

## **Legalisation of Public Documents within the EU Member States**

### **NETHERLANDS**

National Rapporteur:  
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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**

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

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

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

##### **I.A.1.2. Implementation of specific measures**

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

##### **Article 19 of Regulation (EC) No 1346/2000**

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

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

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

**Article 56 of Regulation (EC) No 44/2001**

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

**Article 57 of Regulation (EC) No 44/2001**

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

**Article 58 of Regulation (EC) No 44/2001**

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

**Article 46 Regulation (EC) No 2201/2003**

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

**Article 52 of Regulation (EC) No 2201/2003**

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

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

See above.

**Article 27 of Regulation (EC) No 805/2004**

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

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

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

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

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

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

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

**Free movement of workers - social security (Article 42 EC)****Article 85 Regulation (EEC) No 1408/71 read in conjunction with Regulation (EEC) No 574/72**

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

**I.A.1.3. Judicial control**

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

**I.A.2. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)****I.A.2.1. Status**

Signature: 30-XI-1962

Ratification: 9-VIII-1965

Entry into force: 8-X-1965. For the Netherlands Overseas Territories: 30-IV-1967

Netherlands Antilles and 1-I-1986 for Aruba (the date of entry into force of the “Status Aparte” -partial independence- for Aruba).

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

### **I.A.2.2. Scope**

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

### **I.A.2.3. Legislative implementation**

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

### **I.A.2.4. Practical implementation**

The central authority for the Netherlands Overseas Territories is the Lieutenant Governor of an island or a group of islands (Trb. 1989, 100 and Trb. 1996, 280, losbladige Kluwer Rechtsvordering, Verdragen&Verordeningen, Part 2, p. J-156a). The central authorities for the kingdom of the Netherlands in Europe are the registrars of the courts of first instance (rechtbanken). There are 19 courts of first instance, each responsible for a district that is described in the law of Court Organisation ("Wet op de Rechterlijke Organisatie"). The contact details of the courts of first instance can be found at the general courts site of the Netherlands ([www.rechtspraak.nl](http://www.rechtspraak.nl)), but there is no uniform information on the way the registrars of the courts of first instance exercise their competence as central authority. Nor are there any general rules applicable in this respect, with the exclusion of the fee of an apostille. On the web page of each court on the site mentioned above, the legalisation of documents is indicated as one of the services provided by the information desk of the court. In most cases no reference is made to the issuance of an Apostille. Only two courts have published more detailed information on this subject.

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

#### **A. Issuance of an Apostille**

1. By which methods can an Apostille be requested (in person, by registered mail, mail, email, fax, etc.)? Requests can only be made by (registered) mail or in person (including by courier).
2. How, in practice, does the competent authority verify the authenticity of the signature, the capacity in which the person signing the document has acted, and the identity of the seal or stamp which the document bears? The registrars of the courts keep paper files of all signatures of notaries public, civil servants, judges, sworn translators and members of the chamber of commerce within their district. Each signature for which an Apostille is requested is then compared with the signature in the file. One central authority stated that in case a signature deviates substantially from the signature in the file, a new signature is requested.
3. What is the form of the Apostille used (please provide a copy, with English translation of any parts in a foreign language)? Some of the central authorities use a word document with the text from the annex to the treaty in Dutch, German, French, Spanish or Italian in combination with the official court seal and a mechanical stamp with the signature of the court's president. The others use a mechanical print with the text from the annex to the treaty in Dutch, German, English, French, and either Spanish or Portuguese in combination with the official court seal and a mechanical

stamp with the signature of the court's president. One central authority pointed out that the use of the different languages varied according to the kind of document and the professional group requesting the Apostille.

4. Is the Apostille issued by the competent authority placed on the public document itself or is the Apostille placed on a so-called allonge? Both methods are used, depending on the available amount of space on the document in question.
5. How is the Apostille issued when the public document consists of multiple pages? The Apostille is issued on the page with the signature which is usually the last page of the document.
6. Which language is used on the Apostille? See above under no. 3.
7. Is the system used for the issuance of an Apostille mechanical or electronic? See above under no. 3.
8. What are the main measures taken in order to avoid fraud? This question was interpreted differently by the various central authorities. One pointed out that each Apostille is given a unique number and the official court seal. Another saw the comparison of the signatures with the original signature in the file of the central authority as a method preventing fraud. The third specified that the authenticity of the signature and the authority of the signatory are controlled visually by comparison with the information and the signature in the files and the identity and the authenticity of a seal or a stamp on a document is controlled visually as well.
9. Are there any plans to modernize the system used to issue Apostilles? No.
10. How long does the total process generally take? 10 minutes. One central authority specified: 5 minutes for issuance and 5 minutes for payment.
11. What is the fee payable for the issuance of an Apostille? Who sets the fees? How is the level of the fees determined? Are they purely covering costs or can they also be said to be aimed at bringing revenue? The fee is set in the Law on Tariffs for Civil Cases ("Wet Tarieven Burgerlijke Zaken"). The fee is for the issuance of an apostille is presently € 16,-- (according to article 13 paragraphs 7 and 8 of the Law on Tariffs for Civil Cases. One central authority pointed out that this is to cover the costs only, the others had no information as to the relation between fees and costs.
12. The same procedure is used for documents to be used in any State party to the convention. The legalisation of certificates from the Netherlands is only done by the registrars of the courts of first instance in Groningen.

#### **B. Registration or card index requirement**

1. Is the system used electronic? No. One central authority is working on an electronic system.
2. Are there any plans to modernize the system used? Only according to the one authority working on an electronic system.
3. By which methods can the register or card be consulted in accordance with Article 7 of the Convention? By hand, upon request. According to one central authority also by telephone.

#### **I.A.2.5. Judicial control**

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

#### **I.A.2.6. Empirical analysis**

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

#### **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**

Signature: 16-IX-1969

Ratification: 9-VII-1970

Entry into force: 11-X-1970

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

Signature:

Ratification: -

Entry into force: -

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

Signature: 25-V-1959

Ratification: 28-II-1964

Entry into force: 28-IV-1964

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

Signature: 15-XI-1965

Ratification: 3-XI-1975

Entry into force: 2-I-1976

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

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

Signature: 28-II-1979

Ratification: 8-IV-1981

Entry into force: 7-VI-1981

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

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

Signature: 2-X-1973

Ratification: -

Entry into force: -

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

Signature: 11-IX-1987

Ratification: 12-VI-1990

Entry into force: 1-IX-1990

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

Signature: 15-IX-1989

Ratification: 2-III-1992

Entry into force: 1-VI-1992

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

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

Signature: 10-IX-1997

Ratification: -

Entry into force: -

**The Netherlands is also party to the following conventions:**

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

Ratification: 13-II-1958

Entry into force: 13-III-1958

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

Ratification: 4-XII-1959

Entry into force: 3-I-1960

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

Ratification: 29-VI-1963

Entry into force: 29-VII-1963

**4. Convention on legitimation by marriage (Rome 1970)**

Ratification: 1-VII-1977

Entry into force: 31-VII-1977

**5. European Convention on Social Security (Paris, 1972)**

Signature: 5-XI-1975

Ratification: 8-II-1977

Entry into force: 9-V-1977

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

Ratification: 27-III-1987

Entry into force: 26-IV-1987

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

Ratification: 9-VI-1978

Entry into force: 1-V-1981

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

Ratification: 5-X-1984

Entry into force: 1-II-1985

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

Ratification:

Entry into force: 1-IX-1990

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

Ratification: 28-XI-1986

Entry into force: 1-III-1987

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

**I.A.3.2. Scope**

**I.A.3.3. Legislative implementation**

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

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

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

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

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

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

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

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

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

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

**Practical implementation**

As regards the practical implementation of the various conventions the Netherlands is a party to, it has to be mentioned that the foreign ministry publishes information on its website for each country concerning the legalisation requirements applicable with regard to that state. The site can be accessed through the following link:

<http://www.minbuza.nl/nl/reizenlanden/landen> (in Dutch only). The site mentions information as to which treaties abolishing legalisation requirements are applicable between the Netherlands and the respective country. The legalisation authorities of the respective country are also mentioned. EC regulations are however not taken into account. This means that the website cannot be used as an exhaustive source of reference by the Netherlands authorities as regards the legalisation requirements applicable in question. Unfortunately we do not have access to information on the practical implications that this may have.

#### **I.A.3.4. Judicial control**

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

### **I.A.4. National Law**

#### **I.A.4.1. Legislative framework**

##### **Legalisation of foreign court decisions**

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

##### **Legalisation of foreign documents on personal status**

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

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

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

In case of doubts as to the accuracy of the contents of the document in question, verification is possible (D). The new policy rules no longer make a distinction as to specific countries for which verification is applicable, but in the following three cases any foreign document may be sent to the minister of foreign affairs for verification (D.2):

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

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

#### **I.A.4.2. Scope**

##### **Legalisation of foreign court decisions**

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

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

#### **Legalisation of foreign documents on personal status**

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

#### **I.A.4.3. Practical implementation**

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

#### **I.A.4.4. Judicial control**

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

### **PART I.B. Specific**

#### **I.B.1. Introduction**

#### **I.B.2. Specific documents**

##### **1. Documents proving involuntary unemployment**

Not applicable for the Netherlands.

##### **2. Documents proving a family relationship or other durable relationship**

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

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

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

community law (proof of lawful residence)".

As regards the administrative registration of data on personal status: In 1994 the *Wet gemeentelijke basisadministratie persoonsgegevens* ("GBA", law of 9 June 1994, Stb, 1994, 494, as amended by law of 6 October 2005, Stb 2005, 525) was introduced. It was intended to create a central administration of information on the personal status of each person registered in the Netherlands. The information is held by the municipality where the person in question is registered and can be accessed by all administrative authorities. A foreigner entering into the Netherlands first has to register with the municipality where he intends to stay, before contacting the immigration authorities. The documents that have to be provided for immigration purposes can also be used for the GBA. The personal data of a person that are entered into the GBA have to be evidenced by documents which are ranked in order of preference (article 36 GBA). As regards changes in the personal status that have occurred outside the Netherlands the ranking is:

A certificate issued by the Civil Registrar; a judgement of a Netherlands court; a certificate issued by a foreign authority for the purpose of being used in evidence of the fact stated therein; a written document drawn up by the competent authorities in compliance with the foreign law in question; a sworn declaration by the person in question before a specially appointed civil servant of the municipality. It is necessary to always use the highest ranking document possible. For more information on this law and the application thereof, please be referred to the law edition of Schuurman&Jordens, 2006, number 48. Please also see II.A.4.3.

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

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

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

purposes of evidence in the Netherlands, the effect of this registration makes the document stronger than the original.

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

### **3. Documents proving or contesting a parent-child relationship**

See under number 2 above.

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

See under number 2 above.

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

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

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

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

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

In the Netherlands, two centres of expertise work together on evaluating foreign diplomas (IDW): Nuffic and Colo. They set up an Information Centre for Credential Evaluation (IcDW). Information on how to apply for recognition and what documents have to be provided can be found at <http://www.idw.nl/pages/work.html>. According to article 7.23 section 3 of the law on higher education and scientific research ("Wet op het hoger onderwijs en het wetenschappelijk onderzoek", 'WHV') it is possible to carry official titles in the Netherlands with a foreign educational certificate. In view of this article policy rules have been issued which entered into of force as of 5 August 2005: "Verzoeken tot het voeren van Nederlandse titulatuur op grond van een buitenlandse opleiding" (Official Gazette 2005, nr. 150, p. 8). The policy rules provide that verification and legalisation of the foreign documents to be submitted may be requested. Legalisation is not required for documents originating from members of the Apostille Convention; in that case an Apostille will be asked. In the case of documents originating from one of the EU Member States, the documents will be verified directly with the issuing authority. The material conditions to be fulfilled in order to obtain

permission to official titles in the Netherlands with a foreign educational certificate are equal to those of the Lisbon Convention on the Recognition of Qualifications Concerning Higher Education in the European Union, even though this Convention has not yet been ratified by the Netherlands.

#### **8. Documents proving a person's death**

See under number 2 above.

#### **9. Documents proving a person's date of birth**

See under number 2 above.

#### **10. Documents proving the establishment by incorporation of a company**

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

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

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

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

See above (10).

#### **12. Documents proving the latest banking accounts of a company**

Not applicable for the Netherlands.

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

Not applicable for the Netherlands.

## **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**

The Community instruments mentioned in that paragraph are all regulations and therefore take direct effect in the Netherlands legal order. Since there are no mandatory rules of law on legalisation in place in the Netherlands, there seems to be no need to abolish legalisation requirements in the various implementation measures. It is however difficult to establish the effect of the policy that is used in practice by the various authorities. The fact is however that there is practically no case law involving the acceptance of instruments drawn up by authorities from other Member States. This may indicate that in legal practice in the Netherlands few problems arise.

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

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

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

The provisions of the Netherlands Code of Civil Procedure are expressly excluded for the applicability of Regulation (EC) 2201/2203 (see I.A.1.2 above). For the other Community measures mentioned in paragraph I.A.1.2 it follows from article 992 and 993 Rv that the effect of instruments drawn up by the authorities of another Member States equals that of an authentic instrument from one of the Netherlands authorities.

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

See Annexes NL 1-5 and NL 1-6 for case law on the effect of EU-law on national legalisation requirements. Annex NL 1-5 is mentioned by H. Luijendijk (2005, p. 302) in

her dissertation as an illustration for her criticism that rights granted under EU law are not always respected by the Netherlands authorities with regard to family members from third countries.

## **II.A.2. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)**

### **II.A.2.1. The effect of completion of the requirements of the Hague Convention**

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

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

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

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

As far as the execution of a foreign judgment in the Netherlands is concerned, one author explicitly mentions that no legalisation may be asked by a court of documents issued with an Apostille under the treaty (Vlas in *Iosbladige Kluwer Rechtsvordering*, comments on article 986 Rv, page 2-6, under number 3). The Court Rules on Divorce Cases that have entered into force in revised form (taking into account the regulation) on April 1<sup>st</sup> 2005 (Official Gazette 2005, nr. 52, p. 19) do not impose or mention any legalisation requirements. The Court Rules on Adoptions 2005 (Official Gazette 2005, nr. 52, p. 25) and the Rules Other Cases of Family Law (Official Gazette 2005, nr. 52, p. 27), both of which also entered into force on April 1<sup>st</sup> 2005 however contain the following note in annex 2 titled “Overview of documents to be submitted”: “In general copies of authentic instruments, (court) decisions or declarations have to be in original form and/or legalised according to the ‘circular letter on legalisation’ “.

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

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

In practice administrative authorities such as the IND (“Immigratie- en Naturalisatiedienst”, service responsible for the admission of foreigners into the country) and the municipalities follow the policy rules set out by the ‘circular letter on legalisation’ mentioned in I.A.4.1 above. The ‘circular letter on foreigners’ (Vreemdelingencirculaire, hereinafter “VC”) refers to “legalised authentic documents” (gelegaliseerde akten) in order to prove the existence of a certain personal status evidenced by a foreign document (VC, paragraphs B.2.2.3 and B.2.4.5 (marriage, unmarried status), B.2.6.3

and B.2.8.4 (family relationship)). Paragraph B.2.12.1- B.2.12.6 VC contains further information as to what requirements have to be fulfilled for entry into the Netherlands. It is stated that the personal status has to be proven by officially legalised documents and that it is the responsibility of the foreigner seeking admission, to fulfil these requirements. It is pointed out that legalisation only contains a confirmation of the formal authenticity of the foreign document, but that it does not guarantee that the information contained in the document is correct. In case there are doubts as to the contents of the document, verification by the foreign ministry may be asked. Paragraph B.2.12.3 states that documents originating in a state party to the Apostille treaty are exempted from legalisation. No reference is made to the fact that the Apostille treaty introduces a special procedure for documents issued by a state party to the treaty, i.e., the Apostille. Paragraph B.2.12.3 makes no reference to other treaties abolishing legalisation requirements.

### **II.A.3. Parallel international agreements**

#### **II.A.3.1. The effect of completion of the requirements of parallel agreements**

Please be referred to II.A.4 below.

#### **II.A.3.2. Admissibility and evidentiary weight in judicial proceedings**

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

#### **II.A.3.3. Admissibility and evidentiary weight in administrative matters**

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

### **II.A.4. National Law**

#### **II.A.4.1. The effect of the completion of the requirements of national law**

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

- article 5 of the law on conflict rules concerning marriage (Wet Conflictenrecht Huwelijk of 7 September 1989, Stb. 1989, 392, latest amendment 8 March 2001, Stb. 128);
- article 2 of the law on conflict rules concerning divorce (Wet Conflictenrecht Echtscheiding of 25 March 1981, Stb. 166);
- article 10 of the law on conflict rules concerning descent (Wet Conflictenrecht Afstamming of 14 March 2002, Stb. 153);
- article 7 of the law on conflict rules concerning adoption (Wet Conflictenrecht Adoptie of 3 July 2003, Stb. 283).

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

state of origin.

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

#### **II.A.4.2. Admissibility and evidentiary weight in judicial proceedings**

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

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

#### **II.A.4.3. Admissibility and evidentiary weight in administrative matters**

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

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

Finally the following has to be mentioned. According to article 36 paragraph 2 GBA there is a ranking of documents that may be used in evidence of a fact on personal status to be entered into the administrative system of the GBA. Formally documents not

mentioned in the ranking cannot be used for evidence Schuurman & Jordens, 2006, number 48, p. 157. Another formal effect of the ranking is that the availability of a higher ranking document prevents changes in the administration being added by a document with a lower ranking. For example for a child born in the Netherlands a birth certificate is issued by the Netherlands authorities. This is a document with the highest ranking. If the parents of the child get married abroad, this does not automatically lead to a change of name of the child, because the foreign marriage certificate has a lower ranking Schuurman & Jordens, 2006, number 48, p. 155. The Netherlands public order may prevent the acceptance of a foreign document (article 37 paragraph 2 GBA). However, according to information from municipal authorities in practice this does not appear to be a great problem, since official documents from authorities abroad can be used to effect the requested change even if a document with a lower ranking is presented.

## **PART III – Incoming documents: Difficulties**

### **OVERVIEW OF PART III**

#### **PART III.A. General**

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

###### **III.A.1.1. Legal**

###### **III.A.1.2. Practical**

##### **III.2. Parallel international agreements**

###### **III.A.2.1. Legal**

###### **III.A.2.2. Practical**

##### **III.3. National law**

###### **III.A.3.1. Legal**

There are policy rules in effect in the Netherlands that provide very strict procedures in case a document is submitted to the Netherlands authorities and there are doubts as to the authenticity of the document or to its contents. In practice this may mean that the rules are only applied on documents from certain third countries, but this may equally affect citizens from EU Member States or their family members who are in the possession of such documents.

In the past there has been strong criticism on the Netherlands policy on legalisation and verification (see for example the book by P. Boeles, Mensen&Papieren, 2003) and it has also been pointed out that as far as EU nationals of their family members are involved, the policy is contrary to EU law (H. Luijendijk, Nederlandse Gemeenten en het Europese Personenverkeer, 2005, p. 302). It is yet unclear whether the new circular letter on legalisation that took effect from 1 May 2006 will lead to a policy that is more in line with EU law.

The policy rules on legalisation have in effect been amended because of the 2004

decision by the Raad van State (Annex 1 NL-2). The ratio of the new policy rules is that the foreign ministry legalises a foreign document upon request by a person as long as it is issued by the competent foreign authority. In case there are doubts as to the contents of the document, the administrative authority for whom the legalised document has to be produced, may ask the foreign ministry for verification. This is a change in policy by the foreign ministry, because there used to be no legalisation of documents from “problem countries” if the process of verification had been unsuccessful. It has to be pointed out that municipalities in practice used documents which could not be legalised for the registration of information on personal status under the system of the GBA. They were however entitled to refuse the use of the documents because of lack of legalisation. There used to be two ways of seeking legal recourse: 1. with the Raad van State against the refusal of the foreign ministry to legalise the document and 2. with the civil court against the refusal of the municipalities to register the facts mentioned in the document. This was seen as costly and inefficient.

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

### **III.A.3.2. Practical**

The revised version of the policy rules on legalisation and verification has only been in effect since 1 May 2006, so it remains to be seen what effect this new policy will have in practice.

Also the policy on the acceptance of documents from “states not to be trusted” (probleemlanden) for registration in the civil register or in the GBA has changed since 1 May 2006. Here equally, it remains to be seen what the practical effects will be.

## **PART III.B. Specific**

### **1. Documents proving involuntary unemployment**

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

### **2. Documents proving a family relationship or other durable relationship**

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

### **3. Documents proving or contesting a parent-child relationship**

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

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

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

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

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

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

No comment

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

No comment

**8. Documents proving a person's death**

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

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

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

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

No comment.

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

No comment.

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

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

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

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

## **PART IV – Outgoing documents: Difficulties**

### **OVERVIEW OF PART IV**

#### **PART IV.A. General**

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

#### **IV.A.1. Hague Convention of 5 October 1961 (the ‘Apostille’ Convention)**

##### **IV.A.1.1. Legal**

##### **IV.A.1.2. Practical**

Central authorities notice frequently that Dutch nationals having to submit documents originating in the Netherlands in another state are not adequately informed on what documents they need, so that they have to come back several times before the process of legalising documents through an Apostille is complete.

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

#### **IV.A.2. Parallel international agreements**

##### **IV.A.2.1. Legal**

##### **IV.A.2.2. Practical**

#### **IV.A.3. National law**

##### **IV.A.3.1. Legal**

##### **IV.A.3.2. Practical**

### **PART IV.B. Specific**

#### **1. Documents proving involuntary unemployment**

**2. Documents proving a family relationship or other durable relationship**

**3. Documents proving or contesting a parent-child relationship**

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

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

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

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

**8. Documents proving a person's death**

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

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

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

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

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

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

#### **OVERVIEW OF PART V**

#### **PART V.A. General**

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

###### **V.A.1.1 Requirements and procedures**

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

###### **V.A.1.2 Effects rules**

##### **V.A.2. Parallel international agreements**

###### **V.A.2.1 Requirements and procedures**

###### **V.A.2.2 Effects rules**

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

##### **V.A.3. National law**

###### **V.A.3.1 Requirements and procedures**

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

practice.

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

#### **V.A.3.2 Effects rules**

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

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

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

### **PART V.B. Specific**

#### **1. Documents proving involuntary unemployment**

#### **2. Documents proving a family relationship or other durable relationship**

#### **3. Documents proving or contesting a parent-child relationship**

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

<b>5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship</b>
<b>6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities</b>
<b>7. Documents proving a person's professional qualifications (diplomas)</b>
<b>8. Documents proving a person's death</b>
<b>9. Documents proving a person's date of birth</b>
<b>10. Documents proving the establishment by incorporation of a company</b>
<b>11. Documents proving the constitution of a company, including any official translation thereof</b>
<b>12. Documents proving the latest banking accounts of a company</b>
<b>13. Documents proving the deposit of cash or certificates of deposit</b>

## **PART VI – Suggested action**

### **OVERVIEW OF PART VI**

#### **VI.1. European**

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

#### **VI.2. Intergovernmental**

No comment.

#### **VI.3. National**

The study shows that the various rules applicable in the Netherlands are not always consistent for example with regard to legal protection. Also the rules of private international law in place are more liberal than the policy rules used by the administrative authorities.

From a point of view of legal certainty (the legal effect of foreign documents is unclear), legal protection (of the persons having to use foreign documents in the Netherlands) and the rule of law (there are in effect only policy rules on legalisation) a lot may be said for the introduction of a law on legalisation.