Council of the European Union

Brussels, 11 March 2016
(OR. en)

14956/2/15
REV 2 ADD 1

Interinstitutional File:
2013/0119 (COD)

JUSTCIV 286
FREMP 291
CODEC 1654
PARLNAT 156

STATEMENT OF THE COUNCIL'S REASONS

Subject:	Position of the Council at first reading with a view to the adoption of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 – Statement of the Council's reasons – Adopted by the Council on 10 March 2016

I. INTRODUCTION

1. On 26 April 2013, the Commission submitted a 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 (the 'proposed Regulation').

2. The European Economic and Social Committee adopted its opinion on the proposed Regulation on 12 November 2013.[1]

3. On 4 February 2014, during its plenary session, the European Parliament adopted its position at first reading on the proposed Regulation and the accompanying legislative resolution.[2]

4. On 15 and 16 June 2015, the Council (Justice and Home Affairs) approved as a general approach the compromise text set out in ADD 1 to 3 to document 9332/15, in combination with the text set out in ADD 1 to document 6812/15. On the same occasion, the Council agreed that the text of the general approach should be the basis for future negotiations with the European Parliament.

5. On 13 October 2015, an agreement was reached with the European Parliament on a compromise package. On 21 and 22 October 2015, the compromise package was confirmed by COREPER.

6. On 12 November 2015, the compromise package was endorsed by the European Parliament's Committee on Legal Affairs. On the same date, the Chair of said Committee addressed a letter to the Chair of COREPER II to inform him that, should the Council formally transmit its position to the European Parliament in the form presented in the Annex to that letter, he would recommend to the plenary that the Council's position be accepted without amendment, subject to legal-linguistic verification, at the European Parliament's second reading.

---

1 OJ C 327, 12.11.2013, p. 52.

2 See document 5905/14 CODEC 237 JUSTCIV 18 PE 46.

7. On 3 and 4 December 2015, the Council (Justice and Home Affairs) adopted a political agreement on the compromise package[3] and instructed the Council's legal-linguistic experts to proceed with the revision of the text.

8. Taking into account the political agreement referred to above and after legal-linguistic revision, the Council adopted its position at first reading on 10 and 11 March 2016, in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

II. OBJECTIVE

9. The proposed Regulation aims to promote the free movement of Union citizens by (a) facilitating the free circulation of certain public documents and their certified copies within the Union and (b) simplifying other formalities, namely the requirement to provide in each instance certified copies and translations of public documents between the Member States.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. PROCEDURAL CONTEXT

10. The European Parliament and the Council conducted negotiations with a view to concluding an agreement at the stage of the Council's position at first reading ('early second-reading agreement'). The text of the Council's position at first reading reflects the compromise package agreed between the two co-legislators, with the support of the Commission.

[3] See document 13144/15 JUSTCIV 240 FREMP 223 CODEC 1359 + ADD1.

B. SUMMARY OF THE MAIN FEATURES OF THE PROPOSED REGULATION

1. SUBJECT MATTER AND SCOPE OF THE PROPOSED REGULATION

11. The proposed Regulation provides, in relation to certain public documents which are issued by the authorities of a Member State and which have to be presented to the authorities of another Member States, for a system of exemption from legalisation and similar formality and simplification of other formalities.[4]

12. The system set out in the proposed Regulation should be without prejudice to persons being able to continue to benefit, if they so wish, from other systems which exempt public documents from legalisation or similar formality and which are applicable between Member States. In particular, this Regulation should be regarded as a separate and autonomous instrument from the Apostille Convention.[5]

13. The public documents covered by the proposed Regulation are those issued by the authorities of a Member State, in accordance with its national law, and the primary purpose of which is to establish one of the following facts: birth, that a person is alive, death, name, marriage (including capacity to marry and marital status), divorce, legal separation or marriage annulment, registered partnership (including 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, or nationality.[6]

14. The proposed Regulation also covers public documents issued for a person by the Member State of which that person is a national to attest that that person does not have a criminal record.

---

[4] See Article 1(1) of the proposed Regulation, as set out in document 14956/15 JUSTCIV 286 FREMP 291 CODEC 1654.

[5] See 1(1), subparagraph (2) of the proposed Regulation, as set out in document 14956/15.

[6] See Article 2(1) of the proposed Regulation, as set out in document 14956/15.

15. Furthermore, the proposed Regulation covers public documents the presentation of which can be required of citizens of the Union residing in a Member State of which they are not nationals when, in accordance with the relevant Union legislation, they wish to vote or stand as candidates in elections to the European Parliament or in municipal elections in their Member State of residence.[7]

16. Lastly, the proposed Regulation establishes multilingual standard forms to be used as a translation aid attached to public documents concerning birth, a person being alive, death, marriage (including capacity to marry and marital status), registered partnership (including capacity to enter into a registered partnership and registered partnership status), domicile and/or residence, and absence of a criminal record.[8]

2. SIMPLIFICATION OF OTHER FORMALITIES RELATING TO CERTIFIED COPIES

17. In order to promote the free movement of Union citizens, certified copies of public documents covered by the proposed Regulation should also be exempted from all forms of legalisation and similar formality.[9]

18. Where a Member State permits the presentation of a certified copy of a public document, the authorities of that Member State should also accept certified copies made by a competent authority of the Member State in which the original public document was issued.[10]

---

7 See Article 2(2) of the proposed Regulation, as set out in document 14956/15.
8 See Article 1(2) of the proposed Regulation, as set out in document 14956/15.
9 See Article 4 of the proposed Regulation, as set out in document 14956/15.
10 See Article 5 of the proposed Regulation, as set out in document 14956/15.

3. SIMPLIFICATION OF OTHER FORMALITIES RELATING TO TRANSLATIONS AND MULTILINGUAL STANDARD FORMS

19. In order to overcome language barriers and thereby further facilitate the circulation of public documents between the Member States, the proposed Regulation provides that a translation should not be required where:

    a) the public document is in the official language of the Member State where the document is presented or, if that Member State has several official languages, in the official language or one of the official languages of the place where the document is presented or in any other language that that Member State has expressly accepted; or

    b) a public document concerning birth, a person being alive, death, marriage (including capacity to marry and marital status), registered partnership (including capacity to enter into a registered partnership and registered partnership status), domicile and/or residence, or absence of a criminal record, is accompanied, in accordance with the conditions set out in this Regulation, by a multilingual standard form, provided that the authority to which the public document is presented considers that the information included in the multilingual standard form is sufficient for processing the public document.[11]

20. Moreover, a certified translation carried out by a person qualified to do so under the law of a Member State should be accepted in all Member States.[12]

---

[11] See Article 6(1) of the proposed Regulation, as set out in document 14956/15.

[12] See Article 6(2) of the proposed Regulation, as set out in document 14956/15.

4. REQUESTS FOR INFORMATION AND ADMINISTRATIVE COOPERATION

21. In order to allow for fast and secure cross-border information exchange and to facilitate mutual assistance, the proposed Regulation aims to establish an effective mechanism for administrative cooperation between the authorities designated by the Member States. The use of that mechanism should be based on the Internal Market Information System ('IMI'), established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council.[13] [14]

22. Where the authorities of a Member State in which a public document or its certified copy is presented have a reasonable doubt as to the authenticity of those documents, they should have the possibility of checking the models of documents available in the repository of IMI and, if a doubt remains, to submit requests for information through IMI to the relevant authorities of the Member State where those documents were issued, either by sending the request directly to the authority that issued the public document or made the certified copy, or by contacting the central authority of that Member State.[15]

23. The requested authorities should reply to such requests within the shortest possible period of time and in any case within a period not exceeding five working days or 10 working days when the request is processed through a central authority. In the event that those time limits cannot be complied with, an extension of the time limit should be agreed upon between the requested authority and the requesting authority.[16]

---

13 Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

14 See Article 13 of the proposed Regulation, as set out in document 14956/15.

15 See Article 14(1) of the proposed Regulation, as set out in document 14956/15.

16 See Article 14(5) of the proposed Regulation, as set out in document 14956/15.

IV. CONCLUSION

24. The Council's position at first reading reflects the compromise package agreed between the Council and the European Parliament, with the support of the Commission.

25. As indicated in paragraph 6 above, this compromise package was confirmed by a letter from the Chair of the European Parliament's Committee on Legal Affairs addressed to the Chair of COREPER II on 12 November 2015 . It was subsequently endorsed by the Council (Justice and Home Affairs) on 3 and 4 December 2015, through the adoption of a political agreement.

26. The Council believes that its position at first reading represents a balanced package and that the new Regulation, once adopted, will significantly contribute to facilitating the daily lives of Union citizens who move to another EU country or need to present a public document in another EU country.