

EXPLANATORY REPORT

Adopted by the General Assembly in Paris on 10 September 1998

A. GENERAL REMARKS

The basic purpose of the Convention is to facilitate proof that a person is alive, in cases where such proof has to be furnished in a State where that person is not resident. The uniform certificate which it introduces is intended first of all to make it easier for individuals to supply such proof. A further aim is to afford better guarantees to the public and private agencies requiring such proof, by virtue of the official character of the certificate and the procedures laid down for drawing it up. This Convention does not, of course, prevent those agencies from accepting other evidence that a person is alive.

The practical utility of the Convention can be seen above all in the context of the payment of retirement pensions, whether it be those of the retired persons themselves or those due to their widowers or widows or to orphans. But there is nothing to prevent the certificate being used for other purposes. If agencies paying pensions find it useful to have information other than that appearing in the uniform certificate, they can obtain it from additional documents. It is difficult to identify and list such further information and its inclusion in the model provided would involve too many practical complications and raise tricky questions as to how to determine which authorities are empowered to certify its correctness.

B. COMMENTARY ON THE ARTICLES

Article 1

Article 1 lays down the basic undertaking, given by each State party, to issue life certificates.

It should be emphasised that, as is specified in paragraph 2, the certificate must be issued regardless of the nationality of the person applying for it and even if he or she is a national of none of the Contracting States. For example, it is important for a Moroccan worker entitled to a pension paid by a Netherlands agency and living in retirement in Spain to be able to turn to the Spanish authorities to obtain a life certificate which must be accepted in the Netherlands. Furthermore, it is impossible, for both practical and legal reasons, to require the authorities of the State of residence to make enquiries about the nationality of an applicant who is not one of its own nationals.

Article 2

The rule set out in paragraph 1 is the indispensable counterpart of the rule laid down by the preceding Article: each Contracting State undertakes not only to issue life certificates but also to accept the certificates issued by the other countries bound by the Convention.

Paragraph 2 of this Article is derived from Article 7 of Convention No. 20 of the International Commission on Civil Status (ICCS), signed at Munich on 5 September 1980, on the issue of a certificate of legal capacity to marry. However, a different wording was adopted in order to take account of certain observations formulated in the course of the discussions, drawing attention to the distinction that should be made between the validity of the certificate and the rules concerning its presentation.

The certificate attests that a person is alive at the moment when it is issued. It must also be accepted during a certain period. Whilst the fact that a person is alive cannot, of course, be proved in advance, it can be presumed that this is so during a reasonable period following the issue of the certificate, which will give the person concerned time to transmit the requisite evidence to the paying agency. What is created here is no more than a rebuttable presumption that he or she is alive.

As regards fixing the time-limit for presentation of the certificate, it was initially envisaged to adopt a uniform time-limit that would have appeared in the text of the Convention. However, in the end it seemed preferable to leave the fixing of the time-limit to the domestic law of each of the Contracting States. Since some countries have no legal rule on this point and since the time-limit may vary according to the agency – which may be public, semi-public or private – to which the life certificate is presented, it appeared necessary to refer to the law or the practice in force; this will leave a high degree of flexibility for the application of the Convention.

As is stated in paragraph 3, a life certificate is to be accepted as correct unless and until the contrary is proved.

It should be noted that the wording adopted leaves open the question of the lapse of time after which the paying agency will be led to ask the creditor for proof that he or she is alive.

Article 3

The conditions for issuing the certificate are governed by the domestic law of the sending State. In general the individuals concerned will be required to present themselves before the authority called upon to certify that they are alive. However, nothing would prevent other issuing procedures being prescribed by law, for example in cases where the person cannot travel on account of invalidity, illness or any other legitimate reason.

Whether the person asking a State to issue a certificate is resident in its territory is also to be determined under domestic law.

Article 4

States should be able, if they think fit, to include notaries and bailiffs amongst the authorities empowered to issue the certificates. Although they are not “authorities” in the strict sense of the word, they are public or professional officers and are entitled, inter alia, to draw up officially authenticated instruments. A similar explanation is to be found in the explanatory report on Convention No. 17, signed at Athens on 15 September 1977, on the exemption from legalisation of certain records or documents.

As for diplomatic or consular authorities, it appeared necessary to refer to them expressly in the Convention. At the present time, they are probably already empowered to draw up, as regards their nationals, life certificates destined for their national authorities, provided that both their own law and the law of the country where they are performing their duties recognise that they have this power. However, it seemed advisable to oblige all the Contracting States to recognise the existence of this power, with the consequence that any certificates drawn up by those authorities will have to be accepted not only by their national agencies but also by the agencies of all the Contracting States. It was also decided that diplomatic or consular authorities will be entitled to draw up life certificates regardless of the nationality of the person concerned, if this is not precluded by the law of their State of residence and if the certificate is to be used in the territory of the State which they represent. Thus, for example, an Italian who used to work in Belgium and is living in retirement in Spain will be able, if he or she is entitled to a retirement pension paid by a Belgian agency, to supply that agency with a life certificate issued not only by the Spanish authorities or the Italian consul but also by the Belgian consul. This power on the part of the Belgian consul would even be recognised in the case of an Italian who used to work in Belgium and is resident in Italy, provided that this is not precluded by Italian law.

Articles 5 to 9

These Articles detail the conditions concerning the form of the certificate, a model whereof appears in Appendix 1 to the Convention. They are derived directly from earlier ICCS Conventions.

However, since the adoption of Convention No. 25, signed at Brussels on 6 September 1995, on the coding of entries appearing in civil status documents, it has been decided to abandon the use of multilingual forms. Life certificates will be written in the official language or one of the official languages of the issuing authority and in the French language, with the entries also bearing a code based on that created by the above-mentioned Convention No. 25.

Article 10

The life certificate is designed to be utilised in a State other than the one that issued it and will generally be presented to an authority or agency that does not possess the glossary enabling the coded entries to be understood. It therefore seemed appropriate to provide that the authority issuing the certificate will, if so requested by the person applying for it, append a document listing the code numbers appearing in the certificate and their translation – or, if this term is preferred, their meaning – in the official language or one of the official languages of the State where the certificate is to be used. If the authority issuing the certificate found it difficult to follow this procedure, it could append thereto a list of the code numbers with their translations into all the various languages used in the ICCS countries.

The issuing authority will also have the option, if the equipment available to it so permits, of “decoding” the certificate, a process that consists of appending to the document drawn up in the language of the issuing country a complete translation into the language of the country of utilisation.

It is furthermore provided, in paragraph 2 of Article 10, that any interested party – which expression covers both the applicant and the agency for which the certificate is intended – may request the competent authority of the State of utilisation to indicate the meaning of the code numbers appearing in the certificate or to “decode” it. Needless to say, recourse should be had to this option only if the authority that drew up the certificate has not previously translated the code numbers or decoded the document. It would also be reasonable for agencies utilising the certificate that has been issued to refrain from asking for the meaning of the code numbers or a decoding when they understand the foreign-language entries appearing therein.

Article 11

Paragraph 1 of this Article sets out the formal guarantees of authenticity of the life certificate. If it was signed, as permitted by domestic law, by a person delegated for the purpose by the competent authority, the delegation procedure does not have to be indicated.

The exemption from legalisation, enunciated by paragraph 2, is in line with the rules of more general application found in the above-mentioned Convention No. 17. Provision is made, in case of serious doubt as to the authenticity of the certificate, for a procedure analogous to that created by Article 3 of that Convention.

It seemed advisable to refer expressly to exemption from legalisation since, *stricto sensu*, life certificates do not fall within the list of records and documents covered by Convention No. 17. Moreover, there might be some States which ratify this Convention but are not party to the general Convention on exemption from legalisation.

Articles 12 to 18

These Articles contain the final clauses found in ICCS Conventions. It should be pointed out that this Convention is semi-open, in that only member States of the ICCS, the European Union or the Council of Europe can accede thereto.

Under Article 14, the entry into force of the Convention is conditional on ratification, acceptance, approval or accession by two ICCS member countries.

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The model certificate appearing in Appendix 1 calls for few comments.

It should, however, be noted that the country of the authority issuing the certificate should be specified in the space marked "State" at the top of the form: this appears to be self-evident not only for certificates issued by local authorities, which will show here the State in which they are located, but also for diplomatic or consular authorities, which will indicate here the State which they represent.

Place-names appearing in the certificate are to be followed by the name of the State in which the place is situated; this information is necessary as regards the place of issue if the certificate is issued by a diplomatic or consular authority and in all cases as regards the place of birth of the person concerned.

An authority which is asked to issue a life certificate should check thoroughly the identity as well as the existence of the person concerned: it can do this, as the model certificate indicates, by examining the identity card, passport or residence permit, by consulting civil status or population registers or by any other means prescribed by its domestic law (information supplied by other administrative departments or even by witnesses). It is recommended to give the number of the document consulted. If this is not possible – as will be the case if the checking was effected by recourse to district or consular civil status or population registers or if the person applying for the certificate furnished other evidence –, the issuing authority will simply tick the corresponding box or boxes and score through the space for the number.

It should also be emphasised that it is not permissible to give any particulars other than those itemised in the form.