States, notwithstanding applicable rules, abstain *de facto* from imposing legalisation requirements or other similar or equivalent requirements as regards public documents originating in certain (Member) States, for example on the basis of historical connections between the States concerned, or may *de facto* impose additional requirements. In the event such a situation applies to your Member State, please describe exactly between which State(s) this practice applies and for which types of public document.

Part I.A. General

I.A.1. European Community Law

I.A.1.1. Introduction [I.A.1.1](#)

In a number of Community policy areas the matter of legalisation has in fact been harmonized. In those situations the mutual trust between competent public authorities was deemed sufficient in order to exempt documents from legalisation requirements applicable at the Member State level. Great significance is attached at the Community level to stimulating mutual trust between the Member States' competent authorities. Mutual trust is recognised to be indispensable in the process of fully completing the Community programme on mutual recognition. Measures that have been taken in order to further mutual trust are the introduction of lists of competent national authorities which are to implement specific

Community instruments. Such lists are subsequently annexed to the relevant Community instrument which greatly enhances administrative transparency both for the authorities in question. Another measure is the introduction of standard forms at the Community level for the purpose of transmitting information between Member States' authorities, or for the purpose of certifying the authenticity of domestic public documents which are to be used in other Member States.

NB1. Given the extensive number of measures at the Community level which may provide for additional exemptions from identified legalisation requirements it is recognised that the following list may be incomplete. The national rapporteurs are encouraged to report on any additional exemptions they discover in the process of drafting their national report.

NB2. In the process of drafting the national report, it may become apparent that the obligations to exempt documents from any legalisation requirement or other similar or equivalent requirements applicable at the Member State level are in practice not adequately discharged by the Member States or that additional obstacles hinder the recognition of foreign public documents. The national rapporteurs are encouraged to report on such failing to implement Community law by the Member State in question.

One could say that for certain specific types of public document the current legal practice of the Member States as regards legalisation of foreign public documents has effectively been dictated at Community level. In the situations enumerated below, under I.A.1.2., the current legal practice ought to be that no legalisation or other similar or equivalent requirements are imposed as regards the documents covered by the instruments mentioned.

It is of importance for the purpose of the study that the current legal practice is evaluated in order to establish whether the requirements of Community law as regards legalisation and other similar or equivalent requirements are in fact fulfilled in the Member States' legal orders.

Under *Implementation* (I.A.1.2.) the National Rapporteurs are asked to identify and describe any legislative or other measures taken to implement the relevant EC legislation and to evaluate whether their respective Member States have in fact effectively implemented the Community law requirements as listed into their national legal orders.

I.A.1.2. Implementation of specific measures [I.A.1.2](#)

Area of Justice - judicial cooperation in civil matters (Article 61(c) EC)

Article 19 of Regulation (EC) No 1346/2000 - Documents appointing a liquidator

Based on Article 19 of Regulation (EC) No 1346/2000 documents by which a liquidator in the sense of the Regulation is appointed in a Member state and translations of such documents are exempt from legalization requirements or other similar or equivalent requirements.

Article 4(4) of Regulation (EC) No 1348/2000 - Service of documents in civil and commercial matters

Based on Article 4(4) of Regulation (EC) No 1348/2000 all documents, requests, confirmations, receipts, certificates and any other papers used in the process of the service of judicial and extrajudicial documents in civil and commercial matters are exempt from Member State's national legalisation requirements and other similar or equivalent requirements.

Article 56 of Regulation (EC) No 44/2001 - Judgments in civil and commercial matters

Based on Article 56 of Regulation (EC) No 44/2001, judgments in civil and commercial matters which satisfy the conditions necessary to establish their authenticity are exempt from Member State's national legalisation requirements and other similar or equivalent requirements.

Article 56 of Regulation (EC) No 44/2001 - Documents certifying the authenticity of judgments,

court settlements and authentic instruments in civil and commercial matters

In accordance with Article 56 Regulation (EC) No 44/2001 the standard form certificate, see ANNEX V Regulation (EC) No 44/2001, which is required for certifying the authenticity of judgments, court settlements and authentic instruments are exempt from Member State's national legalisation requirements and other similar or equivalent requirements.

Article 56 of Regulation (EC) No 44/2001 - Documents appointing a representative ad litem in civil and commercial matters

Based on Article 56 of Regulation (EC) No 44/2001, documents appointing a representative ad litem in civil and commercial matters which satisfy the conditions necessary to establish their authenticity are exempt from Member State's national legalisation requirements and other similar or equivalent requirements.

Article 57 of Regulation (EC) No 44/2001 - Authentic instruments in civil and commercial matters

Authentic instruments in civil and commercial matters in the sense of Article 57 of Regulation (EC) No 44/2001 are to be placed on the same footing as a judgment in civil and commercial matters. Thus the documents used for its certification are exempt from Member State's national legalisation requirements and other similar or equivalent requirements: see chapter IV of the Jenard Report on the 1968 Brussels Convention.

Article 57 of Regulation (EC) No 44/2001 does not provide a definition of the term 'authentic instrument'. Authentic instruments are to fulfill the following three requirements: 1. the authenticity of the instrument should have been established by a public authority, 2. this authenticity should relate to the content of the instrument and not only, for example, the signature, and 3. the instrument has to be enforceable in itself in the State in which it originates. The term can be said to cover those authentic instruments which are not covered by either Article 31 Regulation (EC) No 44/2001 with regard to judgments, or Article 58 Regulation (EC) No 44/2001 regarding court settlements. The assimilation of such instruments to judgments is justified because it is to emanate from a public official exercising attributed powers of reasoning and judgment and is therefore an indirect manifestation for purposes of documentation of public authority acting as agents of the administration or as private individuals vested with public authority. Those effects are justified because they are associated with a firm presumption of correctness and accuracy inherent in operations undertaken in a representative capacity by specialists in public documentation. The term 'authentic instrument' is not applicable to any document recording the expression of a person's intent but only to those for which appropriate authentication procedures are laid down, justifying the treatment of documents within that category as if they were judgments.

Article 58 of Regulation (EC) No 44/2001 - Court settlements in civil and commercial matters

Court settlements in civil and commercial matters in the sense of Article 58 of Regulation (EC) No 44/2001 are to be placed on the same footing as a judgment in civil and commercial matters and so are exempt from Member State's legalisation requirements.

Article 46 Regulation (EC) No 2201/2003 - Authentic instruments in matrimonial matters or matters concerning parental responsibility

Based on recital 22 and Article 46 Regulation (EC) No 2201/2003, documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgments in matrimonial matters or matters concerning parental responsibility, see above and Article 52 Regulation (EC) No 2201/2003.

Article 46 Regulation (EC) No 2201/2003 - Agreements between parties in matrimonial matters or matters concerning parental responsibility

Based on recital 22 and Article 46 Regulation (EC) No 2201/2003, agreements between parties that are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgments in matrimonial matters or matters concerning

parental responsibility, see above and Article 52 Regulation (EC) No 2201/2003.

Article 52 of Regulation (EC) No 2201/2003 - Judgments in matrimonial matters or matters concerning parental responsibility

Based on Article 52 of Regulation (EC) No 2201/2003, judgments in matrimonial matters or in matters concerning parental responsibility are exempt from Member State's national legalisation requirements and other similar or equivalent requirements.

Article 52 Regulation (EC) No 2201/2003, certificates drawn up in the standard forms of ANNEX I (Article 39), II (Article 39), III (Article 41) or IV (Article 42) - Documents certifying the authenticity of judgments, authentic instruments and parties between parties in matrimonial matters or matters concerning parental responsibility

In accordance with Article 52 Regulation (EC) No 2201/2003, certificates drawn up in the standard forms of ANNEX I (Article 39), II (Article 39), III (Article 41) or IV (Article 42) which are required for certifying the authenticity of judgments, authentic instruments and agreements between parties are exempt from Member State's national legalisation requirements and other similar or equivalent requirements.

Article 52 of Regulation (EC) No 2201/2003 - Documents appointing a representative ad litem in matrimonial matters or matters concerning parental responsibility

Based on Article 52 of Regulation (EC) No 2201/2003, documents appointing a representative ad litem in matrimonial matters or in matters concerning parental responsibility are exempt from Member State's national legalisation requirements and other similar or equivalent requirements.

Article 27 of Regulation (EC) No 805/2004 - Judgments, court settlements and authentic instruments on uncontested claims in civil and commercial matters

In accordance with Article 27 of Regulation (EC) No 805/2004, Regulation (EC) No 805/2004 does not affect the possibility of seeking recognition and enforcement, in accordance with Regulation (EC) No 44/2001, of a judgment, a court settlement or an authentic instrument on an uncontested claim, see Article 56 Regulation (EC) No 44/2001 as referred to above. Judgments, court settlements or authentic instruments on uncontested claims which fulfill the requirements of Regulation (EC) No 44/2001 are exempt from Member State's national legalisation requirements and other similar or equivalent requirements where they are enforced by means of a European enforcement order certificate, see below.

ANNEXES I (Article 9 - judgments), II (Article 24 – court settlements) and III (Article 25 – authentic instruments) of Regulation (EC) No 805/2004 - Judgments, court settlements and authentic instruments on uncontested claims in civil and commercial matters certified as European enforcement order

European enforcement order certificates drawn up in accordance with ANNEXES I (Article 9 - judgments), II (Article 24 – court settlements) and III (Article 25 – authentic instruments) of Regulation (EC) No 805/2004 should be deemed to be exempt from Member State's national legalisation requirements and other similar or equivalent requirements.

Although Regulation (EC) No 805/2004 does not explicitly stipulate the exemption of legalisation or other requirements, it follows implicitly from the Regulations Recital 18 which states that: "Mutual trust in the administration of justice in the Member States justifies the assessment by the court of one Member State that all conditions for certification as a European Enforcement Order are fulfilled to enable a judgment to be enforced in all other Member States without judicial review of the proper application of the minimum procedural standards in the Member State where the judgment is to be enforced" and Article 20(1) of the Regulation which stipulates that a judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement. Furthermore, the referral in Article 27 of the Regulation to Regulation (EC) No 44/2001 which makes the European enforcement order an optional instrument, reinforces the idea of an analogous application of Article 56 Regulation (EC) No 44/2001 referred to above.

Article 13(5) of Directive 2002/8/EC - Documents concerning legal aid

Based on Article 13(5) of Directive 2002/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, legal aid request forms and their supporting documents are exempt from Member State's national legalisation requirements and other similar or equivalent requirements.

Free movement of goods (Article 23 EC)**Article 250 of Regulation (EEC) No 2913/92 - Certificates of origin**

The European Community is based upon a customs union. In the interests both of Community traders and customs authorities the provisions of customs legislation have been assembled in a European Customs Code, see Regulation (EEC) No 2913/92. Based on the concept of an internal market, the Code contains the general rules and procedures which ensure the implementation of the tariff and other measures introduced at Community level in connection with trade in goods between the Community and third countries. The Code seeks to guarantee the uniform application of the European customs regulations by enabling the procedures for their implementation to be adopted within a suitable time and it has established a Customs Code Committee in order to ensure close and effective cooperation between the Member States and the Commission. One of the primary objectives besides to proper functioning of the internal market is to prevent any fraud or irregularity liable to affect adversely the General Budget of the European Communities.

For the import into the Community of third countries' goods the Commission requires so-called '*binding tariff and origin information*' to be submitted. In order to benefit from subsequent free movement of goods throughout the Community the Commission Regulation (EEC) 2454/93 which implements Regulation (EEC) 2913/92 lays down in detail the procedures to be followed and standard forms to be used with a view to obtaining a so-called '*certificate of origin*' which constitutes binding proof on the administrations of all Community Member States that the good concerned originates in the member State where the certificate was obtained. As regards the legalization requirements or other similar or equivalent requirements, Article 250 of Regulation (EEC) No 2913/92 on '*the legal effects in a Member State of measures taken, documents issued and findings made in another Member State*' states that where a customs procedure is used in several Member States, the decisions, identification measures taken or agreed on, and the documents issued by the customs authorities of one Member State shall have the same legal effects in other Member States as such decisions, measures taken and documents issued by the customs authorities of each of those Member States.

The Regulation further establishes procedures to be followed by the competent national authorities in case reasonable doubt arises as regards the authenticity of a certificate of origin or the information contained therein, which are based on communication between the competent national authorities concerned. In principle, therefore, certificates of origin within the meaning described above are to be considered to be exempt from any legalization requirements or other similar or equivalent requirements at the member State level. Based on the EEC-EFTA Convention on the simplification of requirements in trade in goods, the same can be said to apply to documents issued by the competent national authorities of the EFTA States.

Free movement of workers - social security (Article 42 EC)**Article 85 Regulation (EEC) No 1408/71 read in conjunction with Regulation (EEC) No 574/72 - Statements, documents and certificates of any kind whatsoever required to be produced for the purposes of the coordination of the national social security schemes of the Member States**

When it comes to the free movement of workers, it is important to be aware of the tensions and interplay between the economic and the social aspects. On the one side, there is the image of the 'Community worker' as a mobile unit of production, contributing to the creation of a single market and to the economic prosperity of Europe. On the other side, there is the image of the worker as a human being who at some point may become reliant upon benefits that he or she is entitled to under the laws of a

particular Member State. In order to facilitate the free movement of workers whilst ensuring that the social aspects of free movement are not disregarded, the Member States' national security schemes have been coordinated at the European level.

The legal basis for Community measures in the field of social security is limited to the coordination of the application of national social security schemes as regards persons resident in the territory of a Member State who are or have been subject to the social security legislation of one or more other Member States. The system established is based on the principle of equal treatment and exportability of acquired social security benefits of persons who move within the Community and who are therefore subjected to multiple national social security schemes. One of the measures taken in the process of coordination was to address the issue of legalisation as regards statements, documents and certificates by the Member State where they are to be produced as far as their production is required for the effective coordination of the national social security schemes. As a result, Regulations (EEC) No 1408/71 and 574/72 exempt all documents required in the process of coordination from legalisation by the Member State where they are to be produced.

Based on Article 85 Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community read in conjunction with Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, all statements, documents and certificates of any kind whatsoever required to be produced for the purposes of the coordination of the national social security schemes of the Member States are exempt from legalisation by the Member State where their production is required in the process of ensuring that persons moving within the Community and their dependants and survivors retain the social security rights and advantages acquired and in course of being acquired. Regulations (EEC) No 1408/71 and 574/72 are to be replaced. Article 5 of the Commission proposal for a Regulation for the implementation of Regulation (EC) No 883/2004, COM(2006)16 final - which will replace Regulation (EEC) No 1408/71 - relates to the legal value of documents and supporting documents issued in another Member State. The Article stipulates that documents issued by the institution of a Member State and supporting documents issued by the authorities of another Member State, including taxation authorities, are to be accepted by the institutions of other Member States so long as they have not been withdrawn or declared to be invalid by the competent authority or institution of the Member State in which they were issued. Paragraph 2 of the Article stipulates that where doubt arises about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, the institution of the Member State that receives the document shall contact the issuing institution to ask it for the necessary clarification and, where appropriate, the withdrawal of the said document.

I.A.1.3. Judicial control [I.A.1.3](#)

Summary of national case law relevant to the enumerated rules of Community law.

1. Please prepare an overview, i.e. analysis, of the case law relevant to the functioning of the relevant provisions of Community law in your Member State.
2. Please process the cases you have selected using the **Format Sheet in ANNEX I [1](#)**

I.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

I.A.2.1. Status [I.A.2.1](#)

The Apostille Convention is currently in force in all but one – Denmark – of the EU Member States.

Please verify and, if necessary correct the information on the status of the Convention in your Member State as stated below.

Member State	1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents	
	Signed?	Ratified/ Acceded/ Succeeded?
Austria	Y	Y
Belgium	Y	Y
Cyprus	N	Y
Czech Republic	N	Y
Denmark	N	N
Estonia	N	Y
Finland	Y	Y
France	Y	Y
Germany	Y	Y
Greece	Y	Y
Hungary	N	Y
Ireland	Y	Y
Italy	Y	Y
Latvia	N	Y
Lithuania	N	Y
Luxembourg	Y	Y
Malta	N	Y
Netherlands	Y	Y
Poland	N	Y
Portugal	Y	Y
Slovakia	N	Y
Slovenia	N	Y
Spain	Y	Y
Sweden	Y	Y

1) S = Signature

2) R/A = Ratification or Accession

3) Type = R: Ratification;

A: Accession;

A*: Accession giving rise to an acceptance procedure; click on A* for details of acceptances of the accession;

C: Continuation;

Su: Succession;

D: Denunciation;

4) EIF = Entry into force

5) Ext = Extensions of application

6) Auth = Designation of Authorities

7) Res/D/N = Reservations, declarations or notifications

Member States of the Organisation (click here for the non-Member States)

States	S ¹	R/A ²	Type ³	EIF ⁴	Ext ⁵	Auth ⁶	Res/D/N ⁷
Austria	5-X-1961	14-XI-1967	R	13-I-1968		1	
Belgium	10-III-1970	11-XII-1975	R	9-II-1976		1	
Cyprus		26-VII-1972	A	30-IV-1973		1	
Czech Republic		23-VI-1998	A	16-III-1999		1	
Estonia		11-XII-2000	A	30-IX-2001		1	
Finland	13-III-1962	27-VI-1985	R	26-VIII-1985		1	
France	9-X-1961	25-XI-1964	R	24-I-1965		1	D
Germany	5-X-1961	15-XII-1965	R	13-II-1966		1	N
Greece	5-X-1961	19-III-1985	R	18-V-1985		1	
Hungary		18-IV-1972	A	18-I-1973		1	D
Ireland	29-X-1996	8-I-1999	R	9-III-1999		1	
Italy	15-XII-1961	13-XII-1977	R	11-II-1978		1	
Latvia		11-V-1995	A	30-I-1996		1	
Lithuania		5-XI-1996	A	19-VII-1997		1	
Luxembourg	5-X-1961	4-IV-1979	R	3-VI-1979		1	
Malta		12-VI-1967	A	3-III-1968		1	
Netherlands	30-XI-1962	9-VIII-1965	R	8-X-1965	2	1	
Poland		19-XI-2004	A	14-VIII-2005		1	
Portugal	20-VIII-1965	6-XII-1968	R	4-II-1969		1	D
Slovakia		6-VI-2001	A	18-II-2002		1	
Slovenia			Su	24-I-1965		1	
Spain	21-X-1976	27-VII-1978	R	25-IX-1978		1	D
Sweden	2-III-1999	2-III-1999	R	1-V-1999		1	
United Kingdom of Great Britain and Northern Ireland	19-X-1961	21-VIII-1964	R	24-I-1965	13	1	D

I.A.2.2. Scope [I.A.2.2](#)

Please describe the scope of application of the Convention.

1. **Geographical scope** : has the scope of application of the provisions of the ‘Apostille’ Convention been extended beyond the states party to the Convention by the legislator, the competent authorities or the judiciary?
2. **Material scope** : has the scope of application of the Convention *ratione materiae*, i.e. the categories of document to which it applies (see Article 1), been limited or extended either by the legislator, the competent authorities or the judiciary?

I.A.2.3. Legislative implementation [I.A.2.3](#)

Please describe the process of implementation of the ‘Apostille’ Convention by the legislation into the national legal order of your Member State.

1. Please provide copies of any **relevant legislative acts** and provide a translation in the English language of important provisions.
2. Please provide any key **travaux préparatoires** (e.g. draft legislation with commentary, legislative report) and provide a translation in the English language of parts thereof which express the legislator’s intention with and motivation for the ratification and implementation of the Convention.

I.A.2.4. Practical implementation [I.A.2.4](#)

The implementation process of the Convention in practice.

Please describe the process of the **issuance of an Apostille** by the competent authority, see Articles 4 and 5 of the Convention.

13. By which methods can an Apostille be requested (in person, by registered mail, mail, email, fax, etc.)?
14. How, in practice, does the competent authority verify the authenticity of the signature, the capacity in which the person signing the document has acted, and the identity of the seal or stamp which the document bears? NB. Please describe the **precise mechanism** the authority uses to verify those elements.
15. What is the form of the Apostille used (please provide a copy, with English translation of any parts in a foreign language)?
16. Is the Apostille issued by the competent authority placed on the public document itself or is the Apostille placed on a so-called allonge?
17. How is the Apostille issued when the public document consists of multiple pages?
18. Which language is used on the Apostille?
19. Is the system used for the issuance of an Apostille mechanical or electronic?
20. What are the main measures taken in order to avoid fraud?
21. Are there any plans to modernize the system used to issue Apostilles?
22. How long does the total process generally take?
23. What is the fee payable for the issuance of an Apostille? Who sets the fees? How is the level of the fees determined? Are they purely covering costs or can they also be said to be aimed at bringing revenue?

NB. Does the same procedure apply to all documents and to all (Member) States party to the Hague Convention, or does it happen that in practice, although a specific document/situation is within the scope of the Convention, a different procedure is applied to particular cases?

Please describe the system used to comply with the **registration or card index requirement**, see Article 7 of the Convention.

4. Is the system used electronic?

5. Are there any plans to modernize the system used?
6. By which methods can the register or card be consulted in accordance with Article 7 of the Convention?

Please verify and, if necessary, correct the information for your Member State on the **competent authorities** under Article 6 of the Convention. The final information should include:

1. the number of authorities
2. their identity and contact details
3. the name and contact details of an approachable contact person at the competent authority(ies).

NB. In case of multiple competent authorities, is the same system described above used by all authorities?

Austria

Bundesministerium für Auswärtige Angelegenheiten
Minoritenplatz 8
A-1014 WIEN
Telephone: +43 (5) 01150-0
+43 (5) 01150-4411
Fax: +43 (5) 01159-0
Email: post@bmaa.gv.at
General website: <http://www.bmaa.gv.at>

Belgium

Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement
rue des Petits Carmes 27
1000 BRUSSELS
Belgium
Telephone: +32 (2) 501 89 00
Fax: +32 (2) 501 37 90
Email: legalisation.ae@diplobel.fed.be
General website: <http://www.diplobel.fgov.be/en/default.asp>

Cyprus

The Ministry of Justice of the Republic of Cyprus
Address: Ministry of Justice
12 Ilioupoleos St.
1461 Lefkosia (Nicosia)
Cyprus
Telephone: +357 22805911
Fax: +357 22518349
Email: lazaros.savvides@cytanet.com.cy
General website: <http://www.cyprus.gov.cy>

Czech Republic

The Ministry of Justice, International Department (certificates issued by authorities of justice, including certificates issued or certified by notaries);
The Ministry of Foreign Affairs, Consular Department (documents issued by authorities of State Administration or by the other ones).

Address: Ministry of Justice
Vyšehradská 16
128 10 PRAHA 2
Czech Republic
Telephone: +420 221 997 106
Fax: +420 224919927
Email: posta@msp.justice.cz
General website: <http://portal.justice.cz>

Address: Ministry of Foreign Affairs
Loretánské náměstí 5
118 00 PRAHA 1
Czech Republic
Telephone: +420 224 181 111
Fax: -
Email: info@mzv.cz
General website: <http://www.mzv.cz>

Denmark

Ministry of Justice
Law Department
Slotsholmsgade 10
1216 COPENHAGEN K
Tel.: +45 3392 3340
Fax: +45 3393 3510
email: jm@jm.dk

Estonia

There are five competent authorities in Estonia:

1. Ministry of Foreign Affairs, Consular Department, Legal Division;
2. Ministry of Education and Research, Administrative Department;
3. Ministry of Justice, Courts' Department;
4. Ministry of Internal Affairs, Population Facts Department;
5. Ministry of Social Affairs, Information Management Department

Address: Ministry of Foreign Affairs
Consular Department
Legal Division
Islandi väljak 1
15049 TALLINN
Telephone: +372 6317 440 / 6 317 478
Fax: +372 631 7454

Email: legaliseerimine@mfa.ee
<http://www.vm.ee>

Address: Ministry of Education and Research
Administrative Department
Munga 18
51007 TARTU
Telephone: +372 7 350 252 / 7 350 222
Fax: +372 7 350 250
Tallinn Office:
Tõnismägi 11
15192 TALLINN
Telephone:
+ 372 6281 234 / +372 6 281 243
Fax:
+372 6 281 390
Email: hm@hm.ee
<http://www.hm.ee>

Address: Ministry of Justice
Courts' Department
Lökke 4
10122 TALLINN
Telephone: +372 611 3100
Fax: +372 611 3101
Email: info.apostill@just.ee / info@just.ee
<http://www.just.ee>

Address: Ministry of Internal Affairs
Population Facts Department
Pikk 61
15065 TALLINN
Telephone: +372 612 5169, +372 612 5170
Fax: +372 612 5162
Email: sisemin@sisemin.gov.ee
<http://www.sisemin.gov.ee>

Address: Ministry of Social Affairs
Information Management Department
Gonsiori 29
15027 TALLINN
Telephone: +372 626 9302, +372 626 9306 / 626 9301
Fax: +372 699 2209
Email: info@sm.ee
General website: <http://www.sm.ee>

Finland

In Finland there are 36 local register offices designated as Competent Authorities (listed at http://www.hcch.net/upload/auth12_fi.pdf).

However, the Finnish Ministry of Justice would be relied upon as the primary information point for the Study, through its National Rapporteur, Dr Sakari Lukkanen.

France

Ministère de la Justice
Service d'Information et de la Communication
13, place Vendôme
75042 PARIS CEDEX 01
France
Fax: 00 33 (0)1 44 77 61 15
<http://www.justice.gouv.fr>

Germany

1 Bund Level

a) Urkunden aller Bundesbehörden und Gerichte (ausser den unter Buchstabe
berwähnten Urkunden)

Bundesverwaltungsamt in Köln

b) Urkunden des Bundespatentsgerichts und des Deutschen Patentamtes
Präsident des Deutschen Patentamtes

2 Länder Level

a) Urkunden der Justizverwaltungsbehörden, der ordentlichen Gerichte (Zivil- und
Strafgerichte) und der Notare

Ministerium (Senator) für Justiz

Land-, (Amts-)gerichtspräsident

b) Urkunden aller Verwaltungsbehörden

(ausser Justizverwaltungsbehörden)

Ministerium (Senator) für Inneres

Regierungspräsident (Präsident des Verwaltungsbezirks)

c) Urkunden der anderen als der ordentlichen Gerichte (vgl. Buchstabe a)

Ministerium (Senator) für Inneres

Regierungspräsident (Präsident des Verwaltungsbezirks)

Ministerium (Senator) für Justiz

Land- (Amts-)gerichtspräsident.

And, with the reunification of Germany on 3 October 1990, for Brandenburg, Mecklenburg-
West Pomerania, Saxony, Saxony-Anhalt, Thuringia:

a) für Urkunden der Justizverwaltungsbehörden, der ordentlichen Gerichte (Zivil- und
Strafgerichte) und der Notare

die Ministerien für Justiz sowie die Präsidenten der Landgerichte (Bezirksgerichte)

b) für Urkunden aller Verwaltungsbehörden (ausser Justizverwaltungsbehörden)

die Ministerien für Inneres sowie die Regierungspräsidenten (Bezirks-regierungen) und

das Landesverwaltungsamt (Thüringen)

c) für Urkunden anderer Gerichte als der ordentlichen Gerichte (vgl. Buchstabe a)) die Ministerien für Inneres, die Regierungspräsidenten (Bezirksregierungen), die Ministerien für Justiz sowie die Präsidenten der Landgerichte (Bezirksgerichte).»

Declaration of 2 August 2004:

In accordance with Article 3, paragraph 1, of the Convention, the competent authorities for issuing certificates are notified as follows in the Land of Baden-Württemberg:

1. The Ministry of Justice with regard to public documents issued by itself, an Oberlandesgericht (highest court of a Land) and public prosecutor's offices serving an Oberlandesgericht;
2. the President of a Landesgericht (district court of a Land) for the public documents issued in his district by the other normal courts and public prosecutor's offices, by the authorities to which tasks of the normal courts have been delegated, by notaries and district notaries, and for other documents issued in connection with the administration of justice;
3. the district council of Tübingen for public documents issued by the ministries, except for those issued by the Ministry of Justice;
4. the district councils for the public documents issued in their districts by all other administrative bodies and by courts of all branches of the judicial system except for the normal courts.

Address: Bundesverwaltungsamt (Federal Office of Administration)

Bundesverwaltungsamt

Barbarastr. 1

50735 Köln

Deutschland

Telephone: 01888 358-0 bzw. +49 (221) 758-0 / 01 88 83 58-40 26 / 01 88 83 58-40 24

Fax: 01888 358-2823 bzw. + 49 (221) 758-2823

Email: poststelle@bva.bund.de

General website: <http://www.bva.bund.de>

Address: Präsident des Deutschen Patentamtes (German Patent Office)

Deutsches Patent- und Markenamt

Zweibrückenstraße 12

80331 München

Postanschrift:

Deutsches Patent- und Markenamt

80297 MÜNCHEN

Deutschland

Telephone: +49 (89) 21 95-0

Fax: +49 (89) 21 95-22 21

Email: post@dpma.de

General website: <http://www.dpma.de/index.htm>

Greece

Greece has nominated two forms of State entity to as competent authority for the purposes of the 1961 Convention:

- 1 The department (nómos) which is the seat of the authority issuing the document in the case of administrative documents; and
- 2 The court of the first instance in the district which is the seat of the authority issuing

the document in the case of judicial documents.

Hungary

- 1 The Minister of Justice of the Hungarian People's Republic in respect of public documents and legalisations executed by judicial authorities;
- 2 The Minister for Foreign Affairs of the Hungarian People's Republic in respect of public documents and legalisations executed by other authorities.

Contact details:

Address: Minister of Justice
Kossuth Lajos tér 4
BUDAPEST 1055
Hungary
Telephone: +36 441-3003
Fax: +36 441-3002
Email: im@im.hu
ugyfelszolgalat@im.hu
<http://www.im.hu>

Address: Minister of Foreign Affairs
Department of Consular Affairs and Judicial Cooperation
Nagy Imre tér 4
1027 BUDAPEST
Hungary
Telephone: +36 (1) 458 1706
+36 (1) 458 1923
+36 (1) 458-1000
Fax: +36 (1) 356 9536
+36 (1) 212-5918
Email: iroda.konz@kum.hu
<http://www.mfa.gov.hu>

Ireland

The Department of Foreign Affairs
Address: Consular Section
69 - 71 Hainault House
St. Stephen's Green
DUBLIN 2
Ireland
Telephone: +353 1 408 2174
+353 1 4780822
Fax: -
Email: consular@iveagh.irlgov.ie
General website: <http://foreignaffairs.gov.ie/default.asp>

Italy

For judicial, state and notarial acts: the procurator of the tribunal in the jurisdiction from

which the act emanates.

For all other administrative acts covered by the Convention: the competent regional prefect, for the Val d'Aosta the President of the region, and for the provinces of Trento and Bolzano the government commissioner.

The central point of contact for the Study would be the Ministero della Giustizia, Via Arenula, 70 - 00186 Roma (Tel 06.68897501 - 06.68897952 – 06.68852201, Fax 06.68891493)

General website: http://www.giustizia.it/uffici/info/indirizzi_uffgiud.htm

Latvia

The Ministry of Foreign Affairs

Address: Brivibas bulv. 36
RIGA LV-1395
Telephone: +371 7016-210
+371 7016-201
Fax: +371 7828 121
Email: mfa.cha@mfa.gov.lv
General website: <http://www.mfa.gov.lv/en/>

Lithuania

The Consular Department of the Ministry of Foreign Affairs
J.Tumo-Vaižganto 2
LT-01511 VILNIUS
Lithuania
Telephone: +370 2362444
Consular information: +370 2362400 // 2362607
Fax: +370 5 2313090
Email: urm@urm.lt
Consular Department: redaz.kia@urm.lt
General website: <http://www.urm.lt>

Luxembourg

The Ministry of Foreign Affairs
Address: 5, rue Notre-Dame
L-2240 LUXEMBOURG
Telephone: +352 478 23 00
Fax: +352 22 31 44
Email: boite.officielle@mae.etat.lu
General website: <http://www.mae.lu>

Malta

The Ministry of Foreign Affairs
Address: Palazzo Parisio
Merchants Street
VALLETTA CMR 02
Malta
Telephone: +356 (626) 21 242 853
+356 (626) 21 242 191
Fax: +356 (626) 21 235 032
Email: info.mfa@gov.mt
General website: <http://www.foreign.gov.mt>

Netherlands

Details for each *Rechtbank* can be found at: http://www.hcch.net/upload/auth12_nl.pdf

The civil registrar of Amsterdam
Eric Gubbels Gubbels, Eric E.Gubbels@dpg.amsterdam.nl

Poland

The Ministry of Foreign Affairs
Consular Division
Legalisation Section
Al. Szucha 21
00-580 Warszawa
Poland
Telephone: +48 (22) 523 9463
+48 (22) 523 9128
Fax: +48 (22) 523 8872
Email: dkip@msz.gov.pl
<http://www.msz.gov.pl/>

Portugal

The Procurator General of the Republic, and the Procurators of the Republic of the Courts of Appeal

Address: Le Procureur Général de la République
(Procuradoria Geral da República)
Rua da Escola Politécnica, 140
1269-103 LISBOA
Portugal
Telephone: +351 213 921 900 / 99
Fax: +351 213 975 255
Email: mailpgr@pgr.pt
General website: <http://www.pgr.pt>

Address: Les Procureurs de la République auprès des Cours d'Appel
Tribunal da Relação de Coimbra
(Repartição Administrativa do Ministério Público)
Palácio da Justiça

Rua da Sofia
3004 - 501 COIMBRA
Portugal
Telephone: +351 239 852 950
Fax: +351 239 824 310 (direct)

Address: Tribunal da Relação de Evora
(Repartição Administrativa do Ministério Público)
Largo das Alterações, n.º 1
7004 - 501 ÉVORA
Portugal
Telephone: +351 266 758 817 (direct)
Fax: +351 266 701 529 (direct)

Address: Tribunal da Relação do Porto
(Repartição Administrativa do Ministério Público)
Campo Mártires da Pátria
4049 - 012 PORTO
Portugal
Telephone: +351 222 008 531 (ext. 216)
Fax: +351 222 000 715 (direct to the apostille services)

Slovakia

The Ministry of Justice of the Slovak Republic ("Ministerstvo spravodlivosti Slovenskej republiky") and all Regional Courts ("Krajský súd") for: a) public documents issued or certified by courts, notaries, huissiers de justice or other judicial officers; b) translations executed by official (court appointed) translators:

The Ministry of Interior of the Slovak Republic ("Ministerstvo vnútra Slovenskej republiky") for public documents emanating from authorities within its jurisdiction with the exception of documents specified in point 6 lit. a/ below;

The Ministry of Education of the Slovak Republic ("Ministerstvo školstva Slovenskej republiky") for public documents emanating from authorities within its jurisdiction;

The Ministry of Health of the Slovak Republic ("Ministerstvo zdravotníctva Slovenskej republiky") for public documents emanating from authorities within its jurisdiction with the exception of documents specified in point 6 lit. b/ below;

The Ministry of Defence of the Slovak Republic ("Ministerstvo obrany Slovenskej republiky") for public documents emanating from authorities within its jurisdiction;

Office of the Regional Administration ("krajský úrad") for: a) documents from the Register of Births, Deaths and Marriages ("matrika") with the exception of decisions on civil status; b) documents issued by health facilities established by the Office of Regional Administration; c) documents issued by the authorities of local self-government,

The Ministry of Foreign Affairs of the Slovak Republic ("Ministerstvo zahraničných vecí Slovenskej republiky") for any other public document issued in the Slovak Republic not specified above.

Address: Ministry of Justice
Župné námestie 13
813 11 BRATISLAVA
Slovak Republic
Telephone: +421 (2) 59353 111
+421 (2) 5935 3347
Fax: +421 (2) 5935 3604

Email: inter.coop@justice.sk
tlacove@justice.sk
General website: <http://www.justice.gov.sk>

Address: Ministry of Interior
Pribinova 2
812 72 BRATISLAVA
Slovak Republic
Telephone: +421 (2) 5094 1111
Fax: +421 (2) 5094 4397
Email: tokmv@minv.sk
General website: <http://www.minv.sk>

Address: Ministry of Education
Stromová 1
813 30 BRATISLAVA
Slovak Republic
Telephone: +421 (2) 59374111
Fax: -
Email: inform@education.gov.sk
General website: <http://www.education.gov.sk>

Address: Ministry of Health
Limbová 2
P. O. BOX 52
837 52 BRATISLAVA 37
Slovak Republic
Telephone: +421 (2) 593 73 111
Fax: +421 (2) 547 77 983
Email: office@health.gov.sk
General website: <http://www.health.gov.sk>

Address: Ministry of Defence
Kutuzovova 8
832 47 BRATISLAVA
Slovak Republic
Telephone: +421 (2) 44 25 03 20
+421 960 312 233
Fax: +421 (2) 442 532 42
Email: iveta.viragova@mod.gov.sk
General website: <http://www.mosr.sk>

Address: Ministry of Foreign Affairs
Hlboká 2
833 36 BRATISLAVA
Slovak Republic
Telephone: + 421 (2) 5978 1111
Fax: -
Email: infopublic@foreign.gov.sk
General website: <http://www.foreign.gov.sk>

Slovenia

The Ministry of Justice and Administration of the Republic of Slovenia
Address: Zupanciceva 3

1000 LJUBLJANA
Slovenia
Telephone: +386 (1) 369 52 00
Fax: +386 (1) 369 57 83
Email: gp.mp@gov.si
General website: <http://www.gov.si/mp/>

Spain

For documents drawn up by competent judicial authorities or officials: the Secretaries of the "Territorial Courts" (Secretarios de Gobierno de las Audiencias) or their deputies.

For documents authenticated by a notary public, or private documents where the signatures have been authenticated by a notary public: the President of the relevant Association of Notaries public or the person legally responsible for its affairs.

For other public documents, excepting those issued by central administrative bodies: any of the officials referred to in paragraphs 1 and 2, above.

For documents issued by authorities of the central administration: the Head of the Central Section (*Jefe de la Sección Central de la Subsecretaría*) of the Ministry of Justice.

Contact details:

Address: for contact details of all the competent authorities designated:
<http://www.justicia.es>.

Sweden

In Sweden, all notaries public are competent authorities. In addition, however, the Swedish Ministry of Justice was responsible for responding to the 2003 Apostille survey conducted by the Hague Convention; it will therefore be relied upon for much statistical information.

The Swedish Ministry of Justice
Rosenbad 4
City 103 33 Stockholm
Sweden
Switch board +46 8 405 10 00
Fax +46 8 20 27 34

United Kingdom

Foreign and Commonwealth Office
The Legalisation Office
Address: Legalisation Office
Foreign & Commonwealth Office
Old Admiralty Building
The Mall
LONDON SW1A 2LG
Telephone: +44 (20) 7008 1111
General website: <http://www.fco.gov.uk>

I.A.2.5. Judicial control [I.A.2.5](#)

Summary of national case law relevant to the Convention.

1. Please prepare an overview, i.e. analysis, of any significant case law relevant to the functioning of the Convention in your Member State.
2. Please process the cases you have selected using the **Format Sheet in ANNEX I [1](#)**

I.A.2.6. Empirical analysis [I.A.2.6](#)

Please conduct the empirical analysis as described in **ANNEX II [2](#)**

I.A.3. Parallel international agreements

I.A.3.1. Status [I.A.3.1](#)

Please indicate the status of all relevant international agreements for your Member State

Of particular importance are the following two Conventions:

1. **1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers**
2. **1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities**

Other International Agreements which can have a great impact on either legalisation of documents relating to a specific subject matter, or the cross border use of public documents between two or more specific (Member) States.

3. **Agreements abolishing the requirement of legalisation for foreign public documents generally between two or more countries**
4. **Agreements abolishing the requirement of legalisation for categories of documents relating to a specific subject matter, for example:**

The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958)

Based on Article 10 of the Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958) decisions in maintenance obligations falling within the scope of the Convention are exempt from the legalisation requirements of the States party to the Convention (currently 11: Austria, Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Portugal, Spain and Sweden)

The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969)

Based on Article 3 of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1969) the documents used in the process of the service of judicial and extrajudicial documents in civil and commercial matters are exempt from legalisation or other equivalent requirements of Member States party to the Convention (currently 23; Austria and Malta are the two Member States not yet party to the Convention).

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972)

Based on Article 3 of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972) letters used by a judicial authority of a State party to the Convention to request the competent authority of another State party to the Convention to obtain evidence, or to perform some other judicial act are exempt from legalization or other like requirements of the Member States party to the Convention (currently 21; Austria, Belgium, Ireland and Malta are the 4 member States not yet party to the Convention).

The Hague Convention concerning the International Administration of the Estates of Deceased Persons (1973)

Based on Article 9 of the Hague Convention concerning the International Administration of the Estates of Deceased Persons (1973) documents which attest the designation and powers of the person or persons entitled to administer the estate are exempt from the legalisation requirements of the Member States party to the Convention (currently 3: the Czech Republic, Portugal and the Slovak Republic have signed and ratified the Convention. Italy, Luxembourg, Malta and the UK have signed the Convention).

The Hague Convention on Civil Aspects of International Child Abduction (1980)

Based on Article 23 documents used by the competent authorities in the process of reinstating the right of custody or the right of access to children which have wrongfully be removed or retained are exempt from legalisation or analogous requirements of the Member States party to the Convention (currently all 25 Member States are party to the Convention)

The Hague Convention on International Access to Justice (1988)

Based on Article 10 legal aid request forms and their supporting documents are exempt from legalisation or other analogous requirements of the Member States party to the Convention (currently 14: Cyprus, Czech Republic, Estonia, Finland, France, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Spain and Sweden)

The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (2002)

Based on Article 43 all documents forwarded or delivered under the Convention are exempt from legalisation or any analogous requirements applicable in the Member States party to the Convention (currently 5: Slovakia, Slovenia, Latvia, Lithuania and the Czech Republic. However, the Convention, which entered into force on 1 January 2002, has been signed by all the EU Member States – except Denmark - in compliance with the Council Decision of 19 December 2002 authorizing the Member States, in the interest of the Community, to sign the Convention and thus is expected to be ratified by all Member States, except Denmark)

I.A.3.2. Scope [I.A.3.2](#)

Please describe the scope of application of the relevant agreements.

1. **Geographical scope** : has the scope of application, i.e. to the document's of which countries the provisions of the relevant agreement apply, been modified (e.g. extended beyond the States party to the agreement) by the legislator, the competent authorities or the judiciary?
2. **Material scope** : has the scope of application of the relevant agreement *ratione materiae*, i.e. the categories of document to which it applies, been modified by the legislator, the competent authorities or the judiciary?
3. How do the agreements in force in your Member State interrelate (precedence)?

I.A.3.3. Legislative implementation [I.A.3.3](#)

Please describe the process of implementation of the agreements by the legislation into the national legal order of your Member State.

1. Please provide copies of any **relevant legislative acts** and provide a translation in the English language of important provisions.
2. Please provide any key **travaux préparatoires** (e.g. draft legislation with commentary, legislative report) and provide a translation in the English language of parts thereof which express the legislator's intention with and motivation for the ratification and the implementation of the agreement.

I.A.3.4. Practical implementation [0](#)

The implementation process of the identified agreement(s) in practice.

Please describe in detail the practical implementation process of the relevant agreement(s).

Does the same procedure apply to all documents and to all (Member) States party to the particular agreement, or does it happen that in practice, although a specific document/situation is within the scope of the agreement, a different procedure is applied?

Please indicate the **competent authorities**, if any, charged in your Member State with the practical implementation of the relevant agreement(s). The information should include:

1. the number of authorities
2. their identity and contact details
3. the name and contact details of an approachable contact person at the competent authority(ies).

NB. In case of multiple competent authorities, is the same system described above used by all authorities?

EXAMPLE:

Article 5 of the 1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities states:

“Each contracting State shall (...) designate the central authority responsible for receiving and forwarding the requests for information referred to in Article 4. (...)”

I.A.3.5. Judicial control [I.A.3.4](#)

Summary of national case law relevant to the applicable agreement.

3. Please prepare an overview, i.e. analysis, of any significant case law relevant to the functioning of the relevant agreement(s) in your Member State.
4. Please process the cases you have selected using the **Format Sheet in ANNEX I [1](#)**

I.A.4. National Law

I.A.4.1. Legislative framework [I.A.4.1](#)

The national legal framework.

In situations outside of the scope of Community law as described, the Apostille Convention or other relevant international agreements, *national law* will be most relevant for the study of legalisation or similar or equivalent requirements.

For these situations, please describe in detail the national process of legalisation or similar or equivalent requirements.

1. Please provide copies of any **relevant legislative acts** and provide a translation in the English language of important provisions.
2. Please provide any **travaux préparatoires** and provide a translation in the English language of parts thereof which express the legislator's intention with and motivation for its ratification and implementation.

I.A.4.2. Scope [I.A.4.2](#)

The scope of application of the national law.

1. What is the geographical scope of application of the applicable national law, e.g. to the documents of which countries does national law apply?
2. What is the material scope of the applicable national law, i.e. to which types of document does national law apply?

I.A.4.3. Practical implementation [I.A.4.3](#)

Please describe in detail the implementation process of national law in practice.

1. Which authorit(y)(ies) is/are responsible for legalisation?
2. What is the procedure for legalisation or other similar or equivalent requirements (e.g. in person or by post)?
3. Does the same procedure apply to all documents and to all (Member) States?
4. What documents must be provided?
5. How, in practice, does the official carry out the task of legalising a document?
6. How long does the process take; what fee (if any) is payable?.

I.A.4.4. Judicial control [I.A.4.4](#)

Summary of national case law.

1. Please prepare an overview, i.e. analysis, of the case law relevant to the functioning of the relevant agreement(s) in your Member State.
2. Please process the cases you have selected using the **Format Sheet in ANNEX I [1](#)**

Part I.B. Specific

I.B.1. Introduction [0](#)

This specific part is aimed at the provision of a comprehensive description of the current legal practice as regards legalisation or other similar or equivalent requirements for twelve specifically identified public documents which are considered of particular importance for the purpose of the present study.

In order to enhance the transparency of the requirements and procedures under scrutiny in the present study, the national rapporteurs are requested to briefly identify and describe the authorities competent for issuing the specific actual documents listed in Part I.B.2. and indicate their legal basis, prior to answering the core questions as regards legalisation and other similar or equivalent requirements.

Of course, as in the general part, the documents enumerated may originate in either a Member State or a Third Country, and subsequently diverse sources of rules may be applicable as regards the legalisation or other similar or equivalent requirements.

If there is a difference of treatment as regards the process of legalisation or other similar or equivalent requirements either between Member States, or between Member States and Third States, this ought to be indicated and explained.

Please state if your Member State has no equivalent of any document, so that the question of recognition of an equivalent document from another (Member) State is otiose.

I.B.2. Specific documents

- 1. Documents proving involuntary unemployment [1](#)**
- 2. Documents proving a family relationship or other durable relationship [2](#)**

EU Citizenship - entry and residence

Citizenship of the EU has become the fundamental status of nationals of the individual Member States. The idea of Community citizenship and the notion of 'People's Europe' precedes the symbolic move from European Economic Community to European Community with the Maastricht Treaty. However, the concept of Union Citizenship and the implication of this status have developed significantly in recent years. In particular, there is now a directly effective right for all EU citizens to move and reside freely within the territory of the Member States. Such persons also fall within the scope of the EC Treaty for the purposes of Article 12 EC, which prohibits discrimination on the grounds of nationality. Taking the example of Article 12 EC; the right not to be discriminated against is restricted *ratione personae*, i.e. to persons which reside lawfully on the territory of a host Member State and which have the status of EU Citizenship. An EU Citizen who lawfully resides in the territory of a host Member State will, on the other hand, be able to rely on the protection of Article 12 in all situations that come within the scope of Community law.

The right to move and reside freely throughout the Community is subject to the limitations and conditions laid down in the Treaty and those laid down in the measures adopted to give it effect. Directive 2004/38/EC is a recent restatement and development of the law in relation to the free movement and residence of persons within the EU. The Directive replaces the existing secondary Community law instruments which dealt separately with workers, self-employed persons, as well as students and other inactive persons and links the right to free movement directly with the status of EU Citizenship. Besides, it contains the limitations and conditions to which the exercise of the right is subjected.

The issue of the effective cross-border use of public documents which EU Citizens require in order to exercise their right to move and reside freely within the Community has not been explicitly addressed in Directive 2004/38/EC. Although the Directive contains a comprehensive list of types of document that may be required by the competent authorities of the Member States, the Directive does not abolish legalisation as regards such documents which have to be produced as a part of the limitations and conditions it sanctions. As a result, the process through which the

requirements of the Directive are met, is left to the internal organization and the laws and procedures of the Member States. The right of all Union citizens to move and reside freely within the territory of the Member States extends to their family members, irrespective of their nationality. The supporting documents required by the competent authorities for issuing a registration certificate or a residence card have been comprehensively specified in the Directive in order to avoid divergent administrative practices or interpretations constituting an undue obstacle to the exercise of the right of residence by Union citizens and their family members.

As regards the rights of EU Citizens and their family to move and reside freely within the Community, the study will focus on those public documents which are to be produced in the process of either obtaining a 'Registration certificate' (EU Citizen) or a 'residence card' in accordance with Articles 8 and 9 of Directive 2004/38/EC.

Based on the Articles 8 and 9 of the Directive the competent authorities of the Member States may require documents providing proof of a person's employment, self-employment, comprehensive sickness insurance, sufficient financial resources, involuntary unemployment, prior employment, registration with an employment office, family relationship, durable other relationship, date of birth, household dependency, and serious health grounds.

3. Documents proving or contesting a parent-child relationship [3](#)
4. Documents proving the name and forenames of a child or adult [4](#)
5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship [5](#)

EU Citizenship - civil status

Under Community law as it stands at present, the substantive rules and procedures governing a person's civil status remain for the most part within the competence of the Member States.

NB. This statement becomes less absolute when looking at Article 21(2) of Regulation (EC) No 2201/2003 which stipulates that "*no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State*". However, this harmonizing measure relates more to the procedures and functioning of the Member States' public civil status registers than to the rules and procedures which have a direct substantive impact on a person's civil status as such.

As a consequence of the absence of harmonisation at the Community level, citizens may encounter difficulties as a result of legalisation requirements or other similar or equivalent requirements when they need to prove their civil status by means of public documents executed abroad. Those difficulties are the more relevant for the present study when they are incurred by a person in the process of exercising rights arising under Community law. For example, when a child holds the nationality of two Member States, the diversity of the national legal systems in the absence of harmonisation may lead it to having different surnames under the legal systems of those States (see Case C-148/02 Carlos Garcia Avello v Belgian State [2003] ECR I-11613). Such discrepancy in surnames is liable to cause serious inconvenience for the child concerned in both private and professional levels resulting from difficulties in benefiting in one Member State of which it is a national, from the legal effects of documents, e.g. diploma's, drawn up in the surname recognised in another Member State of which it is also a national.

With a view to the exercise of the fundamental freedoms provided for in the Treaty the ECJ has held that it is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for its recognition of that nationality (see Case C-369/90 Micheletti and others [1992] ECR I-4239 paragraph 10). As

regards documents relating to a person's civil status - *rectification of the date of birth* - the ECJ acknowledged in the Dafeki case (C-336/94) that the exercise of rights arising from the freedom of movement for workers is not possible without production of documents relative to personal status, which are generally issued by a person's State of origin. The Court held that Member States must, therefore, accept certificates and analogous documents relative to personal status issued by the competent authorities of the other Member States, unless their accuracy is seriously undermined. However, the Court did not explicitly reject the Member States' right to require proof of the authenticity of the signature on such documents, the capacity in which the person signing the documents has acted and where appropriate the stamp or seal which the documents bear through a process of legalisation or other similar or equivalent requirements.

Further difficulties may arise when a person needs to prove changes in his or her personal status which occurred abroad or when they seek to have their civil status records registered or up-dated on the basis of documents drawn up abroad. As mentioned above, based on Regulation (EC) No 2201/2003, judgments and related documents in matrimonial matters or in matters concerning parental responsibility have been expressly exempt from Member State's national legalisation requirements and other similar or equivalent requirements. However, the scope of application of the Regulation is limited to divorce, legal separation or marriage annulment, and the attribution, exercise, delegation, restriction or termination of parental responsibility, see Article 1. The Regulation does not apply to many other subject matters related to a person's civil status, e.g. the conclusion of marriages or other durable relationships, the establishment or contesting of a parent-child relationship, decisions on adoption or the annulment or revocation of adoption, the name and forenames of the child, or emancipation. The Member States' can therefore continue to insist on the fulfilment of legalisation requirements or other similar or equivalent requirements as regards documents related to those subject matters as they fall outside the scope of the coordinated field.

The study does not disregard the existence of several important Hague Conventions in the field of family law. One of the Hague Conventions deals explicitly with the issue of legalisation is the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. Article 43 of the Convention provides for the exemption of all documents forwarded or delivered under the Convention from legalisation or any analogous requirements applicable in the states party to the Convention. The Convention, which entered into force on 1 January 2002, has been signed by all the EU Member States – except Denmark - in compliance with the Council Decision of 19 December 2002 authorizing the Member States, in the interest of the Community, to sign the Convention, but has so far only been ratified by Slovakia, Slovenia, Latvia, Lithuania and the Czech Republic.

NB. The Member States have made a Declaration when signing the Convention to the end that the Community rules which provide for a system of recognition and enforcement which is at least as favourable as the rules laid down in the Convention will be applied to a judgment given in a court of a Member State, in respect of a matter relating to the Convention, when its recognition and enforcement is sought in another Member State.

Other Hague Conventions, such as the Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages, do not deal with the issue of legalisation. Article 10 of the 1978 Convention relates to the question how the existence of a marriage can be proven: by the presentation to the competent authority of the relevant documents. However, the Convention does address the question how the authenticity of such documents is to be established. The issue whether such documents require legalisation or other similar or equivalent requirements is consequently left to the discretion of the States party to the Convention.

6. Documents proving a person's legal establishment for the purpose of pursuing

specific regulated professional activities [6](#)

7. Documents proving a person's professional qualifications (diplomas) [7](#)

Free movement of workers – professional qualifications

The mutual recognition of qualifications is a matter of importance in the field of workers, services, and establishment alike, therefore, it will only be dealt with here. For nationals of the Member States, the right to move and provide services freely includes, in particular, the right to pursue a profession, in a self-employed or employed capacity, in a Member State other than the one in which they have obtained their professional qualifications. Directive 2005/36/EC facilitates the effective exercise of those rights by consolidating a majority of the existing Directives in relation to the mutual recognition of diplomas, certificates and other evidence of formal qualifications. The Directive establishes separate systems with regard to the freedom to provide services and the freedom of establishment.

As regards the freedom to provide services, the Directive states that host Member States may demand a written declaration to be sent to its competent authorities prior to a person moving for the first time with a view to the provision of services in the Member States in question. The host Member States may further require that the declaration be accompanied by documents providing proof of a person's legal establishment in the Member of origin for the purpose of pursuing the activities concerned, professional qualifications, (in case of an unregulated profession) the pursuance of the activity concerned for at least two years during the previous ten years, and (in case of a profession in the security sector) clean criminal record.

As regards the freedom of establishment with a view to provide services the Directive stipulates in Article 50 that prior to granting an authorisation to pursue a regulated profession the competent authorities of the host Member State concerned may, depending on the specific situation, demand documents providing proof of a person's formal qualifications giving access to the profession, professional competence, and diploma's. The authorities may further require documentary proof of the nature and duration of the activity pursued in the Member State of origin, and of substantive information concerning a person's training.

8. Documents proving a person's death [8](#)

9. Documents proving a person's date of birth [9](#)

Free movement of workers – social security

The coordination of national schemes by European measures does not detract from the autonomy of Member States as regards the internal organization of their social security systems. In the absence of harmonisation at the Community level it is for the legislation of the Member State concerned to determine the conditions governing the right or duty to be insured with a social security scheme and the substantive rules and procedures which determine a person's entitlement to social security benefits acquired in that Member State. Furthermore, the scope of harmonisation does not cover all fields of social security, nor does it affect the Member States national social assistance schemes.

Based on Article 4, the concept of social security benefit of Regulation (EEC) 1408/71 only covers benefits granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a legally defined position and provided that it concerns one of the situations related to for example unemployment, old-age, death, or family relations.

Regulation (EEC) 1612/68 requires Member States to grant to migrant workers and their family members the same social and tax advantages as national workers. The concept of 'social advantages' in this Regulation covers a broader spectrum of substantive rights than the concept of 'social security benefits' in Regulation (EEC) 1408/71. The right to equal treatment substantiated refers to all social and tax advantages, not just those which are linked to employment, and even when they are of an indirect rather than of indirect benefit to the worker.

Regulation (EEC) 1612/68, however, does not in itself create rights; it rather protects and facilitates the exercise of primary rights conferred by the Treaty. Consequently, in the substantive and procedural rules governing the process for establishing a migrant person's entitlement to tangible social advantages, neither the internal organization of the Member States for their distribution, nor the matter of legalisation of documents required to be produced have been harmonised.

As a consequence of the incomplete harmonisation of the matter of cross-border use of documents in the field of social security and assistance, migrant workers, self-employed persons and their dependants frequently have to rely on the production of foreign public documents which often relate to the civil status of the person in question, documents which are usually issued by the competent authorities in the person's state of origin. For example, in order to claim a right to Child Benefits a parent will often be required to prove the date of birth of the child, e.g. birth certificate, and the existence of a family relationship with the child, e.g. adoption certificate or, in case of custody over the child, the death certificates of the parents. Another example is Statutory Sick Pay which will often require medical proof, e.g. medical certificate. The request for Pension Benefits will often require proof of age, e.g. birth certificate, information on a person's marital status, e.g. marriage or civil partnership certificate.

10. Documents proving the establishment by incorporation of a company [10](#)

11. Documents proving the constitution of a company, including any official translation thereof [11](#)

12. Documents proving the latest banking accounts of a company [12](#)

Freedom of establishment and to provide services

Articles 39 EC on the free movement of workers and 43 EC on establishment are often compared on the basis that each requires equal treatment of persons who are settled in a Member State, having exercised their freedom of movement and the abolition of any restrictions on free movement. The essential difference between the two provisions is whether a person is working in an employed or self-employed capacity. Further similarities between establishment and services (Article 49 EC) are evident when considering at what stage a self-employed person providing regular services into or within a Member State may be considered to be sufficiently connected with that State to be established, rather than merely providing services there. The crucial features of establishment are the stable and continuous basis on which the economic or professional activity is carried on, and the fact that there is an established professional base with the host Member State.

The potential overlaps between workers in the sense of Article 39 EC and temporary service providers in the sense of Article 49 EC can be seen in a series of cases before the ECJ in which the ECJ distinguished the two by ruling that workers employed by a business established in one Member State who are temporarily sent to another Member State to provide services do not, in any way, seek access to the labour market in that second State if they return to their country of origin or residence after completion of their work. For the provision of services, the temporary nature of the activity is to be determined by reference to its periodicity, continuity and regularity. Providers of services will not necessarily be deemed to be established simply by virtue of the fact that they equip themselves with some form of infrastructure in the host Member State.

In the process of achieving a genuine internal market in services the European Commission adopted on 13 January 2004 a much discussed proposal on 'Services in the Internal Market'. Subsequently, the European Parliament adopted a legislative resolution at its first reading on 16 February 2006, and proposed amendments to the Commission proposal. On 4 April 2006 the Commission adopted its amended proposal which incorporates a part of the amendments proposed by the European Parliament in first reading as well as many of the clarifications which have been discussed by the Council.

The proposal of the Commission in its amended form still aims at removing legal and administrative barriers to the development of service activities within the EU. Those barriers arise both when service providers from one Member State wish to establish themselves in another Member State and when they wish to provide a service from their Member State of establishment into another Member State, for example by moving to the other Member State on a temporary basis. The Commission has established that the competent (regulatory) authorities in Member States have little knowledge of and therefore little trust in the legal framework and supervision in other Member States, which results in duplication of rules and controls for cross-border activities. The Commission considers that as a consequence service providers, particularly small and medium-sized enterprises, are prevented from extending their operations beyond their national borders and from taking full advantage of the internal market.

The proposal seeks to address those barriers, to generally facilitate the exercise of the fundamental freedoms enshrined in the EC Treaty most closely related to the subject - the freedom of establishment and to provide services - and to provide service providers with greater legal certainty. The Commission considers that those aims require the removal of legal and administrative barriers to the development of service activities, and the creation legally binding obligations for effective administrative cooperation between member States. Obligations of effective administrative cooperation involve information exchange and mutual assistance between Member States, underpinned by an effectively-functioning electronic information system which allows competent authorities to easily identify their relevant counterparts in other Member States and to communicate with one another.

As far as relevant to the present study, the Commission has proposed to abolish legalisation and other similar and equivalent requirements as regards documents required in the exercise of rights derived from the proposed Directive, unless such requirements are justified by an overriding reason relating to the public interest including public order and security.

Article 5(2) of the proposal stipulates that where Member States require a provider or recipient to supply a certificate, attestation or any other document proving that a requirement, within the scope of the proposed Directive, has been satisfied, they are to accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied. The Article prohibits the Member States from requiring that a document from another Member State be produced in its original form, or as a certified copy or as a certified translation, save in the cases provided for in other Community instruments or where such a requirement is justified by an overriding reason relating to the public interest including public order and security. Article 4(7a) and Recital 20a indicate that "overriding reasons relating to the public interest" means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; *combating fraud*; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives.

The amended proposal further introduces the prospect of the introduction of harmonised forms to be established at the Community level, which are to be considered equivalent to certificates, attestations and any other documents required of a service provider, see Recital 22a and Article 5(1a). Furthermore, the Member States are required to ensure that, at the latest three years after the entry into force of the Services Directive, all procedures and requirements relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means, at the relevant point of single contact and with the relevant competent authorities, see Article 8.

The Services Directive (COM (2006) 160 final) provides for important measures as regards the cross-border use of public documents by services providers who wish to establish themselves in

another Member State or provide services there. The Commission has proposed to abolish legalisation and other similar and equivalent requirements as regards documents required in the exercise of rights derived from the proposed Directive, i.e. the Member States are prohibited from requiring that a document from another Member State be produced in its original form, as a certified copy or as a certified translation, except in the cases provided for in other Community instruments, e.g. Directive 2005/36/EC (see above as regards professional qualifications), or where such a requirement is justified by an overriding reason relating to the public interest including public order and security. As the requirement of legalisation is generally justified with reference to the high risk of fraud which is involved in the cross-border use of public documents, the practical implications of the Commission's initiative may be limited by the fact that the Amended Proposal has characterized "the prevention of fraud and combating fraud" as overriding reasons relating to the public interest, see Recital 20(a) and Article 4(7a). As a consequence, the national competent authorities may be inclined and (potentially) entitled to insist on the fulfilment of the applicable legalisation requirements or other similar or equivalent requirements until harmonised forms have been established at the Community level for the cross border use of documentary evidence.

13. Documents proving the deposit of cash or certificates of deposit [13](#)

Free movement of capital

The free movement of capital raises similar issues to those encountered in the context of goods, persons, establishment, and services. The original Rome Treaty did already contain provisions on the free movement of capital. However, they were drafted in a different way than the Treaty Articles concerned with the other freedoms: they were not as unconditional, e.g. the obligation to abolish progressively restrictions on capital movements during the transitional period was only imposed as far as necessary to ensure the proper functioning of the common market (see for example Case 203/80, *Casati* [1981] ECR 2595, paragraph 19). The TEU made the free movement of capital less unconditional. The current Article 56 EC provides that all restrictions on the movement of capital (and payments, see paragraph 2) between Member States and between Member States and third countries are prohibited.

The EC Treaty provisions do not define the notion of 'movement of capital', however, the ECJ has held that in order to elucidate it reference can be made to the non-exhaustive list in Directive 88/361/EEC which established the basic principle of free movement of capital as a matter of EC law (see Case C-222/97, *Proceedings brought by Trummer and Mayer* [1999] ECR I-1661, paragraph 20 and 21). It will, therefore, be for the ECJ to decide, with the aid of the Directive, whether a national measure constitutes a restriction on the movement of capital in the sense of Article 56 EC.

On the basis of Directive 88/361/EEC (see ANNEX 1, Nomenclature) the term '*capital movements*' covers all the operations necessary for the purposes of capital movements: conclusion and performance of the transaction and related transfers. The term thus covers operations carried out by any natural or legal person, including operations in respect of the assets or liabilities of Member States or of other public administrations and agencies, access for the economic operator to all the financial techniques available on the market approached for the purpose of carrying out the operation in question, operations to liquidate or assign assets built up, repatriation of the proceeds of liquidation thereof or immediate use of such proceeds, and operations to repay credits or loans.

Capital movements are classified according to the economic nature of the assets and liabilities they concern, denominated either in national currency or in foreign exchange. The study questionnaire focuses on transactions and admissions of '*securities and other instruments normally dealt in on the money market*', a term which covers treasury bills and other negotiable bills, certificates of deposit, bankers' acceptances, commercial paper and other similar instruments. *Transactions* can be understood as the acquisition by non-residents of domestic money market securities and instruments, or the acquisition by residents of foreign money market securities and instruments. *Admissions* can be understood as the admission of domestic

securities and instruments to a foreign money market, or the admission of foreign securities and instruments to the domestic money market. In this regard the questionnaire (see document 13) highlights the aspect of the cross-border use of *documents proving the deposit of cash or certificates of deposit*, which may be a prerequisite for the transaction or admission of securities in domestic and foreign markets as referred to.

EXPLANATORY MEMORANDUM

PART II – Incoming documents: Effects in the Member State’s legal order

OVERVIEW OF PART II 0

Part II of the study is aimed at identifying the effects under Member State law of the implementation of European Community law, the Hague Convention of 1961, other applicable international agreements, or national law as identified and described in Part I so far as they concern incoming documents, i.e. documents originating in another Member State or in a Third State which it is sought to employ in the judicial or administrative processes of your Member State.

The question what effect is given in a State’s legal order to a foreign public document which has been subjected to legalisation or any similar or equivalent requirements is generally left to the domestic law of the destination State. As a consequence, the question whether such a document is recognized as a public document and treated in the same way as a domestic public document is also left to the domestic law of the State concerned.

The function of a public document has been described earlier as ‘the provision of conclusive evidence of the information stated therein in judicial proceedings or administrative matters’. Whether or not a public document is able to perform this function will generally depend in the first place on its admissibility in judicial proceedings and administrative matters, i.e. whether the information contained in such document can be received as evidence by courts and other competent authorities in the country of destination, on the basis of the domestic law or practice of the court or authority concerned.

Generally, the law of evidence of a State will require proof of the due execution of public documents, i.e. that it be demonstrated that a document was executed by the person or body alleged to have executed it. This may require proof of handwriting or of the genuineness of the signature, seal or stamp borne by the document.

As regards domestic public documents, it is often provided by statute under domestic law or established in legal practice that they be admitted as proof of the facts stated therein without any process of proof of the seal and/or signature they bear. Such rules compromise legal certainty but are considered indispensable for reasons of convenience. In other words, in the interest of the efficient functioning of the legal order, a lower standard of legal certainty is thought to be justified as regards the due execution of domestic public documents.

Both common and civil law states provide for said facilitation of proof of the genuineness of the seal and/or signature borne by public documents of domestic origin. When documents of domestic origin are permitted to be presented in court or to administrative bodies, the law of the state in question usually permits the court to take judicial notice of any signature and/or seal they bear, and it is the practice of administrative bodies to assess on sight the authenticity of the documents. In both instances no further proof is required and the presented documents are accepted as *prima facie* genuine.

The law of evidence will also generally determine the evidentiary weight of the information contained in a public document. As regards domestic public documents it is often provided by statute under domestic law or established in legal practice that statements contained in such documents are either treated as conclusive evidence, i.e. those statements must, as a matter of law, be taken to establish some fact in issue and that cannot be disputed, or as *prima facie* evidence, i.e. of sufficient weight to justify a reasonable inference of its existence but does not amount to conclusive evidence.

For the purpose of Part II it is of importance to identify the differences, if any, in legal effect as described above between domestic public documents and foreign public documents which have undergone legalisation or any similar or equivalent process (whether required under Community law, the Hague Convention of 1961, other applicable international agreements, or national law). Furthermore, it is important to establish whether all foreign documents are treated equally irrespective of the (Member) State of their origin, and whether all legalised foreign public documents are treated equally irrespective of the type of document in question, which may not be the case either *de jure* or *de facto*.

II.A.1. European Community Law

II.A.1.1. The effect of the implementation of Community law [II.A.1.1](#)

Please describe the legal status in the legal order of your respective Member State of the foreign public documents described in the Community Instruments referred to in Part I.A.1 after the implementation of those Instruments.

Do such documents have a legal status equivalent to a comparable domestic public document? In your view, has your Member State fulfilled its obligations under each of the Community Instruments referred to?

Are you aware that in your Member State, notwithstanding the applicable Community Instruments, *de jure* or *de facto* a distinction is made as regards documents originating in different Member States? If this is the case, please give a description of the distinction and its consequences, and indicate the Member States and the types of document involved.

Are you aware that in your Member State, notwithstanding the applicable Community Instruments, *de jure* or *de facto* a distinction is made between types of document? If this is the case, please give a description of the distinction and its consequences, and indicate the document types involved.

II.A.1.2. Admissibility and evidentiary weight in judicial proceedings [13](#)

Please describe whether a foreign public document which falls under the scope of the Community law provisions as evaluated in Part I is equally admissible in judicial proceedings and produces the same evidentiary weight as equivalent domestic public documents. If there is a difference in treatment in the legal order of your Member State, please describe this difference and its implications for the fulfilment by the foreign document of its intended function.

II.A.1.3. Admissibility and evidentiary weight in administrative matters [13](#)

Please describe whether a foreign public document which falls under the scope of the Community law provisions as evaluated in Part I are equally admissible in administrative matters and produces the same evidentiary weight as equivalent domestic public documents. If there is a difference in their treatment in the legal order of your Member State, please describe this difference and its implications for the fulfilment by the foreign document of its intended function.

II.A.2. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

II.A.2.1. The effect of implementation of requirements of the Hague Convention [13](#)

Please describe the effect of the implementation of the 'Apostille' Convention; what is the legal status of such a foreign public document to which an apostille has been attached in accordance

with the requirements of the Convention in the legal order of your member State? Is a foreign public document which has been processed in accordance with the rules of the Convention recognized as a public document in the legal order of your Member State?

Are you aware that in your Member State either *de jure* or *de facto* a distinction is made as regards documents originating in different (Member) States party to the Convention? If this is the case, please give a description of the distinction and its consequences, and indicate the (Member) States and the types of document involved.

Are you aware that in your Member State either *de jure* or *de facto* a distinction is made between types of documents which have been processed in accordance with the rules of the Convention? If this is the case, please give a description of the distinction and its consequences, and indicate the document types involved.

II.A.2.2. Admissibility and evidentiary weight in judicial proceedings [II.A.2.2](#)

Please describe whether a foreign public document which has been processed in accordance with the rules of the Convention is equally admissible in judicial proceedings and produces the same evidentiary weight as equivalent domestic public documents. If there is a difference in their treatment on the basis of domestic law, please describe this difference and its implications for the fulfilment by the foreign document of its intended function.

II.A.2.3. Admissibility and evidentiary weight in administrative matters [II.A.2.3](#)

Please describe whether a foreign public document which has been processed in accordance with the rules of the Convention is equally admissible in administrative matters and produces the same evidentiary weight as equivalent domestic public documents. If there is a difference in their treatment on the basis of domestic law, please describe this difference and its implications for the fulfilment by the foreign document of its intended function.

II.A.3. Parallel international agreements

II.A.3.1. The effect of implementation of requirements of parallel agreements [II.A.3.1](#)

Please describe the effect of the implementation of each applicable agreement; what is the legal status of a foreign public document falling within the scope of such agreement in the legal order of your member State? Is a foreign public document which has been processed in accordance with the rules of the applicable agreement recognized as a public document in the legal order of your Member State?

Are you aware that in your Member State either *de jure* or *de facto* a distinction is made as regards documents originating in different (Member) States party to the applicable agreement? If this is the case, please give a description of the distinction and its consequences, and indicate the (Member) States and the types of document involved.

Are you aware that in your Member State either *de jure* or *de facto* a distinction is made between types of documents which have been processed in accordance with the rules of the applicable agreement? If this is the case, please give a description of the distinction and its consequences, and indicate the document types involved.

II.A.3.2. Admissibility and evidentiary weight in judicial proceedings [II.A.3.2](#)

The question of the admissibility and the evidentiary weight in judicial proceedings and administrative matters of a foreign public document which has been processed in accordance with the rules of the applicable agreement is, as indicated, also one which is generally to be answered in accordance with domestic law.

Please describe whether a foreign public document which has been processed in accordance with the rules of the applicable agreement is equally admissible in judicial proceedings and produces the same evidentiary weight as equivalent domestic public documents. If there is a difference in their treatment on the basis of domestic law, please describe this difference and its implications for the fulfilment by the foreign document of its intended function.

II.A.3.3. Admissibility and evidentiary weight in administrative matters [II.A.3.3](#)

Please describe whether a foreign public document which has been processed in accordance with the rules of the applicable agreement is equally admissible in administrative matters and produces the same evidentiary weight as equivalent domestic public documents. If there is a difference in their treatment on the basis of domestic law, please describe this difference and its implications for the fulfilment by the foreign document of its intended function.

II.A.4. National Law

II.A.4.1. The effect of implementation of requirements of national law [II.A.4.1](#)

Please describe the effect of the implementation of national law; what is the legal status of a foreign public document meeting the requirements (including, in particular, legalisation requirements) of your national law in the legal order of your member State? Is a foreign public document which has been processed in accordance with the rules of the applicable agreement recognized as a public document in the legal order of your Member State?

Are you aware that in your Member State either *de jure* or *de facto* a distinction is made as regards documents originating in different (Member) States? If this is the case, please give a description of the distinction and its consequences, and indicate the (Member) States and the types of document involved.

Are you aware that in your Member State either *de jure* or *de facto* a distinction is made between types of documents which have been processed in accordance with national law? If this is the case, please give a description of the distinction and its consequences, and indicate the document types involved.

II.A.4.2. Admissibility and evidentiary weight in judicial proceedings [II.A.4.2](#)

Please describe whether a foreign public document processed in accordance with national law is equally admissible in judicial proceedings and produces the same evidentiary weight as equivalent domestic public documents. If there is a difference in treatment on the basis of domestic law, please describe this difference and its implications for the fulfilment by the foreign document of its intended function.

II.A.4.3. Admissibility and evidentiary weight in administrative matters [II.A.4.3](#)

Please describe whether a foreign public document which has been processed in accordance with national law is equally admissible in administrative matters and produces the same evidentiary weight as equivalent domestic public documents. If there is a difference in their

treatment on the basis of domestic law, please describe this difference and its implications for the fulfilment by the foreign document of its intended function.

EXPLANATORY MEMORANDUM

PART III – Incoming documents: Difficulties

OVERVIEW OF PART III 0

Part III of the study is aimed at identifying difficulties, be it of a legal or practical nature, for a person seeking the cross-border use of a foreign public document which result from the process of legalisation or other similar or equivalent requirement carried out by the *authorities of the Member State of a public document's destination* as identified and described in **Part I**, and at identifying difficulties which result from the rules of the Member State of destination concerning the effects of a public document which satisfies legalisation or other similar or equivalent requirement (whether of the country of origin or the country of destination (see **Part II**).

Part III excludes European Community law as the application of Community law as identified in Part I leads to the exemption of legalisation requirements and (assuming full implementation – see Part II.1. above) cannot create difficulties as such.

The general part of the Part III is focused on general difficulties. The specific part of Part III is focused on particular difficulties encountered by natural or legal persons in the Member State of destination when they seek the cross-border use of the specific public documents as identified in 'Part 1.B Specific' in the exercise of the Community rights with which such documents are associated for the purpose of this study.

Throughout Part III the National Rapporteurs are encouraged to report the identified difficulties by using examples and existing cases reported in case-law or in practice (including from the Rapporteur's own direct or indirect experience).

PART III.A. General

III.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

III.A.1.1. Legal [III.A.1.1](#)

Please report on difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the *authorities of your Member State or another Member State* in relation to a foreign public document in circumstances where it is the Member State of that foreign public document's destination (i.e. where the natural or legal person seeks to rely on such document in any judicial or administrative process in your Member State). Difficulties of a legal nature as regards *incoming documents* could result, for example, from the limited legal effects of the implementation of the Convention in the national legal order of the Member State of the document's destination.

Aspects which can be taken into account are: legal certainty, i.e. transparency of rules and predictability of outcome; effectiveness of rules, i.e. is the aim of the rules attained in practice; effects of rules, i.e. can the document be used effectively after fulfilling the requirements of the Convention or are there further requirements under domestic law which cause additional difficulties?

III.A.1.2. Practical [III.A.1.2](#)

Please report on difficulties of a practical nature which natural or legal persons experience as a

result of any process administered by the *authorities of your Member State or another Member State* in relation to a foreign public document in circumstances where it is the Member State of that foreign public document's destination (i.e. where the natural or legal person seeks to rely on such document in any judicial or administrative process in your Member State). Difficulties of a practical nature as regards *incoming documents* may, for example, result from the specific process and procedures by means of which the Convention is implemented. Difficulties may further result from practical consequences of the effects of the implementation of the Convention.

Aspects which can be taken into account: costs, i.e. do the costs of the implementation of the Convention expressed in money and effort cause difficulties; duration, i.e. does the length of the process established for the implementation of the Convention cause difficulties?

III.A.2. Parallel international agreements

III.A.2.1. Legal [III.A.2.1](#)

Please report on difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the *authorities of your Member State or another Member State* in relation to a foreign public document in circumstances where it is the Member State of that foreign public document's destination (i.e. where the natural or legal person seeks to rely on such document in any judicial or administrative process in your Member State). Difficulties of a legal nature may, for example, relate to the process of legalisation carried out by the authorities of the Member State of destination. Furthermore, difficulties of a legal nature which ought to be reported here are those difficulties which relate to the (limited) legal effects of a foreign public document in the national legal order of the Member State of destination after the fulfilment of all requirements of the applicable agreement.

Aspects which can be taken into account are: legal certainty, i.e. transparency of rules and predictability of outcome; effectiveness of rules, i.e. is the aim of the rules attained in practice; effects of rules, i.e. can the document be used effectively after fulfilling the requirements of the applicable agreement or are there further requirements under domestic law which cause additional difficulties?

III.A.2.2. Practical [III.A.2.2](#)

Please report on difficulties of a practical nature which natural or legal persons experience as a result of any process administered by the *authorities of your Member State or another Member State* in relation to a foreign public document in circumstances where it is the Member State of that foreign public document's destination (i.e. where the natural or legal person seeks to rely on such document in any judicial or administrative process in your Member State). Difficulties of a practical nature may, for example, relate to the process of legalisation carried out by the authorities of the Member State of destination. Furthermore, difficulties of a practical nature which ought to be reported here are those practical difficulties which result from the (limited) legal effects of a foreign public document in the national legal order of the Member State of destination after the fulfilment of all requirements of the applicable agreement.

Aspects which can be taken into account: costs, i.e. do the costs of the implementation of the applicable agreement expressed in money (fees etc.) and effort (travelling etc.) cause difficulties; duration, i.e. does the length of the process established for the implementation of the applicable agreement cause difficulties?

III.A.3. National law

III.A.3.1. Legal [III.A.3.1](#)

Please report on difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the *authorities of your Member State or another Member State* in relation to a foreign public document in circumstances where it is the Member State of that foreign public document's destination (i.e. where the natural or legal person seeks to rely on such document in any judicial or administrative process in your Member State). Difficulties of a legal nature may, for example, relate to the process of legalisation carried out by the authorities of the Member State of destination. Furthermore, difficulties of a legal nature which ought to be reported here are those difficulties which relate to the (limited) legal effects of a foreign public document in the national legal order of the Member State of destination after the fulfilment of all requirements of national law relating to the process of legalisation carried out by the authorities of the Member State of destination.

Aspects which can be taken into account are: legal certainty, i.e. transparency of rules and predictability of outcome; effectiveness of rules, i.e. is the aim of the rules attained in practice; effects of rules, i.e. can the document be used effectively after fulfilling the requirements of national law or are there further requirements under domestic law which cause additional difficulties?

III.A.3.2. Practical [III.A.3.2](#)

Please report on difficulties of a practical nature which natural or legal persons experience as a result of any process administered by the *authorities of your Member State or another Member State* in relation to a foreign public document in circumstances where it is the Member State of that foreign public document's destination (i.e. where the natural or legal person seeks to rely on such document in any judicial or administrative process in your Member State). Difficulties of a practical nature may, for example, relate to the process of legalisation carried out by the authorities of the Member State of destination. Furthermore, difficulties of a practical nature which ought to be reported here are those practical difficulties which result from the (limited) legal effects of a foreign public document in the national legal order of the Member State of destination after the fulfilment of all requirements of national law relating to the process of legalisation carried out by the authorities of the Member State of destination.

Aspects which can be taken into account: costs, i.e. do the costs of the implementation of national law expressed in money and effort cause difficulties; duration, i.e. does the length of the process established for the implementation of national law cause difficulties?

EXPLANATORY MEMORANDUM

PART IV – Outgoing documents - Difficulties

OVERVIEW PART IV 0

Part IV of the study is aimed at identifying difficulties, be it of a legal or practical nature, for a person seeking the cross-border use of a domestic public document which result from the process of legalisation carried out by the *authorities of the Member State of a public document's origin* as identified and described in **Part I**.

Part IV excludes European Community law as the application of Community law as identified in Part I leads to the exemption of legalisation requirements and (assuming full implementation – see Part II.1. above) cannot create difficulties as such.

The general part of the Part IV is focused on general difficulties. The specific part of Part IV is focused on particular difficulties encountered by natural or legal persons when they seek the cross-border use of the specific public documents as identified in 'Part 1.B Specific' in the exercise of the Community rights with which such documents are associated for the purpose of this study.

Throughout Part IV the National Rapporteurs are encouraged to report the identified difficulties by using examples and existing cases reported in case-law or in practice (including from the Rapporteur's own direct or indirect experience).

PART IV.A. General

IV.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention) 0

IV.A.1.1. Legal [IV.A.1.1](#)

Please report on difficulties of a legal nature which natural or legal persons experience as a result of process administered by the authorities of your Member State or another Member State in relation to a public document where it is the Member State of a public document's *origin* as identified and described in Part I.A.2.

Aspects which can be taken into account are: legal certainty, i.e. transparency of rules and predictability of outcome; effectiveness of rules, i.e. is the aim of the rules attained in practice; effects of rules, i.e. can the document be used effectively after fulfilling the requirements of the Convention or are there further requirements under domestic law which cause additional difficulties?

IV.A.1.2. Practical [IV.A.1.2](#)

Please report on difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the *authorities of your Member State or another Member State* in relation to a foreign public document in circumstances where it is the Member State of that foreign public document's destination (i.e. where the natural or legal person seeks to rely on such document in any judicial or administrative process in your Member State). Difficulties of a practical nature as regards *outgoing documents* may, for example, result from the specific process and procedures by means of which the Convention is implemented. Difficulties may further result from practical consequences of the effects of the implementation of the Convention.

Aspects which can be taken into account: costs, i.e. do the costs of the implementation of the Convention expressed in money and effort cause difficulties; duration, i.e. does the length of the process established for the implementation of the Convention cause difficulties?

IV.A.2. Parallel international agreements [0](#)

IV.A.2.1. Legal [IV.A.2.1](#)

Please report on difficulties of a legal nature which natural or legal persons experience as a result of process administered by the authorities of your Member State or another Member State in relation to a public document where it is the Member State of a public document's *origin* as identified and described in Part I.A.3.

Aspects which can be taken into account are: legal certainty, i.e. transparency of rules and predictability of outcome; effectiveness of rules, i.e. is the aim of the rules attained in practice; effects of rules, i.e. can the document be used effectively after fulfilling the requirements of the Convention or are there further requirements under domestic law which cause additional difficulties?

IV.A.2.2. Practical [IV.A.2.2](#)

Please report on difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the *authorities of your Member State or another Member State* in relation to a foreign public document in circumstances where it is the Member State of that foreign public document's destination (i.e. where the natural or legal person seeks to rely on such document in any judicial or administrative process in your Member State). Difficulties of a practical nature as regards *outgoing documents* may, for example, result from the specific process and procedures by means of which the Convention is implemented. Difficulties may further result from practical consequences of the effects of the implementation of the Convention.

Aspects which can be taken into account: costs, i.e. do the costs of the implementation of the Convention expressed in money and effort cause difficulties; duration, i.e. does the length of the process established for the implementation of the Convention cause difficulties?

IV.A.3. National law [0](#)

IV.A.3.1. Legal [IV.A.3.1](#)

Please report on difficulties of a legal nature which natural or legal persons experience as a result of process administered by the authorities of your Member State or another Member State in relation to a public document where it is the Member State of a public document's *origin* as identified and described in Part I.A.4.

Aspects which can be taken into account are: legal certainty, i.e. transparency of rules and predictability of outcome; effectiveness of rules, i.e. is the aim of the rules attained in practice; effects of rules, i.e. can the document be used effectively after fulfilling the requirements of the Convention or are there further requirements under domestic law which cause additional difficulties?

IV.A.3.2. Practical [IV.A.3.2](#)

Please report on difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the *authorities of your Member State or another Member State* in relation to a foreign public document in circumstances where it is the Member State of that foreign public document's destination (i.e. where the natural or legal person seeks to rely on such document in any judicial or administrative process in your Member State). Difficulties of a practical nature as regards *outgoing documents* may, for example, result from the specific process and procedures by means of which the Convention is implemented. Difficulties may further result from practical consequences of the effects of the implementation of the Convention.

Aspects which can be taken into account: costs, i.e. do the costs of the implementation of the Convention expressed in money and effort cause difficulties; duration, i.e. does the length of the process established for the implementation of the Convention cause difficulties?

EXPLANATORY MEMORANDUM

PART V – Justification of legalisation or other similar or equivalent requirements identified in Part I

OVERVIEW OF PART V 20

After identifying in Parts I to IV the requirements, effects and difficulties of legalisation or other similar or equivalent requirements as regards *incoming* and *outgoing* public documents, Part V focuses on the question whether in general and in particular cases the identified legalisation requirements or other similar or equivalent requirements can be justified in a European context.

It is of importance for the study that the justification of the identified legalisation requirements and other similar or equivalent requirements is evaluated for all situations in which the cross-border use of a public document by a natural or legal person is necessary in the exercise of such person's rights arising out of Community law, in particular rights derived from the free movement of persons - including EU citizenship (economically non-active), freedom of establishment and to provide services -, the free movement of goods and capital are considered to be relevant in this regard, see more specifically the explanatory memorandum of 'Part I.B. Specific'.

The general part of Part V (see V.A. General) is aimed at a general evaluation of the legalisation and other similar or equivalent requirements identified and describe in Part I. The specific part of Part V (see V.B. Specific) is aimed at a specific evaluation of the legalisation and other similar or equivalent requirements identified and describe in Part I as regards the specific documents as referred to in 'Part I.B. Specific'.

In your answer to the questions of Part V sections 1 to 3 please answer the following questions:

1. Are there legalisation requirements or other similar or equivalent requirements as regards incoming or outgoing public documents as identified in Part I (hereinafter 'requirements and procedures') or rules concerning the effects of foreign public documents satisfying such requirements and procedures as identified in Part II (hereinafter 'effects rules') that overtly discriminate on grounds of nationality (whether between your own Member State and other Member State or between different Member States)?
2. Are there requirements and procedures or effects rules that otherwise appear discriminatory or operate in a discriminatory matter?
3. Are the requirements and procedures or effects rules (potentially) liable to hinder or make less attractive the free movement of goods, persons, services or capital between the Member States of the European Union? How?
4. What is the rationale for the requirements and procedures and effects rules, in particular those which you have identified in response to questions 1 to 3 above?
5. Are there situations in which the requirements and procedures or effects rules appear irrational?
6. Are the requirements and procedures and effects rules effective? Do they in practice guarantee that their aims are achieved?
7. Are there situations in which the requirements and procedures or effects rules appear ineffective?

8. Are requirements and procedures and effects rules necessary, or are there less burdensome ways of achieving the same aims?
9. Are the requirements and procedures and effects rules proportionate to the objectives pursued? Are there any particular cases where a requirement or a procedure or effects rules is excessively burdensome, given its aims?
10. What consequences flow from a failure to comply with the requirements and procedures? Are there any particular cases where the consequences appear disproportionate?
11. Are there any areas where alternative requirements and procedures or effects rules have been adopted which might provide a general solution in the present context to reduce the administrative or other burdens? What are those arrangements and how do they operate? What is their advantage?
12. Have there been any developments in this field in your country? Have requirements or procedures or effects rules recently been added, modified or abolished? What reasons (if any) were given for those changes?

PART V.A. General

V.A.1. Hague Convention of 5 October 1961 (the 'Apostille' Convention)

V.A.1.1 Requirements and procedures [V.A.1.1](#)

Please consider the justification for the requirements and procedures of your Member State relating to the Apostille Convention as identified and described in Part I.A.2.

V.A.1.2 Effects rules [V.A.1.2](#)

Please consider the justification for the effects rules of your Member State relating to foreign public documents meeting the requirements and procedures of the Apostille Convention as described in Part II.A.2.

V.A.2. Parallel international agreements

V.A.2.1 Requirements and procedures [V.A.2.1](#)

Please consider the justification for the requirements and procedures of the applicable international agreement(s) as identified and described in Part I.A.3.

Effects rules [V.A.2.2](#)

Please consider the justification for the effects rules of your Member State relating to foreign public documents meeting the requirements and procedures of the relevant international agreement as described in Part II.A.3.

V.A.3. National law

V.A.3.1 Requirements and procedures [V.A.3.1](#)

Please consider the justification for the requirements and procedures of national law as identified and described in Part I.A.4.

V.A.3.2 Effects rules [V.A.3.2](#)

Please consider the justification for the effects rules of your Member State relating to foreign public documents meeting the requirements and procedures of national law as described in Part II.A.4.

EXPLANATORY MEMORANDUM

PART VI – Suggested action

OVERVIEW OF PART VI 0

The fact that this part on the ‘*suggested action*’ calling upon the creative and constructive thoughts of the National Rapporteurs is placed at the end of the National Report indicates the importance of the foregoing parts of the report. Only if the information gathered in parts I to V is sufficient will it possible to consider suggested action which will in fact address real difficulties resulting from legalisation or other similar or equivalent requirements.

However, with regard to the great benefit the study may enjoy from the knowledge or experience of the National Rapporteurs who have been approached for their particular expertise in this field, Part VI gives the necessary space to develop new ideas on how the subject of the cross-border use of public documents may be addressed at either the European, intergovernmental or national level.

There are many possible approaches which may be taken towards developing a system which will allow an effective cross-border use of public documents whilst ensuring the protection of the national legal orders of the Member States against risks such as fraud. An interesting example which ought to be mentioned here is for example the E-apostille Pilot Programme which was launched very recently by the Hague Conference of Private International Law (see www.hcch.net). Other approaches which may be considered are the establishment of European Standard Forms for public documents in combination with the co-operation between Member States’ competent authorities through the establishment of concise contact and competence lists, or the furthering of mutual recognition of public documents without legalisation combined with the establishment of a central European Register.

VI.1. European 0

Please consider which action at a European level may usefully be taken towards developing a system which will allow an effective cross-border use of public documents whilst ensuring the protection of the national legal orders of the Member States against risks such as fraud.

VI.2. Intergovernmental 0

Please consider which action at an intergovernmental level may usefully be taken towards developing a system which will allow an effective cross-border use of public documents whilst ensuring the protection of the national legal orders of the Member States against risks such as fraud.

VI.3. National 0

Please consider which action at a national level may usefully be taken towards developing a system which will allow an effective cross-border use of public documents whilst ensuring the protection of the national legal orders of the Member States against risks such as fraud.

1. ANNEX I - CASE LAW format sheet [2](#)

ANNEX I – NATIONAL CASE LAW REPORT FORMAT SHEET

FORMAT SHEET

The aim of this format sheet is to ensure the uniformity of the information submitted by the national rapporteurs regarding relevant case law for the present Legalisation Study Project.

Number of Judgment submitted by the national rapporteur

Please insert a number here. It ensures that all judgments received are properly processed. Sample: A47 ('A' represents Austria).

A47
(example)

1. Court, Judgment, Date

Please indicate the Court and the Member State, the judgment date, the file number and the parties, if in your Member State the parties are quoted.

President Arrondissementsrechtbank Haarlem, 29 July 1998, Intertext B.V. (The Netherlands)/ Baufast Maschinenbau GmbH (Germany).

2. Headnotes

You may include as many as necessary. Please note that a judgment often decides on more than one legal issue. All of interest should be provided.

3. Publication References

Please state any legal publication references. If the judgment is not published, please insert "unpublished".

4. Articles and Instrument

It is mandatory to state the respective articles dealt with in a judgment. Please always indicate whether the Court has applied the Brussels Convention, the Lugano Convention or the Brussels I Regulation.

e.g. Article ... of the ... Convention

6. Keywords

Please provide keywords which categorize the judgment, e.g. types of document, rules applied, (Member) States involved, outcome of the proceedings etc.

7. Case summary

Please draft a concise summary in the English language of a maximum of 2000 characters including spaces. NB. you can check this in word by selecting the text of the summary, choosing Tools in the Word menu and subsequently Word count. The case summary should be divided into three paragraphs: 1. facts of the case, 2. legal question and 3. reasoning of the court.

Summary – in the English language

(Example) The plaintiff, a Dutch company, has requested the legalisation of The defendant, a German competent authority...

The case involves the question whether...

The President of Rechtbank Arnhem (NL) states that...

2. ANNEX II [I.A.2.6](#)

ANNEX II - EMPIRICAL DATA FORMAT SHEET

FORMAT SHEET

The aim of the statistical data format sheet is to process the empirical data required in order to present a reliable statistical analysis of the implementation of legalisation or similar or equivalent requirements with respect to public documents.

The format sheet will have to be used in several stages of the questionnaire:

1. PRACTICAL APPLICATION of the Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)

The empirical data required for the statistical analysis of the practical application will be gathered by selecting an adequate sample authority and monitoring for an adequate period [5 working days] the practical application of the Hague Convention of 5 October 1961 by the selected authority.

PUBLIC DOCUMENT <i>[number processed quantification]</i>	<u>Monday</u>	<u>Tuesday</u>	<u>Wednesday</u>	<u>Thursday</u>	<u>Friday</u>
Sample Authority:					
JUDICIAL DOCUMENT	21	10	16	21	18, total 86
ADMINISTRATIVE DOCUMENT	15	10	5	4	5, total 39
NOTARIAL ACT	14	12	15	29	32, total 102
OFFICIAL CERTIFICATE	27	17	32	8	26, total 110

3. ANNEX III - NATIONAL BIBLIOGRAPHY format sheet [23](#)

ANNEX III – NATIONAL BIBLIOGRAPHY

FORMAT SHEET

The aim of the National Bibliography is to enable and facilitate an objective reflection of the national doctrine in respect of the subject of the cross-border use of public document. National Rapporteurs are requested to provide a short summary of the main conclusions of the respective publication.

Books

<i>Please list here the Book Title, Author, Publisher and Year of Publication</i>	<i>Please report here a concise summary of the main findings and conclusions of the publication</i>
<ol style="list-style-type: none">1. Polak, Tekst&Commentaar Burgerlijke Rechtsvordering, 2005, p. 1171“T&C”,2. Kluwer, Burgerlijke Rechtsvordering, part 4, book III, title 9, p. art. 986 2-6; losbladige Kluwer Rechtsvordering, Verdragen&Verordeningen, Part 2, p. J-156a).3. (Plasschaert, p. 212).	1.

Journal Articles or other (Official) Publications

<i>Please list here the Journal (if applicable) PublicationTitle, Author, Publisher and Year of Publication</i>	<i>Please report here a concise summary of the main findings and conclusions of the publication</i>
1.	1.