

7 June 2013

Resolution of the Bundesrat

Proposal for a Regulation of the European Parliament and of the Council on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012

COM(2013) 228 final

At its 910th session on 7 June 2013, under Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG), the Bundesrat adopted the following opinion:

1. The Bundesrat supports the European Commission's efforts, in view of the rights pertaining to Union citizenship, to create a Europe which serves the citizen.
2. The Bundesrat welcomes the Commission's intention to simplify formalities for the acceptance of certain public documents in cross-border traffic in order to simplify the exercise of the right to freedom of movement, the right of establishment and the freedom to supply services without detriment to the general public policy interest of ensuring the authenticity of public documents.
3. It welcomes in principle the Commission's proposal to waive the requirement to certify certain documents. It also welcomes the provisions in the proposed Regulation for checking the authenticity of documents where there are reasonable doubts.
4. The Bundesrat refers to its opinion of 15 April 2011 (Bundesrat document 831/10 (Resolution)) on the Commission's Green Paper *Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records* (COM(2010) 747 final) and would again point out that if all EU States signed up to the tried and proven ICCS Convention of 8 September 1976 on the issue of multilingual extracts from civil status records, there would be no need for an additional European system. Accordingly, it reiterates its view that

the accession of all EU States to this Convention should be actively pursued.

5. The Bundesrat considers that the planned exemption of civil status documents from the general requirement of legalisation/apostille is, in principle, sensible. It therefore believes that the introduction of multilingual EU forms as an alternative to the national forms is a first important step towards simplifying administrative formalities. It agrees with the Commission that this is a way of reducing translation costs for Union citizens and businesses.
6. The Bundesrat has concerns about the requirement under Article 5(3) of the proposed Regulation for Member State authorities to accept - without restriction - certified copies of the public documents specified in Article 3 of the proposal. The wording of Article 5(3) makes no distinction as to whether the documents to be accepted have been certified by the issuing authority, by another authority of the same Member State or by an authority of another Member State. It will generally be harder for an authority of another Member State to recognise forgeries than for the authority which issued the document or an authority of the same Member State, which is at least familiar with such documents. Since it is often barely possible to detect forgeries of originals in copies, in the Bundesrat's opinion the provision currently proposed brings with it a relatively high risk of forgery. Safeguards should be provided for to counteract this risk, for instance by providing that only those certified copies certified by the issuer of the original or at least by an authority of the same Member State need be accepted. The Bundesrat therefore advocates that the scope of the provision should be restricted accordingly.
7. The Bundesrat also has reservations about the general provision in Article 6 that non-certified translations of public documents issued by authorities in other Member States should be accepted. This provision is scarcely compatible with fundamental, tried and tested principles of German civil status law and would therefore lead to implementation problems. Under German civil status law, civil registry offices are required to enquire about, and then check, the facts underlying the certification of a person's civil status (Section 5 of the PStV [Ordinance laying down provisions for implementation of the Civil Status Act]). A German translation has to be requested of documents in foreign languages (Section 2 PStV). If a document is drafted in a foreign language not widely known in the Member State, the civil registry offices will not be in a position to check a non-certified translation for consistency. They would therefore generally require a German translation.

Moreover, Article 6 does not rule out the possibility of the document being translated by the person submitting it. This too would expressly conflict with German civil status law (Point A 4.1.1 PStG-VwV [General Administrative Rules on the Civil Status Act]). If a participant in the authentication procedure translates the document, there is a conflict of interests which puts complete and correct

authentication at risk, at least in cases in which the authority cannot check the translation. The provision in Article 6(2) that certified translations may be required in individual cases where there is reasonable doubt does not suffice to resolve the conflict with German civil status law, since Article 6(2) is a provision for exceptional cases and not for general application.

The Bundesrat therefore considers that requiring an officially certified translation of a foreign document should be generally allowed. Since, under Article 11 *et seq*, multilingual EU documents are to be made available, which will not require translation, citizens will have an easily accessible, affordable and practicable alternative allowing them to avoid translations, as the customary use of multilingual documents under the ICCS Convention also shows. There is therefore no need for Article 6. The Bundesrat therefore advocates deleting this Article.

8. The Bundesrat, like the Commission, also believes that introducing the multilingual EU forms will make a valuable contribution to reducing the outlay of administrative work, time and money. It would therefore encourage the Commission to examine the possibility of also including in the Regulation provision for appropriate EU forms for requests for information under Article 7 in cases of reasonable doubt about the authenticity of public documents. Requiring the use of such forms would both guarantee a uniform manner of proceeding and reduce translation requirements, which might in some circumstances be eliminated entirely.
9. The Bundesrat considers that the forms provided for in Article 11 *et seq* of the proposed Regulation need to be amended and supplemented for reasons of civil status law.

Since the EU documents provided for are to be issued on the basis of register entries, it seems sensible for all documents to include the register numbers or registration references to allow reference from the documents back to the registers and to facilitate any necessary verification of the documents. Inclusion of this information is required in all ICCS documents (line 3). Where a Member State uses other registration references to trace an entry or a person, these should be entered in the document.

It should also be specified how the issuing Member State is to proceed if, under national law, the data required in the EU forms is not available in the register entry nor otherwise indicated. In the case of German civil status law this concerns the data on habitual residence to be entered in box 12 of the EU forms in Annexes III and IV for marriages and acts of registered partnership, and the data on the parents of the deceased to be entered in boxes 12 and 13 of the form in Annex II. In this connection, Article 7 of the ICCS Convention of 8 September 1976 provides that a box of the document form must be scored through if the relevant data is not available in the register.

It should also be borne in mind that under German civil status law (Section 40(3) PStV), a period of death may be indicated in the register. Box 4 of the current version of the EU form in Annex II does not allow for this entry.

Lastly, the Bundesrat considers that some of the explanatory text in the forms requires correction, notably in the notes/translations for the different boxes. For example, in the form in Annex III, the [German] note to box 4 reads 'Tag und Ort des Eintrags' [Date and place of the entry], where it should read 'Tag und Ort der Eheschließung' [Date and place of the marriage], and the [German] note to box 11 reads 'Name vor der Eheschließung' [name before the marriage], whereas it should read 'Name nach der Eheschließung' [Name following the marriage]. In the form in Annex IV, the text in box 4 'Tag und Ort des Eintrags' [Date and place of the entry], box 5 'Name vor dem Eintrag' [Name before the entry] and box 11 'Name nach dem Eintrag' [Name following the entry] should be corrected to 'Tag und Ort der Begründung' [Date and place of the act], 'Name vor der Begründung' [Name before the act] and 'Name nach der Begründung' [Name following the act].

10. In the opinion of the Bundesrat, the EU form concerning the 'Legal status and representation of a company or other undertaking' requires more specific detail as follows. In addition to the 'date and place of registration', the office which carries out the registration should also be specified. The choice of stating that representation is authorised 'alone' or 'jointly' may not always fit the specific legal circumstances. Instead, it should be possible to enter the authorised representation separately for every representative. If there is joint representation, further information is needed, for instance on the required minimum number of authorised representatives or on the names of the other authorised representatives.
11. In terms of land register law, the Bundesrat rejects the comprehensive exemption of public documents from EU Member States from legalisation or apostille, since it considers that this would be detrimental to the reliability of the land register. Section 29 of the Land Register implementing provisions, binding on the Land Registry, which requires proof in the form of public or publicly certified documents to support the required declarations, serves to establish a reliable basis for registration of immovable property. It would be considerably more difficult for the Land Registry to check the authenticity of foreign documents, as it is required to do, in the absence of legalisation or an apostille. This could lead to considerable delays and uncertainties in land register transactions.
12. The Bundesrat is sending this opinion directly to the Commission.