
COM(2013) 228 final — 2013/119 (COD)

Rapporteur-general: Vincent FARRUGIA

On 13 May 2013 the Council and on 21 May 2013 the European Parliament decided to consult the European Economic and Social Committee, under Article 114 (1) of the Treaty on the Functioning of the European Union, on the


On 21 May 2013, the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Farrugia as rapporteur-general at its 491st plenary session, held on 10 and 11 July 2013 (meeting of 11 July 2013), and adopted the following opinion by 96 votes to two with two abstentions.

1. Conclusions and recommendations

1.1 Citizens are at the heart of European integration. The EU Citizenship report underlines that EU citizenship brings citizens new rights and opportunities. The report calls to attention that the right that persons living in Member States (MS) associate most closely with is the right to move and live freely within the EU: the ability to come and go between EU MS, for shorter or longer periods, to work, study, train, to travel for business, or to shop across borders (1).

1.2 The 2013 EU Citizenship Report presents twelve new actions in the following six areas directed to further remove obstacles standing in the way of citizens' enjoyment of their EU rights, including the right to move freely across EU borders. These include the (2):

(01) Removal of obstacles for workers, students and trainees in the EU which facilitate the proper working of the EU labour market and thereby allow them to benefit from job opportunities in other MS and hence contribute to the EU economy.

(02) Cutting of red tape with regard to the right to free movement given that citizens who use their right to free movement experience problems often as a result of lengthy and unclear administrative processes.

(03) Protection of the more vulnerable persons in the EU given that consultation feedback suggests that people with disabilities do encounter difficulties when moving around the EU.

(04) Elimination of barriers to EU citizens with regard to e-commerce, which has increased significantly, who still experience problems when shopping online.

(05) Targeting and accessibility of information with regard to citizens being aware of and understanding their EU rights.

(06) Participation of EU citizens in the democratic life of the EU.


(2) Ibid.
1.4 This proposal is consistent with EU Citizenship report as it introduces measures that will facilitate the ability of EU citizens to genuinely enjoy the substance of the rights conferred by their status as EU citizens.

1.5 Although the Lisbon Treaty and the EU Charter of Fundamental Rights reinforced EU citizens’ rights defined by Maastricht Treaty, including the right to move and reside freely within the EU, the administrative process that supports the use of this right has not been reformed accordingly. Indeed, the presentation of an Apostille – a formality based on the Hague Apostille Convention of 1961 designed to facilitate movement across international borders in a world devoid of technology - does not reflect the fact that the EU is borderless and hence hampers rather than facilitates the execution of EU citizenship right for free intra-EU movement.

1.6 The simplification of the following certain public documents in the EU as presented in the proposal is one important measure that will result in a more cohesive legal framework which will facilitate the right of intra-EU movement:

Public documents of EU citizens

— Civil status records (e.g. documents relating to birth, death, name, marriage, registered);

— partnership, parenthood and adoption);

— Documents relating to residence, citizenship and nationality;

— Documents relating to real estate;

— Documents relating to intellectual property rights;

— Documents proving the absence of a criminal record; and

Public documents of EU businesses (companies and other undertakings)

— Documents relating to their legal status and representation;

— Documents relating to real estate;

— Documents relating to intellectual property rights;

— Documents proving the absence of a criminal record.

The simplification of these public documents will, undoubtedly, facilitate the promotion of the free movement of citizens and businesses as it will further increase commerce within the internal market as well as render increased ease in the collection of such documents by citizens of each MS.

1.7 The introduction of a simplified framework for the acceptance of certain public documents up to local public administration level is to be considered as an important policy instrument as it also:

— Reduces the cost for business and public administration: According to 2010 data nearly 30 % of SMEs are engaged in import/export activities and 2 % have foreign direct investment abroad. Moreover, about 7 % of EU SMEs are involved in international subcontracting practices where about 26 % have clients in other MS (').

— Increases the ease in interacting with public administration and reduces costs for citizens and businesses: The average annual cost for obtaining an Apostille amounts to EUR 13,20. It is estimated that the cost for EU citizens and business for obtaining Apostilles for intra-EU use amounts to over EUR 25 million. Additionally, the cost of legalisation of public documents not covered by the Apostille Convention is significant with an average price of EUR 16,50. Moreover, the costs of certified translations is calculated on a basis of EUR 30 per page: the cost for certified translations required for a cross-border marriage amounts to EUR 120 for the majority of MS (').

— Achieves net cost savings for MS that range between EUR 5-7 million as a result of the abolition of the Apostille and a further estimated EUR 500 000 to EUR 1 million as a consequence of abolishing legalisation (').

— Removes indirect discrimination of nationals of other MS in comparison to a MS’ nationals in cross-border scenarios given that in general, national authorities are not familiar with the requirements applicable to public documents in the MS of origin, including their signatures, seals and stamps.

1.8 The EESC regrets that the reforms being brought in by virtue of the proposal directed to facilitate citizens and businesses to exercise their right for intra-EU movement are presented 20 years after the launch of the EU citizenship and 42 years after the Hague Convention. Indeed, the EU has not moved in parallel with technological progress which could have been leveraged to reduce or eliminate the burdens placed on citizens and businesses to exercise their right to movement. The EESC emphasises that the Internal Market Information System (IMIS) is an important vehicle that should be exploited more aggressively with regard to enabling EU citizens to exercise their fundamental rights.

1.9 The EESC, therefore, concludes that the policy recommendation presented by the EC for:

— a legislative measure that promotes the free movement of citizens and business by simplifying administrative formalities related to the use and acceptance of certain public documents in the EU;

(') SWD(2013) 144 final.

(”) Ibid.

(”’) Ibid.
— complemented by improved administrative cooperation between MS based on the Internal Market Information System (IMIS); and supported by optional multilingual standard forms used independently in cross border cases is an excellent proposal. It, however, underlines that certain provisions in the proposal can be re-positioned to further strengthen the rights of EU citizens to movement which, amongst other matters, generates mutual economic benefits for business and citizens.

1.10 The EESC recommends:

1.10.1 Future simplification exercises with regard to public documents should target important public documents such as those relating to intra-EU mobility of workers (which is fundamental for the development of cross-border enterprise and commerce) or vulnerable persons such as persons with disabilities in so far that such public documents are not accounted for by other EU Directives.

1.10.2 A citizen or a business should have the maximum degree of certainty with regard to the extent that public documents presented are exempted from all forms of legalisation or similar formality and, thus, the definition of "reasonable doubt" as presented in the proposal is amended as follows:

"2. The reasonable doubt referred to in paragraph 1 relates to:

(a) the authenticity of the signature,

(b) the capacity in which the person signing the document has acted,

(c) the identity of the seal or stamp."

1.10.3 In the event that a MS is to make an official request with regard to reasonable doubt, to the relevant authorities of the MS where the document were issued it is to explicitly inform the person or business on the reasons of why such a request is being made.

1.10.4 There is a need for a balanced system of accountability achieved through the carrying out of annual benchmarking by the EC directed to assess the extent to which MS are effectively implementing the proposal.

1.10.5 In the event that expected benefits materialise once the IMIS stabilises the maximum period for a response under the administrative cooperation mechanism is reduced to two weeks. This will send a strong message to citizens and business alike that the EU is truly making EU citizenship effective and that it is placing citizens at the heart of EU policies.

1.10.6 The exchange and transmission of information and documents by MS pursuant to the proposal reflect the EU's principles with regard to data protection.

2. Introduction

2.1 The 2009 Stockholm Programme "An open and secure Europe serving and protecting citizens" (9) stressed the importance of making Union citizenship effective and place citizens at the heart of EU policies in the area of justice. The related Action Plan (7) confirmed this mandate and stated that a well-functioning European judicial area that "should be put at the service of citizens and business so as to support economic activity in the single market (...)". The EC responded by confirming its commitment to facilitating the free circulation of public documents within the EU in its 2010 Citizenship Report and presented in December 2010 a concrete vision to the public in the Green Paper on "Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records" (8).

2.2 In parallel to the above a Single Market Act (9) was introduced directed towards strengthening citizens' confidence in the internal market and in maximising its potential as the growth engine within the EU's economy. This demanded, amongst others, the elimination of disproportionate barriers hampering of internal market freedoms by citizens and business. The fostering of citizen and business mobility within the EU is one of the cornerstones of the Single Market Act II (10).

2.3 The EC’s Action Plan on company law and corporate governance (11) focuses on supporting European business particularly with regard to the strengthening of legal certainty for cross-border operations. The Digital Agenda for Europe (12) refers to the proposed legislation on electronic identification and e-Signatures (13) which includes the introduction of a regulatory framework for common administrative facilities relating to citizen and business electronic identification.

2.4 The recent Entrepreneurship 2020 Action Plan (14) underlines that reducing excessive regulatory burden remains on the top of the EC’s political agenda. The Action Plan calls for the elimination or reduction of red tape whenever possible for all businesses and particularly for micro-enterprises.

Consequently, cutting red tape, simplifying the procedures for cross-border use and acceptance of public documents between the MS as well as harmonising the related rules contributes to all actions aimed at moving towards the creation of a citizens’ Europe and a well-functioning Single Market for EU businesses.

2.5 The EU Citizenship report underlines that EU citizenship brings citizens new rights and opportunities. The report calls to attention that the right that persons living in MS associate most closely with is the right to move and live freely within the EU: the ability to come and go between EU MS, for shorter or longer periods, to work, study, train, to travel for business, or to shop across borders. The 2013 EU Citizenship Report presents twelve new actions in the following six areas directed to further remove obstacles standing in the way of citizens’ enjoyment of their EU rights, including the right to move and to go into business freely across EU borders. These include the (15):

- (01) Removal of obstacles for workers, students and trainees.
- (02) Cutting of red tape.
- (03) Protection of the more vulnerable persons.
- (04) Elimination of barriers to EU citizens with regard to e-commerce.
- (05) Targeting and accessibility of information.
- (06) Participation of EU citizens in the democratic life of the EU.

2.7 Currently, for example, citizens who move to another MS have to spend a lot of time and money in order to ensure that public documents from a MS state of origin are authentic. It is recognised that businesses and citizens will, undoubtedly, benefit from a framework of consistent and transparent rules governing certain public documents that are critical to the flow of goods, services and people within the EU and single market.

2.8 The EU has not moved in parallel with technological progress which can be leveraged to reduce or eliminate the burdens placed on citizens and businesses to exercise their right to movement. The EESC understands that the IMIS, a web-based application that allows national, regional and local authorities to communicate quickly and easily with their counterparts abroad, is an appropriate ICT platform that will facilitate administrative cooperation once the proposal is implemented. The IMIS will also act as an important repository of templates of the most frequently used national public documents within the EU, including their translation into all Union official languages, in order to support authorities with insufficient linguistic expertise to judge correctness or quality of translations of public documents presented to them (16).

2.9 The EESC regrets that the reforms being brought in by virtue of the proposal directed to facilitate citizens and businesses to exercise their right for intra-EU movement is presented 20 years after the launch of the EU citizenship and 42 years after the Hague Convention.

3. Legal elements of the proposal

This is the response of the EESC to the main features of the proposal.

3.1 Subject matter, scope and definitions

3.1.1 The EESC agrees that the definition of "public documents" as presented in Article 3(1) of the proposal embraces the important public documents related to EU rights of EU citizens and businesses.

3.1.2 The EESC underlines, however, that the public documents identified in the proposal should indeed be the first of a series of public documents that should be subject to a simplification process directed to enhance intra-EU mobility, cross-border activities, and the functioning of the EU single market.

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(15) Ibid.
(16) Regulation 1024/2012 of 25 October 2012 on administrative cooperation through the Internal Market Information System (IMIS) was published in the Official Journal on 14 November 2012 provides a high level of flexibility for future expansion of IMI to Union acts not yet listed in the Annex (Art. 4 of the "IMI Regulation"), based on pilot projects carried out by the Commission and evaluations of their outcomes, including data protection issues and effective translation functionalities.
3.1.3 The EESC underlines that future simplification exercises with regard to public documents should target important public documents such as those relating to intra-EU mobility of workers (which is fundamental for the development of cross-border enterprise and commerce) or persons with disabilities in so far that such public documents are not being accounted for by other EU Directives. Such public documents may include, for example, national education accreditation certifications and social security public documents.

3.2 Exemption from legalisation, simplification of other formalities and requests for information

3.2.1 The EESC emphasises that the current requirements demanding the presentation of an Apostille reflects international procedures and, thus, do not reflect the developments of the EU as a single market. There are approximately 12.5 million EU citizens living in MS other than their own and over 380 thousand of EU micro and small and medium sized (SMEs) businesses involved in MS cross border subcontracting practices which are continuously confronted by red-tape and unnecessary bureaucracy to move from one MS to the other or to carry out cross border business. This is a state of play which does not reflect a borderless EU.

3.2.2 The EESC, therefore, agrees with the EC’s proposal’s objective to exempt the public documents from legal and administrative requirements in place across MS. The EESC considers this as a first phase in a continued programme of the simplification of public documents.

3.2.3 The EESC agrees that provisions should be introduced to ensure that the necessary level of verification is undertaken where there is a case of a reasonable doubt. The EESC recognises that there will be instances where administrative coordination would be required amongst MS to ensure that a public document or its certified copy is authentic.

3.2.4 The EESC strongly supports the principle that a citizen or a business should have the maximum degree of certainty with regard to the extent that public documents presented are exempted from all forms of legalisation or similar formality. Such certainty will allow a citizen or a business to pro-active plan his/her or its activities and in doing so ensure that tangible and intangible gains and benefits identified in the EC Impact Assessment are actually accrued (17).

3.2.5 The EESC notes that under the current system 99 % of the approximate annual 1.4 m Apostilles presented for intra-EU activity do not result in issues. The EESC, therefore, is of the opinion that the policy option presented by the EC with regard to administrative cooperation (that is based on the IMIS in cases of reasonable doubt on the authenticity of public documents supported by multilingual forms) should lead to improved results.

3.2.6 The EESC recommends that the definition of "reasonable doubt" as presented in the EC’s proposal should be rendered unequivocal to remove uncertainty. In the regard the EESC proposes the following amendment:

"2. The reasonable doubt referred to in paragraph 1 relates to:

(a) the authenticity of the signature,

(b) the capacity in which the person signing the document has acted,

(c) the identity of the seal or stamp."

3.2.7 In the event that a MS is to make an official request with regard to arising of reasonable doubt, on the basis of this new definition, to the relevant authorities of the MS where the document were issued it is to explicitly inform the person on the reasons of why such a request is being made.

3.2.8 The EESC is confident that once the IMIS is implemented across MS and regular progress reports show that the system is stable and working and that MS staff would have accrued the necessary knowledge, the requests for administrative coordination amongst MS will be far more efficient than the maximum period of one month established in the proposal. The EESC, thus, recommends that in the event results demonstrate such significant improvement the EC should reduce the stated maximum period to two weeks. Such a revision will send a strong message to citizens and business alike that the EU is truly making EU citizenship effective and that it is placing citizens at the heart of EU policies.

3.2.9 The EESC gives importance for the need for a balanced system of accountability that assesses the extent to which MS are effectively implementing the proposal. The EESC recommends that the EC benchmarks MS performance with regard to implementation on an annual basis.

3.3 Administrative cooperation

The EESC agrees that the Internal Market Information System (Article 8) shall be used in cases where the authorities of a MS have a reasonable doubt on the authenticity of a public document or its certified copy and cannot be otherwise resolved (Article 7). The Committee also agrees that MS shall designate at least one central authority and all appointed central authorities and their contact details shall be communicated to the Commission (Article 9) and that these central authorities shall provide assistance in relation to request for information pursuant to Article 7 and take any other measures necessary to facilitate the application of this Regulation (Article 10).

(17) SWD(2013) 144 final.
3.4 Union multilingual standard forms

The Committee is in agreement that the Union multilingual standard forms concerning birth, death, marriage, registered partnership and legal status and representation of a company or other undertaking are being established and set out in the Annexes (Article 11) and that these forms shall be made available upon request to citizens, companies or other undertakings as an alternative to the equivalent public documents, bearing the date of issue, signature and seal of the issuing authority (Article 12). The EESC also agrees that the Commission shall develop detailed guidance on the use (Article 13) of such standard forms and also the development of their electronic versions (Article 14) and that the forms shall have the same formal evidentiary value as their public document equivalent and shall be accepted by the authorities of the MS without the need for formalities (Article 15).

3.5 Relations with other instruments

The EESC agrees that this Regulation shall not prejudice other Union law or the use of other systems of administrative cooperation established by it (Article 16) and shall not affect the application of international conventions to which one or more Member States are party but shall take precedence over conventions concluded by them in so far as such conventions concern matters governed by this Regulation (Article 18). The Committee is also in agreement with the inclusion of standard text as outlined in Article 17.

3.6 General and final provisions

3.6.1 The EESC agrees that the exchange and transmission of information and documents by the MS shall serve the purpose of making the verification of authenticity of public documents through the Internal Market Information System (Article 19). The Committee also agrees that the MS shall communicate to the Commission the designation of central authorities and any subsequent changes to such information and that the Commission will make such information publicly available (Article 20). Lastly the EESC agrees that the Commission shall submit at the latest every three years a report on the application of this regulation to the European Parliament (Article 21).

3.6.2 The EESC emphasises that Article 19 titled 'Data protection' must ensure that the exchange and transmission of information and documents by MS pursuant to the proposal are to reflect the EU's principles with regard to data protection.

Brussels, 11 July 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE