Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 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

REGULATION (EU) 2016/1191 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 July 2016

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 21(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The Union has set the objective of maintaining and developing an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured. In order to ensure the free circulation of public documents within the Union and, thereby, promote the free movement of Union citizens, the Union should adopt concrete measures to simplify the existing administrative requirements relating to the presentation in a Member State of certain public documents issued by the authorities of another Member State.

(2) All Member States are contracting parties to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (the 'Apostille Convention'), which introduced a system for the simplified circulation of public documents issued by Contracting States to that Convention.

(3) In accordance with the principle of mutual trust and in order to promote the free movement of persons within the Union, this Regulation should set out a system for further simplification of administrative formalities for the circulation of certain public documents and their certified copies where those public documents and the certified copies thereof are issued by a Member State authority for presentation in another Member State.

(4) The system set out in this Regulation should be without prejudice to persons being able to continue to benefit, if they so wish, from other systems which exempt public

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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) Coexistence between the system set out in this Regulation and other systems applicable between Member States should be safeguarded. As regards the Apostille Convention, while it should not be possible for Member States' authorities to require an apostille when a person presents to them a public document covered by this Regulation and issued in another Member State, this Regulation should not prevent Member States from issuing an apostille where a person chooses to request it. Moreover, this Regulation should not prevent a person from continuing to use in one Member State an apostille issued in another. Accordingly, the Apostille Convention could still be used, at a person's request, in relations between Member States. Where a person requests an apostille on a public document covered by this Regulation, the issuing national authorities should use appropriate means to inform that person that under the system set out in this Regulation an apostille is no longer necessary if that person intends to present the document in another Member State. In any case, Member States should make that information available through any appropriate means.

(6) This Regulation should cover public documents 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. This Regulation should also cover 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. Furthermore, this Regulation should cover 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) This Regulation should not oblige Member States to issue public documents that do not exist under their national law.

(8) This Regulation should also apply to certified copies of public documents made by a competent authority of the Member State in which the original public document was issued. However, this Regulation should not cover copies of certified copies.

(9) This Regulation should also cover electronic versions of public documents and multilingual standard forms suitable for electronic exchange. However, each Member State should decide in accordance with its national law whether and under which conditions public documents and multilingual standard forms in electronic format may be presented.

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(10) This Regulation should not apply to passports or identity cards issued in a Member State as such documents are not subject to legalisation or similar formality when presented in another Member State.

(11) This Regulation, and in particular the mechanism for administrative cooperation set out therein, should not apply to civil status documents issued on the basis of the relevant International Commission on Civil Status ('ICCS') Conventions.

(12) Public documents on a change of name should also be regarded as being public documents whose primary purpose is to establish an individual's name.

(13) The concept of 'marital status' should be interpreted as referring to an individual's status of being married, separated or unmarried, including being single, divorced or widowed.

(14) The concept of 'parenthood' should be interpreted as meaning the legal relationship between a child and the child's parents.

(15) For the purposes of this Regulation, the concepts of 'domicile', 'residence' and 'nationality' should be interpreted in accordance with national law.

(16) The concept of 'criminal record' should be interpreted as referring to the national register or registers recording convictions in accordance with national law. 'Conviction' should be interpreted as referring to any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent such decisions are entered in the criminal record of the convicting Member State.

(17) Simplification of the requirements for presenting in a Member State public documents issued in another Member State should bring tangible benefits to Union citizens. Given their different legal nature, documents issued by private persons should be excluded from the scope of this Regulation. Public documents issued by the authorities of third countries should likewise fall outside the scope of this Regulation, including where they have already been accepted as authentic by the authorities of a Member State. The exclusion of public documents issued by the authorities of third countries should extend to certified copies made by the authorities of a Member State of public documents issued by the authorities of a third country.

(18) The aim of this Regulation is not to change the substantive law of the Member States relating to birth, a person being 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, nationality, the absence of a criminal record, or to public documents the presentation of which can be required by a Member State from a candidate in elections to the European Parliament or in municipal elections or from a voter in such elections who is a national of that Member State. Furthermore, this Regulation should not affect the recognition in one Member State of legal effects relating to the content of a public document issued in another Member State.

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(19) In order to promote the free movement of Union citizens, the public documents covered by this Regulation and certified copies thereof should be exempted from all forms of legalisation and similar formality.

(20) Other formalities, namely the requirement to provide in each instance certified copies and translations of public documents, should also be simplified to further facilitate the circulation of public documents between the Member States.

(21) In order to overcome language barriers and thereby further facilitate the circulation of public documents between the Member States, multilingual standard forms should be established in each of the official languages of the institutions of the Union for 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.

(22) The sole purpose of the multilingual standard forms should be to facilitate the translation of the public documents to which they are attached. Accordingly, such forms should not be circulated as autonomous documents between the Member States. They should not have the same purpose or pursue the same objectives as extracts from, or verbatim copies of, civil status records, multilingual extracts from civil status records, multilingual and coded extracts from civil status records or multilingual and coded civil status certificates established by ICCS Convention No 2 on the issue free of charge and the exemption from legalisation of copies of civil status records, ICCS Convention No 16 on the issue of multilingual extracts from civil status records and ICCS Convention No 34 on the issue of multilingual and coded extracts from civil status records and multilingual and coded civil status certificates.

(23) The multilingual standard forms established by this Regulation should reflect the content of the public documents to which they are attached and should eliminate, to the extent possible, the need for a translation of those public documents. However, for a number of public documents the content of which may not be properly reflected in a multilingual standard form, such as certain categories of court decisions, the objective of eliminating the need for translation is not reasonably achievable. The Member States should communicate to the Commission the public documents to which multilingual standard forms can be attached as a suitable translation aid. The Member States should endeavour to attach a multilingual standard form to the greatest possible number of public documents falling under the scope of this Regulation.

(24) A person who presents a public document accompanied by a multilingual standard form should not be required to produce a translation of that public document. However, the authority to which the public document is presented should ultimately decide whether the information included in the multilingual standard form is sufficient for the purpose of processing that public document.

(25) The authority to which a public document is presented may exceptionally require, where necessary for the purpose of processing that public document, the person presenting that public document accompanied by a multilingual standard form also to provide

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a translation or a transliteration of the content of the multilingual standard form into the official language of its Member State or, if that Member State has several official languages, the official language or one of the official languages of the place where the public document is presented, that language being also one of the official languages of the institutions of the Union.

(26) Multilingual standard forms should be issued, upon their request, to persons entitled to receive the public documents to which the multilingual standard forms are to be attached. Multilingual standard forms should not produce legal effects as regards the recognition of their content in the Member States where they are presented.

(27) When preparing a multilingual standard form that is to be attached to a specific public document, the authority issuing that form should be able to select from the model for that multilingual standard form only the country-specific entry headings which are relevant for the public document concerned, in order to ensure that the multilingual standard form contains only the information included in the public document to which the form is to be attached.

(28) It should be possible to integrate the electronic version of a multilingual standard form from the European e-Justice Portal into a different location accessible at national level, and to issue it from there.

(29) The Member States should have the possibility of creating electronic versions of multilingual standard forms using a technology other than that used by the European e-Justice Portal, provided that the multilingual standard forms issued by the Member States using that other technology contain the information required by this Regulation.

(30) Appropriate safeguards should be established for the prevention of fraud involving, and forgery of, public documents, and certified copies thereof, circulating between the Member States.

(31) In order to allow for fast and secure cross-border information exchange and to facilitate mutual assistance, this Regulation should establish an effective mechanism for administrative cooperation between the authorities designated by the Member States. The use of that mechanism for administrative cooperation should strengthen mutual trust between the Member States within the internal market and 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[(3)].

(32) Regulation (EU) No 1024/2012 should therefore be amended in order to add certain provisions of this Regulation to the list of provisions on administrative cooperation in Union acts that are implemented by means of IMI, as set out in the Annex to Regulation (EU) No 1024/2012.

(33) In order to guarantee a high level of security and data protection in the context of the application of this Regulation and to prevent fraud, the Commission should ensure that IMI guarantees the security of public documents and provides a safe means of electronic transmission of those documents. The Commission should make a tool available in IMI that certifies information exchanged through the system when it is