



CCBE RESPONSE TO THE COMMISSION’S CONSULTATION ON “EU CITIZENS’ RIGHTS – THE WAY FORWARD”

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The Council of Bars and Law Societies of Europe (CCBE) represents around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer member countries. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.

The CCBE welcomes the European Commission's declared ambition to eliminate the obstacles citizens still face in their daily life, in particular in cross-border situations.

In particular, the CCBE would like to focus on **Question 4 of the consultation document**, i.e.:

What could be done to improve the recognition of documents relating to birth, marriage, death, etc between Member States, and to reduce formalities and costs (for instance by ensuring automatic recognition of such legal documents in any other Member State, by establishing standard European formats for specific documents, etc)?

The Commission has announced a Green Paper later in 2010 on this same issue. The CCBE will eventually respond to it in the light of the questions raised and the ideas put forward in the document. However, we would like to use the opportunity of the present consultation to recall our relevant recommendations already expressed in relation to the mutual recognition of authentic instruments in Europe¹.

In the Stockholm Programme, the European Council has underlined that mutual recognition of documents in the area of civil law should extend to areas not yet covered, yet essential in daily life, such as successions, and wills, matrimonial regimes and the patrimonial consequences of the separation of couples. The European Council further stressed that this should be achieved while according proper respect to the varied legal systems of the Member States, namely their national legal traditions in this area.

The CCBE fully supports this approach and, accordingly, makes the following recommendations in reply to Question 4 of the consultation document:

CCBE recommendations:

Civil status documents formally drawn up or registered in a Member State should be recognised in the other Member States, and if they are enforceable in the first Member State, then they should be declared enforceable also in the other Member States.

The recognition and enforceability should apply, not only to authentic instruments, but also to instruments with comparable status and effect in a Member State.

Explanation:

Citizens rely on a legal act whether it is an authentic act under the civil law notarial system or whether it is an instrument with comparable legal effects (for example, a deed or a legal act). Citizens should

¹ CCBE proposal on a new motion for a European parliament resolution with recommendations to the Commission on the European Authentic Act and instruments that have equivalent legal effect (where such legal effect is assigned under national law) and CCBE recommendations for Stockholm Programme: <http://www.ccbe.eu/index.php?wkgroup=47&id=33&L>
CCBE position on the draft regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, COM(2009)154 final: <http://www.ccbe.eu/index.php?wkgroup=27&id=33&L>

not suffer in the cross-border reach of their legal actions because they have consulted a competent professional in their jurisdiction which might not be recognised by the legal system in another member state.

In some countries, such as Austria, Hungary and Portugal, lawyers are entitled to prepare specific authentic acts. As an example, in Hungary lawyers are competent for the ratification of signatures for company registration and other purposes. In Nordic countries, where authentic acts do not exist, citizens would be excluded from the benefits of future legislation which would focus on authentic instruments. In all Member States there are legally binding documents drawn up by legal professionals, and it is these which should fall within the scope of benefit.

The Commission's approach in its proposal on successions and wills², whereby only notarial acts are to be recognised and analogous legal acts (deed, legal act by a lawyer or comparable act) which exist under national law are ignored, is not the right way to go forward in the interest of citizens. The example to follow is rather that set by Regulation 2201/2003 (Brussels II bis). Article 46 of that Regulation states that "documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgements."

Mutual recognition is an important principle of European legal culture. As set out in the Hague Programme, and now in the Stockholm Programme, there should be respect for the different legal systems and traditions of the Member States, in the interest of all mobile citizens, whichever Member State they come from.

² Draft regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession, COM(2009)154 final