



**COUNCIL OF
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NOTE

From : Secretariat General of the Council
To : Committee on Civil Law Matters (General Questions)
Subject : International Commission on Civil Status

Delegations will find in annex the following notes transmitted by the International Commission on Civil Status.

- Annex I Note on the CIEC draft on the transmission of decisions in matrimonial matters
Annex II International Commission on civil Status (CIEC)

NOTE ON THE CIEC DRAFT
ON THE TRANSMISSION OF DECISIONS IN MATRIMONIAL MATTERS

I. Presentation of the CIEC outline draft

The proposal of the International Commission on Civil Status that an instrument be drawn up on the transmission of decisions in matrimonial matters is intended to enable the civil-status records of a Contracting State to be automatically up-dated in case of divorce, separation or annulment of marriage pronounced in another Contracting State.

In most States such up-dating is currently effected only on the request of one or other of the former spouses, and on production of a full copy of the decision, accompanied by a translation by an approved expert. In some States the civil-status records can be up-dated only if a decision authorising enforcement of the judgment (*exequatur*) has first been obtained.

As between member States of the European Union, the Brussels II Regulation has done away in this area with the requirement of a decision authorising enforcement (*exequatur*) (Article 14 § 2), but it is silent as to the manner in which records are to be up-dated. The CIEC draft would simplify such up-dating in two respects: in the first place, it would be effected without any action on the part of the former spouses, since it is the court in which the judgment originates (or any other authority designated by the State of origin) that would be responsible, through the intermediary of central authorities, for the transmission to the civil registrar having custody of the record to be up-dated. In the second place, the up-dating would no longer require the production of the judgment and a translation, but only of a certificate issued by the court of origin, confirming that the judgment is final.

This draft obviously tends towards an increased circulation of divorce judgments between Contracting States. It abolishes any *a priori* review of the judgment, but in no way affects the right of any interested party to take proceedings to contest its enforceability.

In order to facilitate the circulation of the judgment, and having regard to the fact that as between member States of the CIEC refusals to recognise divorce judgments are exceptional, Article 9 of the CIEC draft limits the power of the civil registrar to whom the certificate is addressed to decline to up-date the records. He will be able to do so if he is informed that proceedings to contest the enforceability of the judgment are pending before a court in his State (Article 9-1).

He will also be able to do so if the judgment was rendered by default and if the certificate is not accompanied by documents establishing the regularity of the procedure or acceptance of the judgment by the absent party (Article 9-3, which is a copy of Article 32 §2 of the Brussels II Regulation). Finally, the civil registrar will be able to decline to up-date the records if the original judgment has not been the object of a decision in his State authorising its enforcement (*exequatur*) (Article 9-2), but this provision is obviously not applicable in relations between the States of the European Union which are bound by the Brussels II Regulation.

II. Interference by the CIEC draft with the Brussels II Regulation

To be operable the CIEC draft needs the certificate issued by the court of origin and provided for by the Brussels II Regulation (Article 33, referring to Appendix IV). To enable civil-status records to be up-dated, this certificate should be supplemented slightly and the entries therein should be coded so as to ensure that it can be read without any translation in all the Contracting States. The CIEC has already contacted the European Commission on this point, with a view to examining together a possible modification of Appendix IV to the Regulation.

For the rest, the CIEC draft does not interfere with the Brussels II Regulation. The draft comes into play after the Regulation, by making provision for the manner in which civil-status records are to be up-dated, a matter with which the Regulation does not deal, save to say that that up-dating does not require any decision authorising enforcement (*exequatur*).

It has been argued that Article 9 of the CIEC draft would deprive the civil registrar of the power to check that the divorce judgment does not run up against one of the reasons for non-recognition set out in Article 15 § 1 of the Brussels II Regulation. In fact, some member States, in the instructions adopted for the implementation of the Regulation, have conferred such a power of review on the civil registrar. However, such a power is not provided for in the Regulation itself, which simply states that :

« Any interested party may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be or not be recognised » (Article 14 § 3).

Unless one were to consider that the civil registrar is an « interested party » -which would be contrary to the usual rules of civil procedure which reserve to the public prosecutor (*ministère public*) capacity to take action to ensure observance of the dictates of public policy (*ordre public*)-, it does not appear that Article 9 of the CIEC draft is at variance with the Brussels II Regulation.

Adoption of the CIEC draft would thus not necessitate any modification of the Brussels II Regulation, save as regards the model certificate appearing in Appendix IV.

INTERNATIONAL COMMISSION ON CIVIL STATUS (CIEC)

Information note prepared by the Secretariat General of the CIEC

The International Commission on Civil Status (CIEC) is an inter-governmental organisation composed of 16 member States, 11 of which are also members of the European Union (*Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, the United Kingdom*). The seat of the CIEC is at 3 place Arnold, Strasbourg (France), where the Commission's Secretariat General is housed. The CIEC's official language is French.

Creation and composition : The Commission was founded in Amsterdam in September 1948 and was recognised in December 1949 by an exchange of letters between Belgium, France, Luxembourg, the Netherlands and Switzerland. A Protocol, signed at Bern on 25 September 1950, specifies the manner in which the exchange of documentation to be carried out through the Commission is to be effected and an Additional Protocol, signed at Luxembourg on 25 September 1952, lays down the conditions on which further States may adhere. Since then, the following States have joined the CIEC : Turkey (1953), Germany (1956), Italy (1958), Greece (1959), Austria (1961), Portugal (1973), Spain (1974), the United Kingdom (1996), Poland (1998), Croatia and Hungary (1999).

Co-operation with other States : Six States have observer status, namely Cyprus, the Holy See, Lithuania, the Russian Federation, Slovenia and Sweden.

Co-operation with other international organisations : The CIEC has concluded co-operation agreements by exchanges of letters with the Council of Europe (1955), the Hague Conference on Private International Law (1969), the United Nations High Commissioner for Refugees (1981) and the European Economic Community (1983). The last of these exchanges of letters was published in the Official Journal of the European Communities, following the Commission's decision of 12 July 1983 (83/473/CEE) (*OJEC*, 21.9.1983, No. L 260/19 at 22).

Purpose and objectives : The purpose of the CIEC is to promote international co-operation in civil-status matters and to improve the functioning of national civil-status departments. To this end, the CIEC keeps up-to-date a documentation, supplies States with information and expert opinions, carries out legal and technical studies, edits publications and drafts conventions and recommendations.

Institutional structures : Each member State sets up a national Section responsible for ensuring liaison with the other Sections through the intermediary of the Secretariat General. The CIEC meets in plenary session twice a year, in the spring in Strasbourg and in September in one of the member countries. *Ad hoc* working groups meet between the plenary sessions in order to prepare, with the Secretariat General's assistance, work that has been entered on the agenda following a proposal by the national Sections.

Conventions : Since its creation the CIEC has adopted 30 multilateral Conventions of which the last, on international communication by electronic means, was signed at Athens on 17 September 2001. Most of these Conventions are open to signature not only by the member States of the CIEC but also by other States, notably those which are members of the European Union or the Council of Europe. 23 Conventions are at present in force. The Swiss Federal Council acts as depositary of the Conventions.

The aim of the Conventions is either to harmonise the members States' substantive law in civil-status matters or to facilitate the circulation of civil-status records and documents across frontiers, notably with the aid of multilingual appendices. Documents issued in conformity with the models established by these Conventions are exempt from any requirement of translation or legalisation, thereby simplifying formalities for persons living abroad. In response to the problem of the increasing number of languages to be used in the multilingual forms, the CIEC adopted in 1995 a Convention creating a system of numerical coding for the entries appearing in civil-status records and documents. The Conventions adopted since then include appendices drawn up in this way (for example: life certificate, certificate of nationality).

Recommendations : Since 1958 the CIEC has addressed to its member States 8 Recommendations dealing with the improvement of the functioning of civil-status departments, the harmonisation of civil-status records and extracts therefrom, the publicity of registers, the computerisation of civil-status departments and co-operation in the matter of administrative assistance to asylum-seekers.

Documentation and publications : For the areas within its competence, the CIEC compiles a documentation on legal writings, legislation and case-law in its member States. It prepares reports summarising the situation as regards questions of current concern (for example : fraud with respect to civil status, civil status and the European Convention on Human Rights, transsexualism, registration of stillborn children, ...). The CIEC's "International Practical Guide on Civil Status", which was prepared in 1985 and has since been up-dated every year, provides an overview of the general organisation of civil-status departments in the member States and gives details, by means of specific questions and answers, of the legislative and regulatory provisions concerning numerous matters (rules common to the various civil-status records, birth and filiation, marriage and dissolution of marriage, death, nationality, surname and forenames, civil status in international law). This work, which until 2001 was sold directly by Editions Berger Levraut, will be accessible in a few weeks' time on the CIEC's Internet site.

Annex : list of conventions and recommendations, with a chart showing signatures and ratifications.

The English translations of the original French titles are unofficial.

A - CONVENTIONS

1. Convention relative à la délivrance de certains extraits d'actes de l'état civil destinés à l'étranger [*Convention on the issue of certain extracts from civil status records for use abroad*] (signée à Paris le 27 septembre 1956)
2. Convention relative à la délivrance gratuite et à la dispense de légalisation des expéditions d'actes de l'état civil [*Convention on the issue free of charge and the exemption from legalization of copies of official records of civil status*] (signée à Luxembourg le 26 septembre 1957)
3. Convention concernant l'échange international d'informations en matière d'état civil [*Convention on the international exchange of information relating to civil status*] (signée à Istanbul le 4 septembre 1958)
4. Convention relative aux changements de noms et de prénoms [*Convention on changes of surnames and forenames*] (signée à Istanbul le 4 septembre 1958)
5. Convention portant extension de la compétence des autorités qualifiées pour recevoir les reconnaissances d'enfants naturels [*Convention extending the competence of authorities empowered to receive declarations acknowledging natural children*] (signée à Rome le 14 septembre 1961)
6. Convention relative à l'établissement de la filiation maternelle des enfants naturels [*Convention on the establishment of maternal descent of natural children*] (signée à Bruxelles le 12 septembre 1962)
7. Convention tendant à faciliter la célébration des mariages à l'étranger [*Convention to facilitate the celebration of marriages abroad*] (signée à Paris le 10 septembre 1964)
8. Convention concernant l'échange d'informations en matière d'acquisition de nationalité [*Convention on the exchange of information relating to acquisition of nationality*] (signée à Paris le 10 septembre 1964)
9. Convention relative aux décisions de rectification d'actes de l'état civil [*Convention on decisions concerning the rectification of civil status records*] (signée à Paris le 10 septembre 1964)
10. Convention relative à la constatation de certains décès [*Convention relating to the establishment of death in certain cases*] (signée à Athènes le 14 septembre 1966)
11. Convention sur la reconnaissance des décisions relatives au lien conjugal [*Convention on the recognition of decisions relating to the matrimonial bond*] (signée à Luxembourg le 8 septembre 1967)
12. Convention sur la légitimation par mariage [*Convention on legitimation by marriage*] (signée à Rome le 10 septembre 1970)
13. Convention tendant à réduire le nombre des cas d'apatridie [*Convention to reduce the number of cases of statelessness*] (signée à Berne le 13 septembre 1973)
14. Convention relative à l'indication des noms et prénoms dans les registres de l'état civil [*Convention on the recording of surnames and forenames in civil status registers*] (signée à Berne le 13 septembre 1973)
15. Convention créant un Livret de famille international [*Convention introducing an international family record book*] (signée à Paris le 12 septembre 1974)

16. Convention relative à la délivrance d'extraits plurilingues d'actes de l'état civil [*Convention on the issue of multilingual extracts from civil status records*] (signée à Vienne le 8 septembre 1976)
17. Convention portant dispense de légalisation pour certains actes et documents [*Convention on the exemption from legalization of certain records and documents*] (signée à Athènes le 15 septembre 1977)
18. Convention relative à la reconnaissance volontaire des enfants nés hors mariage [*Convention on the voluntary acknowledgment of children born out of wedlock*] (signée à Munich le 5 septembre 1980)
19. Convention sur la loi applicable aux noms et prénoms [*Convention on the law applicable to surnames and forenames*] (signée à Munich le 5 septembre 1980)
20. Convention relative à la délivrance d'un certificat de capacité matrimoniale [*Convention on the issue of a certificate of legal capacity to marry*] (signée à Munich le 5 septembre 1980)
21. Convention relative à la délivrance d'un certificat de diversité de noms de famille [*Convention on the issue of a certificate of differing surnames*] (signée à La Haye le 8 septembre 1982)
22. Convention relative à la coopération internationale en matière d'aide administrative aux réfugiés [*Convention on international co-operation in the matter of administrative assistance to refugees*] (signée à Bâle le 3 septembre 1985)
23. Protocole additionnel à la Convention concernant l'échange international d'informations en matière d'état civil signée à Istanbul le 4 septembre 1958 [*Additional Protocol to the Convention on the international exchange of information relating to civil status signed at Istanbul on 4 September 1958*] (signé à Patras le 6 septembre 1989)
24. Convention relative à la reconnaissance et à la mise à jour des livrets d'état civil [*Convention on the recognition and updating of civil status books*] (signée à Madrid le 5 septembre 1990)
25. Convention relative au codage des énonciations figurant dans les documents d'état civil [*Convention on the coding of entries appearing in civil status documents*] (signée à Bruxelles le 6 septembre 1995)
26. Convention concernant l'échange international d'informations en matière d'état civil [*Convention on the international exchange of information relating to civil status*] (signée à Neuchâtel le 12 septembre 1997)
27. Convention relative à la délivrance d'un certificat de vie [*Convention on the issue of a life certificate*] (signée à Paris le 10 septembre 1998)
28. Convention relative à la délivrance d'un certificat de nationalité [*Convention on the issue of a certificate of nationality*] (signée à Lisbonne le 14 septembre 1999)
29. Convention relative à la reconnaissance des décisions constatant un changement de sexe [*Convention on the recognition of decisions recording a sex reassignment*] (adoptée par l'Assemblée Générale de Lisbonne le 16 septembre 1999)
30. Convention relative à la communication internationale par voie électronique [*Convention on international communication by electronic means*] (signée à Athènes le 17 septembre 2001)

B - RECOMMENDATIONS

1. Recommandation relative à la délivrance et à la reconnaissance des documents délivrés aux réfugiés en application de la Convention de Genève du 28 juillet 1958 [*Recommendation on the issue and recognition of documents issued to refugees under the Geneva Convention of 28 July 1958*] (adoptée à Luxembourg le 8 septembre 1967)
2. Recommandation relative au droit du mariage [*Recommendation relating to the law of marriage*] (adoptée à Vienne le 8 septembre 1976)
3. Recommandation relative à l'identification des réfugiés de l'Asie du Sud-Est [*Recommendation on the identification of refugees from South-East Asia*] (adoptée à Munich le 3 septembre 1980)
4. Recommandation relative à la publicité des registres et des actes de l'état civil [*Recommendation relating to the publicity of civil status registers and records*] (adoptée à Rome le 5 septembre 1984)
5. Recommandation relative à l'harmonisation des actes de l'état civil [*Recommendation relating to the harmonization of civil status records*] (adoptée à Lisbonne le 10 septembre 1987)
6. Recommandation relative à la coopération internationale en matière d'aide administrative aux demandeurs d'asile [*Recommendation relating to international co-operation in the matter of administrative assistance to asylum-seekers*] (adoptée à Patras le 8 septembre 1989)
7. Recommandation relative à l'harmonisation des extraits d'actes de l'état civil [*Recommendation on the harmonization of extracts from civil status records*] (adoptée à Madrid le 7 septembre 1990)
8. Recommandation relative à l'informatisation de l'état civil [*Recommendation on the computerization of civil status*] (adoptée à Strasbourg le 21 mars 1991)

C – Chart of signatures and ratifications (next page)

Conventions CIEC : état des signatures, des ratifications et des adhésions au 31.12.2001

Tableau récapitulatif

Etats membres de la CIEC																															
Conventions	n° 1	n° 2	n° 3	n° 4	n° 5	n° 6	n° 7	n° 8	n° 9	n° 10	n° 11	n° 12	n° 13	n° 14	n° 15	n° 16	n° 17	n° 18	n° 19	n° 20	n° 21	n° 22	n° 23	n° 24	n° 25	n° 26	n° 27	n° 28	n° 29	n° 30	
Allemagne	A	R	R	R	R	R	R		R		S	S	R	R		A	S	S	S	A			R		S		S	S	S	S	
Autriche	A	A	A	A				R			R	R		R		R	A		S	R		R	R						S		
Belgique	R	R	R	S	R	S	S	R	S		S	S	S	S	S	R	S	S	S	S	S	R	R								
Croatie (1999)	A															A															
Espagne			A	A	A	A	A		A	A						R	R	S	R	R	R	R	A	R	S		R				
France	R	R	R	R	R	S	S		R	S	S	R			S	R	R	R			R	R	R	R		S	S			S	
Grèce					R	R	R	R	S	R	S	R	R	A	R	S	S	S	S	S	S	S	S		S	R	S		S	S	S
Hongrie (1999)																															
Italie	A	A	A	A	R	S		R				R		A	R	R	R		R	R	R	R	R	R	S	S	S	S	S	S	
Luxembourg	R	R	R	A		A		R	R			R	R	R	R	R	R	S	S	R	S	S	S								
Pays-Bas	R	R	R	R	R	R	R	R	R	R	R	R	D	R		R	R		R	R	R	R	R						S		
Pologne (1998)																															
Portugal	A	A	A	A	A			A		A					S	R	R	S	R	R	S		S	S	S	S		S		S	
Royaume-Uni (1996)																															
Suisse	R	R			R	R			R	S		S	R			R	S				R	S		S		S					
Turquie	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R			R	S		S	S	S	S	S	S	S	
Date d'entrée en vigueur	Jo Mo An	15/03/1958	03/01/1960	16/04/1961	24/12/1961	29/07/1963	23/04/1964	29/05/1968	30/09/1965	06/04/1966	31/07/1977	10/12/1977	08/02/1976	31/07/1977	16/02/1977	01/03/1979	30/07/1983	01/05/1981		01/01/1990	01/02/1985	01/07/1988	01/03/1987	01/03/1991	01/07/1992						
Autres Etats																															
Conventions	n° 1	n° 2	n° 3	n° 4	n° 5	n° 6	n° 7	n° 8	n° 9	n° 10	n° 11	n° 12	n° 13	n° 14	n° 15	n° 16	n° 17	n° 18	n° 19	n° 20	n° 21	n° 22	n° 23	n° 24	n° 25	n° 26	n° 27	n° 28	n° 29	n° 30	
Slovénie	A															A															
Ex-Rép. Yougos. de Macédoine	DS															DS															
Bosnie-Herzégovine	DS															DS															
Rép. fédérale de Yougoslavie	DS															DS															

S = signé R = ratifié A = adhésion ultérieure DS = Déclaration de succession D = Dénonciation