



Explanatory Report to the European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers

London, 7.VI.1968

1. The European Convention on the abolition of legalisation of documents executed by diplomatic agents or consular officers was prepared within the framework of the Council of Europe by the sub-committee for the study of the question of the abolition of legalisation for consular documents set up for this purpose by the European Committee on Legal Co-operation (CCJ). The Convention was opened for signature by the member States of the Council of Europe on 5 June 1968 on the occasion of the Vth Conference of European Ministers of Justice in London.

2. The text of the explanatory report by the sub-committee is presented here as amended and completed by the European Committee on Legal Co-operation.

General considerations

1. The Convention abolishing the requirements of legalisation for foreign public documents, which was concluded at The Hague on 5 October 1961, excludes from its field of application documents executed by diplomatic or consular agents. This was the reason why the Committee of Ministers and the CCJ considered it would be useful, with a view to facilitating inter-European relations, to draw up, in the framework of the Council of Europe, a Convention designed to abolish the requirements of legalisation for these documents.

2. In order to attain the desired end, two, possibilities could be envisaged:

- (a) either to simplify the requirement of legalisation, or
- (b) to abolish the requirement of legalisation.

For several reasons, the solution mentioned above at (b) was adopted. First, at the European level, relations between the States, as well as relations between their diplomatic agents or consular officers, are becoming more and more close and are based on mutual trust, by reason, particularly, of the conclusion of the Vienna Conventions on Diplomatic and Consular Relations and the European Convention on Consular Functions which will shortly be opened for signature in the Council of Europe. Secondly, the abolition of legalisation is likely to strengthen the ties between States by making it possible to use foreign documents in the same manner as documents emanating from national authorities. Furthermore, it appeared that any attempt at simplification in the matter must inevitably lead to the abolition of a procedure which, unlike the procedure examined by the negotiators at The Hague, does not involve a chain of formalities.

3. The question of abolishing legalisation is important not only for the countries which are familiar with this formality but also for those which do not know it. Without any doubt, some countries do not require legalisation of foreign documents and on this matter the Convention will not change anything. By contrast, in many countries official foreign documents, can not be produced without legalisation because these countries are opposed to this. Countries which are not familiar with legalisation would, therefore, have every interest in signing the Convention in order that documents executed by their diplomatic agents or consular officers shall not be submitted to legalisation abroad.

4. Moreover, the wish was expressed that the abolition of legalisation of documents executed by foreign diplomatic agents or consular officers should lead to the abolition of all further formalities of a similar nature which are still required by internal law in certain States in respect of documents executed by their own diplomatic agents or consular officers.

5. It was agreed that, in the framework of the proposed Convention, no distinction should be made between the documents executed by career consuls and those executed by honorary consuls. In effect, honorary consuls, whose functions may be limited by some countries, are empowered to execute a certain number of documents which have to be recognised in the same way as documents executed by career consuls; furthermore, neither international law nor the Vienna Convention on consular relations, which is in course of ratification, draws a distinction between these types of consul except as regards the privileges and immunities which they enjoy. In any case, a possible dispute about the validity of a document executed by an honorary consul would not be in any way connected with the question of the authenticity of such document.

6. The best way to achieve the abolition of legalisation would be by means of an international agreement which might be open to accession, on invitation by the Committee of Ministers, to states not Members of the Council of Europe, whose legal and administrative systems are similar to those of the member States of the Council. The preparation of a uniform law was rejected because such a law could have been invoked for the benefit of diplomatic agents or consular officers other than those representing the Contracting Parties. There would be no question of having a recommendation on the subject, because a recommendation would lack all binding force.

7. As regards the terminology of the English text, the term " legalisation " was adopted as this term is now in current use in international English terminology.

8. This Convention only covers documents executed by diplomatic agents or consular officers: all other documents, with a reservation in respect of administrative documents dealing directly with commercial or customs operations ⁽¹⁾, come within the scope of The Hague Convention abolishing the requirement of legalisation for foreign public documents of 1961. It is therefore by reference to The Hague Convention that documents other than those executed by diplomatic agents or consular officers may benefit from the abolition of legalisation.

Commentary on the Articles of the Convention

Article 1

This article, which defines legalisation, uses the same terminology as that found in Article 2 of The Hague Convention abolishing the requirement of legalisation for foreign public documents.

(1) See Article 1 (3) (b) of the Hague Convention.

Following the above-mentioned Convention and in respect of signatures, the French expression "*véracité*" ⁽¹⁾ of a signature has been used instead of the expression "*authenticité*" of a signature because the latter term is often used to define the particular probative value of certain documents and could lead to confusion. As regards seals, the word "identity" has also been used instead of "*authenticité*" for the same reason.

The expression "means only" emphasises the scope of the Convention which only abolishes legalisation in the strict meaning of the term. Legalisation therefore only means the three elements expressly mentioned in this article. It does not, contrary to the way of thinking in some states, affect the competence of the person who signs or the validity of the document.

The word "signature" does not cover initials on their own or "signatory-stamps" (Fr. *griffes*), that is to say, a non-manuscript reproduction of a signature by some mechanical process, put on a document: it follows that any document on which there is only a signatory-stamp does not come within the scope of the present Convention.

It is also to be noted that legalisation also means the formality by which the identity of the seal or of the stamp is attested. Indeed, following The Hague Convention, legalisation of a seal has been added to that of a signature in order to meet the requirements of some countries. A document which is, not signed but is sealed or stamped instead, whether initialled or not, also comes within the scope of the present Convention.

Article 2

This article defines the field of application of the Convention.

"Diplomatic agents or consular officers" mentioned in this Article are those referred to in the Vienna Conventions on diplomatic and consular relations and in the European Convention on Consular Functions which will shortly be opened for signature in the Council of Europe.

No distinction has been made among the documents drawn up by diplomatic agents or consular officers: in fact, it was considered that all the documents executed by such agents or officers should come within the scope of the proposed Convention. Moreover, it was not considered desirable to draw up a list of such documents because they are very varied : they include, in particular, documents executed by such agents and officers acting as notary or civil registrar, as well as all other administrative documents which they may be called on to execute in the course of their official functions as defined in Article 5 of the Vienna Convention on consular relations.

This Convention, therefore, also covers attestations which under the law of certain States are not considered as public documents within the strict meaning of the term.

Paragraph 1, sub-paragraph (a), covers the following two cases:

(1) documents which have to be produced in the national territory of a Contracting Party and which have been executed in that territory by a diplomatic agent or consular officer of another Contracting Party ;

(2) documents which have to be produced in the national territory of a Contracting Party and which have been executed in the territory of any State (including a State which is not a party to this Convention) by a diplomatic agent or consular officer of another Contracting Party.

(1) The English text of The Hague Convention uses the word " authenticity ".

Paragraph 1, sub-paragraph (b) covers the following case:

documents which have to be produced in the territory of a State not a party to the Convention to the diplomatic agent or consular officer of a Contracting Party and which have been executed by a diplomatic agent or consular officer of another Contracting Party.

The provisions of paragraph 2 call for the following observations:

They assimilate, to a certain extent, official certificates to the documents mentioned at paragraph 1. In the other articles, therefore, the word " document " also includes official certificates. The abolition of legalisation applies only to the official certificates and does not refer to the documents themselves, which, more often than not, are documents drawn up by private persons (*actes sous seing privé*).

The enumeration of official certificates in paragraph 2 is not exhaustive.

On the other hand, the implementation of this text is not to have the effect of substituting the competence of a diplomatic or consular agent of one Contracting Party for that of the diplomatic or consular agent of another Contracting Party when a public document drawn up by the authorities of a third state (not a party to this Convention) is legalised.

Article 3

This article defines the obligation undertaken by the Contracting Parties under the provisions of the Convention ; this obligation consists, in exempting from all legalisation the documents referred to in Article 2.

Article 4

Paragraph 1 of this article is taken from Article 9 of The Hague Convention abolishing the requirement of legalisation for foreign public documents. The Contracting Parties shall take all necessary steps in order that their administrative authorities, and particularly the Ministry for Foreign Affairs, shall refuse to accede to requests for legalisation of diplomatic or consular documents which are unjustified under the terms of the present Convention.

Paragraph 2 provides for the setting up of a national system of verification of the authenticity of the documents, as, for example, in cases of dispute about the authenticity of a signature.

Each State is free to establish the system of verification which it considers most suitable, having regard to the cases which may arise and to its legal and administrative system.

This verification shall not give rise to payment of any taxes or expenses.

The Convention does not contain a provision indicating the channel to be used for transmission of requests for verification. Indeed, it was considered that this question ought not to be settled in the Convention and that every State was entitled to fix the channel which it finds most appropriate, by concluding, if necessary, agreements with other States concerned. However, it was thought proper that the central authorities of each State should control these requests in a manner sufficiently strict to avoid the multiplication of pointless requests. Accordingly, such verification should only be requested in exceptional cases and, in general, by official channels.

Article 5

This article is designed to make the present Convention prevail over conventional provisions, present or future, which might conflict with the provisions of this Convention. In this way, the Contracting Parties will not be able to revive, at a later time, the issue of the principle – enunciated in Article 3 – of the total abolition of legalisation by setting up in its place a system of *apostille* (certificate) or like formality.

This article is directed to all instruments both bilateral and multilateral. The term "shall prevail over" emphasises that, in case of denunciation of this Convention, the above-mentioned conventional provisions shall again apply.

The Conventions enumerated below which were drawn up in the framework of the Council of Europe already abolish all formalities of legalisation:

- (a) European Convention on mutual assistance in criminal matters.
- (b) European Convention on the supervision of conditionally -sentenced or conditionally released offenders.
- (c) European Convention on the punishment of road traffic offences.

Other drafts, which are at present in course of preparation contain a similar provision.

Articles 6 to 10

These provisions reproduce the final clauses which have been approved by the Committee of Ministers.