

Legalisation of Public Documents within the EU Member States

BELGIUM

National Rapporteur:

Prof. Marcel Storme

President of the International Association of Procedural Law, Ghent;
Partner, Storme, Leroy, van Parys advocatenassociatie, Ghent

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

OVERVIEW OF PART I

PART I.A. General

I.A.1. European Community Law

I.A.1.1. Introduction

I.A.1.2. Implementation of specific measures

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

Article 19 of Regulation (EC) No 1346/2000

Ever since the “wave” of European regulations in judicial matters, some Member States systematically provide internal implementation laws. Belgium however, is already a “bad student” as to the European directives and reaches rock bottom concerning the regulations... Consequently, Belgium does not have a so-called “implementation culture”. Moreover, regulations do not require an implementation. It is not inconceivable that the absence of an obligation to implement also influences our Parliament...

The Belgian legalisation procedures mainly rely on customary law. However, in 2004 a Code on private international law was constituted (see: *Wet van 27 mei 2004 houdende het Wetboek van internationaal privaatrecht, B.S. 27 juli 2004*) and as we speak, a royal decree in execution of article 30 (concerning the legalisation) is presented to the Council of State. In spite of article 30, subparagraph 3 of the mentioned Code, which proclaims that the king shall further determine more detailed rules of legalisation, the Minister of Justice Laurette ONKELINX confirmed, in reply to a parliamentary question, that these provisions are already implemented under the *Koninklijk besluit van 23 maart 1857 betreffende de bevoegdheden van consuls inzake legalisaties en gerechtelijke betekeningen, B.S. 29 maart 1857* (see: *Vr. en Antw. Kamer 2005-2006, 19 december 2005 (Vr. nr. 820 MALMENDIER)*).

Article 19 of Regulation (EC) No 1346/2000 is, as such, not implemented into national law but the exemption from legalisation of documents appointing a liquidator relies on article 30, paragraph 1, first subparagraph of the mentioned Code. In principle, foreign legal decisions or authentic documents must be legalised for use in Belgium. However, according to the Codes explanatory memorandum, legalisation is only

required if no international text states otherwise. In this case, article 19 stipulates an exemption for documents appointing a liquidator.

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

See above.

Article 56 of Regulation (EC) No 44/2001

See above.

Article 57 of Regulation (EC) No 44/2001

See above.

Article 58 of Regulation (EC) No 44/2001

See above.

Article 46 Regulation (EC) No 2201/2003

See above.

Article 52 of Regulation (EC) No 2201/2003

See above.

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

See above.

Also see the Departmental circular of 22 June 2005 (*Departementale Circular van 22 juni 2005 – Verordening (EG) nr. 805/2004 van het Europese Parlement en de Raad van 21 april 2004 tot invoering van een Europese executoriale titel voor niet-betwiste schuldvorderingen, B.S. 28 oktober 2005*) and the *Voorstel van wet tot aanvulling van het Gerechtelijk Wetboek teneinde de gedaagde te waarschuwen voor de gevolgen van het niet-verschijnen, Parl. St. Kamer 2005-06, nr. 2457*. Although both measures are taken to implement the aforementioned Regulation, they contain no relevant information concerning this subject.

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

See above.

Also see the Departmental circular of 22 June 2005 (*Omzendbrief van 22 juni 2005 – Verordening (EG) nr. 805/2004 van het Europese Parlement en de Raad van 21 april 2004 tot invoering van een Europese executoriale titel voor niet-betwiste schuldvorderingen, B.S. 28 oktober 2005*) and the *Voorstel van wet tot aanvulling van het Gerechtelijk Wetboek teneinde de gedaagde te waarschuwen voor de gevolgen van het niet-verschijnen, Parl. St. Kamer 2005-06, nr. 2457*. Although both measures are taken to implement the aforementioned Regulation, they contain no relevant information concerning this subject.

Article 13(5) of Directive 2002/8/EC

See above.

Free movement of goods (Article 23 EC)

Article 250 of Regulation (EEC) No 2913/92

See above.

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

See above.

I.A.1.3. Judicial control

There is no national case law relevant to the enumerated rules of Community law.

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

I.A.2.1. Status

The information on the status of the 'Apostille' Convention in Belgium, as stated in the explanatory memorandum, is correct.

I.A.2.2. Scope

1. The geographical scope of application of the provisions of the 'Apostille' Convention has not been extended beyond the States party to the Convention by the legislator, the competent authority or the judiciary.
2. The material scope of application of the Convention has not been limited or extended by the legislator, the competent authority or the judiciary. Thus, the application of the Convention is rather strict. Sometimes difficulties concerning the application of article 1, third paragraph, b, arise. The problem area is the interpretation of the terms "dealing "directly" with commercial or customs operations". Many firms present administrative documents (e.g. certificates emanating from Federal Public Services, from a Chamber of Commerce, etcetera). If one takes the text too literally, those firms are confronted with complications as to legalisation. However, they'd rather have the apostille. Therefore, they claim that the presented documents are not "directly" dealing with commercial operations. It would have been better to specify, for all the Member States, which administrative documents are by nature directly dealing with commercial operations because the interpretation can differ from Member State to Member State. If not, point b seems useless. Moreover, the Convention doesn't define the term "administrative documents". For example: the Chambers of Commerce are private organizations but they sometimes deliver documents by delegation of the Federal Public Service Economic Affairs, e.g. certificates of origin. Those certificates are considered as administrative documents directly dealing with commercial operations and thus cannot bear the apostille. On the contrary, certified copies of invoices (private documents) by a notary, will be apostilled...

I.A.2.3. Legislative implementation

The only relevant legislative act is the *Wet van 5 juni 1975 houdende goedkeuring van het Verdrag tot afschaffing van het vereiste van legalisatie van buitenlandse openbare akten, en van de bijlage, opgemaakt te 's-Gravenhage op 5 oktober 1961, B.S. 7 februari 1976*. Article 1 stipulates that the 'Apostille' Convention will have full result. According to article 2, the competent authority for affixing the apostille concerning the Belgian public documents mentioned in article 1 of the Convention, is the Minister of Foreign Affairs (or an authorised civil servant). In accordance to article 4 of the Convention, the applicant can request a Dutch, French or German formula.

Finally, article 3 prescribes that the introduction of an apostille gives cause for collection of the same charge as for legalisations as stipulated in the law of 4 July 1956 concerning the tariff of the consular and chancellery rights and in the laws appendix (recently replaced by the *Wet van 30 juni 1999 houdende het tarief van de consulaire rechten en de kanselarijrechten, B.S. 24 december 1999* and the *Koninklijk besluit van 21 december 2005 tot wijziging van de tarieven gevoegd bij de wet van 30 juni 1999 houdende het tarief der consulaire rechten en der kanselarijrechten, B.S. 26 januari 2006*).

There are no key *travaux préparatoires* concerning this legislative implementation.

I.A.2.4. Practical implementation

The process of the issuance of an apostille by the competent authority (articles 4 and 5 of the Convention):

1. The apostille can be *requested* in person, by registered mail, by mail, by e-mail, by fax, etcetera. However, the *actual addition* of the apostille requires the presentation of the original documents. One can either go personally to the appropriate department with the documents, or send them by post. In this case, it is preferable to send them by registered mail. One can also charge someone with the task to submit a document for apostille, in which case no authorisation must be presented.
2. The competent authority verifies 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. For this reason, a Legalisations Service has been established at the Federal Public Service Foreign Affairs. A very extended database of specimen is kept up with the signatures of all useful Belgian governments (clerks of the courts, municipal and local authorities and other competent civil servants) and a comparison is made in relation to those specimen. The card-index is still used to check the signatures. However, they will be scanned soon. On the other hand, the Federal Public Service Foreign Affairs has already introduced the names, quality, the dates of entry in function, the place of exercise of the function, etcetera, into the information processing system.
3. Form of the apostille: "*Apostille (Convention of the Hague 5 October 1961) 1. Country: Belgium 2. This public document has been signed by... 3. acting in the capacity of... 4. bears the seal/stamp of... Certified 5. at... 6. the... 7. by the Federal Public Service Foreign Affairs 8. N° ... 9. Seal/stamp... 10. Signature...*"
4. Depending on the size of the document, the apostille issued by the competent authority is placed on the public document itself or on an allonge.

5. When the public document consists of multiple pages, the apostille is affixed on the last page, after the signature on the document.
6. The applicant can request a Dutch, French or German formula.
7. The system used for the issuance of an apostille is electronic. The computer system is called "LegalNet".
8. Belgium has taken several measures in order to avoid fraud. The new system is called "LegaliNet" and such a technique is unknown in other E.U. Member States. The apostille consists of a unique control figure made up of at least 16 numbers, generated and enciphered by a computer programme. The control figure is printed on the apostille sticker. At any time, the user can check the control figure (by means of the following Internet site: www.diplomatie.be/LegaliNet/index.aspx) from each computer linked with the Internet, without any special equipment or programme. If the number does not exist, the apostille is tampered with or the user has introduced the wrong number (the user then receives the message: " Not valid"). If a valid number is entered, the user receives the following message: "(Number) is a valid number, date: ..., place: Federal Public Service Foreign Affairs". Moreover, the form of the stickers will change soon. The Federal Public Service Foreign Affairs asked for a protected paper and wants each virgin sticker to be numbered.
9. For the moment, Belgium has no plans to modernize the system used to issue apostilles.
10. The total process approximately takes five minutes. However, one should not neglect the aspect of the preliminary analysis of the case. For example, the interrogation of the applicant to determine if the document is appropriate within the framework of his file and to find out if legalisation is even necessary. When the document is sent by mail, the total approximately takes ten days.
11. The fee payable for the issuance of an apostille is ten euro. The ministers of Foreign Affairs, Budget and Finance set the fees. The level of the fees is determined by the tariff of the consular taxes, see the *Wet van 30 juni 1999 houdende het tarief van de consulaire rechten en de kanselarijrechten, B.S. 24 december 1999* and the *Koninklijk besluit van 21 december 2005 tot wijziging van de tarieven gevoegd bij de wet van 30 juni 1999 houdende het tarief der consulaire rechten en der kanselarijrechten, B.S. 26 januari 2006*. For the moment, the fees are aimed at bringing revenue. This will change when the Federal Public Service Foreign Affairs will have its own "Service with separate management". Then, a part of the fees will be used to cover costs.

NB: the same procedure applies to all documents and to all Member States party to the Hague Convention. Consequently, if the document falls under the application of the Apostille Convention, the procedure is always the same. However, the stages of legalisations preceding the affixing of the apostille, depend of the nature of the presented document.

The system used to comply with the registration or card index requirement (article 7 of the Convention):

1. The system used to comply with the mentioned requirement is electronic.

2. Due to the fact that Belgium is one of the first Member States with an electronic register, there are currently no plans to modernize the system.
3. By means of the Internet site www.diplomatie.be/LegaliNet/index.aspx, one can already verify the validity of the control figure and the date and place of the addition of the apostille. To know the name of the person signing the public document and the capacity in which he has acted, or in the case of unsigned documents, the name of the authority which has affixed the seal or stamp, one must address to the Legalisations Service.

The competent authority:

The Federal Public Service Foreign Affairs (article 2 *Wet van 5 juni 1975 houdende goedkeuring van het verdrag tot afschaffing van het vereiste van legalisatie van buitenlandse openbare akten, en van de bijlage, opgemaakt te 's-Gravenhage op 5 oktober 1961, B.S. 7 februari 1976*).

Contact details: Federal Public Service Foreign Affairs (Legalisations Service), Karmelietenstraat 27, 1000 Brussel, tel.: +32 (0)2 501 87 85 – +32 (0)2 501 88 16 – +32 (0)2 501 89 00, fax.: +32 (0)2 501 37 90, opening hours: Monday to Friday, from 9 a.m. to 3.30 p.m., e-mail: legalisation.ae@diplobel.fed.be, general website: <http://diplobel.fgov.be/en/default.asp>.

An approachable contact person at the competent authority is Mrs A.M. Latte, Karmelietenstraat 15, 1000 Brussel.

I.A.2.5. Judicial control

There is no national case law relevant to the functioning of the Convention in relation to other Member States of the European Union. There is national case law concerning the Convention; Council of State, 2 Februari 2004 concerning the marriage of a woman from Mauritania and a man from Morocco. For Mauritania legalisation is required, apostille is not valid.

I.A.2.6. Empirical analysis

The competent (sample) authority is the Federal Public Service Foreign Affairs.

The empirical analysis was not possible during summer holiday. In addition, the program of the Federal Public Service Foreign Affairs only shows the total number of apostilles and the proportion of apostilles compared to the total of legalisations. Consequently, the Federal Public Service Foreign Affairs has asked their ICT-devison to refine their program. The aforementioned Federal Public Service has monitored the practical application of the Apostille Convention for a period of 5 working days from 18 August 2006 up to and including 23 August 2006. In spite of our clear request, the information could *not* be reported *per day*. Consequently, we can only note the numerical data based on the type of document for the aforementioned period of reference as a whole.

1. Judicial documents: 172.
2. Administrative documents: 238.
3. Notarial act: 144.
4. Official certificate: 14.

PUBLIC DOCUMENT <i>568 processed (see above)</i>	<u>Monday</u>	<u>Tuesday</u>	<u>Wednesday</u>	<u>Thursday</u>	<u>Friday</u>
Sample Authority: see above					
JUDICIAL DOCUMENT	?	?	?	?	?
ADMINISTRATIVE DOCUMENT	?	?	?	?	?
NOTARIAL ACT	?	?	?	?	?
OFFICIAL CERTIFICATE	?	?	?	?	?

I.A.3. Parallel international agreements

I.A.3.1. Status

1.1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic Agents or Consular officers

Neither signed nor ratified by Belgium.

2.1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities

Signed on 25/05/1987. This Convention has not entered into force, but it is already applied provisionally. For Belgium, the date of deposit of the instrument of ratification is 16 December 1996 (for the declaration see below). The date of the provisional application is 16 March 1997.

3. Agreements abolishing the requirement of legalisation for foreign public documents generally between two or more countries:

Germany:

Agreement of Brussels of 13 May 1975 between Belgium and the German Federal Republic concerning the abolition of the legalisation of public documents, *B.S.* 19 March 1981: entered into force on 01/05/1981.

France:

Agreement of Paris of 9 November 1981 between Belgium and France concerning the abolition of the legalisation of public documents, *B.S.* 12 February 1982.

4. Agreements abolishing the requirement of legalisation for categories of documents relating to a specific subject matter:

Multilateral agreements:

a) The Hague Conventions:

- The Hague Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations Towards Children (1958): signed on 11/07/1958, ratified on 15/9/1961 and entered into force on

01/01/1962 (In the relations between the contracting parties, this Convention was replaced by the agreement of 2 October 1973. In Belgium however, it has not yet entered into force).

- The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965): signed on 21/01/1966, ratified on 19/11/1970 and entered into force on 18/01/1971.
- The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1972): signed nor ratified.
- The Hague Convention concerning the International Administration of the Estates of Deceased Persons (1973): signed nor ratified by Belgium.
- The Hague Convention on Civil Aspects of International Child Abduction (1980): signed on 11/01/1982, ratified on 09/02/1999 and entered into force on 04/05/1999.
- The Hague Convention on International Access to Justice (1988): signed nor ratified by Belgium.
- 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): signed on 01/04/2003 but not ratified.

b) Other:

- Agreement of Luxembourg of 26 September 1957 concerning the free of charge issuing and the exemption from legalisation of duplicates and extracts of certificates of the registry of births, deaths and marriages, *B.S.* 27 May 1966: entered into force on 12/06/1966.
- Agreement of Vienna of 8 September 1976 concerning the delivery of multilingual extracts from the certificates of the registry of births, deaths and marriages, *B.S.* 5 March 1998: entered into force on 02/07/1997.

Bilateral agreements with regard to the municipal registry of births, marriages and deaths:

c) Abolishing the legalisation irrespective of the use of the document:

- Declaration of Luxembourg of 6 June 1923 between Belgium and Luxembourg concerning the abolition of the legalisation of extracts of certificates of the registry of births, deaths and marriages, delivered in one Member State to be presented in the other, irrespective of the use of the document, *B.S.* 25-26 June 1923: entered into force on 01/07/1923.
- Declaration of 2 May 1924 between Belgium and the Netherlands concerning the abolition of the legalisation of duplicates and extracts of certificates of the registry of births, deaths and marriages, delivered in one Member State to be presented in the other, irrespective of the use of the document, *B.S.* 10 May 1924: entered into force on 15/05/1924.
- Declaration of Brussels of 21 December 1928 between Belgium and the United Kingdom concerning the abolition of the legalisation of certain official documents, *B.S.* 11 January 1929: entered into force on 21/01/1929.

- d) Abolishing the legalisation for administrative use or in favour of insolvent persons:
- Declaration of Prague of 10 March 1948 between Belgium and Czechoslovakia concerning the reciprocal free of charge delivery of the duplicates of certificates of the registry of births, deaths and marriages for administrative use and in favour of insolvent persons, *B.S.* 22 April 1948: entered into force on 10/04/1948.
 - Agreement of Stockholm of 18 April and 28 May 1959 between Belgium and Sweden concerning the legalisation of duplicates of certificates of the registry of births, deaths and marriages and the free of charge and reciprocal issuing of these documents, *B.S.* 19 august 1959: entered into force on 01/06/1959.

I.A.3.2. Scope

- 1) In principle, the geographical scope of application of the provisions of the agreements has not been extended beyond the States party to the conventions by the legislator, the competent authority or the judiciary. However, in practice the scope of the Agreement of Vienna of 8 September 1976 concerning the delivery of multilingual extracts from the certificates of the registry of births, deaths and marriages seems to be applied beyond the States party to this agreement.
- 2) The material scope of application of the conventions has not been limited or extended by the legislator, the competent authority or the judiciary. Thus, the application of the conventions is rather strict.
- 3) Depending on the nature of the presented document, the most favourable agreement is applied.

I.A.3.3. Legislative implementation

- 1) 1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities:

The only relevant legislative act is the *Wet van 27 november 1996 houdende instemming met het Verdrag betreffende de afschaffing van de legalisatie van akten in de Lid-Staten van de Europese Gemeenschappen, ondertekend te Brussel op 25 mei 1987, B.S. 18 april 1997(voor de lijst van de gebonden staten) en erratum B.S. 30 september 1999*. There are no important provisions.

Key travaux préparatoires. The definition of legalisation in the Brussels Convention (article 3) largely corresponds with the one given in the doctrine of law. The Brussels Convention aims at abolishing legalisation for public documents, e.g. notarial deeds. Due to the fact that legalisation is merely an administrative formality, not granting any authenticity to a document, (European and non-European) states have already signed many treaties with a view to the abolition or simplification of legalisation. Well-known is the Apostille Convention. Besides this multilateral Convention, Belgium has concluded several bilateral agreements with a view to the abolition of legalisation for public documents, including an agreement with the Federal Republic of Germany, signed on 13 May 1975, and an agreement with France, signed on 9 November 1981. Both of the aforementioned agreements have not yet been approved by the parliament. According to the Council of State however, a parliamentary approval is absolutely necessary. Consequently, the agreements cannot be applied in Belgium, as a result of which the

affixing of an apostille on public documents originating from France or Germany is still required. As a result of the ratification of the Brussels Convention, these administrative difficulties can be solved definitively. This solution has the added advantage that the Apostille Convention would no longer be applicable: the affixing of an apostille on documents, with a view to the submission in another contracting state, would become unnecessary. In anticipation of the entry into force of the Convention, it seems opportune that Belgium should, according to article 6, paragraph 3, declare that the Convention is applicable in relation to states that have made the same declaration.

2) Agreements abolishing the requirement of legalisation for foreign public documents generally between two or more countries:

a) Agreement of Brussels of 13 May 1975 between Belgium and the German Federal Republic concerning the abolition of the legalisation of public documents:

- There are no relevant legislative acts.
- There are no key *travaux préparatoires*.

b) Agreement of Paris of 9 November 1981 between Belgium and France concerning the abolition of the legalisation of public documents (B.S. 12 februari 1982):

- There are no relevant legislative acts.
- There are no key *travaux préparatoires*.

3) Multilateral agreements:

a) The Hague Conventions:

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

The only relevant legislative act is the *Wet van 11 augustus 1961 houdende goedkeuring van het Verdrag nopens de erkenning en de tenuitvoerlegging van beslissingen ter zake van onderhoudsverplichtingen jegens kinderen, ondertekend op 15 april 1958, te 's-Gravenhage, B.S. 28 oktober 1961*. There are no important provisions.

- There are no relevant key *travaux préparatoires*.
- In the relations between the contracting parties, this Convention was replaced by the agreement of 2 October 1973. In Belgium however, it has not yet entered into force.

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

The only relevant legislative act is the *Wet van 24 januari 1970 houdende goedkeuring van het verdrag inzake de betekening en de kennisgeving in het buitenland van gerechtelijke en buitengerechtelijke stukken in burgerlijke zaken en in handelszaken en de bijlage, opgemaakt te 's-Gravenhage op 15 november 1965, B.S. 9 februari 1971*. There are no important provisions.

- There are no relevant key *travaux préparatoires*.

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

The only relevant legislative act is the *Wet van 10 augustus 1998 houdende instemming met het Verdrag betreffende de burgerrechtelijke aspecten van*

internationale ontvoering van kinderen, opgemaakt te 's Gravenhage op 25 oktober 1980, tot opheffing van de artikelen 2 en 3 van de wet van 1 augustus 1985 houdende goedkeuring van het Europees Verdrag betreffende de erkenning en de tenuitvoerlegging van beslissingen over het gezag over kinderen en betreffende het herstel van het gezag over kinderen, opgemaakt te Luxemburg op 20 mei 1980, alsook tot wijziging van het Gerechtelijk Wetboek, B.S. 24 april 1999. There are no important provisions.

- There are no relevant key *travaux préparatoires*.

b) Other:

Agreement of Luxembourg of 26 September 1957 concerning the free of charge issuing and the exemption from legalisation of duplicates and extracts of certificates of the registry of births, deaths and marriages:

- There are no relevant legislative acts.
- There are no key *travaux préparatoires*.

Agreement of Vienna of 8 September 1976 concerning the delivery of multilingual extracts from the certificates of the registry of births, deaths and marriages:

- The relevant legislative acts are the *Wet van 3 april 1997 houdende instemming met de Overeenkomst betreffende de afgifte van meertalige uittreksels uit akten van de burgerlijke stand, en Bijlagen, gedaan te Wenen op 8 september 1976, en het Aanvullend Protocol bij de Overeenkomst inzake internationale uitwisseling van gegevens op het gebied van de burgerlijke stand, ondertekend te Istanbul op 4 september 1958, en Bijlage, gedaan te Patras op 6 september 1989, B.S. 5 march 1998* and the *Omzendbrief van 25 mei 1998 betreffende de inwerkingtreding en de toepassing van de Overeenkomst betreffende de afgifte van meertalige uittreksels uit akten van de burgerlijke stand, en Bijlagen, gedaan te Wenen op 8 september 1976, en van het aanvullend Protocol bij de Overeenkomst inzake de internationale uitwisseling van gegevens op het gebied van de burgerlijke stand, ondertekend te Istanbul op 4 september 1958, en Bijlage, gedaan te Patras op 6 september 1989, B.S. 12 juni 1998.* The law and the departmental circular contain no important provisions.
- Key *travaux préparatoires*. The use of standard multilingual forms in seven languages is now regulated by the Agreement of Paris of 27 September 1956 concerning the issuing of certain extracts from certificates of the registry of births, deaths and marriages intended for use in other countries. This agreement will cease to exist in the relation between member states of the new Agreement of Vienna. The main reason for the new agreement lies in making possible the use of the national language(s) of the six new member states (i.e. between 1956 and 1974) of the international Commission on Civil Status. At the same time, the shape and conditions for the use of the forms were adapted. The delivery of these forms will be obliged whenever an interested party asks for it or whenever a translation is necessary. This is an unmistakable advantage for all parties concerned with the international exchange of documents. In addition, these forms are exempted from legalisation when presented in one of the contracting states. Moreover, this agreement protects the privacy of all those concerned by stipulating that extracts can only be delivered to persons, competent to receive literal copies. Consequently, it is unnecessary to make reservation concerning the extracts of the birth certificates concerning adopted children. Only persons

mentioned in article 45, paragraph 1, second subparagraph of the Civil Code can obtain certified copies or an extract of a certificate of the registry of births, deaths and marriages of less than hundred years ago with indication of the filiation of the persons to whom the certificate is related.

4) Bilateral agreements with regard to the municipal registry of births, marriages and deaths:

a) Abolishing the legalisation irrespective of the use of the document:

Declaration of Luxembourg of 6 June 1923 between Belgium and Luxembourg concerning the abolition of the legalisation of extracts of certificates of the registry of births, deaths and marriages, delivered in one Member State to be presented in the other, irrespective of the use of the document:

- There are no relevant legislative acts.
- There are no key *travaux préparatoires*.

Declaration of 2 May 1924 between Belgium and the Netherlands concerning the abolition of the legalisation of duplicates and extracts of certificates of the registry of births, deaths and marriages, delivered in one Member State to be presented in the other, irrespective of the use of the document:

- There are no relevant legislative acts.
- There are no key *travaux préparatoires*.

Declaration of Brussels of 21 December 1928 between Belgium and the United Kingdom concerning the abolition of the legalisation of certain official documents:

- There are no relevant legislative acts.
- There are no key *travaux préparatoires*.

b) Abolishing the legalisation for administrative use or in favour of insolvent persons:

Declaration of Prague of 10 March 1948 between Belgium and Czechoslovakia concerning the reciprocal free of charge delivery of the duplicates of certificates of the registry of births, deaths and marriages for administrative use and in favour of insolvent persons:

- There are no relevant legislative acts.
- There are no key *travaux préparatoires*.

Agreement of Stockholm of 18 April and 28 May 1959 between Belgium and Sweden concerning the legalisation of duplicates of certificates of the registry of births, deaths and marriages and the free of charge and reciprocal issuing of these documents:

- There are no relevant legislative acts.
- There are no key *travaux préparatoires*.

I.A.3.4. Practical implementation

The same procedure applies to all documents and to all Member States party to the particular agreements.

Competent authorities charged with the practical implementation of the relevant agreements:

1) 1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities:

- Only one authority is competent for the legalisation.
- The competent authority is the Federal Public Service Foreign Affairs.

Contact details: Federal Public Service Foreign Affairs (Legalisations Service), Karmelietenstraat 27, 1000 Brussel, tel.: +32 (0)2 501 87 85 – +32 (0)2 501 88 16 – +32 (0)2 501 89 00, fax.: +32 (0)2 501 37 90,

Opening hours: Monday to Friday, from 9 a.m. to 3.30 p.m., e-mail: legalisation.ae@diplobel.fed.be, general website: <http://diplobel.fgov.be/en/default.asp>.

- An approachable contact person at the competent authority is Mrs A.M. Latte, Karmelietenstraat 15, 1000 Brussel.

2) Agreement of Brussels of 13 May 1975 between Belgium and the German Federal Republic concerning the abolition of the legalisation of public documents:

- Only one authority is competent for the legalisation.
- The competent authority is the Federal Public Service Foreign Affairs.

Contact details: Federal Public Service Foreign Affairs (Legalisations Service), Karmelietenstraat 27, 1000 Brussel, tel.: +32 (0)2 501 87 85 – +32 (0)2 501 88 16 – +32 (0)2 501 89 00, fax.: +32 (0)2 501 37 90

Opening hours: Monday to Friday, from 9 a.m. to 3.30 p.m., e-mail: legalisation.ae@diplobel.fed.be, general website: <http://diplobel.fgov.be/en/default.asp>.

- An approachable contact person at the competent authority is Mrs A.M. Latte, Karmelietenstraat 15, 1000 Brussel.

3) Agreements abolishing the requirement of legalisation for categories of documents relating to a specific subject matter:

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

- The competent authorities to take decisions concerning maintenance obligations towards children are, according to the cases determined by the Belgian law, the justices of the peace or the courts of first instance. The judges in appeal are the courts of first instance for decisions taken by the justices of the peace, and the courts of appeal for decisions taken by the courts of first instance. The courts of first instance are qualified to enforce foreign judgements. In this matter, the courts of appeal are the competent judges in appeal. For a detailed list, presenting the number, identity and contact details of the competent authorities and the contact details of approachable contact persons at the competent authorities, see http://www.juridat.be/vrede_gerecht/index.htm for the justices of the peace, http://www.juridat.be/eerste_aanleg/index.htm for the courts of first instance and <http://www.juridat.be/beroep/index.htm> for the courts of appeal. The same system described above is used by all authorities.
- In the relations between the contracting parties, this Convention was replaced by the agreement of 2 October 1973. In Belgium however, it has not yet

entered into force.

The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965).

- The competent authorities are

(1) the Federal Public Service Justice; contact details: Federal Public Service Justice (International Support Service in Civil Matters), Waterloolaan 115, 1000 Brussel, tel.: +32 (0)2 542 65 11, fax.: +32 (0)2 542 70 06, opening hours: Monday to Friday, from 9 a.m. to 4 p.m., e-mail: info@just.fgov.be, general website: http://www.just.fgov.be/index_fr.htm

(2) the registries and parquets of the various civil, commercial and labour courts, see: http://www.juridat.be/cgi_adres/adrn.pl and the process servers, see: http://www.gerechtsdeurwaarders.be/index_nl.htm

(3) the judicial officers, officials or other competent persons; contact details: Chambre nationale des Huissiers de Justice, Avenue Henri Jaspar 93, 1060 Brussels, tel.: +32 (2) 538 00 92, fax: +32 (2) 539 41 11, e-mail : Chambre.Nationale@huissiersdejustice.be, general website: http://www.huissiersdejustice.be/Index_fr.htm.

- Approachable contact persons at the competent authorities: see sites

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

- The competent authority is the Federal Public Service Justice. Contact details: Federal Public Service Justice (Direction générale de la Législation et des Libertés et Droits fondamentaux, Autorité centrale d'Entraide judiciaire internationale en matière civile), Waterloolaan 115, 1000 Brussel, tel.: +32 (2) 542 67 00, fax.: +32 (2) 542 70 06, e-mail: rapt-parental@just.fgov.be and kinderontvoering@just.fgov.be.

- An approachable contact person at the competent authority is Mr Ph. Lievin, tel.: +32 (2) 542 67 25.

4) Other:

Agreement of Luxembourg of 26 September 1957 concerning the free of charge issuing and the exemption from legalisation of duplicates and extracts of certificates of the registry of births, deaths and marriages:

- The competent authorities are the servants of the registry of births, deaths and marriages.

Contact details: see:

http://www2.vlaanderen.be/ned/sites/gemeenten/NASApp/cs/ContentServer/index_1.html for the communities in Flanders,

<http://www.uvcw.be/communes/> for the Walloon and

<http://www.dglive.be/Desktopdefault.aspx/tabid-223/> for the German communities.

- Approachable contact persons at the competent authorities: see the aforementioned websites.

Agreement of Vienna of 8 September 1976 concerning the delivery of multilingual

extracts from the certificates of the registry of births, deaths and marriages:

5) Bilateral agreements with regard to the municipal registry of births, marriages and deaths:

1) Abolishing the legalisation irrespective of the use of the document:

Declaration of Luxembourg of 6 June 1923 between Belgium and Luxembourg concerning the abolition of the legalisation of extracts of certificates of the registry of births, deaths and marriages, delivered in one Member State to be presented in the other, irrespective of the use of the document

Declaration of 2 May 1924 between Belgium and the Netherlands concerning the abolition of the legalisation of duplicates and extracts of certificates of the registry of births, deaths and marriages, delivered in one Member State to be presented in the other, irrespective of the use of the document:

Declaration of Brussels of 21 December 1928 between Belgium and the United Kingdom concerning the abolition of the legalisation of certain official documents:

2) Abolishing the legalisation for administrative use or in favour of insolvent persons:

Declaration of Prague of 10 March 1948 between Belgium and Czechoslovakia concerning the reciprocal free of charge delivery of the duplicates of certificates of the registry of births, deaths and marriages for administrative use and in favour of insolvent persons:

Agreement of Stockholm of 18 April and 28 May 1959 between Belgium and Sweden concerning the legalisation of duplicates of certificates of the registry of births, deaths and marriages and the free of charge and reciprocal issuing of these documents:

I.A.3.5. Judicial control

Number of Judgment submitted by the national rapporteur

B...

1.Court, Judgment, Date

President of the court of first instance Brussels, 25 July 1997.

2.Headnotes

The 1987 Brussels Convention abolishing the legalisation of documents in the member states of the European Communities, as it was ratified by Belgium on November 27, 1996 (M.B. April 18, 1997), does away with all the formalities of legalisation. Consequently, the demand for affixing of mortgage visa becomes without object.

3. Publication References

Voorz. Rb. Brussel 25 juli 1997, *T.B.B.R.* 1997 (verkort), 315, noot C. DE BUSSCHERE.

Voorz. Rb. Brussel 25 juli 1997, *Rev. not. b.* 1997, 500, noot F. BOUCKAERT.

4. Articles and Instrument

Article 2 of the 1987 Brussels Convention abolishing the legalisation of documents in the member states of the European Communities.

5. Keywords

Notarial mortgage proxy (Belgium-Italy).

Request for mortgage visa (according to article 77 Mortgage Law).

1987 Brussels Convention: request without object.

6. Case summary

Summary – in the English language

1. By delegation of a female professor of physical education and kinesitherapy, born in Leuven and domiciled in Italy, the plaintiff, a Belgian engineer born in Leuven and domiciled in Belgium, receives a proxy (notarial act of an Italian notary public of June 28, 1997) to conclude an equitable mortgage and to mortgage estate located in Belgium. According to article 77 of the Belgian Mortgage Law, the plaintiff subsequently requests a mortgage visa from the president of the competent court.

2.The case involves the question whether such a visa is necessary, in view of the 1987 Brussels Convention abolishing the legalisation of documents in the member states of the European Communities.

3.The President of the court of first instance (B) states that the demand for affixing of a mortgage visa is without object. After all, according to the 1987 Brussels Convention abolishing the legalisation of documents in the member states of the European Communities, each contracting state has to abolish legalisation or any other equivalent formality concerning the acts to which this Convention applies. Therefore, the present request is without object.

We must notice that this judgment has been criticised. According to a number of jurisconsults (see the publication references above) the 1987 Brussels Convention was not correctly applied.

Number of Judgment submitted by the national rapporteur

B...	
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1.Court, Judgment, Date

Court of appeal Brussels, 19 February 1998.

2.Headnotes

The treaties and, *a fortiori* the agreements in simplified form, which aim to deviate from the Belgian laws or which are related to matters belonging, under the Constitution, to the exclusive competence of the legislator, need a legal approval. For lack of approval by the legislator, the treaty between the governments of the Kingdom of Belgium and the French Republic concerning the abolition of the legalisation of public documents, signed in Paris on November 9, 1981, cannot deviate from the obligations imposed by article 77 and 93, third subparagraph of the Mortgage Law, which apply to each foreign document permitting a mortgage abroad or implying the approval with the crossing-out or the reduction of mortgage registrations done abroad.

3.Publication References

Brussel 19 februari 1998, *Pas.* 1997, II, 48.

4. Articles and Instrument

Article 1 of the Agreement of Paris of 9 November 1981 between Belgium and France concerning the abolition of the legalisation of public documents.

5. Keywords

Condition of mortgage visa (according to article 77 and 93, paragraph 3 Mortgage Law) (Belgium-France).

Agreement of Paris of 9 November 1981 between Belgium and France concerning the abolition of the legalisation of public documents.

Abolition without result in relation to the requirement of article 77 and 93, paragraph 3 Mortgage Law: lack of parliamentary approval (required by article 68 Constitution).

6. Case summary

Summary – in the English language

1. In first instance, the applicant asked the president of the court of first instance of Brussels to affix a visa on a notarial mortgage proxy of a French company (SOFAL), received by a notary from Paris, with a view to the release of mortgage registrations concerning real estate located in Brussels. This court declared the request admissible but unsubstantiated. After all, the Agreement of Paris of 9 November 1981 between Belgium and France does away with the formality of visa concerning a notarial mortgage proxy, such as the one presented by the applicant. Consequently, the applicant lodges an appeal stipulating that the aforementioned agreement, although published in Belgian Monitor, is deprived of obligatory force because it did not obtain the parliamentary approval (although this is necessary according to the Belgian Constitution).

2. The case involves the question whether a visa is necessary, in view of the Agreement of Paris of 9 November 1981 between Belgium and France concerning the abolition of the legalisation of public documents.

3. The court of appeal (B) states that the agreement is an administrative agreement

in simplified form, concluded between Belgium and France. According to its preamble, it particularly aims at facilitating the production, in one of the two contracting states, of public acts (for example notarial deeds) established in the other contracting state. Nevertheless, the formality of visa is imposed by article 77 and 93, paragraph 3 of the Mortgage Law. Thus, the agreement derogates from a legal provision. The treaties and, *a fortiori* the agreements in simplified form, which aim to deviate from the Belgian laws or which are related to matters belonging, under the Constitution, to the exclusive competence of the legislator, need a legal approval. For lack of approval by the legislator, the agreement cannot deviate from the obligations imposed by the Mortgage Law. Consequently, the request is admissible and founded.

I.A.4. National Law

I.A.4.1. Legislative framework

Relevant legislative acts:

1) General:

- a) Article 28 Law of 25 ventose Year XI (16 March 1803) on the regulation of the office of notary public, *Bull.* 258, nr. 2440:

Authenticated certificates are legalised if necessary to be used outside the national territory. Legalisation is performed by the president of the court of first instance of the notary's stand or of the place where the certificate or the subsequent ordinary copy thereof is given.

- b) Article 49 Law of 25 ventose Year XI (16 March 1803) on the regulation of the office of notary public, *Bull.* 258, nr. 2440:

Before accepting his office, the notary public must lay down his signature and initials at the office of the court of first instance and the office of the town clerk of his stand.

- c) Article 47 of the Civil Code of 21 March 1804, *B.S.* 3 September 1807: replaced by article 28 and 30 Code on private international law (see below for an English translation of important provisions).

- d) Article 45 of the Civil Code of 21 March 1804, *B.S.* 3 September 1807:

The certified copies and the extracts intended for use abroad and of which the legalisation is required, are legalised by the Minister of Foreign Affairs or by the delegated civil servant. The certified copies and the extracts intended to serve in Belgium or abroad, can be delivered by the authorized officials of the district council, if no legalisation is required.

- e) Article 368.4 of the Civil Code of 21 March 1804, *B.S.* 3 September 1807:

Unless international treaties stipulate otherwise, documents distributed by a foreign authority with a view to be presented in Belgium concerning the realisation, the recognition, the conversion, the revocation or the revision of an adoption must be legalised at the request of the adoptive parent(s) or one

of them or of the adopted person.

- f) Law of 14 July 1966 *betreffende sommige buiten het rijk opgemaakte akten van de burgerlijke stand*, B.S. 2 augustus 1966, amended by the Law of 31 March 1987 *tot wijziging van een aantal bepalingen betreffende de afstamming*, B.S. 27 mei 1987: there are no important provisions.
- g) Royal Decree of 28 August 1967 *betreffende de uitvoering van de wet van 14 juli 1966 betreffende sommige buiten het rijk opgemaakte akten van de burgerlijke stand*, B.S. 23 september 1967:

As a deviation from article 3 of the Royal Decree of 23 March 1857 concerning the competence of consuls concerning legalisations and the judicial service notification, legalisation by the Minister of Foreign Affairs is not required to lay down issues and translations of certificates or judgments concerning the registry of births, deaths and marriages of Belgians at the relevant Ministry.

- h) Article 600 Judicial Code of 10 October 1967, B.S. 31 October 1967:

The justice of the peace legalises the signatures of notaries and civil servants of the Registry Office of the municipalities under his jurisdiction.

- i) Article 126 Royal Decree of 24 June 1988 *tot codificatie van de Gemeentewet onder het opschrift "Nieuwe Gemeentewet"* (Law of 26 May 1989 *tot bekrachtiging van het koninklijk besluit van 24 juni 1988 tot codificatie van de gemeentewet onder het opschrift "Nieuwe gemeentewet"*, B.S. 30 mei 1989):

Within their competences, both the mayor and the civil servant of the Registry Office can authorize officials of municipal authorities to legalise signatures. The aforementioned power applies to all documents intended for use in Belgium or abroad, unless they have to be legalised by the Minister of Foreign Affairs or the authorized civil servant.

- j) Departmental circular of 17 February 1993 *betreffende de legalisatie van buitenlandse akten van de burgerlijke stand*, B.S. 27 maart 1993:

This circular replaces the circular of 29 December 1913 concerning the legalisation of foreign documents. According to the first circular, foreign certificates of the registry of births, deaths and marriages can be legalised either by the Belgian diplomatic or consular representative at the country of origin, or by the foreign diplomatic or consular representative in Belgium, provided that the signature of these representatives was legalised by the Ministry of Foreign Affairs.

The common procedure of legalisation exists in the legalisation of foreign public documents in accordance with the local procedure, followed by the legalisation by the Belgian diplomatic mission or consular post. Only in exceptional cases, namely when legalisation cannot be obtained abroad, legalisation can be asked at the diplomatic or consular posts. If the Belgian government, while receiving the document, throws any doubts upon the authenticity, the usual legalisation procedure can be required. If necessary, the parties concerned can apply to the department of foreign affairs with a view to obtain the legalisation abroad.

- k) Departmental circular of 28 August 1997 *betreffende de procedure van de huwelijksafkondiging en de documenten die dienen overgelegd te worden ten einde een visum met het oog op het afsluiten van een huwelijk in het Rijk te bekomen en ten einde een visum gezinshereniging op basis van een huwelijk afgesloten in het buitenland te bekomen*, B.S. 1 oktober 1997:

The civil servant of the Registry Office cannot refuse the publication of banns on the sole fact that one of the spouses is not physically present. However, he must examine if the absentee approves with the publication. Such an approval can be found in a legalised written proof originating from the absentee. If necessary, a translation of this document can be requested. According to the Departmental circular of 17 February 1993, foreign documents submitted to the civil servants of the Registry Office or the Belgian diplomatic or consular posts abroad must be legalised, unless an internationally binding instrument states otherwise.

- l) Departmental Circular of 17 December 1999 *inzake de wet van 4 mei 1999 tot wijziging van een aantal bepalingen betreffende het huwelijk*, B.S. 31 december 1999:

This Circular recalls the Departmental Circular of 17 February 1993 *betreffende de legalisatie van buitenlandse akten van de burgerlijke stand*, B.S. 27 maart 1993. The civil servant of the Registry Office refuses to draw up the certificate of notification of the intended marriage if the interested parties fail to submit the documents enumerated in article 64 of the Civil Code. This also includes the situation where these documents were legalised in an insufficient manner.

- m) Article 30 Code on private international law (see above for full reference):

A foreign court order or a foreign authentic act must be legalised to be produced in Belgium. This legalisation only attests the veracity of the signature, the quality in which the signatory of the document acted and, if necessary, the identity of the seal or stamp. Legalisation is done by (1) a Belgian diplomatic or consular agent, accredited in the State of origin of the decision or the act; (2) failing this, by a diplomatic or consular agent of the foreign State, which represents the Belgian interests in this State; (3) failing this, by the Minister of Foreign Affairs. The king shall further determine more detailed rules of legalisation.

- n) Departmental circular of 13 May 2005 *aan de Belgische gemeenten en provinciebesturen*:

The (very important) content of this circular is fully incorporated in this national report. Consequently, the information undermentioned is purely restricted to a reflection of the table of contents: legal basis for the diplomatic and consular posts and the Federal Public Service Foreign Affairs – definition of legalisation – view of the legalisation procedure – competence of the Belgian diplomatic and consular posts – competence of the Federal Public Service Foreign Affairs – legalisation is, according to the law, a term *sensu stricto* – which documents can be legalised by the Belgian diplomatic and consular posts? – what about the contents of the foreign document or judgment? – refusal of legalisation by Belgian diplomatic and consular posts (motives of non-acceptance and notification of refusal) – administrative practice of Belgian diplomatic and consular posts (form of the legalisation,

keeping up specimen by the Belgian diplomatic and consular posts, keeping up specimen by the Federal Public Service Foreign Affairs) – prima facie problems with a document presented for legalisation on a Belgian diplomatic or consular post (establishing the problem and reaction of the posts) – new possibility for Belgian authorities receiving a legalised document: research on the merits of the document.

- o) Royal Decree concerning the legalisation of foreign judgements or authentic documents, *B.S. 11 Januar 2007*:

Formula of legalisation - prima facie problems with a document presented for legalisation on a Belgian diplomatic or consular post: same content as Departmental Circular of 13 May 2005.

- p) Departmental circular of 14 December 2006 concerning instructions on legalisation, *B.S. 11 Januar 2007*: same content as the one in 2005.

2) Diplomats and consuls

- a) Article 14 of the Law of 31 December 1851 *betreffende de consulaten en de consulaire rechtsmacht, B.S. 7 januari 1852* and the Royal Decree of 23 March 1857 *betreffende de bevoegdheden van consuls inzake legalisaties en gerechtelijke betekeningen, B.S. 29 maart 1857*:

The consul legalises the acts and documents dispatched in the extent of his jurisdiction and intended to be produced elsewhere (Law). The consuls will legalise the acts delivered by the public authorities of their district and intended to be produced in Belgium. They will mention the quality of the authority when the act was passed, quality which is indicated there. The signature of the consuls will be legalised by our Minister of Foreign Affairs or the delegated civil servant (Royal Decree. This text has been modified by the Royal Decree of 5 December 2003, amending the Royal Decree of 23 March 1857 concerning the competence of consuls concerning legalisations and the judicial service notification, see below).

- b) Article 5 of the Law of 10 July 1931 *betreffende de bevoegdheid der diplomatieke en consulaire agenten in notariële zaken, B.S. 31 juli 1931*, amended by the Law of 31 March 1987 *tot wijziging van een aantal bepalingen betreffende de afstamming, B.S. 27 mei 1987*:

The notarial competence of diplomatic agents, as well as of the consular agents who are, under this law, held with the notary office, covers: 1° the certificates and contracts exclusively related to Belgian nationals, 2° the antenuptial contracts concerning a Belgian national and a strange woman, 3° the certificates of authorisation in the marriage of a Belgian national, irrespective of the nationality of his parents, 4° abolished, 5° the certificates of recognition of children, irrespective of the nationality or age of the child, provided that the certificate is subscribed to by a Belgian national, 6° other certificates and contracts where parties or one of them are strangers, provided that these certificates and contracts concern Belgian real estate or Belgian matters.

- c) Article 602 Judicial Code of 10 October 1967, *B.S. 31 October 1967*:

The court of appeal of Brussels is competent for appeals against decisions of Belgian consuls abroad.

- d) Article 609, 4° Judicial Code of 10 October 1967, B.S. 31 October 1967:

The court of cassation is competent for appeals against judgments of Belgian consuls abroad, rendered in last resort.

- e) Royal Decree of 5 December 2003 *tot wijziging van het Koninklijk besluit van 23 maart 1857 betreffende de bevoegdheden van consuls inzake legalisaties en de gerechtelijke betekeningen*, B.S. 8 maart 2004:

Article 3 of the Royal Decree of 23 March 1857 concerning the competence of the consuls in relation to legalisations and judicial service notifications is withdrawn.

- f) Royal Decree of 21 December 2005 *tot wijziging van de tarieven gevoegd bij de wet van 30 juni 1999 houdende het tarief der consulaire rechten en der kanselarijrechten*, B.S. 26 januari 2006:

The tariff of the consular taxes for legalisation, levied by the Belgian diplomatic and consular posts abroad, is fixed at ten euro. However, legalisation is free of charge for documents where war invalidity is determined. The tariff of the chancellery rights for legalisation, levied in Belgium, is also fixed at ten euro.

Key travaux préparatoires:

- a) Article 28 and 49 Law of 25 ventose Year XI (16 March 1803) on the regulation of the office of notary public, Bull. 258, nr. 2440.
- b) Article 45 of the Civil Code of 21 March 1804, B.S. 3 September 1807.
- c) Article 14 of the Law of 31 December 1851 *betreffende de consulaten en de consulaire rechtsmacht*, B.S. 7 januari 1852 and the Royal Decree of 23 March 1857 *betreffende de bevoegdheden van consuls inzake legalisaties en gerechtelijke betekeningen*, B.S. 29 maart 1857: ...
- d) Article 5 of the Law of 10 July 1931 *betreffende de bevoegdheid der diplomatieke en consulaire agenten in notariële zaken*, B.S. 31 juli 1931, amended by the Law of 31 March 1987 *tot wijziging van een aantal bepalingen betreffende de afstamming*, B.S. 27 mei 1987: ...
- e) Law of 14 July 1966 *betreffende sommige buiten het rijk opgemaakte akten van de burgerlijke stand*, B.S. 2 augustus 1966, amended by the Law of 31 March 1987 *tot wijziging van een aantal bepalingen betreffende de afstamming*, B.S. 27 mei 1987: ...
- f) Article 600, 602 and 609, 4° Judicial Code of 10 October 1967, B.S. 31 October 1967: ...
- g) Article 126 Royal Decree of 24 June 1988 *tot codificatie van de Gemeentewet onder het opschrift "Nieuwe Gemeentewet"* (Law of 26 May 1989 *tot bekrachtiging van het koninklijk besluit van 24 juni 1988 tot codificatie van de gemeentewet onder het opschrift "Nieuwe gemeentewet"*, B.S. 30 mei 1989).

h) Article 30 Code on private international law:

The wish to adapt the Belgian law to recent evolutions, linked with the legal initiative, results in important legislative modifications. Article 30 concerns the need of foreign public certificates to be legalised. According to the current practice, a legalisation takes place in the absence of a treaty concluded with the State of origin of the decision or the act. This practice does not, however, depend on a legal provision of general interest. From now on, the code intends to fill this gap. Only in the absence of any contrary provision of an international treaty, the requirement of legalisation is essential. Legalisation requires an examination of the identity and competence of the foreign authority, as well as the capacity of representation and regularity of the mission of the person legalising.

The requirements for translation (applicable in administrative or legal matters) also apply for the production of the documents concerned. The control is limited to a type of formal checking, described in paragraph one, subparagraph 2 (description inspired by article 2 of the 'Apostille' Convention, ratified by Belgium). This control is distinct from a checking from the recognition of the decision or validity of the act, checking which concerns the other relevant provisions of the code.

The article supplements the law of December 31, 1851 on the consulates and the consular jurisdiction. Whereas article 16 of this law aims at the act of a Belgian consul, this article relates to a decision or an act of a foreign authority, waiting to be legalised by a Belgian consul. As for article 14 of this law, it entitles the consul to legalise, according to methods established by the royal decree of 23 March 1857. The code supplements this provision. Indeed, it only tends to establish a set of priorities among the competences conferred on distinct authorities. Article 14 of the law of 1851 grants a special competence to the Belgian consul. It appoints, in particular, a consul according to the territory of his jurisdiction, whereas this article is "satisfied" to establish the order of the priorities, to refer to a type of authorities. Practically, it will be necessary to apply this article initially and, if one is in the case of the point 1°, to apply article 14 of the law of 1851 to determine the specifically qualified consul.

i) Royal Decree of 21 December 2005 tot wijziging van de tarieven gevoegd bij de wet van 30 juni 1999 houdende het tarief der consulaire rechten en der kanselarijrechten, B.S. 26 januari 2006:

This modification is necessary with a view to the establishment, as from 1 January 2006, within the Federal Public Service Foreign Affairs, of a state service with separate management. The purpose is to smoothen the regulations on the issuing of passports, the management of the visa-stickers, the issuing of consular identity cards to belgians abroad and the legalisations and to improve the anticipation on changing situations, such as the setting-up of new technologies. This proposal carries out the principle decision of the government to place a number of consular services in an autonomous management. As of now, a share of the costs of the provided services (passport, visa, consular identity card, legalisation) is to be borne by the applicant instead of an equivalently indirect tax in the consular right or the chancellery dues. Consequently, consular services which are part of this state service with separate management, will largely become self-supporting.

This working method replaces the current method with a consular tax (“consular right”) on the one hand and a registration of the functioning resources to the state budget on the other hand. The adaptation of the two tariffs aims at providing the necessary financial resources for the functioning of the state service with separate management. The consular and chancellery rights are reduced with the amount of the participation in the costs of the concerned consular services, but at the same time, the functioning costs will disappear from the state budget as soon as the state service with separate management starts its activities. Globally the operation must be budgetary neutral. At the end of the year, the state service with separate management will transfer a possibly positive remainder to the Treasury.

I.A.4.2. Scope

- 1) The national law is applicable to the documents of all countries, unless there is an international text.
- 2) See above.

I.A.4.3. Practical implementation

Procedures for documents originating in other Member States

- 1) The competence is granted to all diplomats and consuls: not only to professional civil servants of the Federal Public Service Foreign Affairs but also to honorary consuls (see: Wet van 31 december 1851 betreffende de consulaten en de consulaire rechtsmacht, *B.S.* 7 januari 1852 and Koninklijk besluit van 23 maart 1857 betreffende de bevoegdheden van consuls inzake legalisaties en gerechtelijke betekeningen, *B.S.* 29 maart 1857). *Ex officio*, a head of post can delegate his competence to one of his employees.

In theory, every delegation to a member of the administrative or technical staff is strictly prohibited. Nevertheless, a telegram of March 5, 2004 (N° 04/tc162) stipulates that such a delegation is exceptionally allowed in specific cases or particular circumstances (e.g. provisional absence of the consul due to longer leave, business trip, sickness, etcetera). Delegation is always granted in writing, for a restricted but renewable period. Obviously, the Federal Public Service Foreign Affairs must dispose of specimen of the signatures of deputies. We must notice that the minister for Foreign Affairs can still legalise foreign documents when legalisation by a Belgian diplomat or consul is missing or when they cannot act (art. 30, §2 Wet van 27 mei 2004 houdende het Wetboek van international privaatrecht, *B.S.* 27 juli 2004).

Each refusal has to be thoroughly justified. Moreover, double legalisation remains necessary in some cases (see below). Polish documents signed by the Polish Ministry for Foreign Affairs can be legalised by the Polish consulate in Brussels and afterwards by the Legalisations Service of the Federal Public Service Foreign Affairs (Consular Agreement of Warschau of 11 February 1972 between Belgium and Poland, *B.S.* 5 February 1974). In this case, documents are legalised without mediation of the Belgian diplomatic representation in Poland. If the Belgian government to which the certificate is presented, casts doubt on the authenticity of the certificate, it can always require a full legalisation. If necessary, all interested parties can apply to the Federal Public Service Foreign Affairs with a view to obtain the legalisation abroad. With the exception of Denmark, all countries of the European Union have joined the 1961 Hague Convention. Certain documents coming from the Member States bear an apostil

applied by the competent authorities in that country and are exempted from any other form of legalisation. Belgium has also concluded bi- and multilateral agreements with certain countries aspiring to remove the need for legalisation. In both cases, neither the Belgian consular or diplomatic posts abroad nor the Federal Public Service Foreign Affairs intervene.

- 2) Documents signed by private individuals can only be legalised if they personally submit them. The Belgian diplomatic or consular posts always check the identity of the signatory and verify the signature. For the remaining documents the legalisation does not have to be requested by the person concerned. One can send the documents by post or charge someone with the task to submit a document for legalisation (e.g. a family member, a relative, a lawyer, an acquaintance or a friend), in which case no authorisation must be presented.
- 3) The same procedure applies to all documents and to all Member States. However, certificates of our Belgian diplomatic and consular agents abroad, established in the exercise of their competence as registration officers or within their notarial competence, need no legalisation to have effect in Belgium. By virtue of the *Wet van 10 juli 1931 betreffende de bevoegdheid der diplomatieke en consulaire agenten in notariële zaken*, *B.S. 31 juli 1931*, modified by the *Wet van 31 maart 1987 tot wijziging van een aantal bepalingen betreffende de afstamming*, *B.S. 27 mei 1987* and the *Wet van 12 juli 1931 betrekking hebbende op zekere akten van de burgerlijke stand, alsmede op de bevoegdheid der diplomatieke en consulaire ambtenaren inzake burgerlijke stand*, *B.S. 31 juli 1931*, modified by the *Wet van 31 maart 1987*, *B.S. 27 mei 1987* they can also draw up deeds concerning property in Belgium. Foreign diplomatic agents practice their task according to the law of their country of origin. The impact in Belgian law of certificates established by foreign representatives acting here, is subject to treaty rules concerning the diplomatic and consular office. Normally, the Federal Public Service Foreign Affairs legalizes these types of documents.
- 4) Normally, no documents are required. Consequently, stolen documents may very well be legalised. However, in practice some posts demand the presentation of identity papers. Where it is a private individual who is asking for legalisation, the identity of the signatory is always examined and the posts keep verifying the signature.
- 5) Only the authentic documents and certified copies can be legalised, ordinary (photo)copies (without the formula of certification) cannot. The certified copies must be delivered by the competent bailee of the originals. Translations can be legalised but these legalisations will only concern the signature and quality of the translator. Furthermore, legalisation of a translation is not possible without legalisation of the original document written in the foreign language. A signature introduced by a stamp or mechanical method cannot be legalised. Only a written signature or an originally introduced stamp or seal can (both a “wet seal” and a “stamp”, meaning a seal without the use of ink). Diplomats and consuls autonomously decide whether they legalise or not. Their competence is drawn from the law and not from a delegation of a minister. However, they have the duty to thoroughly motivate a refusal.

A legalisation can be refused in the following cases: (1) the signature is not the one of the competent civil servant, (2) the signing civil servant is not competent (e.g. a civil servant of an other municipality or province than the one where the document was established), (3) the seal or stamp has been falsified or seems unusual, (4) the document is written in a language that is unintelligible for

employees of the diplomatic or consular post (unless the applicant presents a certified translation by a sworn translator or by a person or institution which is considered as equivalent). The non-acceptance has to be notified in writing and must always contain two elements: the motivation of the refusal and the possibilities for appeal.

In all other cases diplomats and consuls have to legalise the presented documents. The aim of the document is irrelevant. Consequently, the posts could not refuse to legalise when they would know or presume that the applicant has no permission to reside in Belgium or that the presented document could be used for closing a fictitious marriage. The essence of legalisation is not the applicant but the document that has to be legalised. To be able to examine if signatures are regular, the Belgian diplomatic and consular posts muster specimen of all useful signatures within their judicial area. They regularly check the specimen and adapt them when necessary. Older specimen are preserved because old documents can still be presented for legalisation. At the lowest doubt concerning the validity of a signature, e.g. on comparison with a specimen in their possession, they try to obtain a new one.

The legalisation consists of a number existing of 16 figures (the "control figure") that is generated and enciphered by a computer programme. The legalisation data are printed on a sticker and the control figure is printed with a bilingual legalisation formula and the indication of the person whose signature is legalised. The sticker also mentions the name of the diplomatic or consular post, the date, etcetera. This sticker is attached to the document. In a nutshell, the legalisation by the posts exists in the following formula: "*Seen for legalisation of the signature of (name), (post), (date), N° (16 figures). This legalisation does not guarantee the authenticity of the contents of the document*" (Soon, the form of the stickers will change. The Federal Public Service Foreign Affairs asked for a protected paper and wants each virgin sticker to be numbered). At any time, the user can check the control figure on the following Internet site:

www.diplomatie.be/LegaliNet/index.aspx. During legalisation a problem can appear. In that case, the Belgian diplomatic and consular post can pass comment on the presented document (see *in extenso*: points 4 and 5 Omzendbrief aan de Belgische gemeenten en provinciebesturen van 13 mei 2005, see below).

- 6) In theory, the legalisation can be wound up in five minutes. Some posts, however, only legalise once or twice a week. Then documents are laid down and in certain cases the delay can even lead up to some months... The cost is ten Euro per legalisation, see: Wet van 30 juni 1999 houdende het tarief van de consulaire rechten en de kanselarijrechten, *B.S.* 24 december 1999 and Koninklijk besluit van 21 december 2005 tot wijziging van de tarieven gevoegd bij de wet van 30 juni 1999 houdende het tarief der consulaire rechten en der kanselarijrechten, *B.S.* 26 januari 2006. Legalisation is free of charge for documents where war invalidity is determined and for insolvent persons provided with a certificate in accordance with the national law of their country.

Procedures for documents for use in other Member States:

- 1) In Belgium, various authorities are competent for the legalisation of signatures, depending on the document carrying the signature to be legalised. For Belgian documents intended for use outside the country the following rules are applicable.

Federal Public Service Foreign Affairs:

The Federal Public Service Foreign Affairs is competent for the legalisation of documents issued in Belgium which are to be produced abroad. Consequently, documents drawn up by the local registration officer or police commissioner (e.g.: birth, marriage, divorce certificates, certificates of good conduct, etcetera) must, among others, be legalised there (see for birth, death and marriage certificates: article 45, §2, subparagraph 2 Civil Code of 21 March 1804, B.S. 3 September 1807). Signatures of Belgian notaries, documents of the National Institute for Sickness and Disablement Insurance, documents of the Federal Public Service Finance, etcetera must also be legalised by the Federal Public Service Foreign Affairs. For this reason, a Legalisations Service has been established at the Federal Public Service Foreign Affairs. A very extended database of specimen is kept up with the signatures of all useful Belgian governments (clerks of the courts, municipal and local authorities and other competent civil servants). Contrary to the diplomats and consuls, the civil servants of this service are not directly qualified.

The service also affixes the apostil on Belgian documents (article 2 Wet van 5 juni 1975 houdende goedkeuring van het verdrag tot afschaffing van het vereiste van legalisatie van buitenlandse openbare akten, en van de bijlage, opgemaakt te 's-Gravenhage op 5 oktober 1961, B.S. 7 februari 1976).

Finally, the service legalises the signature of the Minister of Justice.

Federal Public Service Justice:

If the signature of a Belgian notary needs legalisation by the Federal Public Service Justice, first it must be authenticated by the president of the court of first instance of the notary's judicial district, or by the justice of the peace where applicable. Documents carrying the signature of a Belgian magistrate must be legalised at the Federal Public Service Justice. The Federal Public Service Justice is also competent for the legalisation of:

- signatures of certain authorized clerks of court (but only in Flanders and Brussels);
- signatures of civil servants of the Federal Public Service Justice (for example the central governing board, the criminal record, the prison directors, the Statute Book, etcetera);
- signatures of sheriff officers.
- An extended database of specimen is kept up with the signatures of the mentioned authorities.

Other:

Documents issued by a Belgian municipal administration must be signed by the registration officer (and not by the official delegated). Often, this will be the burgomaster or a deputy burgomaster (see article 126 Municipal Ordinance of 24 June 1988, B.S. 3 september 1988). The signature of a sworn translator must be legalised by the president of the court of first instance to which the translator is answerable. This obligation is not laid down by law but it is regulated domestically by the Federal Public Service Justice and/or the parliament.

The Communities:

-zie diplomatie.be

Combination of various formalities:

In certain cases, a combination of various formalities is essential. For example, documents intended for use outside the country and carrying the signature of:

- a Belgian magistrate: must be legalised successively by the Federal Public Service Justice and the Federal Public Service Foreign Affairs;
- a notary: must be legalised successively by the justice of the peace (article 600 Judicial Code of 10 oktober 1967, *B.S.* 31 oktober 1967) or by the president of the court of first instance of the notary's judicial district (article 28 and 49 Law of 25 ventose Year XI (16 March 1803) on the regulation of the office of notary public, *B.S.* 6 mei 1980). The legalisation of the magistrates signature by the Federal Public Service Justice is the next step in the procedure. Finally, the signature of the Minister of Justice is legalised by the Federal Public Service Foreign Affairs. In practice, the latter possesses a list containing the signatures of all notaries; consequently documents carrying the signature of a notary intended for use outside the country can directly be legalised by the Federal Public Service Foreign Affairs;
- a sworn translator: must be legalised by the president of the court of first instance to which the translator is answerable and then by the Federal Public Service Justice and the Federal Public Service Foreign Affairs;
- a physician: must be legalised by the Federal Public Service Health and then by the Federal Public Service Foreign Affairs;
- a private citizen: must be certificated by the municipal administration or a notary and then legalised by the Federal Public Service Foreign Affairs.

One can either personally go to the appropriate department with the documents to be legalised, or send the documents by post. In this case, it is preferable to send the documents by registered mail. One can also charge someone with the task to submit a document for legalisation, in which case no authorisation must be presented.

The same procedure applies to all Member States. Depending on the document carrying the signature to be legalised, one has to apply to one of the bodies mentioned above.

An authorisation is not to be submitted, nor any identity papers. An exception is made when the signature is placed in front of the legal authority: in that case, identity papers will be asked to check the signature.

Unless the document cannot be legalised, the competent authority will always legalise the signature. The legalisation by the Federal Public Service Justice exists in a large stamp (with the text "*Seen in the Federal Public Service Justice for legalisation of the signature of (name), Brussels, (date), The authorised civil servant, (name)*") and a seal (a round stamp with the text "*Federal Public Service Justice*"). Afterwards, the document is dated and signed. If forgery is established (e.g. if the signatures on a document are scanned), the document is confiscated. By registered mail, the false document is then sent to the competent government or court. The legalisation by the Federal Public Service Foreign Affairs exists in the same formula as the legalisation by the posts: "*Seen for legalisation of the signature of (name), Brussels, (date), N° (16 figures). This legalisation does not guarantee the authenticity of the contents of the document*" (Soon, the form of the stickers will change. The Federal Public Service Foreign Affairs asked for a protected paper and wants each virgin sticker to be numbered). The formula is always provided with the seal of the Federal Public Service Foreign Affairs (a round stamp with the text "*Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation*") and of the signature of the competent civil servant.

The legalisation only takes five minutes and this formality can normally always be done in one day. Municipal authorities and the Federal Public Service Foreign Affairs charge a flat-rate fee (stamp duty). The cost is ten euro per legalisation, see: Wet van 30 juni 1999 houdende het tarief van de consulaire rechten en de kanselarijrechten, B.S. 24 december 1999 and Koninklijk besluit van 21 december 2005 tot wijziging van de tarieven gevoegd bij de wet van 30 juni 1999 houdende het tarief der consulaire rechten en der kanselarijrechten, B.S. 26 januari 2006. Legalisation is free of charge for foreign diplomats in Belgium and for insolvent persons provided with a certificate of the Public Centre for Social Well-being. Legalisation at court and at the Federal Public Service Justice is also free of charge. If one personally appears at the counter of the Federal Public Service Foreign Affairs, one must immediately pay the sum due. If one sends the documents by mail, one must pay the amount into account number: 679-2006056-96. If one makes a bank transfer from abroad, the amount must be paid into account number IBAN BE 65-6792 0060 5696 (with the quote: "service legalisation c31.3" and the name of the person quoted in the deed).

I.A.4.4. Judicial control

Number of Judgment submitted by the national rapporteur

B...

1.Court, Judgment, Date

Court of appeal Brussels, 22 June 1960, Procureur général / Van Poucke, Goedertier and Sasse.

2.Headnotes

The Minister of Foreign Affairs can, explicitly or tacitly, delegate his competence to legalise the signature of Belgian consuls (legalising, for their part, a certificate of the registry of births, deaths and marriages, delivered abroad and intended to be produced in Belgium) to a civil servant of his department.

3.Publication References

Brussel 22 juni 1960, *Pas.* 1961, II, 198.

4. Articles and Instrument

The judgment wrongfully indicates article 3 of the *Civil Code of 23 March 1857*.

Nevertheless, the correct instrument is the Royal Decree of 23 March 1857 *betreffende de bevoegdheden van consuls inzake legalisaties en gerechtelijke betekeningen, B.S. 29 maart 1857*.

5. Keywords

Action for nullity of a marriage for the second time because of bigamy (according to articles 147 and 184 Civil Code) (Belgium-Germany).

Proof of the earliest marriage: a certificate delivered by the German registry of births, deaths and marriages.

Legalisation by the Belgian consul and a delegated civil servant of the Minister of Foreign Affairs.

6. Case summary

Summary – in the English language

1. The Public Prosecutor wants the marriage between Van Poucke and Goedertier (married in Belgium in 1950) to be declared null and void because it has been concluded *before* the dissolution of the marriage between Van Poucke and Sasse (married at a registry office in Germany in 1945). This in accordance with article 147 and 184 of the Civil Code, concerning bigamy. Van Poucke and Goedertier claim that the proof of this earlier marriage is not provided by the certificate of the German registry of births, deaths and marriages. The certificate was indeed legalised by the Belgian consul in Hamburg. But his signature was legalised by the delegated civil servant of the Minister of Foreign Affairs. However, according to Van Poucke and Goedertier, the signature had to be legalised by the Minister of Foreign Affairs himself.

2. The case involves the question whether a certificate delivered by the German registry of births, deaths and marriages must be legalised by the Minister of Foreign Affairs himself, to be accepted as proof of an earlier marriage.

3. The Court of appeal (B) states that the signature of the consul doesn't have to be legalised by the Minister of Foreign Affairs personally. In accordance with law, he

can delegate this competence, explicitly or tacitly, to a civil servant of his department.

Number of Judgment submitted by the national rapporteur

B...

1.Court, Judgment, Date

Court of first instance Antwerp, 30 June 1997.

2.Headnotes

No headnotes are mentioned.

3.Publication References

Kort Ged. Antwerpen 30 juni 1997, *De Burg. St.* 1998, 477.

4.Articles and Instrument

No article or instrument is mentioned.

5.Keywords

Refusal to publish the banns (Belgium-The Netherlands).

Doubts about authenticity of certificate of celibacy: absence of legalisation.

Effect of legalisation on the action of the Registry Office.

6. Case summary

Summary – in the English language

1. According to the law, the servant of the Registry Office must examine whether the future spouses meet the conditions of marriage of their national law, before he can perform the marital service. In this case, the servant of the Registry Office of Antwerp refuses to publish the banns between applicants because he doubts the authenticity of the certificate of celibacy, required by the national law of the groom-to-be. This certificate (apparently) originates from the Moroccan consulate general in Amsterdam (The Netherlands) and it has not been legalised.

2. The case involves the question whether the applicants can obtain the condemnation of defendant (the registry of births, deaths and marriages of Antwerp) to publish the banns between them within forty-eight hours after the pronouncement of the judgment, subject to the fine for delay in performance of contract or in payment of debt.

3. The Court of first instance (B) states that the formality of legalisation is indeed required. Nevertheless, legalisation is not enough to condemn the defendant to publish the banns between applicants. The husband-to-be openly admits that the certificate contains a manifest falsehood concerning his residence. He recognises to have stated a fictitious residence in the Netherlands, purely with the aim to obtain such a certificate. Consequently, he obtained the document by deception. In case of legalisation of the certificate, manifest incorrect indications will also be legalised and will therefore obtain authenticity. Thus, the first applicant has not met the conditions of his national law. Accordingly, the defendant has rightly refused to publish the banns.

Number of Judgment submitted by the national rapporteur

B...

1. Court, Judgment, Date

“Arrondissementsrechtbank” Liège, 12 October 1972.

2. Headnotes

Currently the president of the court of first instance and the justice of the peace always have concurrent competence to legalise the signature of the notaries affixed on notarial acts. This concurrent competence only relates to the notarial acts. It does not exist when an informal agreement was simply recognized in front of a notary without having been remade and noted by him. In this case, the only legal authority entitled to legalise the signature of the notary is the justice of the peace.

3.Publication References

Arrond. Luik 12 oktober 1972, *Rev. not. b.* 1972, 602, noot M. RENARD-DECLAIRFAYT.

4.Articles and Instrument

Article 28 of the Law of 25 ventose Year XI (16 March 1803) on the regulation of the office of notary public, *B.S.* 6 mei 1980.

Article 600 of the Judicial Code of 10 October 1967, *B.S.* 31 October 1967.

5.Keywords

Notarial deed.

Legalisation: president of the court of first instance and justice of the peace

Concurrent competence: conditions

6.Case summary

Summary – in the English language

1.By informal agreement, signed and delivered in the presence of two witnesses, the applicant gave procuration to an agent to represent him in the USA. He recognized

this act in front of a notary. The aforementioned notary has, without even specifying his name, first names and qualities, certified that the applicant personally appeared before him and recognized the aforementioned procuration as being his act and fact. He then signed this certificate and affixed his seal.

2. The case involves the question which legal authority is qualified to legalise in this case.

3. The “Arrondissementsrechtbank” (B) states that it does not rest with the legal authorities to legalize the signature of private individuals. On the other hand they have mission of legalising the signature of the notaries. According to article 28 of the Law of 25 ventose Year XI (16 March 1803) on the regulation of the office of notary public, the notarial acts are legalized by the president of the court of first instance of the residence of the notary or the place where the act will be delivered. With an aim of avoiding expensive displacements of the rural notaries, article 600 of the Judicial Code gives competence to the justice of the peace to legalise the signature of the notaries of his canton. Consequently, the president of the court of first instance and the justice of the peace are always concurrently competent to legalise the signature of the notaries, affixed in notarial acts. But this concurrent competence only relates to the notarial acts. It does not exist if an informal agreement was simply recognized in front of a notary, without having been remade and noted by him. In similar possibility, legalisation escapes from the competence of the president of the court of first instance. The only legal authority entitled to legalise, in this case, the signature of the notary is the justice of the peace.

Remark: Within the European Union, a judicial intervention is rather an isolated case. Complaints of citizens are frequently reported to the Federal Ombudsman, who acquaints the services concerned.

Thus the Federal Public Service Justice was recently contacted concerning a certain case which goes back a number of years. The applicant claimed that the service supplied was insufficient. The matter was regulated amicably, with mediation of the ombudsman. It was not taken to court.

In 2003, there was a complaint concerning the legalisation of a birth certificate. The concerned embassy would have failed to answer the letters of the complainant. During a telephone conversation, the complainant learned that the file had been transferred to the Dutch consulate. Because the correspondence with this consulate never led to the retrieval of the legal certificate, the complainant lodged complaint at the Dutch Ministry of Foreign Affairs. Suddenly, the legal birth certificate was retrieved. The Office of the federal Ombudsmen of Belgium questioned the Ministry of Foreign Affairs both concerning the effective task partitioning between Belgium and the Netherlands on the moment of the facts and concerning the exact events in this case. It became clear that the application to legalisation was wrongfully submitted at the Belgian embassy: the certificate had been intended for a Dutch embassy. Because the “*vertrouwensadvocaat*” of the two posts was the same, the Belgian embassy had done the necessary to transfer the result of the inquiry to the Dutch consulate. During more than one year, the complainant took contact with nor the Belgian nor the Dutch post. When he summoned the Dutch Ministry of Foreign Affairs, the Dutch consulate transferred the legal certificate to the ministry of Foreign Affairs in The Hague.

PART I.B. Specific

I.B.1. Introduction

I.B.2. Specific documents

1. Documents proving involuntary unemployment

Of their own accord, employers must hand over a proof of unemployment (called a form "C4") or a proof of temporary unemployment (also known as a "form C.3.2") to employees who have lost their jobs. Consequently, the authorities competent for issuing documents proving involuntary unemployment are the employers.

The legal basis is article 137, paragraph 1 of the Royal Decree of 25 November 1991 *houdende de werkloosheidsreglementering, B.S. 31 december 1991* and article 87, 1° and 3° of the Ministerial decision of 26 November 1991 *houdende de toepassingsregelen van de werkloosheidsreglementering, B.S. 25 januari 1992*: Of his own accord and not later than the last working day, the employer hands over an "unemployment proof" to the employee whose employment contract has ended. To the employee whose labour performances are temporarily suspended or diminished, the employer (of his own accord) hands over a control form concerning temporary unemployment (at the latest the first effective unemployment day of each month, by the normal commencement hour of the work) and a "proof of temporary unemployment" mentioning the hours of unemployment (after expiring the month). The unemployed person submits his application for unemployment benefit at his unemployment fund by means of one of the following forms: the form "unemployment proof - labour proof" C4 (handed over by the employer to the employee whose employment contract has taken an end; the form "application for temporary unemployment benefits" C.3.2-Employee, completed with the second copy of the "proof of temporary unemployment" C.3.2-Employer.

Remark: the aforementioned documents are only valid in Belgium. Consequently, they cannot be used across the borders, even if they are legalised (in practice the Legalisations Service never legalises these documents). Within the European Union, Regulation 1408/71 is applicable (forms E301 and E303, issued by the local unemployment offices).

2. Documents proving a family relationship or other durable relationship

Authority competent for issuing documents proving or contesting a family relationship

Legal basis

3. Documents proving or contesting a parent-child relationship

According to the case, several authorities are competent for issuing documents proving or contesting a parent-child relationship (see below).

Several articles include the legal basis for documents proving or contesting a parent-child relationship.

a) Filiation:

Documents proving filiation:

The descent of the maternal side is determined by the birth certificate (article 312, paragraph 1 of the Civil Code). This rule must be read in conjunction with article 57, 2° of

the Civil Code: the birth certificate mentions the name of the mother. The civil servants of the Registry Office are the competent authorities to make a record of birth (see below). The (proclaimed) mother can only recognize the child if no birth certificate was drawn up or if her name does not occur on it (article 313, paragraph 1 of the Civil Code) (also see below).

If the descent of the paternal side is certain (cf. the paternity rule, article 315 of the Civil Code), the birth certificate mentions the name of the mother (article 57, 2° of the Civil Code). However, when the parents are not married, only the maternal filiation is *ipso facto* certain. To legally determine the paternal filiation, the (proclaimed) father must recognise the child (article 319 of the Civil Code). Consequently, recognition by the father is only possible if no paternal filiation exists or if it was successfully disputed in court (i.e. disavowal). If the father is married with another woman then the child's mother, the recognition must be ratified by the court of first instance (article 319bis of the Civil Code).

According to article 327 of the Civil Code, recognition (by the father or the mother) can take place in the birth certificate, in a separate certificate of the registry of births, deaths and marriages or in an authenticated certificate. However, recognition is not possible in a will. Without a valid certificate, there is no valid recognition. Both the civil servant of the Registry Office and the notary are competent to act a recognition. Exceptionally, the court of first instance (of the place of residence of the child, see article 102 and 108 of the Civil Code) can act a recognition within the framework of an enquiry into the parenthood (article 331, paragraph 1 of the Civil Code and article 569, 1° of the Judicial Code). Under certain circumstances, the justice of the peace can act a paternal recognition. As soon as the act of recognition is drawn up, report must be made on the side of the birth certificate (article 62, paragraph 2 of the Civil Code).

When paternity is certain, nor under the paternity rule nor under a recognition, it can be determined by court (article 322, paragraph 1 of the Civil Code). Under certain circumstances, the maternal filiation can be determined by court (article 314 of the Civil Code). See above for the competent courts (article 331, paragraph 1 of the Civil Code and article 569, 1° of the Judicial Code). The transfer in the registers of the registry of births, deaths and marriages is left to the Public Prosecutor and the civil servant of the Registry Office (article 333 of the Civil Code).

Documents contesting filiation:

The descent of the maternal side, determined by the birth certificate, can be disputed in court (article 312 and the following of the Civil Code). The descent of the maternal side, determined by recognition, can be disputed in court (article 330 and the following of the Civil Code). The descent of the maternal side, determined by the court, can be disputed in court (article 331decies and the following of the Civil Code). The descent of the paternal side, determined by the paternity rule, can be disputed in court (article 318 and the following of the Civil Code). The descent of the paternal side, determined by recognition, can be disputed in court (article 330 and the following of the Civil Code). The descent of the paternal side, determined by the court, can be disputed in court (article 331decies and the following of the Civil Code).

b) Adoption:

Documents proving adoption:

The justice of the peace of the place of residence of the adoptive parent or a notary

establishes the certificate of adoption. The court converts this certificate in a judgment and provides it to the registry of births, deaths and marriages. The civil servant of the Registry Office transfers this judgment in the birth register or an attached register (see article 343 and the following of the Civil Code).

Documents contesting adoption:

In case of good reasons, the courts can pronounce the revocation of the ordinary adoption at the request of the adoptive parent(s) or one of them, of the adopted person or of the Public Prosecutor. The decision of revocation is transferred in the registers of the registry of births, deaths and marriages (see article 354.1 and the following of the Civil Code). The full adoption is irrevocable (article 356.4 of the Civil Code).

However, both forms of adoption can be reconsidered (article 351 of the Civil Code). Exclusively when there are sufficient indications that the adoption has been realised as a result of the kidnapping of, the sale of or the trade in children, the Public Prosecutor or certain relatives can claim the revision of the judgment pronouncing the adoption in relation to the adoptive parent(s). If the aforementioned facts have been proved, the court declares the adoption without impact as from the transfer of the enacting terms of the judgment in the registers of the registry of births, deaths and marriages

The civil servant of the Registry Office of the ordinary residence of the adoptive parent(s) or one of them, or failing this of the adopted person, is competent to transfer the enacting terms of a Belgian judgment concerning the pronouncement, the conversion, the revocation or the revision of an adoption in his registers (article 368.1 of the Civil Code).

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

The authorities competent for issuing documents proving the name and forenames of a child or adult are the civil servants of the Registry Office¹.

The legal basis is article 57 of the Civil Code of 21 March 1804, *B.S.* 3 September 1807: the certificate of birth mentions 1° the day, the hour, the place of birth, as well as the sex, the name and forenames of the child; 2° the year, the day, the place of birth, the name, the forenames and the place of residence of the mother and the father, if the descent of the paternal side is certain; 3° the name, the forenames and the place of residence of the informant.

Also see below concerning the documents proving a person's date of birth for the competence of the justices of the peace.

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

In principle, the authorities competent for issuing documents *proving* a marriage or a civil partnership or other durable relationship are the civil servants of the Registry Office (see below). For the authorities competent for issuing documents annulling/terminating a

¹ Also see the Law of 12 July 1931 *betreffende de bevoegdheid op zekere akten van de burgerlijke stand alsmede op de bevoegdheid der diplomatieke en consulaire ambtenaren inzake burgerlijke stand*, *B.S.* 31 juli 1931 concerning the competence of the diplomatic and consular servants in relation to the registry of births, deaths and marriages.

marriage or a civil partnership or other durable relationship, see below.

Legal basis:

The legal basis for documents proving or annulling/terminating a civil partnership or other durable relationship is article 1475-1479 of the Civil Code of 21 March 1804, *B.S.* 3 September 1807; the law of 23 November 1998 (entered into force on 1 January 2000) introduced the possibility of "legal cohabitation" in the Civil Code. The legal cohabitation is the situation where two persons who have made a specific statement, are living together. This statement is made by means of a writing which is handed over to the civil servant of the Registry Office of the common place of residence. The content of this writing is legally determined. The civil servant of the Registry Office examines if both parties meet the legal conditions and mentions the declaration in the municipal population register.

The declaration of annulment in reciprocal agreement is handed over to the servant of the Registry Office of the municipality of the place of residence of both parties or, if the parties have no place of residence in the same municipality, to the servant of the Registry Office of the municipality of the place of residence of one of them. In that case, the servant of the Registry Office notifies the servant of the Registry Office of the municipality of the place of residence of the other party, within eight days. The unilateral declaration of annulment is handed over to the servant of the Registry Office of the municipality of the place of residence of both parties or, if the parties have no place of residence in the same municipality, to the servant of the Registry Office of the place of residence of the party giving the statement. Within eight days and by means of a process server, the servant of the Registry Office notifies the other party and (where appropriate) he also notifies the servant of the Registry Office of the municipality of the place of residence of the other party, by means of a registered letter. The servant of the Registry Office reports the annulment of the legal cohabitation in the municipal population register.

Several articles include the legal basis for documents proving or annulling/terminating marriages: Article 194 of the Civil Code of 21 March 1804, *B.S.* 3 September 1807, stipulates that nobody can claim the qualification of spouse or the civil consequences of the marriage if he does not submit a wedding certificate, registered in the registry of births, deaths and marriages. If there are no registers (or if they are lost), the spouses can prove the marriage by means of documents of the deceased father or mother or by witnesses (also see article 197 for children that are unable to present a wedding certificate of their parents). Also see article 198: when the servant of the Registry Office has falsified, embezzled or destroyed a wedding certificate, the proof of the marriage can be obtained as a result of a criminal procedure and the registration of the criminal judgment in the registers of the registry of births, deaths and marriages.

Concerning the legal basis for documents annulling/terminating marriages, the following articles are relevant. There are five grounds for divorce: divorce on the basis of certain facts (article 229 and 231 of the Civil Code), divorce on the basis of actual separation (article 232 of the Civil Code) divorce on the basis of actual separation as a result of mental illness (article 232 of the Civil Code), divorce by mutual consent (article 233 and 275-276 of the Civil Code) and conversion of separation from bed and board in divorce (article 1309-1310 of the Judicial Code). In each case, only the judge is competent to admit claims for divorce. Judgments admitting claims for divorce concerning marriages, concluded in Belgium, must be registered by the servant of the Registry Office of the Belgian municipality where the marriage was acted. Judgments admitting claims for divorce concerning marriages, concluded abroad, must be registered by the servant of

the Registry Office of the first district of Brussels (article 1275, paragraph 1 of the Judicial code). Also see the Departmental circular of 30 April 1984 *betreffende de erkenning door de ambtenaren van de burgerlijke stand van vreemde beslissingen inzake de staat van de persoon, B.S.30 mei 1984* if one of the ex-spouses is deceased.

IMPORTANT: With regard to the translation of a document of repudiation, the consular posts received ad hoc instructions on behalf of the Federal Public Service Foreign Affairs, concerning the remark the posts have to affix if they are confronted with a procedure of dissolution of the marriage based on the unilateral will of a husband.

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

Authority competent for issuing documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities.
The skills to carry on an enterprise must be proved. It is called "*profession competence*". To prove the entrepreneurial skills, only diplomas originating from a school or a jury, recognised or subsidised by the state, the communities or the districts are valid.

Therefore, private tuition is in principle excluded. The same principle applies to foreign diplomas. Information on the recognised foreign schools can be found on the Internet site ENIC-NARIC. It concerns mainly the entrepreneur skills of the law of 10 February 1998 to promote the independent entrepreneurship. E.g. the basic knowledge of the company management, -obliges for every person who must be registered in the trade register - the profession competence, one of 34 regulated self-employed person (http://mineco.fgov.be/enterprises/crossroads_bank/diplo/intro_nl.asp).

To proof his/her basic knowledge of company management and the necessary profession competence, following possibilities exist (<http://www.mineco.fgov.be/>)

- Have all the necessary bits of paper OR
- Prove the required working knowledge, the correct practical experience (no diploma but work during a number of years) OR
- Take or sit an exam at the FPS Economy, SMEs, self-employed and Energy

A third person proves the skills to enterprise: Nationals of a Member State of the European Economic Area (European Union, Norway, Iceland and Liechtenstein) or Switzerland, can prove the entrepreneur skills also with the "*EG-Declaration*". This is a declaration from the country of origin concerning the practical experience and possibly school training of the person involved. There are a few exceptions on this general rule.

-Dispense de la preuve des connaissances de gestion de base pour :

- *la PME qui était déjà inscrite, au 1er janvier 1999, au registre du commerce;*
- *le titulaire d'une profession intellectuelle prestataire de services réglementée en vertu de la loi-cadre du 1er mars 1976;*
- *le titulaire d'une profession déjà réglementée en vertu d'une autre loi (réviseurs d'entreprise, comptables, courtiers d'assurance, ...).*

-Dispense de la preuve des connaissances de gestion de base et de la compétence professionnelle, sous certaines conditions :

- *le conjoint survivant;*
- *le partenaire survivant cohabitant depuis au moins 6 mois;*
- *le cohabitant légal survivant;*
- *la société qui satisfaisait via son gérant ou organe et lorsque le conjoint ou cohabitant légal survivant de celui-ci, ou le partenaire survivant qui cohabite depuis au moins 6 mois, est lui-même gérant ou organe;*
- *les enfants du chef d'entreprise qui est en ordre pendant les 3 ans suivant le décès (ou, s'ils sont mineurs, à partir du jour de leur 18ème anniversaire);*
- *le cessionnaire d'une entreprise pendant une période de 1 an.*

-Lorsque la personne qui prouve les connaissances de gestion de base et/ou la compétence professionnelle quitte l'entreprise, cette dernière dispose d'un délai de 6 mois pour régulariser sa situation.

Legal basis

The law of 10 February 1998 to promote the independent entrepreneurship (la loi-programme P.M.E. du 10 février 1998 pour la promotion de l'entreprise indépendante)

For every regulated profession, another Royal Decree is valid, in which are laid down broad lines. A link is made with the following website: http://www.mineco.fgov.be/SME/profession_access/home_fr.htm.

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

Diplomas must be legalised. Not only all school years must be legalised but also the teaching package and the school timetable must be checked. Several agencies are competent for issuing documents proving a person's professional qualifications. Academic diplomas can be distributed by universities, by schools recognised by the government or by private schools (not recognised by the government). By means of the Belgian federal portalsite (<http://www.belgium.be>), the different institutions (falling within the competence of the communities) can be identified. The diplomatic or consular civil servant can't make certified copies of diplomas, presented by foreign students, for use in Belgium. Certified copies can only be delivered by the authority that delivers the original document. This duplicate can be legalised according to the procedure which is usual in that country.

The legal basis of the different documents can also be found by means of the aforementioned website and <http://www.ond.vlaanderen.be/edulex/database/document/document.asp?docid=13445>.
- Departmental Circular concerning the equivalence of foreign certificates and diplomas, 29 November 1993, see: <http://www.ond.vlaanderen.be/edulex/database/document/document.asp?docid=13028>.

8. Documents proving a person's death

The servants of the Registry Office are the competent authorities for issuing a death

certificate.

Several articles include the legal basis for documents proving a person's death: The death certificate is drawn up by the servant of the Registry Office, on declaration of two witnesses. If possible, these witnesses are the two closest relatives or neighbours or, if someone has died outside his home, the occupant of the house where he has died, and a relative or any other person (article 78 of the Civil Code). When a child has died on the moment of the determination of the birth, the servant of the Registry Office draws up a document concerning the declaration of a lifeless child (article 80bis of the Civil Code). Also see article article 86 of the Civil Code (decease during a sea voyage) and article 87 of the Civil Code (declaration of death on board of a ship).

9. Documents proving a person's date of birth

Within fifteen days, parents have to report the birth of their child at the municipal services. A servant of the Registry Office notes the birth in the register of the registry of births, deaths and marriages. Consequently, the servants of the Registry Office are the competent authorities for issuing documents proving a person's date of birth. However, spouses who are unable to present a birth certificate, can ask an identity certificate to the justice of the peace of their place of birth or place of residence.

Several articles include the legal basis for documents proving a person's date of birth: The declaration of the birth is done at the local Registry Office, within fifteen days after childbirth (article 55 of the Civil Code). The servant of the Registry Office makes certain of birth by means of a declaration of a physician or a midwife, or if this is not possible, by personally visiting the new-born child. In all cases the certificate of birth is made up without delay (article 56 of the Civil Code). An exception is made for the circumstances beyond one's control, and for births during a flight on a Belgian plane, on a Belgian ship or at the Belgian army abroad (see article 89 for the competence of the servant of the Registry Office concerning certificates of the registry of births, deaths and marriages relating to soldiers outside the national territory, see article 59 and 60 of the Civil Code for children born during a sea voyage). The certificate of birth mentions 1° the day, the hour, the place of birth, as well as the sex, the name and forenames of the child; 2° the year, the day, the place of birth, the name, the forenames and the place of residence of the mother and the father, if the descent of the paternal side is certain; 3° the name, the forenames and the place of residence of the informant (article 57 of the Civil Code).

Article 70 of the Civil Code stipulates that the spouse who is unable to present a birth certificate, can ask an identity certificate to the justice of the peace of his place of birth or of residence. In the identity certificate, two witnesses (of the male or female line, blood relatives or no blood relatives) declare the name, the first name, the profession and the place of residence of the spouse-to-be, and those of his parents, if these are known; the place and, if possible, the time of birth and the reasons which prevent submitting the certificate (article 71 of the Civil Code).

10. Documents proving the establishment by incorporation of a company

Authority competent for issuing documents proving the establishment by incorporation of a company:

A natural person can constitute a company, but an artificial person (a body corporate deemed fictitiously a natural person and permitted to go to law) can also constitute a company. In both cases some documents are necessary. The first document is called a

deed of incorporation (corporate charter), a second one is a memorandum and articles of association. On the one hand a company needs a notarial act (public document executed by a notary public). This document is obliged for the incorporation of the following companies: “*société anonyme*” (kind of limited liability company), a “one man” company, a “*société de personnes à responsabilité limitée*” (private limited liability company), co-operative partnership with limited liability. On the other hand, for several companies a simple contract is sufficient (private deed made in writing but not sealed or witnessed), e.g. for “*société en nom collectif*” (general partnership), “*société en commandite simple*” (limited liability partnership). Attention: this private document must be registered by the registry. For some companies (*société de personnes à responsabilité limitée*), the founder must also make a financial plan. This implies that for the first two years after the foundation, he estimates the income and expenditure of the company. So the company can provide sufficient capital to fulfil the activities properly.

After finishing the financial plan, a notary public checks the completeness of it. When the plan is not drawn up precisely (a lack of sufficient social capital), the founder can be responsible (vicarious liability action) during the first three years bankruptcy occurs. In that case, the founders must take the blame for the obligations of the company. Several notifications are needed. When an association is found, there is an obligation to notify the clerk of the court of commerce whereupon this can be published in the Bulletin of Acts, Orders and Decrees (official publication of laws and statutes).

To constitute a company, additional obligations apply. The notarial act and the memorandum and articles of association must be drawn up. The notary public ensures the publication of the memorandum and articles of association in the Belgian Bulletin of Acts, Orders and Decrees. The notary public can not act before he has received a document from the bank. This document proves that the company has access to sufficient initial capital (In Belgium the subscribed capital of a general company must be at least 25% paid up, with a minimum amount of paid-up capital). In order to simplify the administrative obligations imposed upon self-employed workers, starting up or having already established their business, a Crossroads Bank for Enterprises and Business One-Stop Shops have been brought into existence. These business one-stop shops are, among other things, responsible for the registration of natural persons, legal entities and associations in Belgium that :

- either operate as commercial firms;
- or are subject to social security taxes as employers;
- or are subject to VAT;
- or practice an intellectual profession, a liberal profession or provide services as self-employed workers.

You will find all the information necessary for the setting-up of a business one-stop shop, the list of the approved one-stop shops, a series of questions and answers (relating to Procedures, Training, Diplomas, Professional Practice, General Points, Forms and VAT Offices at the following website:

http://mineco.fgov.be/enterprises/crossroads_bank/home_enterprises_windows_en.htm
(Text only available in French)

The Crossroads Bank for Enterprises and Business One-Stop Shops gives each enterprise an Unique Identification Number. The Crossroads Bank keeps track of all

numbers and the identity who matches the enterprises (name, address, etc.). Thanks to this unique number, the enterprises must no longer fulfil the same administrative formalities at several governing boards. The Crossroads Bank will guarantee the exchange of information between these governing boards.

For the application of the Crossroads Bank, see http://mineco.fgov.be/entreprises/crossroads_bank/faq_entreprises_windows/nr_Faq_fr-05.htm#P309_38429. The Crossroads Bank works with codes for fixing several types of data. This gives a flexible application to meet the needs. For these codes meaningful descriptions in several languages are kept up. The government has drawn up this unique number to have a kind of "identification key" for enterprises. Where does this number fit in? This number fits within the framework of the electronic transfer of data of e-gouvernement. We can identify natural persons by their national number or identity card number. Therefore, it is an identification key. The government sailed in entirely new number. She decided to transform the VAT-number to a number for enterprises. This working method ensures that administrative charge for the existing enterprises remains restricted up to minimum. Since 1 July 2003 the number replaced the trade register number, the legal person number and the VAT number. (*"Le numéro d'entreprise, introduit depuis le 1^{er} juillet 2003, est un numéro d'identification unique (10 chiffres) attribué aux entreprises par la Banque - Carrefour des Entreprises. Alors qu'auparavant chaque administration attribuait son propre numéro d'identification, il n'y aura à terme plus qu'un seul numéro et ce, dans un souci de simplification administrative. Ce numéro remplace d'ores et déjà le numéro de Registre de Commerce, le numéro de Registre National des Personnes Morales ainsi que le numéro de TVA (le numéro d'employeur ONSS est provisoirement maintenu), Notons que l'autorité n'a pas eu recours à un numéro entièrement nouveau. Elle a décidé de convertir le numéro d'assujettissement à la TVA en numéro d'entreprise."*)

Besides enterprises, there are also establishments. With establishments, we mean the place where at least an activity of the enterprise is exercised or of from which the activity is exercised, e.g. workshop, factory, shop, sale point, office, my, Executive Board, seat, warehouse, agency, branch, etc. De vestigingseenheden ontvangen een vestigingseenheidsnummer. Dit nummer verschilt van het ondernemingsnummer van de onderneming waarmee ze verbonden is. Het nummer van een vestigingseenheid is overdraagbaar van de ene onderneming naar een andere (bv. bij fusie of overname). The establishment also receives an unique entity number. This number differs of the enterprise number with which she is linked. The number of an establishment entity is transmissible of the enterprise (e.g. at fusion). From January 1, 2005, the use of the unique number of the company is obligatory in the relations which the companies have with the administrative and legal authorities, as well in the relations that they have towards each other. This obligation does not relate to the number of unit of establishment.

Legal basis

- Loi du 16 janvier 2003 portant création d'une Banque-Carrefour des Entreprises, modernisation du Registre de Commerce, création de guichets-entreprises agréés et portant diverses dispositions, M.B. du 5 février 2003, pp 4478-4794.
- Art 3 de l'arrêté royal du 24 juin 2003, arrêté royal fixant les règles d'attribution, la composition et les modalités de transfert du numéro d'entreprise et du numéro d'unité d'établissement dans la Banque-Carrefour des Entreprises, M.B. du 30 juin 2003, pp 34933 et ss)
- Code of Company Law : la loi du 7 mai 1999 contenant le Code des sociétés, B. S . 06-08-1999 (entrée en vigueur, le 06-02-2001).

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

Authority competent for issuing documents proving the constitution of a company, including any official translation thereof.

In the first place the notary must draw up an authentic document (see above). Therefore, a bank certificate is needed to prove that there are sufficiently financial resources to make the company successful. In Belgium the subscribed capital of a general company must be at least 25% paid up, and a minimum amount of paid-up capital is required. For companies with unlimited liability there is no request for a minimum amount of capital. Creditors can address the founders themselves if the capital seems insufficient. For companies with limited liability one requires a minimum capital. In this case, the bank will open an account. Logically, the bank authorities only know the identity of the founder, (natural person) who comes in person. At that moment, the bank does not know the identity of the artificial person. Therefore, the bank waits to open the account until the notary public draws up a certificate of the Court of Commerce. The notary public also confirms the identity and the competence of the founder-natural person. The bank asks a copy of the deed of incorporation and verifies the publication in the Belgian Bulletin of Acts, Orders and Decrees. As soon as to the bank receives the data, they gives the enterprise a score.

The score is linked with to parameters according to the aim of the company. One distinguishes Low-score, a Medium score and High-score. E.g. a diamond cutter or the establishment of a fur trade, immediately falls under a high-score. Exactly because of these scores, a founder with the French nationality e.g. can not open an account in a small branch bank but is forced to go to a main bank office. The scores have an important influence on the decision-making power of the bank clerk. At low-score only the local regional director can decide. With a medium score, the region director can decide with compliance. With a high-score only the national compliance in Brussels can decide. Some companies ride roughshod over our Belgian law and constitute their enterprise in Duncaster (U.K.) and open an branch (office) in Belgium. The memorandum and articles of association must be translated and registered by the Court of Commerce. A publication in the Belgian Bulletin of Acts, Orders and Decrees is also required. Our Belgian banks do not approve the method illegal and that statement is not totally unfounded. This way, the founder escapes his responsibility. Therefore, Belgian banks do not accept these companies as valid.

Legal basis

- Law of March, 22/03/1993 on the statute of and the supervision of the bank.
- Code of Company Law

12. Documents proving the latest banking accounts of a company

Authority competent for issuing documents proving the latest banking accounts of a company:

The banks are competent to make documents which prove the latest banking accounts of a company. Of course, because of the privacy, these documents can't be drawn up without the authorisation of the client. In Belgium the so-called banking discretion (other than a bank secrecy like Switzerland) applies, and therefore a written authorisation of the client is required.

To open a bank account, the different banks must check the identity of the client or the validity of the company. Because banks are not able to know all different laws in the different Member States, the foreign bank or the notary public legalises the documents of its clients. The legalisation confirms that the company is legally established, and that company really exists.

But who will control the foreign bank itself? All banks in Europe exchange their signatures within the framework of their relation with each other. Now this system has been replaced by the SWIFT system (Society for Worldwide Interbank Financial Telecommunication). Authenticated keys are used. SWIFT is the industry-owned co-operative supplying secure, standardised messaging services and interface software to nearly 8,000 financial institutions in 206 countries and territories. SWIFT members include banks, broker-dealers and investment managers. The broader SWIFT community also encompasses corporates as well as market infrastructures in payments, securities, treasury and trade. This system is operating in the whole world but not all banks are connected. All financial reporting happens this way. This is so-called customer due diligence. The signatures and the name of the person who carried out the legalisation, must be identifiable and therefore, it must be regularly renewed. For certain countries, such as e.g. Poland, each page of the document must be legalised, otherwise the document can't be accepted. Generally also a legal translation is required by a sworn translator.

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

See above

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

OVERVIEW OF PART II

The effect of the implementation of Community law, Hague Convention of 5 October 1961 (the 'Apostille' Convention), Parallel international agreements, National Law

Ever since the "wave" of European regulations and directives in judicial matters, some Member States systematically provide internal implementation laws. Belgium however, is already a "bad student" as to the European directives and reaches rock bottom concerning the regulations... Consequently, Belgium does not have a so-called "implementation culture". However, the foreign public documents described in the Community instruments have a legal status in the Belgian legal order equivalent to a comparable domestic public document. Thus, Belgium has – at least *de facto* – fulfilled its obligations under each of the Community instruments. We are not aware of a distinction being made between documents described in the Community instruments originating in different member states. We are also not aware of a distinction being made between types of documents described in the Community instruments.

IMPORTANT:

The legalisation of foreign documents by a Belgian post does not mean that they must be accepted in our country. Thus, the Departmental circular of 13 May 2005 *aan de Belgische gemeenten en provinciebesturen* assigns the authority to check the merits of foreign documents to the authority of destination.

Probatory force belongs to all foreign judgments. The first requirement is that the judgment is presented in a copy which meets the conditions of authenticity of the country where it has been delivered. Unless a treaty grants exemption, the signature of the foreign civil servant must moreover be legalised by a Belgian consul in the country where the judgment was pronounced.

The Code of International and Comparative Law stipulates that all document is equally admissible. See: www.ipr.be.

Admissibility and evidentiary weight in judicial proceedings and in administrative matters

A foreign public document which falls under the scope of the Community law provisions is equally admissible in judicial proceedings and produces the same evidentiary weight as equivalent domestic public documents. A foreign public document which falls under the scope of the Community law provisions is equally admissible in administrative matters and produces the same evidentiary weight as equivalent domestic public documents.

Article 28 of the Code of International and Comparative Law:

« la force probante des actes authentiques étrangers. § 1er. Un acte authentique étranger fait foi en Belgique des faits constatés par l'autorité étrangère qui l'a établi, s'il satisfait à la fois: 1° aux conditions de la présente loi régissant la forme des actes; et 2° aux conditions nécessaires à son authenticité selon le droit de l'État dans lequel il a été établi. Les constatations faites par l'autorité étrangère sont écartées dans la mesure où elles produiraient un effet manifestement incompatible avec l'ordre public. § 2. La preuve contraire des faits constatés par l'autorité étrangère peut être apportée par toutes voies de droit. »

According to the explanatory statement for this bill, this article aims at replacing Article 47 of the Civil Code. Nevertheless, the substantial elements are copied in this article. It provides an intrinsic probatory force, concerning the proof of the facts determined by the foreign government. In this article, it is assumed that the document is according to the domestic law, and the article requires a legalisation if necessary. This legal provision offers e.g. the possibility to prove the civil status by submission of a document of the competent foreign government, without requiring a document concerning the registry of births, deaths and marriages.

Article 29 of the Code of International and Comparative Law:

“Effet de fait des décisions judiciaires et des actes authentiques étrangers » Il est tenu compte en Belgique de l'existence d'une décision judiciaire étrangère ou d'un acte authentique étranger, sans vérification des conditions nécessaires à sa reconnaissance, à la déclaration de sa force exécutoire ou à sa force probante. »

The article confirms that the conditions to which the code subjects the recognition, the executory force or the probatory force, are not applicable when one calls upon the facts of a judgement or a foreign document. Such an effect is in question, for example, when contracting parties call upon a foreign judgement and because of circumstances beyond one's control, they can escape their contractual obligations.

Article 31

Mention et transcription des décisions judiciaires et des actes authentiques étrangers en matière d'état et de capacité :

§ 1er. Un acte authentique étranger concernant l'état civil ne peut faire l'objet d'une mention en marge d'un acte de l'état civil ou être transcrit dans un registre de l'état civil ou servir de base à une inscription dans un registre de la population, un registre des étrangers ou un registre d'attente qu'après vérification des conditions visées à l'article 27, § 1er. La mention ou la transcription d'une décision judiciaire étrangère ne peut avoir lieu qu'après vérification des conditions visées aux articles 24 et 25 et, selon les cas, aux articles 39, 57 et 72. Lorsque le dépositaire refuse de procéder à la mention ou à la transcription, un recours peut être introduit devant le tribunal de première instance de l'arrondissement dans lequel le registre est tenu, conformément à la procédure visée à l'article 23.

§ 2. La vérification est réalisée par le dépositaire de l'acte ou du registre. Le ministre de la Justice peut établir des directives visant à assurer une application uniforme des conditions visées au § 1er. Le dépositaire de l'acte ou du registre peut, en cas de doute sérieux lors de l'appréciation des conditions visées au § 1er, transmettre l'acte ou la décision pour avis au ministère public qui procède si nécessaire à des vérifications complémentaires.

§ 3. Le Roi peut créer et fixer les modalités de la tenue d'un registre des décisions et des actes qui satisfont aux conditions visées au paragraphe premier, lorsqu'ils concernent un Belge ou un étranger. The article specifies that the mention or the transcription of an act can only take place after checking its validity according to the conditions laid down by article 27, whose non-observance constitutes a reason for refusal. When the act is drawn up to prove a fact, like the birth or the death, control only relates to the absence of fraud. For the judgements, the question to control the regularity arises otherwise. Since the formality is analyzed like a recognition of the decision, it is necessary and sufficient to control the recognition so that there are no legal reasons for refusal. These reasons are those aimed by article 25, to which other reasons are added that can contain of the particular provisions, namely articles 39 (name), 57 (divorce) and 72 (adoption).

PART III – Incoming documents: Difficulties

OVERVIEW OF PART III

PART III.A. General

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

III.A.1.1. Legal

Are there any difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian 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 a document in any judicial or administrative process in Belgium)?

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

Are there any difficulties of a practical nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian 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 a document in any judicial or administrative process in Belgium)?

Difficulties of a practical nature as regards incoming documents may result, for example:

- from the specific process and procedures by means of which the Convention is implemented;**
- and/or from practical consequences of the effects of the implementation of the Convention.**

Aspects which can be taken into account are:

- 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.2. Parallel international agreements

III.A.2.1. Legal

Are there any difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian 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 a document in any judicial or administrative process in Belgium)?

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;**
- and 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

Are there any difficulties of a practical nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian 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 a document in any judicial or administrative process in Belgium)?

Difficulties of a practical nature may result, for example relate:

- to the process of legalisation carried out by the authorities of the Member State of destination;
- and 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:

- 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.3. National law

III.A.3.1. Legal

Are there any difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian 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 a document in any judicial or administrative process in Belgium)?

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;
- and 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

Are there any difficulties of a practical nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian 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 a document in any judicial or administrative process in Belgium)?

Difficulties of a practical nature may result, for example relate:

-to the process of legalisation carried out by the authorities of the Member State of destination;
-and 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:

-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?).

PART III.B. Specific

1. Documents proving involuntary unemployment

This specific part 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 these specific public documents in the exercise of the Community rights with which such documents are associated for the purpose of this study. Please report difficulties by using examples and existing cases reported in case-law or in practice.

2. Documents proving a family relationship or other durable relationship

Idem.

3. Documents proving or contesting a parent-child relationship

Idem.

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

Idem.

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

Idem.

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

Idem.

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

Idem.

8. Documents proving a person's death
Idem.

9. Documents proving a person's date of birth
Idem.

10. Documents proving the establishment by incorporation of a company
Idem.

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

12. Documents proving the latest banking accounts of a company
Idem.

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

PART IV – Outgoing documents: Difficulties

OVERVIEW OF PART IV

PART IV.A. General

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

IV.A.1.1. Legal

Are there any difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian Member State or another Member State in relation to a public document where it is the Member State of a public document's origin?

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

Are there any difficulties of a practical nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian Member State or another Member State in relation to a public document where it is the Member State of a public document's origin?

Difficulties of a practical nature as regards outgoing documents may result, for example:

- from the specific process and procedures by means of which the Convention is implemented;
- and/or from practical consequences of the effects of the implementation of the Convention.

Aspects which can be taken into account are:

- 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

IV.A.2.1. Legal

Are there any difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian Member State or another Member State in relation to a public document where it is the Member State of a public document's origin?

Aspects which can be taken into account are:

- legal certainty (i.e. transparency of rules and predictability of outcome);

The public does not often call upon conventions having for principal object other matters than legalisation, when these texts contain an article of exemption of legalisation. In general, this exemption is subjected to precise conditions so that the customers often failed to observe them. It remains a debatable question "why" the recipients are not sufficiently informed of the methods of exemption. Obviously, it is a problem of transparency.

- 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?).

IV.A.2.2. Practical

Are there any difficulties of a practical nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian Member State or another Member State in relation to a public document where it is the Member State of a public document's origin?

Difficulties of a practical nature as regards outgoing documents may, for example result from:

- the specific process and procedures by means of which the applicable agreement is implemented;
- practical consequences of the effects of the implementation of the applicable agreement.

Aspects which can be taken into account are:

- 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?).

IV.A.3. National law

IV.A.3.1. Legal

Are there any difficulties of a legal nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian Member State or another Member State in relation to a public document where it is the Member State of a public document's origin?

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?).

IV.A.3.2. Practical

Are there any difficulties of a practical nature which natural or legal persons experience as a result of any process administered by the authorities of the Belgian Member State or another Member State in relation to a public document where it is the Member State of a public document's origin?

Difficulties of a practical nature as regards outgoing documents may, for example relate:

- to the specific process and procedures by means of which the applicable agreement is implemented;
- to practical consequences of the effects of the implementation of the applicable agreement.

Aspects which can be taken into account are:

- 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?).

PART IV.B. Specific

1. Documents proving involuntary unemployment

This specific part 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 these specific public documents in the exercise of the Community rights with which such documents are associated for the purpose of this study. Please report difficulties by using examples and existing cases reported in case-law or in practice.

2. Documents proving a family relationship or other durable relationship

Idem.

3. Documents proving or contesting a parent-child relationship

Idem.

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

Idem.

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

Idem.

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

Idem.

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

The European diplomas of teachers were not recognised in Belgium. Recently, this has changed. It was not possible to maintain the seniority, with all its consequences (social security). The document must be legalised by the school, then by the FPS Education and FPS Foreign Affairs. We have to distinguish two kinds of students: those who want to study in Belgium, and those who want to work here. E.g. a diploma nursing is not recognised here en the student must take off additional tests.

8. Documents proving a person's death

Idem.

9. Documents proving a person's date of birth

Idem.

10. Documents proving the establishment by incorporation of a company

Idem.

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

Idem.

12. Documents proving the latest banking accounts of a company

Idem.

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

Idem.

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

OVERVIEW OF PART V

PART V.A. General

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

V.A.1.1 Requirements and procedures

Please consider the justification for the legalisation requirements or other similar or equivalent requirements as regards incoming or outgoing public documents as identified in Part I (hereinafter “requirements and procedures”) of our Member State, relating to the Apostille Convention, answering the following questions:

1.Are there “requirements and procedures” that overtly discriminate on grounds of nationality (whether between our own Member State and other Member State or between different Member States)?

2.Are there “requirements and procedures” that otherwise appear discriminatory or operate in a discriminatory matter?

3.Are the “requirements and procedures” (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”, 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” appear irrational?

6.Are the “requirements and procedures” effective? Do they in practice guarantee that their aims are achieved?

7.Are there situations in which the “requirements and procedures” appear ineffective?

8.Are “requirements and procedures” necessary, or are there less burdensome ways of achieving the same aims?

9.Are the “requirements and procedures” proportionate to the objectives pursued? Are there any particular cases where they are 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” 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 Belgium? Have “requirements or procedures” recently been added, modified or abolished? What reasons (if any) were given for those changes?

V.A.1.2 Effects rules

Please consider the justification for the rules concerning the effects of foreign public documents satisfying such “requirements and procedures” as identified in Part II (hereinafter “effects rules”) of our Member State, relating to foreign public documents meeting the requirements of the Apostille Convention, answering the following questions:

1. Are there “effects rules” that overtly discriminate on grounds of nationality (whether between our own Member State and other Member State or between different Member States)?

2. Are there “effects rules” that otherwise appear discriminatory or operate in a discriminatory matter?

3. Are the “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 “effects rules”, in particular those which you have identified in response to questions 1 to 3 above?

5. Are there situations in which the “effects rules” appear irrational?

6. Are the “effects rules” effective? Do they in practice guarantee that their aims are achieved?

7. Are there situations in which the “effects rules” appear ineffective?

8. Are “effects rules” necessary, or are there less burdensome ways of achieving the same aims?

9. Are the “effects rules” proportionate to the objectives pursued? Are there any particular cases where “effects rules” are excessively burdensome, given its aims?

10. What consequences flow from a failure to comply with the “effects rules”? Are there any particular cases where the consequences appear disproportionate?

11. Are there any areas where alternative “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 Belgium? Have “effects rules” recently been added, modified or abolished? What reasons (if any) were given for those changes?

V.A.2. Parallel international agreements

V.A.2.1 Requirements and procedures

Please consider the justification for the legalisation requirements or other similar or equivalent requirements as regards incoming or outgoing public documents as identified in Part I (hereinafter “requirements and procedures”) of the applicable international agreement(s), answering the following questions:

1. Are there “requirements and procedures” that overtly discriminate on grounds of nationality (whether between our own Member State and other Member State or between different Member States)? No
2. Are there “requirements and procedures” that otherwise appear discriminatory or operate in a discriminatory matter? No
3. Are the “requirements and procedures” (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? No
4. **What is the rationale for the “requirements and procedures”, 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” appear irrational?**
6. **Are the “requirements and procedures” effective? Do they in practice guarantee that their aims are achieved?**
7. **Are there situations in which the “requirements and procedures” appear ineffective?**
8. **Are “requirements and procedures” necessary, or are there less burdensome ways of achieving the same aims?**
9. **Are the “requirements and procedures” proportionate to the objectives pursued? Are there any particular cases where they are 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” 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 Belgium? Have “requirements or procedures” recently been added, modified or abolished? What reasons (if any) were given for those changes?**

V.A.2.2 Effects rules

Please consider the justification for the rules concerning the effects of foreign public documents satisfying such “requirements and procedures” as identified in Part II (hereinafter “effects rules”) of our Member State, relating to foreign public

documents meeting the “requirements and procedures” of the relevant international agreement(s), answering the following questions:

1. Are there “effects rules” that overtly discriminate on grounds of nationality (whether between our own Member State and other Member State or between different Member States)?
2. Are there “effects rules” that otherwise appear discriminatory or operate in a discriminatory matter?
3. Are the “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 “effects rules”, in particular those which you have identified in response to questions 1 to 3 above?
5. Are there situations in which the “effects rules” appear irrational?
6. Are the “effects rules” effective? Do they in practice guarantee that their aims are achieved?
7. Are there situations in which the “effects rules” appear ineffective?
8. Are “effects rules” necessary, or are there less burdensome ways of achieving the same aims?
9. Are the “effects rules” proportionate to the objectives pursued? Are there any particular cases where “effects rules” are excessively burdensome, given its aims?
10. What consequences flow from a failure to comply with the “effects rules”? Are there any particular cases where the consequences appear disproportionate?
11. Are there any areas where alternative “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 Belgium? Have “effects rules” recently been added, modified or abolished? What reasons (if any) were given for those changes?

V.A.3. National law

V.A.3.1 Requirements and procedures

Please consider the justification for the legalisation requirements or other similar or equivalent requirements as regards incoming or outgoing public documents as identified in Part I (hereinafter “requirements and procedures”) of national law, answering the following questions:

- 1) Are there “requirements and procedures” that overtly discriminate on grounds of nationality (whether between our own Member State and other Member State or between different Member States)?

There are no requirements and procedures that overtly discriminate on grounds of nationality.

2) Are there “requirements and procedures” that otherwise appear discriminatory or operate in a discriminatory matter?

- 3) Are the “requirements and procedures” (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?

The legalisation is a time-consuming and expensive formality.

- 4) What is the rationale for the “requirements and procedures”, in particular those which you have identified in response to questions 1 to 3 above?

He who appeals to a certificate or decision, must be able to show this piece really originates from the alleged administrative or judicial agency. Formal credibility must be shown. The legalisation by a civil servant confirms the authenticity of the signature, the capacity of the persons who drew up or issued the act and, where appropriate, the identity of the seal or stamp on the piece (article 30, §1, second subparagraph Wet van 27 mei 2004 houdende het Wetboek van internationaal privaatrecht, *B.S.* 27 juli 2004). A chain of signatures and seals is passed through: every civil servant confirms the signature of his predecessor. This way, the risk of fraudulence can be excluded. The legalisation is a simple administrative formality which grants the necessary authority to documents and differs from a check concerning recognition or concerning validity of the certificate in relation to the applicable law.

Quite a while ago, the next formula has been incorporated in the legalisation by the Belgian diplomatic and consular posts and the Federal Public Service Foreign Affairs: “*this legalisation does not guarantee the authenticity of the contents of the document*”. As a result, legalisation does not confer any authenticity to the content of the document (such as the correctness of the facts mentioned) nor does it guarantee the conformity of the document in relation to the local legislation (see: *Vr. en Antw.* Senaat 1982-1983, 29 november 1982 (Vr. nr. 31 HUBIN)). The legalisation is merely a control concerning the origin of a document. It is a powerful instrument to fight fraud, by examining if a document has really been delivered by the competent government and not by unauthorised persons with possibly fraudulent intentions. Article 26 of the Code of International and Comparative law concerns the probatory force of foreign judgements. This Code describes all conditions on which this probatory force can be permitted. Because of this, the distinction between probatory force and recognition, is confirmed.

The distinction is important because the conditions of probatory force are flexible. In other words, probatory force is not subject to the conditions which the Code attaches to recognition. The Code distinguishes external probatory force and internal probatory force. The first form is linked with legalisation. The judgement must respect the intern law of the State of origin. Therefore, article 30 of the Code of Comparative and International Law demands a legalisation.

The legalisation by the Ministry of Justice seems irrational. There is something to be said for joining the databases of the Federal Public Services Justice and Foreign Affairs and centralising them at the level of the latter. This way a “double

internal legalisation” can be avoided for certain signatures, e.g. those of magistrates (see above).

- 5) Are there situations in which the “requirements and procedures” appear irrational?

No situations

- 6) Are the “requirements and procedures” effective? Do they in practice guarantee that their aims are achieved?

By virtue of a telegram of June 21, 2003 (N° 03/tc0369), the main aim of the instrument of legalisation is the battle against fraud. According to a letter of the Director-general of consular matters, attached to the Omzendbrief aan de Belgische gemeenten en provinciebesturen van 13 mei 2005, the duty to legalize is an efficient and effective means within this framework. The competent services must always apply the usual control resources (i.e. the specimen). It is their task to guarantee that there are no doubts concerning the authenticity of the signature or the stamp.

During legalisation a problem can appear. In that case, the Belgian diplomatic and consular post can pass comment on the presented document (see *in extenso*: points 4 and 5 Omzendbrief aan de Belgische gemeenten en provinciebesturen van 13 mei 2005). Thus, the expertise, the knowledge and the resources of the posts are made available for the authorities charged with the separate control of the documents concerning their recognition or their validity with respect to the normally applicable law (see below).

There is a semi-official evaluation mechanism. To preserve a good overview of the problems concerning legalisation faced by the posts, they must send a copy of each refusal of legalisation at the Legalisations Service in Brussels. So far, there have not been any refusals concerning documents to be used within the European Union. Moreover, no specific problems relating to legalisation have been reported.

- 7) Are there situations in which the “requirements and procedures” appear ineffective?

No situations.

- 8) Are “requirements and procedures” necessary, or are there less burdensome ways of achieving the same aims?

Documents intended for use outside the country and carrying the signature of a notary must be legalized successively by a number of authorities (see above). In actual practice, the Federal Public Service Foreign Affairs possesses a list containing the signatures of all notaries; consequently, documents carrying the signature of a notary intended for use outside the country can directly be legalized by the Federal Public Service Foreign Affairs. This alternative arrangement might provide a solution to reduce the administrative burdens. A central database at the level of the Federal Public Service Foreign Affairs could avoid “double internal legalisations” (see above).

A study carried out by the Center of private law of the “Université Libre de Bruxelles (U.L.B.)”, entitled “A la recherche des “travaux inutiles” des magistrats”

examined the useless tasks of magistrates and made some comments on article 600 of the Judicial Code.

It is customary that the signatures of the Belgian notaries and the civil servants of the Registry Office are deposited and legalised directly at the Federal Public Service Foreign Affairs, without requiring an intermediate stage. However, article 600 of the Judicial Code stipulates that the justice of the peace legalises the signatures of notaries and civil servants of the Registry Office of the municipalities under his jurisdiction. In this context, the study generally concludes that it falls completely into disuse to entrust a magistrate with the obligation, to legalise certain signatures. According to the researchers, the magistrates should be able to be discharged from these tasks, tasks which would return to other authorities of the judicial power (clerks of the court, chief clerks) or external authorities (civil servants of the Registry Office) or be subject of a simplification thanks to the development of new technologies (such as the Phenix project, the computerization of the registers of births, marriages and deaths, etcetera).

In practice, the aforementioned signatures are directly legalised at the Federal Public Service Foreign Affairs, without an intermediate stage. This custom leads to a less burdensome way of achieving the same aim as the requirements and procedures of article 600 of the Judicial Code .

- 9) Are the “requirements and procedures” proportionate to the objectives pursued? Are there any particular cases where they are excessively burdensome, given its aims?

All requirements and procedures seem proportionate to the objectives pursued.

- 10) What consequences flow from a failure to comply with the “requirements and procedures”? Are there any particular cases where the consequences appear disproportionate?

Foreign documents, of which the legalisation is obliged, are not accepted if not legalized. No other sanction is applied. Nevertheless, some judges seem to accept non-legalized documents.

In the context of marriages, the Departmental Circular of 17 December 1999 *inzake de wet van 4 mei 1999 tot wijziging van een aantal bepalingen betreffende het huwelijk*, B.S. 31 december 1999 is important. This Circular recalls the Departmental Circular of 17 February 1993 *betreffende de legalisatie van buitenlandse akten van de burgerlijke stand*, B.S. 27 maart 1993. The civil servant of the Registry Office refuses to draw up a certificate of notification of the intended marriage if the interested parties fail to submit the documents enumerated in article 64 of the Civil Code. This also includes the situation where these documents were legalised in an insufficient manner.

In the context of mortgages, the registrar of mortgages must be persuaded of the authenticity of the certificate which is offered for transfer in the records of the mortgage registry. In a departmental circular of May 22, 1852 the minister of Finances at that time, has formulated some directives. According to those guidelines, the applicant of the transfer must show the authenticity of the certificate and satisfactory proof results from the complete legalisation. By virtue of the Belgian law, the lacking of legalisation is a sufficient ground to refuse the transfer. In a letter dated January 22, 1988 of the minister for Foreign Affairs, addressed to the President of the Federation of Notaries, the minister declared

that, in spite the lacking of an explicit legislative provision, the legalisation by the Ministry of Foreign Affairs is nevertheless designated for certificates which are to be transferred or registered in a Belgian mortgage registry and which have been executed by Belgian diplomatic or consular agents abroad.

- 11) Are there any areas where alternative “requirements and procedures” 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?

Documents intended for use outside the country and carrying the signature of a notary must be legalized successively by a number of authorities (see above). In actual practice, the Federal Public Service Foreign Affairs possesses a list containing the signatures of all notaries; consequently, documents carrying the signature of a notary intended for use outside the country can directly be legalized by the Federal Public Service Foreign Affairs. This alternative arrangement might provide a solution to reduce the administrative burdens. A central database at the level of the Federal Public Service Foreign Affairs could avoid “double internal legalisations” (see above).

- 12) Have there been any developments in this field in Belgium? Have “requirements or procedures” recently been added, modified or abolished? What reasons (if any) were given for those changes?

In 2003, the procedure for legalisation was adapted both in Brussels (September 2003) and in the Belgian diplomatic and consular posts abroad (July 2003). The new system is called “LegaliNet”. Such a technique is unknown in other E.U. member states. Formerly, all documents legalized at the posts were legalized once again by the Federal Public Service Foreign Affairs if they were to be used in Belgium. In practice, this second legalisation (or “double legalisation”) was quite pointless: it merely concerned a monitoring of the authenticity of the signature of the diplomatic or consular civil servants by means of files in possession of the Federal Public Service Foreign Affairs.

However, the document *an sich* was no longer checked: Brussels assumed that this was the task of the post, which always happened properly. Moreover, such a control was unfeasible by lack of time due to the large presence of the public at the legalisation counters. In theory, the Koninklijk besluit van 5 december 2003 tot wijziging van het Koninklijk besluit van 23 maart 1857 betreffende de bevoegdheden van consuls inzake legalisaties en de gerechtelijke betekeningen, B.S. 8 maart 2004 has abolished the double legalisation of foreign documents. The Legalisations Service of the Federal Public Service Foreign Affairs no longer legalizes documents which were already legalized with a control figure by the Belgian posts. In these cases, the signatures of our diplomats and posts are directly valid in Belgium.

Because of this, a telegram of June 21, 2003 (N° 03/tc0369) emphasizes that the posts must investigate the authenticity of the signature more thoroughly than before. For documents without a control figure (dated before the 1st of July 2003, or legalized on a post where the new system is not yet applicable (among others most of the Belgian honorary consulates)) the double legalisation remains imperative. Therefore, the Federal Public Service Foreign Affairs-database of specimen with the signatures of all diplomats and consuls abroad stays important. Both at the Belgian posts and at the Federal Public Service in Brussels all legalisations are computerized. In the database, the specimen of

signatures are incorporated with a link in time (for example: "*consul (name) is competent in (post) from ... till ...*"). The former card-index system does not allow such a link. Consequently, the adaptation implies additional guarantees for authenticity. Moreover, some specimen of signatures can be consulted automatically and directly on the computer.

The modification aims at a better protection of the legalisation and also creates a possibility of control for the users. The legalisation by means of a stamp was replaced by a better protected system by using a sticker, on which all data are printed, including a unique control figure made up of at least 16 numbers. The signature of the authorised civil servant and the appropriate seal are of course still introduced. The user can check the number on the website www.diplomatie.be/LegaliNet/index.aspx from each computer linked with the Internet, without any special equipment or programme. After introducing the control figure, the post and date on which the document was legalized, appear. If the number does not exist, the legalisation is tampered with or the user has introduced the wrong number. If the website points out that the document was delivered "*on date x at post x*", the local department can check whether this corresponds with the indication on the document. Soon, the form of the stickers will change again. The Federal Public Service Foreign Affairs asked for a protected paper and wants each virgin sticker to be numbered.

The modification also aims at an administrative simplification. The double legalisation of foreign documents, a first time at a Belgian embassy or consulate abroad, a second time at the Federal Public Service Foreign Affairs in Brussels, is replaced by a single legalisation. As of now, foreign documents, legalized with a sticker and control figure, are directly valid for use in Belgium.

Only in circumstances beyond one's control (for example a computer failure, a printer disorder, etcetera) the Federal Public Service Foreign Affairs temporarily falls back on the traditional legalisation stamp.

During legalisation a problem can appear. In that case, the Belgian diplomatic and consular post can pass comment on the presented document. This procedure has been introduced by the new Omzendbrief aan de Belgische gemeenten en provinciebesturen van 13 mei 2005. In a number of cases, Belgian diplomatic and consular posts can find that there is a problem with a document. Thus, the form can be correct, while the document contains an error.

Examples of possible errors are:

- according to the document, the date of birth of an adult is identical to the date of issuing;
- the certificate states that a person is unmarried whereas he/she confirms the opposite;
- the certificate states that a person is born in X, whereas it is clear (for example from the file at the post) that he/she is born elsewhere;
- the local law requires an indication of the place of residence of the parents, whereas that information is lacking in the presented birth certificate.

In some cases the error is due to a material mistake but it can also mask fraudulent intentions. The question is how the Belgian diplomatic and consular posts may and can act, as well in case of a material mistake or in case of a suspected attempt to fraud.

In the past, an investigation on the merits was ordered in case of an error or a presumption of fraud. In some countries, this investigation was conducted by a “vertrouwensadvocaat” (see above) and at the expense of the applicant of the legalisation. However, there were two objections against this method:

(1) there was no legal basis for conducting such an investigation within the framework of the legalisation;

(2) the reason for refusal of legalisation for no other reason than a problem with the contents of a document by the diplomat or consul, is difficult to state. It is because of these observations that the aforementioned practice has been modified.

We note that a number of foreign documents is incorrect, even if they have been delivered by a competent a civil servant. Blindly accepting foreign documents, on the basis of a simple control of the quality of the signatory, does not serve the interest of our country in the field of fraud control and the fight against illegal immigration.

The new “basic assumptions” are the following. There is no legal basis for an investigation on the merits by the Belgian diplomatic and consular posts within the legalisation procedure. For an investigation on the merits as a separate action after the legalisation has taken place, however, a legal basis exists. In that case, the initiative for such an investigation is taken by the competent government. However, when the legal diplomatic or consular civil servant discovers that the document is prima facie defective, he must be able to formally note this. In this way, the recipient is warned and, if required, an investigation can be requested. The legalisation of a document does not mean that it must be accepted in our country. It is a necessary condition, but not a sufficient one.

When the diplomatic or consular civil servant discovers that the document is prima facie defective, whereas it nevertheless meets all the conditions for legalisation, the post will legalise the document and will introduce an indication on the document itself. Consequently, each future recipient will clearly notice the problem. There are two possibilities:

(1) the indication can be mentioned clearly but concisely on the legalisation sticker;

(2) if the indication occupies a major place than provided on the sticker, the sticker will mention a reference and the complete comments will be made on the other side of the document, or on a separate page which is then attached to the document (namely by affixing the seal of the post, partly on the document and partly on the page).

The Belgian diplomatic or consular post concisely but clearly describes the problem. The (Belgian) recipient must be able to decide whether the problem is of nature to refuse the document and whether an investigation on the merits is necessary.

Since 2005, receiving Belgian authorities have a new possibility to investigate a legalised document. The recipient can be: a civil servant of the Registry Office, the “Office des étrangers”, the Belgian courts, a magistrate,... Belgian diplomatic or consular posts can also receive legalised documents within the framework of applications for which they are authorised under law (for example an application to obtain or preserve the Belgian nationality or documents required with a view to executing a certificate of the registry of births, deaths and marriages).

This investigation is conducted by the Belgian diplomatic or consular posts. However, the posts can further appeal to a “*vertrouwensadvocaat*” when they are not capable to conduct the requested research themselves. Of course, the posts can also appeal to the local governments.

The working method for requesting a research is the following. If a Belgian government receives a legalised document, the competent civil servant can always ask for a research. Therefore, he shall contact the Legalisations Service of the Federal Public Service Foreign Affairs, mentioning the motivation for the request. The Service transfers the request to the embassy or the consulate which carried out the legalisation. If costs are linked to the research, the Belgian diplomatic or consular post estimates them and directly sends them to the requesting government. The costs can be paid by the requesting government but they can also be recovered on the applicant. The posts directly communicate the result of the research to the requesting government. If the Belgian diplomatic or consular posts want to conduct a research themselves (see above), the costs of the research are at the expense of the applicant.

V.A.3.2 Effects rules

1. Are there “effects rules” that overtly discriminate on grounds of nationality (whether between our own Member State and other Member State or between different Member States)? No
2. Are there “effects rules” that otherwise appear discriminatory or operate in a discriminatory matter? No
3. Are the “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? No
4. What is the rationale for the “effects rules”, in particular those which you have identified in response to questions 1 to 3 above?
5. Are there situations in which the “effects rules” appear irrational?
6. Are the “effects rules” effective? Do they in practice guarantee that their aims are achieved?
7. Are there situations in which the “effects rules” appear ineffective?
8. Are “effects rules” necessary, or are there less burdensome ways of achieving the same aims?
9. Are the “effects rules” proportionate to the objectives pursued? Are there any particular cases where “effects rules” are excessively burdensome, given its aims?
10. What consequences flow from a failure to comply with the “effects rules”? Are there any particular cases where the consequences appear disproportionate?
11. Are there any areas where alternative “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 Belgium? Have “effects rules” recently been added, modified or abolished? What reasons (if any) were given for those changes?

PART V.B. Specific

Documents: For the different types of document, there is no further comment as regard to the legalisation.

PART VI – Suggested action

OVERVIEW OF PART VI

VI.1. European

At the moment, making the plunge towards a European database seems unfeasible. At the worst, it would be impossible to look over the amount of information. Moreover, the cost seems another solicitude. By the way, who can guarantee the security of this system? We must give the matter some further careful thought. For reasons of safety, the database would have to be subject to a large number of security measures. Under no circumstances fraud should be possible. Close cooperation with other member states would unquestionably be inevitable.

VI.2. Intergovernmental

Same comment as above.

VI.3. National

Documents intended for use outside the country and carrying the signature of a notary must be legalized successively by a number of authorities (see above). In actual practice, the Federal Public Service Foreign Affairs possesses a list containing the signatures of all notaries; consequently, documents carrying the signature of a notary intended for use outside the country can directly be legalized by the Federal Public Service Foreign Affairs. This alternative arrangement might provide a solution to reduce the administrative burdens. A central database at the level of the Federal Public Service Foreign Affairs could avoid “double internal legalisations” (see above).