



FIT EUROPE

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The EU Public Documents Regulation 2016/1191

Introduction

The new 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 entered into force on 15/08/2016. Member States are required to adopt all necessary measures for the application of the Regulation two years and a half from that date (i.e. by the end of 2018, beginning of 2019).

The thinking behind the Regulation is that since 'the formalities of legalisation, Apostille, certified copies and certified translations are outdated and disproportionate mechanisms to establish the authenticity of public documents', a horizontal approach is needed in order to simplify the circulation of such European public documents between Member States and to reduce the bureaucracy hindering intra-EU mobility, currently affecting some thirteen million EU citizens.

Provisions concerning certified translations

The Regulation provides that translation of public documents from another Member State cannot be required if the public documents are (a) in one of the official languages of the Member State where they are presented or (b) in another non-official language accepted by this country.

The Regulation also establishes multilingual standard forms to be attached to specific categories of 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. These multilingual standard forms should reflect the content of such public documents and should be used as a translation aid, thus eliminating to a certain extent (though not totally) the need for a translation.

It must be stressed that acceptance is subject to whether 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. The Regulation recognises that for a number of public documents where the content 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 will not be reasonably achievable.

Most importantly, for the first time it is stipulated that a certified translation carried out by a person qualified to do so under the law of one Member State should be accepted in all Member States. To help achieve this aim, Member States should, by 16 August 2018, communicate, among other things, the lists of persons qualified, in accordance with national law, to carry out certified translations (where such lists exist) as well as information relating to the means by which certified translations can be identified.

Legal uncertainty and public authorities

The Regulation gives leeway for the authority to which the public document is presented to ultimately decide whether the information included in the multilingual standard form is sufficient for the purpose of processing that public document, even though a person who presents a public document accompanied by a multilingual standard form should not be required, in theory, to produce a

translation. This means that the authority may exceptionally require that this person also submits a translation or a transliteration of the content of the form.

While this may seemingly contradict the aim of reducing legal uncertainty, costs and lengthy procedures, it is partly compensated by the obligation imposed on Member States to communicate to the Commission the public documents to which multilingual standard forms can be attached as a suitable translation aid, along with the languages accepted (official and non-official) and the lists of acceptable certified translation providers, with a view to making the information available to the public through the European e-Justice Portal.

Repercussions for translators

The repercussions on actual translation volumes, working methods, quality, confidentiality and security are yet to be assessed. Still, the financial repercussions for translators offering official/certified/accredited/sworn translations, who work as freelancers or external government contractors, have been estimated and are going to be considerable. The quantitative results published in the European Commission's relevant Impact Study (CoNE 5/2013) estimate the volume of certified translations to be around 1.6 million documents for 13 types of documents, averaging 3 pages; at an approximate cost per page of 30 euros, the estimated annual cost is 100-200 million euros.

What's next?

In view of the regulatory requirements and the repercussions on this particular category of translators, the following actions are suggested by FIT Europe:

- a) Interested national translation associations should approach the relevant authorities, via the local EC field officer if necessary, to ensure their inclusion in the lists of persons qualified, in accordance with national law, to carry out certified translations, thus addressing in good time any issues that may arise before the cut-off date of 16 August 2018.
- b) Considering that translators offering exclusively certified translation services may tend to lack certain translation technology skills, market knowledge and marketing skills, associations should investigate whether their business has been affected and determine how to help them re-orient their services via targeted re-training over the next couple of years.
- c) Considering the requirement that certified translations carried out by qualified persons under the law of a Member State should be accepted in all Member States and the multitude of current systems in existence or lack thereof throughout the EU Member States, European associations should lobby for the mutual recognition or even harmonization of official translation systems, given that mere publication on the e-Justice Portal may not offer legal security to public servants dealing with in-scope documents, thus resulting inevitably in the haphazard rejection of official translations between countries. Such rejections may have a negative impact on the credibility and reputation of professionals in this line of work. Moving towards the harmonization and mutual recognition of EU certified translation systems ensures a stable and protective working environment for translators and administrative certainty for authorities.

For more information

1) 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

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R1191>

2) Directorate-General for Justice and Consumers, *Fact sheet: Certifying your public documents when moving around in the Union? Not for much longer!*, June 2016

http://ec.europa.eu/justice/civil/files/fact_sheet_public_docs_en.pdf

3) Harris Kyriakidis, New European Regulation cuts red tape, 28 July 2016

<https://www.harriskyriakides.law/new-european-regulation-cuts-red-tape.html?id=327>

4) Directorate for Impact Assessment and European Added Value, Cost of Non-Europe Report: Promoting free movement of citizens and businesses by simplifying the acceptance of certain public documents in the EU, CoNE 5/2013

<http://www.europarl.europa.eu/document/activities/cont/201401/20140106ATT76807/20140106ATT76807EN.pdf>

5) Commission Staff Working Document, Executive Summary of The Impact Assessment Accompanying the document Proposal for a Regulation 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, SWD(2013) 145 final

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013SC0145&from=EN>

6) 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, COM(2013) 228 final

http://ec.europa.eu/justice/civil/files/com_2013_228_en.pdf

7) European Commission, Green Paper, *Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records*, COM(2010) 747 final

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0747:FIN:EN:PDF>

8) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006L0123&from=EN>

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