



— PRACTICAL GUIDE —
“PUBLIC DOCUMENTS”
REGULATION (EU 2016/1191)

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INTRODUCTION

Applicable since 16 February 2019, Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens aims at simplifying administrative formalities for the circulation of public documents, certified copies and related translations. The full text of the Regulation and its annexes are available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1191&from=EN>

In certain areas and for certain public documents which are issued by the authorities of one Member State and which must be presented to the authorities of another Member State, the Regulation provides for exemption from legalisation or similar formality (apostille), (refer to Article 1). This Regulation contributes to the simplification of the circulation of public documents within the EU, as the Member States accept the authenticity of these documents among themselves. For cross-border notarial practice this has advantages, particularly in view of the abolition of the formality of legalisation and the Apos-

tille. On the other hand, the Regulation does not govern the recognition, in one EU country, of the content or effects of a public document issued in another EU country, see Article 2(4). The recognition of this content or effects depends on the legislation of the country of reception of the document. Only the movement of the instrumentum is concerned (in particular through the abandonment of the apostille between Member States. The validity of the negotium is not affected by this European regulation.

Similarly, the “Public Documents” regulation is not concerned with the probative value or enforceability. These concepts are covered by other regulations, as will be discussed below.

Finally, the Regulation does not replace the obligation of transcription and does not eliminate the obligations of a citizen of one Member State to have documents issued by another Member State transcribed into the civil registers.

I. SCOPE AND DEFINITIONS (ARTICLES 2 AND 3)

A) TO WHICH AREAS DOES THE REGULATION APPLY?

The scope of the Regulation is limited to public documents in the following areas:

- Birth
- The fact of being alive
- Death
- Name
- Marriage, including capacity to marry and marital status
- Divorce, legal separation and marriage annulment
- Registered partnership, including the capacity to enter into a registered partnership and registered partnership status
- Dissolution of a registered partnership, legal separation or annulment of a registered partnership
- Parenthood
- Adoption
- Domicile and/or residence
- Nationality
- Absence of a criminal record, provided that public documents concerning this fact are issued for a citizen of the Union by the authorities of that citizen's Member State of nationality¹
- Right to vote and stand as a candidate in municipal and European Parliament elections.

Moreover, it should be noted that the Regulation does not apply to the circulation of authentic instruments in areas where more specific instruments of EU law exist.



1 - Note that ONLY a blank criminal record will be able to circulate under the terms of the Public Documents Regulations. If the criminal record mentions a conviction, it should then circulate with the apostille, if necessary – unless exempted under signed bilateral/multilateral agreement.

B) TO WHICH AREAS DOES THE REGULATION NOT APPLY? (NON-EXHAUSTIVE LIST)

WITH REGARD TO SUCCESSIONS, the circulation of authentic instruments is governed by Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (see Article 74 of that Regulation). Commission Implementing Regulation (EU) No 1329/2014 of 9 December 2014 establishes the forms mentioned in Regulation (EU) No 650/2012.

WITH REGARD TO MATRIMONIAL AND PROPERTY REGIMES, the movement of authentic acts is governed by Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the field of applicable law, the recognition and enforcement of judgments in matters relating to matrimonial property regimes (see Articles 61)² and Council Regulation 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships (see Article 61)³.

IN MATRIMONIAL MATTERS AND PARENTAL RESPONSIBILITY, the circulation of authentic acts is governed:

► Until 1 August 2022: by Council Regulation No 2201/2003 of 27 November 2003 (Brussels IIa) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (see Article 52 of that Regulation).

► As from 1 August 2022: by Council Regulation (EU) 2019/1111 of 25 June 2019 (Brussels IIb) on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction – recast – (see Article 90).

WITH REGARD TO MAINTENANCE OBLIGATIONS, the circulation of authentic instruments is governed by Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition enforcement of decisions and cooperation in matters relating to maintenance obligations (see Article 65).

WITH REGARD TO ENFORCEMENT ORDERS, the circulation of authentic instruments is governed by Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (see Article 1).

IN CIVIL AND COMMERCIAL MATTERS, the circulation of authentic instruments is governed by Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 (Brussels Ia) concerning jurisdiction, recognition and enforcement of judgments – Brussels I recast – (see Article 61). Where the instrument predates the entry into force of the Brussels Ia Regulation, i.e. before 10 January 2015, the circulation of that instrument continues to be governed by Regulation (EC) No 44/2001 (Brussels I Regulation) (see Article 56).

Moreover, the above-mentioned specific European regulations therefore go well beyond the rules contained in the public documents regulation since they govern not only the circulation but also, depending on their field, the acceptance, recognition and/or enforcement of authentic instruments.

Furthermore, it is important to note that only certain public documents issued by an authority of an EU Member State are covered.

Finally, the Regulation does not apply to public documents issued by the authorities of a third country or to certified copies of these documents, even if the certification was made by an authority of an EU Member State.

² -These rules apply in 18 EU countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden. See following address: https://beta.e-justice.europa.eu/36686/EN/matrimonial_property_regimes

³ -These rules apply in 18 EU countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden. See following address: https://beta.e-justice.europa.eu/36687/EN/property_consequences_of_registered_partnerships

II. WHAT IS THE DEFINITION OF A PUBLIC DOCUMENT WITHIN THE MEANING OF THE REGULATION? WHAT ARE THE PUBLIC DOCUMENTS CONCERNED? IS THE AUTHENTIC INSTRUMENT CONCERNED?

The Regulation does not contain a definition per se of the concept of a public document, but largely takes up the list of types of documents of the Apostille Convention (Article 3 (1) of which:

- Documents issued by an authority or officer related to the courts or tribunals,
- **Notarial acts**,
- Official declarations such as registration notices, visas for certain dates and certifications of signatures affixed to a private document.

In accordance with Article 24(1)(b), Member States have communicated to the European Commission an indicative list of public documents falling within the scope of the Regulation.

This list by country is available on the European e-Justice portal at the following address:

https://beta.e-justice.europa.eu/551/EN/public_documents?clang=en

(NB: Click on a country's flag – the list of countries and flags is displayed on the left of the screen under the heading “Find information by region”).

On the European e-Justice portal, a link to a collection of the most commonly used public documents by country containing concrete examples of documents was also put in place and is accessible via the following link:

https://ec.europa.eu/internal_market/imi-net/repositories/commonly-used-public-documents/index_en.htm

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Documents publics

Informations par pays et formulaires en ligne concernant le règlement (UE) 2016/1191

En juillet 2016, l'Union européenne a adopté un règlement simplifiant la circulation de certains documents publics entre les pays de l'UE. Ce règlement vise à réduire les formalités administratives et les coûts pour les citoyens lorsque ceux-ci doivent présenter un document public délivré par les autorités d'un pays de l'UE aux autorités d'un autre pays de l'UE. Conformément au règlement, les documents publics (par exemple, les actes de naissance ou les actes notariés de mariage) délivrés dans un pays de l'UE doivent être acceptés comme étant authentiques dans un autre pays de l'UE sans devoir être revêtus d'un cachet d'authentification (l'apostille). Les documents publics auxquels s'applique le règlement concernent notamment l'état civil (par exemple, la naissance, le décès, le mariage, le partenariat enregistré, l'adoption), mais également la résidence et l'absence de casier judiciaire.

Le règlement supprime aussi l'obligation de fournir dans tous les cas des copies et traductions certifiées conformes des documents publics délivrés dans un autre pays de l'UE. Il introduit des formulaires types multilingues facultatifs, qui peuvent être joints aux documents publics afin d'éviter la nécessité de traductions. Le règlement ne régit pas la reconnaissance, dans un pays de l'UE, du contenu ou des effets d'un document public délivré dans un autre pays de l'UE. La reconnaissance de ce contenu ou de ces effets dépend de la législation du pays de réception du document. Le règlement s'applique depuis le 16 février 2019.

CONTENU

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Trouver des informations par région

Belgique	Bulgarie
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Allemagne	Estonie
Irlande	Grèce
Espagne	France
Croatie	Italie

III. THE MODALITIES OF THE EXEMPTION FROM LEGALISATION AND OTHER FORMALITIES

Article 4 of the Regulation provides that public documents falling within its scope, together with their certified copies, shall be exempt from any form of legalisation or similar formality, namely apostille.

Article 3 (3) of the Regulation defines legalisation as the formality to certify the authenticity of the signature of the holder of a public office, the capacity in which the signatory of the document acted, and, where appropriate, the identity of the seal or stamp with which the document is stamped.

Article 3 (4) defines “similar formality” as “the addition of the apostille provided for in the Apostille Convention”.

A) DO I HAVE TO ACCEPT A PUBLIC DOCUMENT OR A CERTIFIED COPY FROM ANOTHER MEMBER STATE WITHOUT LEGALISATION/APOSTILLE?

Yes, if this document falls within the scope of the Regulation. It should be noted that public documents covered by the regulations as well as their certified copies are exempt from any form of legalisation or similar formality (Article 1 (1)).

The receiving authority of the public document may request a multilingual standard form. This form must be issued by an authority of the State issuing the document, bearing the date of issue, the signature and, where appropriate, the seal or stamp of the issuing authority (Articles 7 (1) and 7 (2)). Note that not all documents have a multilingual form (see letter c) above).

B) WHAT CAN I DO IF I HAVE ANY DOUBTS ABOUT THE AUTHENTICITY OF THE PUBLIC DOCUMENT PRESENTED?

Where the receiving authority of the public document or its certified copy has a reasonable doubt as to its authenticity, a verification system shall be put in place, in accordance with the procedure laid down in Article 14.

Reasonable doubt may relate in particular to:

- the authenticity of the signature
- the capacity in which the person signing the document acted
- the identity of the seal or stamp;
- the fact that the document may have been falsified or altered.

Article 14 of the Regulation provides for a verification system of the authenticity of a document in two stages: comparison of the document with the available examples and then, if doubt persists, submission of a request for verification. du document aux exemples disponibles puis, si le doute persiste, soumission d’une demande de vérification.



1) If the authorities of a Member State in which a public document or its certified copy is presented have reasonable doubts as to the authenticity of that document, they shall first compare the document :

- with the information available (indicative list of public documents falling within the scope, indicative list of the types of authorities authorised by national law to draw up certified copies and information on the specific characteristics of certified copies: https://beta.e-justice.europa.eu/551/EN/public_documents#tocHeader2);

- with the models of the most commonly used public documents, together with information on the specific characteristics of each document (https://ec.europa.eu/internal_market/imi-net/repositories/commonly-used-public-documents/index_en.htm). These templates are also available in the IMI directory, as well as anonymised versions of forged documents that have been detected.

2) If, despite this comparison, there are reasonable doubts as to the authenticity of the document, the authority to which the document is presented may contact the issuing authority or the central authority designated directly via IMI for verification (for the list of central authorities, follow the link:

https://beta.e-justice.europa.eu/551/EN/public_documents; the relevant information is at the bottom of the page). This request is made using a standard form that does not require translation. The request must be reasoned and accompanied by the necessary documentation (Art. 14 (4)).

The requested authorities shall respond to requests as soon as possible, within a maximum of five working days or, if the request is received by the central authority, of ten working days, refer to Article 14 (5). If these deadlines cannot be met, an extension must be agreed between the requested authority and the requesting authority.

Assistance may be requested from the national IMI coordinators, the list of which is available at the following address:

https://ec.europa.eu/internal_market/imi-net/contact/index_en.htm

If the veracity of the document or its certified copy is not confirmed, you are entitled to refuse it.

C) DO I HAVE TO REQUEST THE ORIGINAL OR A CERTIFIED COPY?

This depends on the internal procedure of each State.

Where a certified copy of a public document is sufficient in the internal procedure, you must also accept a certified true copy established in another Member State. You can consult the indicative list of the types of authorities authorised by national law to draw up certified copies

[as well as information on the specific characteristics of certified copies](#) on the e-Justice Portal.

However, if an original is requested, the authority cannot also request a certified copy.

D) DO I HAVE TO ACCEPT A PUBLIC DOCUMENT WITHOUT LEGALISATION/ APOSTILLE FROM A THIRD COUNTRY?

Public documents (or certified copies thereof) from third States do not circulate on the basis of the Public Documents Regulation, even if the certification has been made by an authority of an EU Member State.

IV. THE USE OF MULTILINGUAL FORMS

Multilingual forms are annexed to the Regulation. There are 11 forms, which do not cover all civil status facts. Forms have only been developed for the following:

- Birth
- Fact of being alive
- Death
- Marriage
- The capacity to contract marriage
- Marital status⁴
- Registered partnership
- Capacity to enter into a registered partnership
- Domicile/residence
- The absence of a criminal record

Forms are mere aids for the translation of public documents to which they are annexed and do not have an autonomous legal value, see Article 6b a. 1. Their only purpose is to facilitate translation.

The Member States have communicated the list of national public documents to which multilingual standard forms can be attached.

For the other facts, there is no form proposed in the annex to the Regulation. These are the following areas:

- Name
- Divorce
- Legal separation
- Annulment of the marriage
- Dissolution of the registered partnership
- Annulment of the registered partnership
- Filiation
- Adoption
- Nationality

A) CAN I ACCEPT A TRANSLATION FROM ANOTHER MEMBER STATE OF THE EUROPEAN UNION?

Yes, you can accept a translation from another Member State of the European Union and you must accept a certified translation made by a qualified person under the law of a Member State, in accordance with Article 6(2).

In accordance with Article 24(1)(d), Member States have communicated a list of persons qualified, in accordance with national law, to draw up the translations certified as being in conformity in their respective countries, together with the information enabling such translations to be identified. These lists are accessible on the European e-Justice Portal (click on the flag of a country on the left).



https://beta.e-justice.europa.eu/551/EN/public_documents?clang=en

⁴ - Recital 13 defines marital status as the status of a married person, whether separated or unmarried, including the fact that he or she is single, divorced or widowed.

B) CAN I ACCEPT AN UNTRANSLATED DOCUMENT FROM ANOTHER MEMBER STATE?

Yes, you must even accept a public document when it is sufficient, according to the internal procedure, that is not translated when accompanied by a multilingual form.

The person submitting the public document is not expected to provide a translation of the document if the authority to which the document is presented considers that the information on the form is sufficient for its use, see Article 6 (1) b.

The Member States have communicated, in accordance with Article 24(1)(c), the list of public documents to which multilingual standard forms may be attached as a useful translation aid. These lists are available at: https://beta.e-justice.europa.eu/551/EN/public_documents?clang=en (click on the flag of a country on the left).

On the other hand, if the document is not translated and is not accompanied by a multilingual form, you can refuse to accept the document.

C) WHERE CAN I FIND THE MULTILINGUAL FORMS?

The multilingual and dynamic forms are available in the “Forms” section of the European e-Justice portal (https://beta.e-justice.europa.eu/35981/EN/public_documents_forms). The forms are adapted to the needs of each Member State. For this reason, it is important to select the right form for the Member State concerned.

V. RELATIONS WITH OTHER INSTRUMENTS

A) DOES THE HAGUE APOSTILLE CONVENTION STILL APPLY?

A distinction must be made between public documents originating from an authority of an EU Member State and circulating within the EU and public documents originating from a third (non-EU) country.

For the first case mentioned above, the Regulation abolishes within the EU the requirement for legalisation (including apostille) of public documents falling within the scope of the Regulation, simplifies translation formalities and establishes a procedure for checking public documents in case of reasonable doubt as to their authenticity. According to the regulation, public documents issued in one EU country must be accepted as authentic in another EU country without having to be stamped with an authentication stamp (apostille).

However, the Hague Convention of 5 October 1961 abolishing the requirement for the legalisation of foreign public documents (available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=41>) remains important for documents that do not fall within the scope of the Regulation (such as notarial power of attorney) – nor

within those of the other European regulations referred to in I.b) above – and for relations with third countries.

It should be noted that the Regulation prevails, in matters to which it applies and to the extent it provides, over other provisions contained in bilateral or multilateral agreements or arrangements concluded by Member States in relations between the Member States which are parties to it (Article 19 (2)).

Finally, it should be noted that while the regulation is binding on Member States by abolishing the obligation of legalisation and apostille⁵, European citizens still have the right to have the public document apostilled. In this case, the requested authority (e.g. the notary) has an obligation to inform the requesting citizen of the existence of the “Public Documents” Regulation and the removal of any formality of legalisation (or similar) that it provides for.

B) WHAT IS THE RELATIONSHIP BETWEEN THE REGULATION AND BI- OR PLURILATERAL AGREEMENTS BETWEEN MEMBER STATES?

The Regulation shall prevail in matters to which it applies and which are contained in bilateral or multilateral agreements or arrangements concluded between the Member States (Article 19).

On the other hand, since the multilingual standard forms provided for in this Regulation have no legal value and there is no overlap with the multilingual standard forms provided for in the ICCS Conventions (International Commission on Civil Status), this Regulation should not

affect the application of those Conventions between Member States or between a Member State and a third country (see recital 49).

As an example, the French Ministry of Foreign Affairs has created and regularly updates a table summarising the state of French conventional law on legalisation: https://www.diplomatie.gouv.fr/IMG/pdf/tableau_recapitulatif_legalisation_internet_cle8bb176.pdf

5 - All EU Member States have acceded to the Apostille Convention, so that the formality of legalisation is no longer intended to be practised within the European Union.

VI. ENTRY INTO FORCE AND APPLICATION

The Regulation entered into force on 16 August 2016 and has been applicable since 16 February 2019.

With the adoption of this European “Public Documents” Regulation, the European Union strengthens and facilitates the movement of persons within the Internal Market and, together with them, their personal status.

It is now up to European public office-holders, regardless of where they practise in the Union, to take note of these rules, to understand them, in order to make their Office even more effective, with complete legal certainty; all this, for the sole benefit of the European citizens who require them.



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