

Legalisation of Public Documents within the EU Member States

ITALY

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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

I.A.1. European Community Law

I.A.1.1. Introduction

European Regulations have not been followed in Italian law by specific enactments. As far as European Enforcement order is concerned, legalization has been mentioned only once in an article where the need for legalization is not openly excluded.

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

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

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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)

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Article 27 of Regulation (EC) No 805/2004

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

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

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Free movement of goods (Article 23 EC)

Article 250 of Regulation (EEC) No 2913/92

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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

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

I.A.2.1. Status

With the law on December 20th, 1966, n. 1253 Italy authorized the ratification of the Hague Convention of October 5th, 1961. It's in force since August. 14th, 1978.

The designated competent authorities are:

1. for judiciary acts, civil status acts and notarial acts: the Procuratore della Repubblica (Republic's Prosecutor) of the Tribunal of the relevant jurisdiction where the acts have been released
2. for all other administrative acts foreseen by the Convention : the Prefects compoentent by territory, for the Vallée d'Aoste the President of the Region and for the provinces of Trento and Bolzano the governmental commissary.

I.A.2.2. Scope

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I.A.2.3. Legislative implementation

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I.A.2.4. Practical implementation

1. requested personally
2. comparison with a sample

3. the usual Hague Standard
4. in the document itself
5. last page
6. Italian
7. mechanical
- 8.. none
9. yes, the electronic Apostille
10. immediate
11. free of charge

I.A.2.5. Judicial control

I.A.2.6. Empirical analysis

I.A.3. Parallel international agreements

I.A.3.1. Status

Italy ratified various international agreements on the legalisation of documents, such as the Bruxelles Convention of 1987 (in force between Italy, Belgium, Denmark and Ireland), the European Convention on the abolition of legalisation of documents (London, 7 June 1968), the Unidroit Convention providing a Uniform Law on the Form of an International Will (Washington D.C: 26 October 1973) and the CIEC Convention on the exemption of legalisation of certain records and documents (Athens, 15 September 1977)

I.A.3.2. Scope

I.A.3.3. Legislative implementation

I.A.3.4. Practical implementation

I.A.3.5. Judicial control

I.A.4. National Law

I.A.4.1. Legislative framework

Following d.p.r. 28 dicembre 2000, n. 445 (President of the Republic's decree n. 445 on December 28th 2000), the general rule is this:

Article 33

1. The signatures on acts and documents released in Italy and due to be used abroad with foreign authorities are, if the latter do require this, legalized by the competent organs, central or peripherals, of the competent Ministry, or by other organs or authorities duly delegated.
2. The signatures on acts and documents released abroad by foreign authorities and due to be used in Italy are legalized by the competent Italian diplomatic or consular representatives abroad (...).
3. (...)
4. The signatures on acts and documents released in Italy and due to be used in Italy, released by a foreign diplomatic or consular

representative based in Italy are legalized by the prefect's office.

5. The exemptions of legalization (...) provided by laws or international treaties do prevail.

These provisions are not different from those provided by the former law 15/1968.

The concept of authenticity does not mean that a certified copy will not be accepted; in any case, this depends on the foreign authority. Nevertheless, certified copies should have (see art. 2714 Italian civil code) the same value of the original. Art. 2714 c.c.: The copies of public deeds released in the prescribed forms by those who are legally authorized to keep the original have the same value as the originals. The same value in terms of evidence have the copies of copies of original public deeds, released by those who are legally authorized to keep them.

Documents released by a Chamber of Commerce: they are to be legalized by the *Ufficio Commercio Estero* (Foreign Commerce Bureau) of the chamber itself.

Here is provided a list of all the Italian Authorities delegated to provide a legalization certificate, together with the list of the relative ministerial enactment acts:

1. *Ministerial Decree July 5h 1967 (Official Bulletin n. 187 on 27.7.1967)/ Ministerial Decree October 12th 1971 (Official Bulletin n. 295 on November 11th 1971)*

The legalization on signatures on acts released by peripheral offices of the Financial Administration (Ministry of Finance), due to be used abroad, is delegated to the Intendenti di Finanza¹ of each Province.

2. *Ministerial Decree November 18th, 1971 (Official Bulletin n. 312 on November 10th 1971).*

The legalization on acts and documents released by the peripheral offices of the Administration of Post and telecommunications and of the State office for telephones and to be used abroad is delegated to the territorial competent bureau of the Prefect's Office.

3. *Ministerial Decree December 1st, 1971 (Official Bulletin n. 144 on June 6th 1972).*

The legalization on acts and documents released by the peripheral organs of the Ministry on Agriculture and Forests is delegated to the territorial competent bureau of the Prefects's Office.

¹ Intendente is the Chief of the Intendenza, a peripheral office of the finance administration who performs an activity of control on public revenues within the province

4. *Ministerial Decree December 18th, 1971 (Official Bulletin n. 88 on April 4th 1972).*

The legalization on acts and documents released by the peripheral organs of the Ministry of Education and to be used abroad is delegated to the territorial competent bureau of the Prefect's Office.

5. *Ministerial Decree January 4th, 1972 (Official Bulletin n. 124 on May 13th, 1972)*

The legalization on acts and documents released by the peripheral organs of the Ministry on Treasure (State regional and provincial accountants and Treasury provincial Directions) is delegated to the territorial competent bureau of the Prefect's Office.

6. *Ministerial Decree January 14th, 1972 (Official Bulletin n. 30 on February 1972)*

The legalization on acts and documents due to be used abroad released by the functionaries of the Ministry of Health and by the sanitary officers on Treasure (State regional and provincial accountants and Treasury provincial Directions) is delegated to the territorial competent bureau of the Prefect's Office.

7. *Ministerial Decree January 19th, 1972 (Official Bulletin n. 163 on June 27th 1972)*

The legalization on acts and documents due to be used abroad released by the Universities is delegated to the territorial competent bureau of the Prefect's Office.

8. *Ministerial Decree January 22th, 1972 (Official Bulletin n. 42 on February 15th 1972)*

The legalization on acts and documents due to be used abroad released by the peripheral organs of the State Railways is delegated to the territorial competent bureau of the Prefect's Office.

9. *Ministerial Decree January 22th, 1972 (Official Bulletin n. 53 on February 26th 1972)*

The legalization on acts and documents due to be used abroad released by the peripheral organs of the Ministry of Labour is delegated to the territorial competent bureau of the Prefect's Office.

10. *Ministerial Decree January 2nd, 1972 (Official Bulletin n. 153 on June 16th 1972)*

The legalization on acts and documents due to be used abroad released by the peripheral organs of the Forests Bureau is delegated to the territorial competent bureau of the Prefect's Office.

11. *Ministerial Decree February 15th, 1972 (Official Bulletin n. 153 on June 16th 1972)*

The legalization on acts and documents due to be used abroad released by the peripheral organs of the Public Works Administration is delegated to the territorial competent bureau of the Prefect's Office.

12. *Ministerial Decree March 1st 1972 (Official Bulletin n. 77 on March 22nd 1972)*

The legalization on acts and documents due to be used abroad released by the peripheral organs of the Transportation Ministry and Civil Aviation is delegated to the territorial competent bureau of the Prefect's Office.

13. *Ministerial Decree June 13th 1972 (Official Bulletin n. 161 on June 28th 1972)*

The legalization on acts and documents due to be used abroad released by the peripheral organs of the Food Administration is delegated to the territorial competent bureau of the Prefect's Office.

I.A.4.2. Scope

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I.A.4.3. Practical implementation

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I.A.4.4. Judicial control

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PART I.B. Specific

I.B.1. Introduction

I.B.2. Specific documents

1. Documents proving involuntary unemployment

Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States was transposed into Italian law by the Govern's legislative decree 6th of February 2007, no. 30. The abovementioned Directive is also recalled by the bill on civil partnerships.

The legislative decree at issue requires Union citizens to have a valid passport or a valid national identity card in order to enter the State (see article no. 5). Under article no. 7 of legislative decree no. 30, 6th of February 2007, involuntary unemployment must be proved by the interested person by showing that he or she has registered as a job-seeker with a Job Centre, or by providing the specific declaration as described by article no. 3 of legislative decree 19th of December 2002, no. 297, certifying the start working promptness.

2. Documents proving a family relationship or other durable relationship

Under the abovementioned legislative decree, Union citizens are required to have either a valid passport or a valid national identity card in order to enter the State. Family members and dependants are generally required to have a valid passport. On the basis of Article 2, letter 'b' of the same decree, dependents and relatives (including the partner) may be required to produce documentary evidence of the existence of a durable relationship with the Union citizen.

Under the same article, a "relative" could be:

- 1) the partner, i.e. the person to whom the person at issue is married or related on the basis of a relationship legally registered in the country of origin;
- 2) descendants under 21, depending on the person at issue or on the person nominated in 1)
- 3) the forefathers, depending on the person at issue or on the person nominated in 1).

A Union citizen (and an entitled family member) can apply for a permanent residence certificate if he or she meets the conditions listed in article 7, 1st par, lett. a,b,c,d. (presence of an employ, presence of financial support, enrolment in a professional istitute, presence of familiar relationship with the person at issue).

Under these legal provisions, while the supply of official documents from other countries is required in order to allow the entrance in the State, no official translation or specific legalisation is required.

3. Documents proving or contesting a parent-child relationship

See answer no. 2

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

See answer no. 2

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

The end of a marriage/civil partnership is assessed by a specific judgement ("Sentenza di divorzio") issued by the competent Judicial Authority after the relative proceeding. This judgement terminates all the effects originally arising from the marriage, and also states the new status of the persons involved in the proceeding at issue.

Under article 12 of legislative decree no. 30, 6th of February 2007, the annulment or the end of a marriage/civil partnership does not affect the right of establishment of dependants and relatives of the person at issue, if they have obtained the definitive permit of stay, as described by article 14 of the same decree.

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

specific regulated professional activities

See answer no. 2

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

Directive 2005/36/EC on the recognition of professional qualifications has not been yet transposed into Italian law. Full implementation is required.

8. Documents proving a person's death

See answer no. 2

9. Documents proving a person's date of birth

See answer no. 2

10. Documents proving the establishment by incorporation of a company

Commercial activity by foreign subject is allowed in Italy under fair-trading condition. In order to establish and institute a secondary branch in Italy, a foreign company is required to enrol in an Italian company record book. In order to do that, the company is required to present a copy of the new branch founding act, together with the indication of the legal representative: these documents need to be translated in Italian, and provided with an Apostille certificate. Further documents are required in order to enrol properly:

- the main company founding act, translated and "Apostilled" as well;
- the certificate of enrolment in the competent foreign company record book, translated and Apostilled;
- three forms to be filled in properly (Modello S1, Modello SE, Intercalare P), provided with an authenticated signature of the company legal representative for Italy.

All these requirements are strictly compulsory.

On the other side, if an Italian company intends to establish a second branch abroad all the necessary and relevant documents that need to be presented are issued by the Italian local "Camera di Commercio" which provides, among the others documents, origin certificates, compliance visas on acts and documents and signature authentications.

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

See answer above

12. Documents proving the latest banking accounts of a company

No relevant legal disposition was found.

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

No relevant legal disposition was found.

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

OVERVIEW OF PART II

II.A.1. European Community Law

II.A.1.1. The effect of the implementation of Community law

Pursuant to art. 57 of EC Regulation n. 44 of 2001 public documents coming from a Member State are automatically recognized by Italian authorities. However, a sworn translation is needed.

Moreover, a special proceeding is required to confer to the public document executive force (that is, to use the document as a means to force the compliance to an obligation without the cooperation of the debtor: e.g. through a judge-driven selling of the assets of the debtor and a subsequent distribution of the sum).

From this point of view, there is a difference between internal and foreign public documents, and between foreign public documents, depending from their content and from the law of their state of origin (obviously, only public documents formed with the aim of creating an extrajudicial executive title can acquire executive force through the abovementioned proceeding), but not between public documents depending from their state of origin (as far as it is a Member State) (see, e.g., Cafari Panico, *L’efficacia esecutiva degli atti pubblici nel Reg. c.d. “Bruxelles I”*, in Consolo, De Cristofaro, *Il diritto processuale civile internazionale*, Milano, 2007, pp. 865 ff.).

Sometimes, however, notaries require the Apostille (compare, infra, II.A.2), for documents coming from EC Member States that did not accelerate the entry into force of Brussels Convention of 25 May 1987, pursuant to art. 6 of the same Convention (only Belgium, France, Ireland, Denmark and Italy did that).

The soundness of this practice is disputable, but no case law on the point is known to the author, and Italian authorities give the Apostille to Italian documents bound to be used in those Member States.

II.A.1.2. Admissibility and evidentiary weight in judicial proceedings

Pursuant to EC law, there is no difference between internal and foreign public documents from the point of view of the evidentiary weight: insofar as there is a sworn translation, they can be used in judicial proceedings (even when they are just electronic documents).

Of course, different public documents can have different evidentiary value, irrespective of their country of origin.

In Italy, pursuant to articles 2699 and 2700 of the Italian Civil Code, public documents are conclusive evidence of their date, of their formation from the public official that signed them, and of every fact certified in the act as happened in the presence of that public official, insofar as the public official has the legal power to confer that conclusive force in the place where the act was formed.

Art. 2699 Italian civil code

A public act is an instrument drawn with the required formalities by a notary or by another public official authorized, in the place where it is drawn, to clothe such an instrument with public reliability.

Art. 2700 Italian civil code

Subject to an action to establish falsity, a public act constitutes full proof that it was drawn by the public official it represents as having drawn it, as well as of the declarations of the parties and of the other facts which the public official attests to have taken place in his presence or to have been performed by him.

This conclusive force can be eliminated only through a special proceeding aimed at ascertaining that that the act is forged or fake, or that the public official lied.

Therefore, the evidentiary value of the foreign public document depends largely from the law of the Member State where the document was formed: only documents coming from States where the law provides for their conclusive force can have that force also in Italian judicial proceedings (and therefore be subject to the special proceeding for the ascertainment of forgery).

II.A.1.3. Admissibility and evidentiary weight in administrative matters

The same is true for the evidentiary use of public documents in administrative proceedings.

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

II.A.2.1. The effect of completion of the requirements of parallel agreements

After the Apostille Convention no diplomatic or consular legalization is required for the use of a public document formed in a State member to the Convention and processed in accordance with the Convention.

II.A.2.2. Admissibility and evidentiary weight in judicial proceedings

Documents processed in accordance to the Convention have the same evidentiary value of equivalent internal public documents in judicial proceedings (compare supra, II.A.1.2).

II.A.2.3. Admissibility and evidentiary weight in administrative matters

The same holds for administrative proceedings.

II.A.3. Parallel international agreements

Many parallel agreement on that matter can be found in the databank of the Archive of International Treaties held by the Italian Ministry of Foreign Affairs: itra.esteri.it. However, they are generally relevant only when the state of origin is not an EC Member State and is not part to the Apostille Convention (see, e.g., Gasparro, *Atti pubblici e legalizzazioni*, in Pocar (editor); *Codice delle convenzioni di diritto internazionale privato e processuale*, Milano, 1999, pp. 1619 ss.). Moreover, in Italian judicial or administrative proceedings art. 68 of law n. 218 of 1995 should prevail (see infra, II.A.4).

II.A.4. National Law

Pursuant to art. 68 of national law n. 218 of 1995, foreign public documents are automatically recognized irrespective from their State of origin.

Only the proceeding to give executive force is slightly more restrictive than the proceeding mentioned at II.A.1.1 (see again, Cafari Panico, *op. cit.*, pp. 873 f.). However, no case law is known to the author dealing with the evidentiary weight of public documents coming from states not members to the EC and not members to the Apostille Convention. Moreover, notaries may still require legalization of public documents pursuant to art. 68 of Royal Decree n. 1326 of 1914 (but see better supra, part I, and infra, part III).

PART III – Incoming documents: Difficulties

PART IV – Outgoing documents: Difficulties

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

PART VI – Suggested action

OVERVIEW OF PART VI

VI.1. European

VI.2. Intergovernmental

VI.3. National