



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title

DG JUST- Proposal for a Regulation on promoting the free movement of public documents for citizens and companies in the EU

(draft version of 7 September 2012)*

(A) Context

This impact assessment supports a simplification measure of a horizontal nature on dispensing with administrative procedures related to the authentication of public documents issued in one Member State and circulating to (an)other Member State(s). These procedures are legalisation, Apostille (similar formality) and certified copies and certified translations (other administrative formalities). The general objective of this measure is to facilitate and enhance the exercise of the EU citizens' right to free movement within the EU and of EU companies' (in particular SMEs) right to freedom of establishment and freedom to provide services within the Single Market, whilst upholding the general public policy interest of ensuring the authenticity of public documents.

(B) Overall assessment

The report should be strengthened in a number of respects. First, it should better justify the need for EU level action by explaining the scale of the problem and by improving the evidence base. The scope of the initiative should be clarified by providing a more precise analysis of the issues as they relate to different categories of public documents. The report should clarify where exactly the gaps in the current system are, providing an overview of the sectoral regulation currently in place and should discuss how any new measures would be coherent with existing rules and conventions. Second, the report should strengthen the argumentation to demonstrate respect for the principle of subsidiarity and should also demonstrate the proportionality of the measures by better explaining why the benefits for EU citizens and businesses are not outweighed by the creation of additional burdens on Member States. Third, the content and practical implementation of the options should be more clearly explained. Fourth, the report should provide an estimate of the costs to Member States' authorities. Fifth, the report should explain how the elimination of the Apostille would ensure more effective detection of fraud and forgery of public documents. Sixth, it should provide a more detailed assessment of the impact of the options in different Member States and on other affected parties. The different views of all stakeholders should be better integrated into the text. Finally, the report should present a more operational evaluation plan with progress indicators closely linked to the objectives.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

(C) Main recommendations for improvements

(1) Strengthen the problem definition. The report should strengthen the justification for EU level action by better explaining the scale of the problem and by improving the evidence base. It should provide a more precise analysis of the issues as they relate to different categories of public documents. It should clarify where exactly the gaps in the current system are and should discuss how any new measures would be coherent with existing rules and conventions, in particular given the acknowledged need for Member States' authorities to be satisfied as to the authenticity of public documents. In order to aid to reader's understanding, the report should give a brief explanation of key issues such as Apostille and the Brussels Convention and provide a short overview of the sectoral regulation currently in place. In relation to the latter, it should explain why Member States have not ratified the existing 1987 Brussels Convention. The report should also explain (given the range of existing sectoral rules, international conventions and bilateral agreements) how often authorities in a Member State demand such authentication in relation to public documents issued by the authorities of another Member State. The report should also give a better description of the actual problems encountered by SMEs. It should also better explain the risks of fraud which are alleged to arise from the current system.

(2) Better demonstrate coherence with the principles of subsidiarity and proportionality. Given that many Member States have already engaged in bi-lateral and multi-lateral agreements, the report should discuss the extent to which the proposed measures are in line with the principle of subsidiarity. Furthermore, it should demonstrate the proportionality of the measures by better explaining why the benefits for EU citizens and businesses are not outweighed by the creation of additional burdens on Member States.

(3) Better explain the content and choice of the options. The content of the options should be more clearly explained. In particular, an explanation of the functioning of the Internal Market Information System (IMI), and the feasibility of applying it to public documents authentication, should be provided. Furthermore, as this system appears to be designed for contact between public authorities, the report should explain how private entities (such as banks) would be in a position to verify the authenticity of civil documents. The report should clarify what obligations would apply under a new instrument now and exactly what work would remain to be done later (e.g. what is involved in form design under delegating and implementing acts etc.) The report should consider the possibility of some of these options on a stand-alone basis or in different combinations (or at least explain why this is not considered possible). The scope of the options should be further clarified in particular as to which categories of public documents they would apply.

(4) Better assess and compare impacts. In general the report should better assess the likely effectiveness, efficiency and coherence of the proposed measures. More information should be provided on the steps involved in developing this system as an appropriate tool for exchange of information on public documents. Moreover, it appears that this system is developed as a means of exchange between public authorities. It should therefore be clarified how private entities would be able to participate in the system. The report should provide an estimate of the cost, for both Member States and the EU budget, of developing this system for public documents. Furthermore the ongoing costs arising from the need to use this system should be considered. The report should explain how the elimination of the Apostille would meet the stated objective to ensure a more effective detection of fraud and forgery of public documents. The report should

provide a more detailed assessment of the impact of the options in different Member States. It should also consider the impact the proposals may have on e-government and the digital single market.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should provide more information throughout on the different views of stakeholders in particular those of Member States and of other affected parties such as translators and notaries. The report should present a more operational evaluation arrangement and should consider a shorter interim evaluation within three years. Furthermore the report should develop progress indicators that are closely linked to the targets of the (specific) objectives.

(E) IAB scrutiny process

Reference number	2013/JUST/002
External expertise used	No
Date of IAB meeting	3 October 2012