

Legalisation of Public Documents within the EU Member States

FRANCE

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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

As a general remark, one needs to point out that, from a French perspective, there is very little material on legalisation. Case law is scarce, and largely inconclusive ; academic writing is very rare and mostly of a very general nature.

This fact, particularly the absence of case law, could be interpreted optimistically, saying that, since there is no litigation, there is no problem. Another factor of this rather optimistic interpretation lies in the fact that there are, as it will be seen, numerous conventions on legalisation which are in force in France, meaning that legalisation is usually abolished, particularly between Member States.

Optimism should however be tempered, as it appears from some interviews that the absence of legal requirement on legalisation and the absence of litigation does not imply that there is no difficulty. Such difficulties, when known, will be mentioned. It is to be noted, however, that it is very difficult, to say the least, to find in France an adequate assessment of those problems.

I.A.1. European Community Law

As Regulations are self-executing, national implementation is generally not adopted in France. To that extent, it seems that the specific articles mentioned in the questionnaire have not been the object of a specific French rule.

Although not directly linked to legalisation, an important rule concerning Regulation 44/2001 has been adopted in the “Décret” of 20th of August 2004 (Official Journal of the French Republic, hereinafter OJ, 22nd of August 2004). This text adds new articles to the French Code of Civil Procedure, articles 509-1, 509-2 and 509-3. These articles make a major procedural change as to the competent authorities involved in the recognition and enforcement of judgments, judicial transactions and authentic instruments. From January 1st 2005, the request for enforcement of a judgement will be

dealt with by the “Greffier en chef du Tribunal de Grande Instance” (Head of the Court Clerks of the First Degree Court), and not by the Judge.

As to authentic instruments executed by foreign notaries, enforcement requests will be dealt with the “Président de la chambre des notaires” (President of the Public Notaries Chamber). This change implies that this authority is now in charge of the certification of the Authentic instruments executed by a French Notary, as requested by article 57-4 and annex VI of the 44/2001 Regulation. On the other hand, the “Président de la chambre des notaires” will also be in charge of issuing declaration of enforceability for foreign notaries documents, as requested by article 57-1 of the Regulation.

It is to be remarked that neither court settlements nor authentic instruments which are not drawn by notaries are to be subject to the authority of French Notaries Chamber. This implies that any difficulty concerning their recognition and enforcement will be dealt with by the Greffier en chef of the Tribunal de Grande Instance.

- As to Regulation 805/2004, the view generally taken is that, as it is suggested in the explanatory memorandum, no legalisation will be sought for in France. Article 56 of the 44/2001 Regulation could here be considered as a model. It has been also suggested that the procedural changes made by the French Décret of 2004 could be used for the European Enforcement Order. This would imply that Greffiers en chef and Président de la Chambre des notaires could be competent to deliver the title and thus certify the documents. Such a possibility would imply a modification of the rules of the Civil procedure code which has not been adopted yet.

- - As to Regulation 1408/71 : to my knowledge, no case law can be found on the question of legalisation of foreign documents. It seems, however, that some Social Securities agencies in France (Caisse Primaire d'Assurance Maladie) impose legalisation of the documents originating from another Member State. This practice, however, is generally considered as illegal and would certainly be declared so, be it submitted to a French Judge.
- As to the case law : to my knowledge, there is almost no case law involving the articles mentioned in the questionnaire.

One case can however be mentioned, even if it does not appear to be of great importance. It is the decision given by the First Civil Chamber of the Cour de Cassation the 12 January 1994 (Bull. Civ. I. 1994 n° 16) involving enforcement of an act drawn in Germany, by which a man was undertaking a obligation of payment of a maintenance allowance to the child he had previously recognised. The debtor resisted enforcement in France, with various arguments, one of which involving the challenge of the authenticity of the act.

The answer of the Cour de cassation was that, pursuant to article 49 and 50 of the 1968 Brussels Convention, no legalisation of public documents is necessary and, therefore, the presentation of the authentic document is enough to obtain its recognition.
In French :

“Selon les articles 49 et 50 de la Convention de Bruxelles de 1968, la partie qui demande l'exécution d'un acte authentique doit produire une expédition de l'acte réunissant les conditions nécessaires à son authenticité dans l'État d'origine, sans qu'aucune légalisation ni formalité analogue puisse être exigée”

This decision, however, is very exceptional and it seems that the question of legalisation is not frequently submitted to French courts.

I.A.1.1. Implementation of specific measures

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

Article 19 of Regulation (EC) No 1346/2000

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

Article 56 of Regulation (EC) No 44/2001

Article 57 of Regulation (EC) No 44/2001

Article 58 of Regulation (EC) No 44/2001

Article 46 Regulation (EC) No 2201/2003

Article 52 of Regulation (EC) No 2201/2003

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)

Article 27 of Regulation (EC) No 805/2004

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

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

Free movement of goods (Article 23 EC)

Article 250 of Regulation (EEC) No 2913/92

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

I.A.1.2. Judicial control

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

I.A.2.1. Status and I.A.2.2. Scope

France is indeed party to the 1961 Apostille Convention since 1965 (See Décret n° 65-57, 22 January 1965, OJ, 28 January 1965). The Convention has not been extended beyond the States party to the Convention, but by a declaration, France declared that the Convention would be applicable to the whole territory of the French Republic, including the overseas departments ("Départements d'outre-mer", DOM) and the overseas territories ("Territoires d'outre-mer", TOM). By a subsequent declaration, France has extended the Convention to the Franco-British condominium of the New-Hebrides.

In itself, the material scope has not been extended to other documents than those mentioned in the Hague Convention.

It is to be remarked, however, that the Hague experience seems to have influenced French law. A "circulaire" (which is an administrative text) of 4 May 1981 (OJ of 16 May 1981) has decided that every French public document, of civil or administrative nature, would be subject to a simplified legalisation procedure, by which those documents are stamped by the Legalisation Bureau of the Ministry of Justice, attesting that the document has been elaborated in the forms accepted by French laws ("Le present acte public a été établi dans les formes prévues par la loi française"). It has to be stressed that this "circulaire" concerns only documents which are not subject to a particular legalisation regime or exemption, coming from an international convention. It does not concern, therefore, the 1961 Hague Convention. However, even though this text is not, as such, an extension of the Convention mechanism to other public documents, this simplified procedure has been greatly influenced by the Hague experience, which is why it is worth mentioning.

I.A.2.2. Legislative and practical implementation

No specific law has been adopted to implement the Hague 1961 Convention. The Convention has only been ratified by an administrative process, consisting on the adoption of an administrative act by the French Government (a "Décret"), deciding upon the ratification of the Convention.

Some of its provision have been included in other "directives", like the "Instructions Générale relative à l'Etat civil", (IGEC), which is a restatement of all the French rules concerning civil status. The last version of this text is dated of 29 Mars 2002 (OJ 28 Avril 2002) and contains a whole chapter on legalisation. It concerns only legalisation of documents concerning civil status.

As to the practical implementation of the 1961 Convention, some informations can be found in the French answers to the questionnaire drawn up by the Permanent Bureau for the preparation of the Special Commission which took place in November 2003 (published on the Website of the Conference).

The competent authority to issue the apostille is the Public Prosecutor Services attached a Court of Appeal ("Parquet Général près la Cour d'appel"). It appears from the answers to this questionnaire that, in the absence of centralised and unified procedure to obtain the apostille to a public document, situations can vary from a Court of Appeal to another. The typical procedure, however, seems to imply that the request is made in person, or, sometimes, by regular mail. E-mail seems to be still impossible to use for this kind of official demands. In case of doubt about the authenticity of the document produced by

the person seeking the apostille, the Public Prosecutor will generally write to the institution which issued the document in question and ask them to directly confirm the existence of such a document. Such procedure appears however to be quite exceptional. Apparently, the use of e-mail, although foreseeable for such exchanges which does not imply the transmission of official documents, is still very rare. It seems to be developing, however.

The apostille is placed on the document itself. If the document is several pages long, then the general practice is to place it on the last page of the document. Sometimes, particularly for long documents which does not include page numbers, a stamp and a signature are added on every page. The apostille is delivered in French, and takes the form of a big square referring to the Hague Convention, and giving the name of the authority issuing the apostille. The apostille is physically added to the document. No electronic apostille has been delivered. Delay vary greatly from a Court to another. It seems that the typical delay would be between one and six month. The delivery of an apostille is free.

The register mentioned in article 7 of the Convention is held in every Court of appeal, by the Public Prosecutors services. It is usually a written register, although electronic registers seems to be emerging. The use of this register is very rare. It has sometimes allowed to discover an attempt of fraud.

Once again, the competent authority pursuant to article 6 of the Hague 1961 Convention is the Public Prosecutors Services attached to every Court of Appeal. It is NOT the French Ministry of Justice. A list of all the Court of appeal in France can be found on the website of the French Ministry of Justice : <http://www.justice.gouv.fr>. It has to be remarked that, in specific Overseas territories (TOM), the peculiarity of the local judicial organisation can imply some minor change of the denomination of the competent authority to deliver the apostille. The list of these competent authorities can be found on the Hague Conference website : <http://www.hcch.net>.

I.A.2.3. Judicial control

It seems that the Apostille convention has not been the object of any decision in France, at least from the Cour de cassation. The only reported case I am aware of is the judgment given by the Aix Court of Appeal of 19 December 1974 (*Journal du Droit International*, 1976. 929, note Y. Lequette), in which the Court simply accepted the efficiency of foreign public documents which had been apostilled by the foreign authorities.

As to the empirical data, it is very difficult to answer such a question, since many authorities are competent in France for delivering the apostille. More general statistics can be found in the questionnaire answered by the French government to the Permanent Bureau. It can be taken from these statistics that the most important authority delivering apostilles is the Public Prosecutor services attached to the Court of Appeal of Paris. More than 100.000 apostilles are delivered each year. About 1/3 concerns international adoption procedures (apostille of civil status documents) ; about ¼ concerns apostilles of diplomas issued by French schools and Universities ; about ¼ concerns apostilles of commercial documents.

I.A.2.4. Empirical analysis [Error! Reference source not found.](#)

I.A.3. Parallel international agreements

Multilateral agreements

France is party to those international multilateral instruments concerning abolition of Legalisation (most important conventions are marked with an *) :

- *1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic agents or Consular Officers (Décret n° 70-397 of 23 October 1970, OJ 1 November 1970)
- *1987 Brussels Convention abolishing the Legalisation of Documents in the Member States of the European Communities (Décret n° 92-383 of 1 April 1992, OJ 8 April 1992).
- 1958 Hague Convention concerning the Recognition and Enforcement of Decisions Relating to maintenance Obligation Towards Children (Décret n° 67-374 of 21 April 1967, OJ 29 April 1967)
- 1965 Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Décret n°72-1019 of 9 November 1972, OJ 14 November 1972)
- 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (Décret 75-250 of 9 April 1975, OJ 17 April 1975)
- 1980 Hague Convention on Civil Aspects of International Child Abduction (Décret 29 November 1983 OJ 1 December 1983)
- 1980 Hague Convention on International Access to Justice (Décret n°88-979 of 11 October 1988, OJ 15 October 1988)
- 1956 Paris Convention on the issue of certain extracts from civil status records (International Commission on Civil Status Convention n° 1, Décret n° 57-1427 of 10 December 1957, OJ 9 January 1958)
- *1957 Luxembourg Convention on the issue free of charge and the exemption from legalisation of copies of civil status records (International Commission on Civil Status Convention n° 2, Décret n° 59-1018 of 26 August 1959, OJ 2 September 1959)
- 1976 Vienna Convention on the issue of multilingual extracts form civil status records (International Commission on Civil Status Convention n° 16, Décret n° 87-288 of 21 April 1987, OJ 26 April 1987)
- *1977 Athens Convention on the exemption from legalisation of certain records and documents (International Commission on Civil Status Convention n° 17, Décret n° 82-666 of 22 July 1982, OJ 1 August 1982)Some other international conventions, although not directly linked with the question of legalisation, can nevertheless contain some provisions on legalisation.

Such a list includes for example the Hague Conventions on Civil procedure of 1905 and 1954, which are still very partially in force and the 1973 Washington Convention providing a uniform law on the form of an international will (L. 29 April 1994, OJ 26 April 1994).

Bilateral agreements

France is party to those international bilateral instruments which directly concern, or have provisions on, legalisation (limited to EU Countries) :

Belgium : Convention of 9 November 1981 on the exemption from legalisation of public documents (Décret n° 82-110 of 27 January 1982, OJ 31 January 1982)

- Czech Republic : Convention of 10 May 1984 on judicial cooperation (Décret n° 85-752 of 17 July 1985, OJ 21 July 1985)
- Germany : Convention of 13 September 1971 on the exemption from legalisation of public documents (Décret n° 75-247 of 9 April 1975, OJ 16 April 1975)
- Hungary : Convention of 31 July 1980 on judicial cooperation (Décret n° 82-148 of 4 February 1982, OJ 12 February 1982)
- Italy : Convention of 12 January 1955 on judicial cooperation (Décret n° 59-629 of 5 May 1959, OJ 17 May 1959)
- Portugal : Convention of 20 July 1983 on judicial cooperation (Décret n° 84-911 of 10 October 1984, OJ 14 October 1984)
- Slovakia : Convention of 10 May 1984 on judicial cooperation (Décret n° 85-752 of 17 July 1985, OJ 21 July 1985)
- Slovenia : Convention of 29 October 1969 on the exemption from legalisation of public documents (Décret 70-10007 of 23 October 1970, OJ 3 November 1970).

It seems that three more conventions have to be added to that list : a 1937 Convention with United Kingdom, a 1955 Convention with Luxembourg and a 1962 Convention with Malta. The status of those convention is rather unclear, since I have not found their exact references and since the Luxembourg and Malta Convention are not mentioned in the list of conventions on legalisation provided by the Ministry of foreign affairs.

I.A.3.2. Scope

As to multilateral agreements, the scope is described in the agreement and is generally not extended.

As to bilateral agreements, the same sentence is generally used, which gives the list of the documents which are exempt from legalisation. Those documents include : Civil status documents, judicial acts, affidavits or other documents registered in a tribunal, acts executed by public notaries, administrative documents or documents certifying the exactness of a signature. Some minor differences, however, can be found between a Convention and another.

I.A.3.3. Legislative and practical implementation

Each of these conventions have been regularly ratified, usually by an act taken by the Government. These acts ("décrets") simply decide upon the ratification and repeats the text of the Convention concerned. Due to the administrative nature of the process, no travaux préparatoires or draft legislation is available.

In almost every situation, the competent authority to refer to is the Legalisation bureau in the Ministry of Foreign Affairs :

Ministère des Affaires Etrangères
Bureau de legalisation
34, rue La Pérouse
75775 Paris
France

For the 1987 Brussels Convention, the central authority in charge of receiving and

forwarding the request for information is the European and International Affairs Service of the Ministry of Justice :

Ministère de la Justice
Service des affaires européennes et internationales
13, Place Vendôme
75042 Paris Cedex 01

Lastly, and once again, there is no published case law on legalisation I am aware of, at least concerning the EU Countries.

Some case law can be found concerning third countries, most of it being not very recent and of little importance. Reference can be made to the typical decision of the Cour de cassation of 6 Mars 1968 (Bull. Civ. I. 1968, n° 88) which concerned the enforcement of a Franco-Vietnamese Convention of 1954. According to this Convention, legalisation of judicial documents is not any more necessary. Therefore, as the Cour de Cassation said, legalisation of a divorce decision rendered in Vietnam is not necessary to obtain exequatur of this decision in France.

It has to be stressed that, as far as EU Countries are concerned, legalisation is almost never necessary. The important net of both multilateral and bilateral conventions has the effect of an almost complete abolition of legalisation of public documents. Some exceptions are to be mentioned, since, for example, legalisation of documents executed by Diplomatic agents or Consular officers is still necessary between France and some Countries not party to either a bilateral Convention nor the 1968 Convention (ex : Estonia, Latvia, Lithuania, Malta, Poland). Until very recently, Poland seemed to be a more general exception : in the absence of bilateral convention and of ratification by Poland of the major multilateral conventions, including the Hague Convention, legalisation was still needed for many documents coming from or going to Poland. Such a situation has now changed, since Poland has recently ratified the 1961 Convention, and therefore, most of the documents coming from that country are only subject to apostille.

More generally, legalisation is now very rare, and the basic principle, as far as the relationships between France and the other EU Member States are concerned, is the absence of legalisation.

A detailed picture of the French situation, with references to all the conventions in force, can be found on the internet website of the Ministry of Foreign Affairs at the address: www.diplomatie.gouv.fr/français/etatcivil/doit_legalisation.pdf.

I.A.3.4. Judicial control

I.A.4. National Law

In the absence of applicable international convention, national law will be applicable. The scope of national law, therefore, purely depends on the existence of an international convention with the concerned country. As to the material scope, the legalisation procedure concerns any kind of public document, whatever its nature (judicial, administrative, executed by a notary, an enforcement officer (Huissier de justice) or a judge).

In French law, the very requirement of legalisation is to be found in a very old text still

used in courts : the Royal Ordinance on Maritime Affairs of 1681. Such a text has been, for example, recently invoked by the French Cour de Cassation (Civ. 1, 14 February 2006, Case n° 05-10960, unpublished).

French law on the matter is mostly made of administrative and judicial practices. Such a situation explains that there is no law as such, but some scarce “décrets” and “circulaires”.

Among those texts, one has to be mentioned: the décret n°71-941 of 26 of November 1971 (D. 1971. 453), which simplified the legalisation procedure for public notaries acts. This simplification has been extended to all French public documents to be produced abroad by the already mentioned “circulaire” of 4 May 1981 (OJ. 16 May 1981). This simplification concerns all sort of public documents, including private documents when those documents are subject to public intervention (registration, date certification, signature certification...).

In all cases, the competent authority for legalisation is the Bureau of legalisation of the Ministry of Foreign Affairs (address above). Legalisation can also be given by the French Consular Officer in the country where the document is to be used.

Legalisation can be asked for by mail, and on certified copy of the documents. Some documents, however, can never be copied and should therefore be certified on the original (Passports, some civil status documents...). The procedure is usually quite quick but is not free. It is usually about one or two Euros, depending both on the nationality of the person and on the nature of the documents. Some documents, particularly documents executed by notaries, are however more expensive to legalise. The tariffs are detailed on the Website of the Ministry of Foreign Affairs.

As to Foreign acts to be produced in France, those are to be legalised by the French Consul in the Country concerned. Delay to obtain such a legalisation vary greatly from a Consulate to another. French Consuls have also the possibility to legalise private acts signed by French nationals habitually resident in their constituency (Décret n° 46-2390 of 23 October 1946, D. 1946. 437 ; Décret n° 65-283 of 12 April 1965, D. 1965. 136). It has to be stressed that, from pure practice, the foreign Consul in France of the country from which the act is coming has the ability to legalise public documents. Such a document will not be subject to further legalisation by a French authority. The solution, strangely, comes from an internal agreement between the Ministry of Foreign Affairs, the Ministry of Interior, and the Ministry of Justice (See Press Release of the Ministry of Foreign Affairs of 18 January 1967, published in the Journal des Notaires, 1967. 249), and has never been adopted through a regular statute or “décret”.

Some cases on the French requirements upon legalisation can be found. It has however to be stressed that those cases are very rare and most of them of little importance. The most recent case, dated of February 2006 and already referred to, is a topic example. In that case, the Court has only said that, according to French Law and in the absence of any applicable convention, foreign public documents should be legalised by French Consuls in the Country where the document has been drawn.

Some older decisions have decided upon the effect of the absence of legalisation. One of the most important effect is that such an absence can allow the party against whom execution is sought to stay the proceedings (Cass. Req. 8 November 1853, DP. 1854. 1. 420). It has also been accepted that the judge can stay an exequatur procedure on its

own motion if the foreign judgment should have been legalised (Paris, 29 June 1956, Rev. Crit. DIP. 1956. 548, note Francescakis).

PART I.B. Specific

I.B.1. Introduction

I.B.2. Specific documents

1. Documents proving involuntary unemployment

These are obtained at the official State Unemployment services (Agence Nationale pour l'Emploi : ANPE). This official document is not automatically given, since it is generally not necessary in internal relations. However, it can be asked for if needed.

As to the production of documents proving unemployment coming from another country, I am not aware of specific problems that could have occurred in France concerning legalisation.

Should legalisation of such French documents be needed, it should be asked for to the Ministry of foreign affairs. If Apostille is needed, it should be asked for to the Public Prosecutor Services attached to the Court of appeal of the place of residence of the person concerned.

As far as foreign documents are concerned, it is to be supposed that such a document would be considered as an "administrative document" and therefore follow their legal regime. This means that the Apostille is needed for documents coming from most countries (Austria, Cyprus, Spain, Estonia, Finland, Greece, Latvia, Lithuania, Luxembourg, Malta, Norway, Netherlands, Poland, Portugal, United-Kingdom, Sweden). Administrative documents from other countries do not need anything.

2. Documents proving a family relationship or other durable relationship

These are given by the Services d'Etat civil, which are attached to every town hall of every city in France.

Married couples and parents (married or unmarried) automatically obtain an important paper called the "Livret de famille". This little booklet officially states the status of the parents (married, unmarried, name of the parents), and the exact filiation of the children of the couple. This booklet is of constant use for proving the status of the family. If any changes occur (adoption, death, divorce), this change is automatically sent to the official registers of the Services d'Etat civil of each of the cities of birth of the family members and the family should ask for a modification of the "Livret de famille".

In the absence of such a livret de famille (unmarried couple, or single persons, with no child), the proof of the family relationship is made by asking for an extract of the birth registers of the Etat civil. Such an extract will be officially stamped and will serve as a proof of one's filiation. It has to be asked in the "Service d'Etat Civil" of the town hall of the city of birth. There is a special "Service d'Etat civil" for foreigners or French national born abroad located in Nantes. Such a document can be obtained for free and can be asked for by mail or, in most cities, e-mail. Obtaining such a documents takes usually less than a week.

Unmarried couple can also have two kind of documents. In the case where two person live together without any registration, they can have a private contract proving their quality of partner. Such a document, however, has no authentic value, although it can be used before a French court.

If the partners have decided to register their partnership, they can sign a specific contract, called "Pacte civil de solidarité" (PACS). Such a contract will be registered by the clerk officers of the lower courts (Greffiers du tribunal d'instance). The clerk will stamp and date two originals of the contract and give it back to the partners. He will also give them an official paper, with the stamp and the signature proving the registration of a partnership and the date. This paper is the official paper which will be used by the partner to prove the existence of their partnership.

The clerk will then transmit this paper to the Tribunal d'Instance of the place where each partner was born, where the PACS is registered. If the partner needs further proof of their partnership, they will have to ask for an extract of this register. The paper obtained is the same than the one given the day of the conclusion of the PACS. It can be obtained by mail or, in most cities, e-mail.

As to legalisation of these documents, see infra, under n° 5.

3. Documents proving or contesting a parent-child relationship

This document is once again the "Livret de famille", or an official birth certificate. In cases where an established parent-child relationship has been successfully contested in a French Court, then the judgment ending the relationship is automatically registered in the Service d'état civil of the city hall of the city of birth of the child concerned. If the judgment has been given abroad, the exequatur of the foreign decision automatically implies a modification of the register held in the Service d'Etat civil of the town hall of the city of birth (or in Nantes for foreigners or French nationals born abroad). Any subsequent extract from this register will be modified and will therefore not mention the former parent-child relationship. The same solution applies to adoption procedures.

Recognition of a child can be made in two different ways. The most common is a recognition made to a Civil Status Officer (Officier d'Etat civil). In that case, the recognition, if not contested, is then added to the Civil Status Register of the city hall of the city of birth of the child. The other way to register a child's recognition is by an authentic act executed by a public notary. In that case, if the recognition does not remain secret, it is then registered in the town hall of the city of birth of the child.

As to legalisation of documents, see infra, under n° 5.

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

This is, once again, proved by the "Livret de famille" or the official birth certificate. In every day life, however, the identity card, which is officially established after the birth certificate, is enough to prove the name and forename.

As to legalisation of these documents, see infra, under n° 5.

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

This is the "Livret de famille", or the birth certificate, which contains further information about the person involved. If the marriage is terminated either by annulment, divorce or death, the decision (or death certificate executed in the Service d'Etat civil of the city of the habitual residence of the deceased) is sent to the town hall of the city of birth of each of the spouses, and registered. Any subsequent extract from this register will mention the termination of the marriage.

The same applies to registered partnership, except that the register is held in the lower courts (Tribunaux d'Instance).

As far as legalisation of French civil status documents is concerned, the legalisation follows the rules of international conventions. If a complete legalisation is needed, it should be asked for to the Ministry of foreign affairs. As it will be seen, however, legalisation is not necessary for civil status documents between France and other Member States.

If an apostille is needed, it should be asked for to the Public Prosecutor Services of the Appeal Court of the place of residence of the person concerned.

As far as civil status foreign documents are concerned, it has to be remarked that legalisation is never compulsory, concerning documents coming from another EU State. Most of EU State's documents are accepted without any form of legalisation. Some EU State's civil status documents, however, still need the Apostille (Cyprus, Estonia, Finland, Greece, Latvia, Lithuania, Malta, Sweden).

If the act concerned is not an civil status document but an authentic act executed by a public notary (recognition of a child), then the legal regime can be different. Legalisation of French documents follow the general rules, depending on the applicable international convention. As far as authentic instruments coming from another Member State are concerned, apostille is sometimes needed (Cyprus, Estonia, Finland, Greece, Latvia, Lithuania, Malta, Poland, Sweden, United Kingdom). No legalisation is necessary for documents coming from other Member States.

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

These have to be asked for before the clerk officers of the commercial courts (Greffes des tribunaux de commerce). Each company is registered in a national register called the "Registre du commerce et des sociétés" (Trade and companies register). Each commercial court registers the companies which seat is located within their territorial scope of competence. The document proving the establishment is called the "K" document for natural persons and the "Kbis" for legal persons. The Kbis, which is a very common official document as far as companies are concerned, can be asked for by mail or e-mail. It contains all the public information about the company, including the official seat.

Such a document is considered to be a judicial document and follows therefore the

legalisation rules of such documents. Apostille is required for most countries (Austria, Cyprus, Estonia, Finland, Greece, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Spain, Sweden). Other countries' documents are accepted without any form of legalisation or apostille.

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

These are delivered by French Schools and Universities.

As it is shown on the French answers to the questionnaire drawn up by the Permanent Bureau, which can be found on the website of the Hague Conference, apostille to French diplomas is a common practice. No specific certification is needed to obtain the apostille, as long as the diploma has been issued by an establishment officially recognised in France. Apostille can be delivered to copies of diplomas, as long as they are certified as being identical to the original. The latter is a very simple and free of charge procedure by which the copy of a diploma is stamped by an agent, usually in city halls. Presentation of both the original and the copy is compulsory to get such a certification.

As to the diplomas issued by foreign universities, they are considered as administrative acts and therefore follow the legalisation regime of those acts. This implies that the Apostille is needed for documents coming from most countries (Austria, Cyprus, Spain, Estonia, Finland, Greece, Latvia, Lithuania, Luxembourg, Malta, Norway, Netherlands, Poland, Portugal, United-Kingdom, Sweden). Administrative documents from other countries do not need anything.

In practice, however, apostille of foreign diplomas, when needed for admission in a French university, is not asked for. A copy of the diploma seems to be generally enough, at least when the copy is certified identical to the original in the Country of origin. It seems that French University are very tolerant about that point, since, for example, an official stamp of the University of origin on the copy will usually considered to be sufficient. Some French universities ask the student concerned to present the original diploma at the beginning of the academic year.

8. Documents proving a person's death

These are to be considered as Civil Status documents.

The date of birth is officially proved by either the "Livret de famille" or the birth certificate extract which is kept on the register held in the town hall of the city of birth.

The death of a person is proved by a death certificate ("Certificat de décès"). The deceased has to be declared at the Civil status bureau of the town hall of the habitual residence of the deceased. It is then registered in the civil status register held in the town hall of the city of birth of the deceased person.

Being Civil status documents, those documents follow the legalisation regime which has been described in paragraph 5.

9. Documents proving a person's date of birth

See previous response.

10. Documents proving the establishment by incorporation of a company

All official information about companies can be found in the "Kbis" document described in paragraph 6.

As to a possible translation, official translation can only be asked to translators appointed either by the Courts of appeal or by the Cour de cassation.

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

See previous response.

12. Documents proving the latest banking accounts of a company

I am not aware of any public document concerning **banking accounts** or proving the deposit of cash. Those informations, therefore, can be collected only by a document issued by the bank or the financial institution itself. In itself, however, such a document is a purely private act and is not legally binding. If such a document happened to be necessary in a official declaration, for example, an affidavit to be produced in Court, it would then become necessary to register it in a tribunal, and would then follow the legalisation regime of judicial declarations.

In that situation, it could be possible to have this document legalised or apostilled in France the usual way.

If the document is coming from another Member State, apostille would be necessary for most States (Austria, Cyprus, Estonia, Finland, Greece, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Spain, Sweden). Other countries' documents do not need any form of legalisation or apostille.

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

See previous response.

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

OVERVIEW OF PART II

II.A.1. European Community Law

To my knowledge, implementation of Community law referred in Part I has been correctly ensured in France, at least concerning the efficiency in France of foreign public documents. The absence of legalisation is at least clearly established, as it is shown in the decision of the Cour de cassation of 12 January 1994 (Bull. Civ. I. 1994, n°16) already mentioned. In that decision, as it has already been said, the French Court repeated that no legalisation of public documents was necessary in order to get recognition and enforcement of a foreign act.

If a Member State's document is to be produced before a French Court, there is no particular difference with the French equivalent document. The same solution applies to the foreign documents used before a French administration. As to the evidentiary weight of foreign documents, although case law is scarce, it is generally accepted that the foreign act will have the same evidentiary weight than its French equivalent. There is an important discussion among academics on the applicable law to that equivalence. One can here hesitate between the *lex fori* and the *lex originis* of the document. This theoretical discussion, however, does not seem to have much impact on the very principle of the equivalence.

However, it is possible to challenge either the authenticity or the efficiency of the document, be it French or foreign. Such a challenge implies necessarily a different treatment between French and foreign acts. For example, as it is stated in article 57 of the 44/2001 Regulation, "the instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin". As it is generally understood (although no specific decision is to be found on that question) such a solution implies that the requested judge can check that the procedural requirements of the State of origin have been met. Such a control will necessarily imply a different treatment of foreign and French public documents. Such a challenge, however, seems to be quite exceptional.

It is also now quite common that French administrative authorities challenge the validity of a foreign public document. However, such a contest of the reality of the act is usually made in connection with immigration law, and therefore does not really concern EU nationals, which benefit from the free movement of persons. It will therefore be discussed with national law implementation.

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

The same can be said to the documents which are vested with the apostille. They are recognised and produce the same effect than French equivalent documents, if they fulfil the apostille requirement. To that respect, it seems that no difference is to be found between implementation of European Community law and implementation of the 1961 Hague Convention.

II.A.3. and II.A.4. Parallel international agreements and national law

Once again, foreign documents have in principle the same legal value than the French equivalent. If legalisation is necessary, then it should be done prior to giving any evidentiary value in France to the document (Civ. 1, 14 février 2006, n° 05-10960, unpublished). If no legalisation is required, then it will be possible to present the document to French proceedings or French administration.

It has to be noted, however, that fraud is a constant worry of French authorities, particularly as far as immigration law is concerned. Therefore, a recent law enacted by

Parliament (n° 2003-119 of 26 November 2003, art. 46, OJ 27 November 2003) enlarged the powers of Diplomatic and Consular agents. Diplomatic or Consular agents can now proceed to the complete verification of any foreign civil status document if they have any doubt on the authenticity of that act when they are asked either to deliver a visa or to proceed to an inscription on a French civil status register. To that effect, they can stay their decision for four month, time-limit which can be renewed once. This new provision shows that fraud is an important concern, and that, in order to stop those frauds, the powers of investigation of Diplomatic and Consular agents have been enhanced. It has to be remarked that those concern are mostly aimed toward non-European citizens. Such a provision, however, could be applicable in Europe, in the case of a non-European citizen living in a European country.

PART III – Incoming documents: Difficulties

OVERVIEW OF PART III

PART III.A. General

In the absence of significant reported case law, it seems very difficult to assess the existence of particular legal difficulties concerning incoming documents. The challenging of foreign public documents is indeed quite common when the documents come from third countries, and can be quite often found in the proceedings concerning French nationality or immigration law. It seems however that these cases do not concern European Union countries.

On the practical point of view, some interviews with members of the Ministry of Foreign affairs show that there seem to be heavy difficulties concerning the practice of French Diplomatic and Consular agents in some countries. Numerous complaints concern the difficulty to have them accept legal documents and the enormous time necessary to obtain a positive decision recognizing the authenticity of the document shown. It seems however that those difficulties do not really concern European documents, but rather documents coming from third State.

Control over the content of the document is of course possible. It seems that the system resulting from the Athens Convention of 1977 (ICSC Convention), although very helpful, does not work absolutely correctly. This Convention organises a complete abolition of legalisation for civil status documents between the Contracting States. If a Contracting State authority has a doubt on the validity of the document, then it should directly ask its counterpart in the Country of origin of the document, which will then confirm (free of charge) the validity of the document. It seems that this system does not work perfectly well, since problems and delays can be regretted with some foreign administrations.

Another practical difficulty concerns the possibility to achieve electronic transmission of documents. It seems that, even though some progress have been made, electronic transmission is still very rare. If it has to be said that more and more documents can be asked for electronically (Civil Status Documents, Kbis), the transmission itself of electronic document is indeed still very exceptional. One has to stress on that point the essential role played by notaries. An important commitment of notaries in France has led to the development of electronic tools allowing for secure electronic signature. Such a development allows hope for an important grow of electronic transmission of authentic

acts in Europe. This would however concern only documents executed by notaries and not subject to prior legalisation or apostille. A development of a European system of public documents electronic transmission would certainly be a great progress. It does not, however, seem to be foreseeable in a near future.

PART III.B. Specific

1. Documents proving involuntary unemployment

2. Documents proving a family relationship or other durable relationship

3. Documents proving or contesting a parent-child relationship

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

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

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

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

8. Documents proving a person's death

9. Documents proving a person's date of birth

10. Documents proving the establishment by incorporation of a company

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

12. Documents proving the latest banking accounts of a company

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

PART IV – Outgoing documents: Difficulties

OVERVIEW OF PART IV

PART IV.A. General

Once again, it seems difficult, in the absence of significant reported case law, to assess the legal difficulties concerning outgoing documents.

As it has already been said, between France and the other Member States, legalisation has almost completely disappeared. Therefore, no practical difficulty has been mentioned by the members of the Ministry of Foreign Affairs concerning French outgoing documents.

The only procedure which is still used is the Apostille. The efficiency and the rapidity of the apostille procedure depend largely on the competent Court of appeal. It seems however that, even if some delay is to be regretted, no specific difficulties have arisen. The study sent by the French government to the Permanent Bureau in 2003 tends to confirm that no particular problem has been reported.

A practical difficulty concerns the implementation of the ICSC Vienna convention of 1976 on the issue of multilingual extracts from civil status records. If obtaining a multilingual extract from civil status records is legally possible in France, very few (compared to other Contracting States) are indeed delivered. It seems that lack of information on that question is to be regretted since it appears that persons who could apply for such a document do not know the very existence of such a document and do not know that this document is able to circulate among Member States without any form of legalisation. Such a situation is to be regretted, since this Convention is widely ratified and indeed of great practical importance.

PART IV.B. Specific

1. Documents proving involuntary unemployment

2. Documents proving a family relationship or other durable relationship

3. Documents proving or contesting a parent-child relationship

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

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

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

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

8. Documents proving a person's death

9. Documents proving a person's date of birth

10. Documents proving the establishment by incorporation of a company

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

12. Documents proving the latest banking accounts of a company

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

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

PART V.A. General

Once again, it has to be stressed that legalisation of documents have virtually disappeared between France and other EU Member States. As far as French law is concerned, it seems therefore very difficult to find any ground of incompatibility with community law.

As far as apostille is concerned, the apostille procedure works with no consideration on nationality. Therefore it does not seem that any discrimination or obstacle to the internal market could be found.

The only discrimination that could be invoked is the different prices of legalisation of documents depending on the nationality of the beneficiary. The price chart which can be found on the web site of the Ministry of foreign affairs shows that prices can vary greatly from one nationality to another, including among EU nationals. This discrimination, however, seems very modest and would probably not justify community intervention. Particularly, it has to be stressed once again that this discrimination concerns EU nationals who want legalisation of a document obtained in a third country, since legalisation is usually not necessary for Member states documents.

The most common difficulties as far as legalisation is concerned lie in the necessity to fight against fraud to immigration or nationality law. Those difficulties however, even if important, do not primarily concern EU nationals and EU documents. It seems therefore difficult to consider that they could be contrary to EU laws and principles.

PART V.B. Specific

1. Documents proving involuntary unemployment

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2. Documents proving a family relationship or other durable relationship

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3. Documents proving or contesting a parent-child relationship

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

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

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

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

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8. Documents proving a person's death

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9. Documents proving a person's date of birth

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10. Documents proving the establishment by incorporation of a company

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

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12. Documents proving the latest banking accounts of a company

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

PART VI – Suggested action

OVERVIEW OF PART VI

VI.1. European

A great progress would certainly be the general ratification of the 1987 Brussels Convention. Such a wide ratification could be favoured by the Commission, as it has been done for the 1996 Hague convention. Another possibility would also be transforming the Convention into a Regulation, which would then be applicable to all EU Countries, without any further ratification. Such a solution would have the important advantage of a possible modernisation of the 1987 Convention, by including the question of electronic transmissions of public documents.

It has to be stressed, though, that any European action should be grounded on a community competence. Several articles of the Treaty could be used to justify Community action. Only article 65, 94 and 95 of the Treaty, which seem to be the most obvious grounds, will be shortly discussed.

Article 65 seems at first to be the adequate community competence basis. It allows for adopting regulations, and has been used for many community acts which have an impact on legalisation (Brussels 1 and 2 regulations, Service regulation, Evidence regulation...).

The exact wording of article 65 of the Treaty seems however a bit narrow to justify a general text on legalisation. The use of article 65 would necessitate a very large interpretation of the terms “judicial cooperation” in the first paragraph. It has to be stressed, though, that such an interpretation would probably be accepted in France, since provisions on legalisation are often found on treaties on judicial cooperation, even though the abolition of legalisation concerns administrative or civil status documents. Another difficulty arising from article 65 is that this provision is included in a chapter concerning free movement of persons. Although legalisation requirements have an important impact on this freedom of movement, some other freedom can be implied, including free movement of goods or capital.

It seems that the best competence lies in article 94 of the Treaty. This article could give a firm basis of competence, if it can be established that indeed the legalisation requirements in Europe are hindering the realisation of the internal market. The comparative answers to the present questionnaire will show if that is the case, but it seems that, if legalisation was to be needed in many country, such an argument could be made. Article 94 has the advantage of giving a community competence which is not

limited to a specific topic or a specific freedom of movement. It can therefore embrace a question as general as legalisation.

Article 94 has however the inconvenient of necessitating the unanimity of the Member States. There is here an important political issue, but it seems however that, for such a technical question, with little political impact (except for the impact of legalisation on immigration law) and great practical importance, such unanimity could be looked for. Another difficulty is that article 94 opens only the possibility of adopting directives and not regulations. It could be said that directive are not the best instruments, since complete unification and not harmonisation, seems to be here necessary for the efficiency of the general abolition of legalisation in Europe.

On the contrary, article 95 seems difficult to apply, since it expressly excludes the free movement of persons of its scope. Since an important part of the legalisation requirements concern free movement of persons (civil status documents, for example), article 95 would probably not be an appropriate legal basis.

This rapid analysis shows that community competence seems to be indeed an important issue not to be neglected. In any case, the possibility to simply press the Member States to ratify the already existing 1987 Convention remains open and is probably the simplest path.

VI.2. Intergovernmental

The program on e-apostille launched by the Hague Conference seems indeed to be a very interesting development of the 1961 Convention. It is certainly to be favoured greatly since the development of those communication techniques would be a very important simplification of the international transmission of public documents. It has also to be stressed that electronic transmission seems to ensure better protection against fraud because of the great technical difficulties implied by an electronic fraud.

As far as European Union countries are concerned, if European action is not taken, then a policy of systematic bilateral conventions with every Member State would certainly be a great progress. Lots of countries are party to the 1961 Convention, but bilateral conventions are more liberal than The Hague's, since usually, they just provide for complete abolition of any form of legalisation. Therefore, it would indeed be a great advantage for the functioning of the Union to have a complete network of bilateral conventions, linking all and every Member State to one another. Of course, such a result could be achieved far simpler by a multilateral Convention, and the systematic favouring of bilateral convention should be searched for only if it seems impossible for other Member States to ratify the 1987 Brussels convention.

VI.3. National

An important practical improvement of the functioning of the legalisation requirements would certainly be publicity. Information on legalisation is difficult to find, usually quite obscure and certainly not very easy to understand for non lawyers. The web site of the Ministry of foreign affairs, although far better than any other, could certainly be clearer and more easily accessible to general public.

The same could be said about Civil Status Services, which provide for very poor information. It seems very difficult to know exactly what steps are to be taken in order to use abroad an official French document or to use in France a foreign document. The example of the unsatisfactory functioning of the ICSC Vienna convention of 1976 on the issue of multilingual extracts from civil status records is a topic example of that situation.

The development of electronic transmission of documents, which does not exist for the moment, except for notaries, would certainly be a great progress. Once again, such a transmission has lots of advantages, including rapidity and increased protection against fraud.