

# **“CROSS-BORDER CIRCULATION OF DIGITAL PUBLIC DOCUMENTS IN THE EUROPEAN UNION: CHALLENGES FOR CIVIL-STATUS REGISTRARS”**

**Prof. Dr. Guillermo Palao**  
**Professor of Private International Law**  
**University of Valencia (Spain)**

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## ● **TOWARDS THE DIGITALIZATION OF CIVIL-STATUS REGISTRIES: A WORK IN PROGRESS**

- **The growing cross-border mobility of people and Civil-Status in the EU: Challenges for their legal management**
- **The increasing digitalisation of public (e-) documents and of national (e-) Civil-Status Registries within the EU: the digital transformation of public administration**
- **Legal challenges for cross-border circulation of public (e-) documents and Civil-Status Registries**
- **National, EU and International regulatory initiatives and the existing challenges for cross-border cases**

## ● COMMON FEATURES OF NATIONAL INITIATIVES RELATED TO THE DIGITIZATION OF CIVIL-STATUS REGISTRIES

- Adapting analogical public registers to the digital reality: the principle of “functional equivalence” and specific regulatory provisions to guarantee the evidential value of (e-) public documents
- Interactive digital tools and Platforms: interconnection of Civil-Status Registers + online legalization of digital documents, titles, and civil-status records
- The implementation of (advance) digital signatures or a digital identity system (eIDAS)
- Legislative reforms (Civil-Status and Personal Data Protection legislation) and Soft Law instruments (Instructions and Guides)
- The importance of an adequate legal framework also relating to the Protection of Personal Data and for the Respect of Fundamental Rights

## ● **OBSTACLES WHICH NATIONAL INITIATIVES MEET RELATED TO THE DIGITIZATION CIVIL-STATUS OF IN RELATION TO CROSS-BORDER SITUATIONS (I)**

- Different level of development of MS on both regulatory measures and technological tools in the (e-) processes of national public administrations (national particularities)
- Different national solutions respect to (e-) registration processes before national Civil-Status Registries
- A limited (or even excluded) electronic access of foreign public authorities to (e-) Civil-Status Registries of the MS: a “bottle-neck effect”

## ● OBSTACLES WHICH NATIONAL INITIATIVES MEET RELATED TO THE DIGITIZATION OF CIVIL-STATUS REGISTRIES IN RELATION TO CROSS-BORDER SITUATIONS (II)

- The possible requirement of a double documentation both at the MS of origin and at the MS of destination
- The lack of awareness of the international elements which could affect (e-) Civil-Status documents: national solutions and the subsidiary application of Private International Law rules (not always adapted to such particularities)
- The need to allow more flexibility and to developed supra-national legal initiatives in this area, favouring a greater level of cooperation, to ease the legal management

## ● REACTION OF INTERNATIONAL AND EUROPEAN CODIFICATION CENTRES TO THIS DIGITIZATION CHALLENGE

→ The important role played by The Hague Conference on Private International Law (HCCH), the International Commission on Civil Status (ICCS/CIEC) and the European Union (EU)

### ● THE HCCH E-APOSTILLE PILOT PROGRAMME (E-APP)

→ From Convention of 5 October 1961 to the “electronic Apostille Programme” (“the e-App”)

→ Main technological elements: “e-Apostilles” and “e-Registers”

→ Cooperation and obligations for Contracting Parties

→ A growing and sound application, but still there is room for more Contracting parties

## ● **CODIFICATION EFFORTS AT THE ICCS/CIEC**

- The remarkable work done by the ICCS/CIEC. Main instruments:
- a) Recommendation (No. 8) on the computerisation of civil registration (1991), and its precedent Recommendation (No. 4) relating to the accessibility to the public of civil status registers and records (1984)
  - b) Convention (No. 30) on international communication by electronic means (2001), Convention (No. 34) on the issue of multilingual and coded extracts from civil-status records and multilingual and coded civil-status certificates (2014)
  - c) The ICCS/CIEC Platform for the international communication of civil-status data by electronic means: Convention (No. 33) on the use of the International Commission on Civil Status Platform for the international communication of civil-status data by electronic means (2012)
- A seminal and intensive effort and a level of regional implication and national ratification which deserves improvement

## ● **THE EU RESPONSE: REGULATION (EU) 2016/1191 (I)**

- The intra-European circulation of public documents: the development of an Area of freedom, security and justice and the free movement of persons (Art. 21(2) TFEU)
- Regulation (EU) 2016/1191: A specific and simplified uniform response regarding the administrative formalities and requirements to be fulfilled by certain public documents and certified copies thereof issued by the authorities of a MS (in accordance with its national law) for their presentation in another MS
- Main elements of Regulation (EU) 2016/1191:
  - a) Scope “public documents”, including certain civil-status records;
  - b) Authenticity of their extrinsic dimension;
  - c) A system of cooperation between the competent authorities of the MS (monitor cases of fraud and possible falsification) via the IMI System;
  - d) Co-existence with other legislation (domestic legislation, Conventions and other provisions of the EU);
  - e) Information from MS and Cooperation (European e-Justice Portal)

## ● THE EU RESPONSE: REGULATION (EU) 2016/1191 (II)

- Awareness of the digitalisation process in Regulation (EU) 2016/1191:
- a) Electronic versions of multilingual standard forms (European e-Justice Portal);
  - b) Central authorities communicate and exercise their functions by using IMI;
  - c) Exchange of best practices related to the use of electronic versions of public documents;
  - d) Application of other provisions of the EU affecting electronic signatures, electronic identification or administrative cooperation
- The subsidiary character of the instrument, an unfinished system

## ● THE PERSISTENCE OF LEGAL PROBLEMS IN RELATION TO CIVIL-STATUS REGISTRIES AND THE NEED TO RECONSIDER THE CURRENT MODEL FROM THE EU

- The EU Principle of mutual recognition, unlike for court decisions, is not fully guaranteed in the field of public (e-) documents yet
- Disparities of national solutions within the EU and persistent obstacles for cross-border cases
- A high level of legal complexity: plurality of codification venues and applicable legal sources, the limited and fragmentary nature of the normative solutions
- The need to reconsider and develop an EU legal framework: to eliminate legal obstacles and provide for the free movement and mutual recognition in relation to public (e-) documents accessing Civil-Status Registries

## ● THE DIGITAL ELEMENTS OF AN EVENTUAL FUTURE EU MODEL FOR THE CROSS-BORDER CIRCULATION OF PUBLIC (e-) DOCUMENTS (I)

### BASIS OF THE MODEL

- Full application and development of Art. 67 TFEU
- The development of a Single Digital Market for the EU and its implications for public (e-) documents
- Accessibility and transparency of Civil-Status Registry information (e-Justice Portal) and to facilitate the registration of cross-border public (e-) documents (e-Codex)
- Taking full advantage of the opportunities offered by NICTs to reduce legal obstacles to the cross-border circulation of public (e-) documents
- Protection of personal data and Respect of Fundamental Rights

## ● THE DIGITAL ELEMENTS OF AN EVENTUAL FUTURE EU MODEL FOR THE CROSS-BORDER CIRCULATION OF (e-) PUBLIC DOCUMENTS (II)

### OPERATION OF THE MODEL

- The need for a constructive cooperation between the different institutions involved, both normative and technical (i.e. platforms, plurilingual forms ...);
- The need of a full guarantee, from the perspective of UE institutions, of the free circulation and the mutual recognition for public (e-) documents
- Final Objective: the control of the authenticity and validity of the public (e-) document by the MS of origin, while respecting local Civil-Status Registry Regulations and requirements of the MS of destination

## ● THE DIGITAL ELEMENTS OF AN EVENTUAL FUTURE EU MODEL FOR THE CROSS-BORDER CIRCULATION OF (e-) PUBLIC DOCUMENTS (II)

### OPERATION OF THE MODEL (continue)

→ Technical elements of the model:

- a) Civil-Status Registries Interconnection and interoperation through a decentralised IT system (e-Codex)
- b) Direct (e) communication and cooperation Information and assistance tools (e-Justice)
- c) Providing access to foreign authorities from other MS (e-Codex)
- d) Multilingual Annexes with standard (e-) documents
- e) The development of (e) accessible Manual, Glossary and a common semantic model
- f) Guidelines, FAQ, and Good practices

## ● **IN PARTICULAR: THE DIGITIZATION OF CIVIL-STATUS RECORDS AND REGISTERS AND DATA PROTECTION**

- Civil-Status Registers as public databases containing personal sensitive information
- The relationship between registration publicity, privacy and data protection
- An intrinsic cross-border element: international data transfer and Civil-Status records and cooperation between national authorities (ECJ Case C-362/14 and Implementing Decision 2016/1250)
- Legal framework: International (OECD Guidelines 2013) and European (Convention 108 of the Council of Europe and Regulation (EU) 2016/679)
- A usual (direct or indirect) mention and remission to general data protection regulation by National, International and European legislators: Art. 2 Convention (No. 30) CIEC; Art. 1 Convention (No. 33) CIEC; Recital 39 and art. 17 Regulation (EU) 2016/1191

## **● IS THERE A NEED FOR A SPECIFIC APPROACH IN RELATION TO THE LEGAL MANAGERMENTS OF DATA PROTECTION IN RELATION TO (e-) CIVIL-STATUS RECORDS AND REGISTERS?**

- A common concern in all regulatory levels and the lack of specific legal solutions in general data protection law respect to Civil-Status records
- The peculiarities of Civil-Status data must depart from general data protection Law in some aspects: different regulatory approaches (Soft Law versus Hard Law solutions):
- The need to develop specific solutions: Hard Law or/and a Soft Law? International or/and European?
- Some elements for reflection: a) Data which could be accessed and levels of data protection (open and restricted data publicity which need prior public authorisation); b) Data protection authorities (information and security duties), officers and data processors; c) Restrictive rules to legitimate persons to grant access to data (right holders and legal representatives, public administration, public authorities, judges ...), the consequences of use and the application of data protection legislation; d) Rights of the owners of the data; e) Protection of third parties mentioned in the civil-status records who are not aware of them being mentioned (inform and meet their consent)

**Thank you  
Aitähj**



VNIVERSITAT DE VALÈNCIA

**[Guillermo.palao@uv.es](mailto:Guillermo.palao@uv.es)**

**¡Muchas gracias!**