EXPLANATORY REPORT

Adopted by the General Assembly in Strasbourg on 13 September 2024

I. INTRODUCTION

1. Convention No. 35 on the issue of certificates of matrimonial capacity and of capacity to enter into a registered partnership pursues the aim of Convention (No.20) on the issue of a certificate of legal capacity to marry, signed at Munich on 5 September 1980, by extending its substantive scope to certificates of matrimonial capacity and of capacity to enter into a registered partnership, an institution which did not exist at the time of drafting the Munich Convention, just like same-sex marriage. These two situations are now covered by the new Convention, which is also extended to foreigners residing in the territory of the Contracting States. The certificates and the rules applicable to their issue can be modified in a simplified manner, which makes it possible in particular to take account of future technical developments in relation, for example, to the electronic issue of certificates. A system of reservations allows States not to apply the Convention to certificates concerning same-sex marriages, registered partnerships or one or more of their forms, or relating to marriages or registered partnerships of persons habitually resident on their territory but who are not their nationals. In addition, the Convention expressly states (in Article 4) that its accession does not imply recognition by the Contracting States of institutions foreign to their domestic legal system, which would be referred to in its content, its certificate models or its other appendixes. The latter may contain optional headings that may be added at the discretion of the Member States. In practical terms, this possibility ensures that certain elements, such as the existence of same-sex marriages, registered partnerships or a sexual category other than male or female, only appear in States in which they are recognised. In other terms, States that are unaware of these developments will simply not make use of these headings. A particular care has thus been taken in drafting the convention and its appendixes, with the objective of ensuring a lenient use of the new certificates, in deep respect of the legal sentiment of all the concerned States, whether they have directly participated in the elaboration of the convention (Germany, Armenia, Austria, Benin, Belgium, Spain, Estonia, Kosovo, Luxembourg, Moldavia, Montenegro, Netherlands, Portugal, Holy See, Serbia, Slovenia, Switzerland, Turkey) or whether they are indirectly represented by international organizations or entities that have also attended the relevant working meetings [(European Commission, Council of Europe, Hague Conference on Private International Law; Association du Notariat francophone – ANF – (Association of French-speaking Notaries), European Law Institute – ELI – Europà¤ischer Verband der Standesbeamtinnen und Standesbeamten – EVS – (European Association of Civil Registrars)].2. In line with the objective of Convention No.20, the purpose of Convention No 35 is to facilitate the proof that persons wishing to enter into a marriage abroad fulfil the conditions for doing so. In itself, the certificate of matrimonial capacity has a dual component; it certifies that the holders of the certificate are not personally bound by an existing marriage and that they fulfil all the conditions laid down by the law of the issuing State for contracting marriage. The certificate of matrimonial capacity is therefore both a certificate of celibacy for the engaged couple and a certificate of custom. The new Convention also makes it possible to establish that two persons have the capacity to enter into a registered partnership under the rules of the domestic law of the State of issue as well as the possibility of issuing certificates of capacity for couples and for single persons, it being specified that States may limit themselves to issuing certificates in either of these cases (see Article 12 on reservations). It should be noted that the English version of the Convention refers to the notion of “Certificate of matrimonial capacity”. This terminology is in itself different from the current English translation of Convention (No.20) on the issue of a certificate of legal capacity to marry. However, both expressions refer to the same concept.

II. THIS CONVENTION

A. Form of the revision

Instead of amending Convention No. 20 on an *ad hoc* basis, which would undoubtedly have entailed less work, the solution chosen was to adopt a new convention. The most obvious advantage of this solution was that it made it possible to review the normative framework in depth and to make more general adaptations, in addition to integrating registered partnerships, by providing, following the example of Convention (No.34) on the issue of multilingual and coded certificates and extracts from civil-status records, signed at Strasbourg on 14 March 2014, for appendices that could be adapted to the changing needs of practice and that would allow for a simplified method of revision. This applies, for example, to the question of the mention of sex in certificates or the introduction of the coding technique.

B. Outline of the Convention

After regulating its scope, i.e. the undertaking by the Contracting States to issue to their nationals or habitual residents certificates of matrimonial capacity or of capacity to enter into a registered partnership for single persons or couples (Article 1st), the Convention contains two definitions (Article 2) and specifies that refugees and stateless persons are treated in the same way as nationals of the Contracting State (Article 3). It should be noted that Article 14 provides for the possibility of making various reservations not to apply the Convention in its entirety. Article 4 sets out the manner in which certificates are to be drawn up and prescribes the use of the ICCS models in annex 1. The probative value of certificates is governed by Article 6; they are accepted without legalisation, but provision is made for the possibility of checking their authenticity or content and for the authorities of the receiving State to require other documents. In order to ensure the proper application of the text, a number of obligations are imposed on States prior to the deposit of an instrument of ratification, acceptance, approval or accession to the Convention or the declaration of provisional application (articles 5 and 7). Article 8 settles the question of the applicable law when a State comprises two or more territorial units in which different systems of law exist.. The Convention also deals with its method of signature, ratification, acceptance and accession, including newly by regional economic integration organisations (Articles 9 to 13), its entry into force (Article 15), the possibility of provisional application before its entry into force (Article 16), its application in States composed of several territorial units (Article 17), the procedure for amending the Appendixes (Article 18) and the relationship between this Convention and the 1980 Munich Convention (Article 20).

III. COMMENTARY ON THE PREAMBLE AND THE ARTICLES OF THE CONVENTION

Preamble

The first part of the preamble highlights the purpose of the Convention, which is to establish common provisions on the issue of certificates of matrimonial capacity and certificates of capacity to enter into a registered partnership abroad.Secondly, the preamble lists the existing Hague Conference and ICCS Conventions that are relevant to the present Convention and that led to its elaboration. It also mentions other international texts that are intended to apply in the field of documents and marriage, without however claiming to be exhaustive.The preamble thus refers to the UN and Council of Europe Resolutions on the fight against forced marriages and child marriages, as well as the EU Resolution on the fight against marriages of convenience. This is to guarantee the free consent of the future spouses

as also recalled in Recommendation No. 10 on marriage adopted in Paris on 26 September 2014, also cited in the preamble.The ICCS Recommendations are also cited.

Article 1 – Scope of application

This provision takes over the historical scope of the Convention (No.20) on the issue of certificate of legal capacity to marry, signed at Paris on 5 September 1980 (cf. paragraph 1), extending it to the certificate of capacity to enter into a registered partnership for issuing States which know this form of union (paragraph 2). The specification that the certificate is issued for a celebration abroad is deleted. In fact, the issuing State certifies that two persons are authorised to marry or enter into a registered partnership according to the rules applicable in that State. Moreover, the certificates issued may be used in the issuing State itself to certify that two persons are entitled to enter into the union in question before the national authorities in another place.In order to take account of the diversity of conceptions of marriage and forms of conjugality and of known legal systems, this Convention allows reservations to be made excluding its application to same-sex marriages or registered partnerships or one or more of their forms (Article 14(1)(a) and (b)). The Convention also allows certificates to be issued to persons who have their habitual residence in the issuing State, although this extension may also be the subject of a reservation (Article 14(1)(c)).Furthermore, paragraph 3 takes account of the diversity of rules on the conditions for the conclusion of marriage and registered partnership which may vary from one State to another, in particular as regards the sex of the future spouses or partner. Accordingly, it is provided that the certificate of capacity to enter into a registered partnership may be used for the purpose of concluding a marriage and vice versa, that the certificate of matrimonial capacity issued in one State may be used for the purpose of concluding any other union if this is the wish of the persons concerned and if it complies with the domestic rules of the State of conclusion.Concretely, the Convention allows for a traditional application of the concept of marriage, by reserving the issue of certificates of matrimonial capacity to couples consisting of a man and a woman, a situation that exists today in several States, such as Moldova, Montenegro, Serbia and Turkey. The text of the Convention also makes it possible to take account of the various developments that have taken place. This means, for example, that the competent Spanish authorities will be able to certify that two persons, of different or the same sex, are entitled to enter into a marriage or a registered partnership according to the rules of certain provinces of that State, using for each situation model 1 or 2 in annex 1. Depending on the sex of the persons concerned, in Italy they will be able to enter into a marriage (if they are of the opposite sex) or a « unione civile » (if they are of the same sex), whereas in Austria, Belgium, France, Luxembourg and the Netherlands they will be able to enter into either a marriage or a form of registered partnership, and in Germany, in Estonia and Portugal only a marriage will be possible irrespective of the sex of the partners. In Switzerland, marriage could be envisaged throughout the Confederation, while a cantonal form of registered partnership is also possible in two Cantons (Geneva and Neuchâtel). It should be noted that certificates of capacity to enter into such partnerships may be issued by the competent regional authority, which is not (necessarily) attached to the civil status services, as is mentioned in different certificate models, following the example of the partnership forms provided for by the Convention No.32 on the recognition of registered partnerships and the Convention No.34 on the issue of multilingual and coded certificates and extracts from civil-status records.Article 1(1) of this Convention contains new wording compared with Article 1 of Convention No. 20, to specify that the Contracting State draws up the certificate of matrimonial capacity in accordance with the rules of its domestic law and not the rules of a foreign law, corresponding, for example, to the domestic law of one of the fiancés.Finally, paragraph 4 introduces an innovation in that it should be possible to issue not only a certificate of matrimonial capacity to a couple but also a certificate attesting to an individual's

capacity to enter into a marriage, which amounts to certifying his or her civil status in the strict sense of the term (status of a person who is not currently neither married nor in a registered partnership). In this case, the authorities of the receiving State will have to examine whether this person can unite with such and such another person, without being able to refer to the control of the issuing State with regard to the absence of any impediment to marriage between these two persons. Article 14 does, however, allow a State to restrict the issue of certificates of matrimonial capacity exclusively to couples (reservation under letter d) or to individuals (reservation under letter e).

Article 2 – Definitions

For reasons of legal certainty, the terms registered partnership and receiving State are expressly defined in the body of the Convention. The concept of registered partnership is taken from Convention No. 32 on the recognition of registered partnerships (Art. 1). (…). (…)

Article 3 – Refugees and stateless persons

This provision reproduces the content of Article 2 of Convention No. 20. The assimilation of refugees and stateless persons to nationals of the State where they are domiciled or resident, as expressed in this Article, is found in other international agreements.

Article 4 – Preparation of the certificates

This provision takes up the idea introduced with the most recent ICCS Conventions, in particular Convention No.34 on the issue of multilingual and coded certificates and extracts from civil-status records, signed at Strasbourg on 14 March 2014. Thus, in addition to the models of the certificates which are included in Appendix 1, Appendix 2 contains the list of standard entries which appear in the models, with the code number assigned to each, and Appendix 3 the rules which are applicable for their establishment. The advantage of relegating these details to Appendices rather than inserting them in the text of the Convention itself is that they can be amended using the simplified procedure provided for in Article 18. In order to avoid any legal uncertainty, paragraph 3 of this provision expressly states that accession to this Convention does not imply recognition by the Contracting States of any institutions foreign to their domestic legal system, which would be referred to in the content of the Convention, its certificate models or its other appendices. Paragraph 4 also provides that the model certificates may include optional headings which may be deleted at the discretion of the Member States, provided that they notify the General Secretariat; these optional headings are designated as such in the model certificates by a footnote. When the appendices to this Convention were being prepared, it was decided in particular to permit not to include in the certificates the “X” symbol, which is currently used in a minority of countries to designate persons who do not identify themselves as male or female. On the other hand, the symbols “M” and “F” are not optional and will therefore have to appear systematically on certificates, as they are known in all States. However, the “M” and “F” symbols are not optional and will therefore be systematically included in the certificates, as they are known in all States. The “X” symbol has been chosen because it is used as the third category alongside the “M” and “F” symbols in passports in accordance with the standards of the International Civil Aviation Organization (ICAO), a UN specialized agency (see “Machine-readable travel documents”, 7th ed. 2015, part 4, p. 15, ch. 11/II, available at www.icao.int). In the certificates delivered by application of this Convention, the delivering authorities of the States concerned will therefore be free to use the “X” symbol and to specify the known internal designation, for example the mention “diverse” which is

known in Germany and Austria. This point is specified in section 10 of Appendix 3 “Rules applicable to ICCS models”. Other headings in the certificate models have been stipulated as optional, such as the number of the document, the number of the extract, other parts of the name, the State of habitual residence of the person concerned (etc.).

Article 5 – Deposit of translations and list of symbols

This provision takes up the idea introduced with Convention No.34 on the issue of multilingual and coded certificates and extracts from civil-status records, signed at Strasbourg on 14 March 2014.

Article 5(1) introduces several changes to the mechanism relating to translations and their communication. First, it provides that States shall deposit translations of Appendices 2 and 3, which respectively contain the list of statements and symbols (including the optional headings under Article 4, paragraph 4, which the State in question intends to use) that are pre-printed in the models and the rules that are applicable to their establishment, and that these translations, as well as their subsequent modifications, shall be adopted by the ICCS Bureau. It then provides that the prescribed translations are to be deposited with the Secretary General of the ICCS instead of with the Swiss depositary, notably in order to facilitate the latter’s task. Finally, it provides that the communication of the prescribed translations shall take place before a State deposits the instrument of ratification, acceptance, approval or accession or makes a declaration of provisional application. This prior deposit is to ensure the applicability of the Convention upon its entry into force or upon the taking effect of the declaration and to allow for greater harmonisation in the application of the Convention. The fulfilment of this obligation shall be certified in accordance with Articles 15 and 16 and shall accompany the instrument of ratification, acceptance, approval or accession or the declaration of provisional application when deposited with the depositary.

Article 6 – Evidential value of the certificates

Article 6 on evidential value takes over, with some stylistic changes which were already introduced in Convention No. 34, the content of Article 10 of Convention No. 20. It provides that certificates issued under this Convention are accepted without legalisation or equivalent formality such as an apostille (paragraph 1). This liberal provision has, however, been accompanied by possibilities of controls.

In this context, it should first be noted that, pursuant to paragraph 1, certificates have a limited duration of 6 months, as provided for in Article 7 of Convention No. 20. At the end of this period, the certificates automatically lapse. That said, the matrimonial situation of the holders may change rapidly; consequently, the authorities of the receiving State retain the right to carry out any checks prior to the celebration of a marriage or the conclusion of a partnership. Paragraph 2 repeats the rule contained in the Explanatory Report to Convention No. 20 (commentary to Article 1) that the receiving State is never obliged to celebrate a marriage. This rule is now included in the body of the Convention also to take into account the fact that in different systems marriage is open exclusively to opposite-sex couples. On the other hand, the institution of registered partnership does not exist in all States or is not open to all couples.

In view of its importance, paragraph 3 takes over the rule contained in the Explanatory Report to Convention No. 20 (commentary on Article 1), according to which the receiving State may require additional documents. Furthermore, this paragraph implements the obligation of States to combat unions entered into without the free and full consent of the future spouses or partners, in accordance

with the most recent recommendations of various international organisations aimed at combating forced and child marriages and unions of convenience.

Like Convention No. 34, the fourth paragraph introduces, with the aim of combating fraud, a verification procedure which was not provided for in Convention No. 20. It should be noted that the use of the verification procedure is limited to cases where there is a serious doubt. Requests for verification are addressed directly to the issuing authority, without going through an intermediate authority or the hierarchy. The same rule applies to replies.

Article 7 – Indication of the authorities competent to implement the Convention

This provision reproduces Article 8 of Convention No. 20, but now also takes account of the possibility of provisional application under Article 16 and provides for a procedure similar to that for the deposit of translations and lists of symbols under Article 5. Each State must thus indicate the authorities competent to issue certificates of matrimonial capacity and certificates of capacity to enter into a registered partnership. It is understood that the designation of these authorities is no longer necessarily limited to civil status departments, i.e. civil registrars, civil status supervisory authorities and career diplomatic or consular agents empowered to exercise the functions of civil registrars, since in many States other authorities are competent to certify capacity to enter into a registered partnership. In addition, this provision has been supplemented in relation to Article 8 of Convention n°20 in that it also requires States to indicate which authorities will participate in the preparation and adoption of new Appendices under Article 18. This information is particularly important in the case of States which are not members of the ICCS, and which therefore have no national section to act as intermediary between the Secretariat General and the State in question. In fact, for ICCS member States, their national section can simply be designated as the competent authority. It should be noted that it is possible to have two different authorities when it comes to drawing up new appendices, i.e. at the stage of the relevant working meetings, and with regard to the competence to pass a resolution amending the said appendices.

Article 8 – Territorial units with different systems of law

This provision is inspired by Article 17 of the Convention on Celebration and Recognition of the Validity of Marriages, signed at The Hague on 14 March 1978. It takes into account the fact that in some States the rules on marriage or registered partnership are not unified. This is the case in particular in the USA for marriage and in Spain for the different forms of partnership.

Article 9 – Signature, ratification, acceptance and approval

Article 9 contains a usual clause concerning the signature, ratification, acceptance and approval of the Convention. Paragraph 2 recalls the obligation laid down in Articles 5 and 7 by repeating that instruments of ratification, acceptance or approval must be accompanied by the Secretary General's certificate concerning the deposit of translations and the list of symbols provided for in the aforementioned articles.

Article 10 – Accession and article 11 – Objection to an accession

Article 10 also includes a customary clause concerning accession to the Convention by ICCS member States and by non-member States. For the latter, however, accession can only take place after the Convention has entered into force (paragraphs 1 and 2). Paragraph 3 of Article 10 reiterates that the instrument of accession must be accompanied by the Secretary General's certificate concerning the deposit of the translations and the list of symbols provided for in Article 4.

Article 11 repeats the content of Article 10 of Convention No. 34, which provides for the possibility of objecting to the accession of a non-member State. This provision was introduced in order to give each Member State freedom of choice as to the non-member States of the ICCS with which it wishes to be linked for the use of extracts or certificates governed by the Convention. A non-member State that has acceded to the Convention previously may also object to the accession of another non-member State. The provision is not extended to the regional economic integration organisations referred to in Articles 12 and 13; consequently, it does not in itself permit a block objection to the accession of such an organisation. However, Article 11 is worded in such a way as to enable a Contracting State, where appropriate, to raise an objection against one or more States which are not members of the ICCS but which belong to a regional economic integration organisation acceding to this Convention.

Article 12 – Regional economic integration organisations and Article 13 – Regional Economic Integration Organisation as a Contracting Party without its Member States

These two provisions are new in an ICCS Convention. They result from the wish of several member States to associate the European Union (EU) or other regional economic integration organisations such as the Economic Community of West African States (ECOWAS) or the Southern Common Market (Mercosur or Mercosul) more closely with the work of the ICCS, by promoting as far as possible the development and circulation of civil status documents in the interests of citizens.The provisions are taken from Articles 26 and 27 of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, concluded at The Hague on 2 July 2019. On 29 August 2022, the EU declared, in accordance with Article 27(1) of the Hague Convention, that it has competence over all the matters governed by the said Convention, specifying that its Member States would not sign, ratify, accept or approve the Convention, but that they would be bound by it by virtue of the accession of the European Union.

Article 14 – Reservations

Unlike Convention No. 20, which did not provide for any possibility of reservation (see Article 14), the present Convention takes into account the experiences made during the preparation of Convention No. 34, by allowing reservations in respect of same-sex marriages and registered partnerships or one or more of its forms, which are not universally known institutions. Thus, a State could reserve the right not to apply the Convention to partnerships between persons of different sex, while applying it to partnerships between persons of the same sex, or vice versa.Such a reservation could also be made by a federal State that has not recognised a registered partnership entered into in one or more of its States, where such recognition is required by federal law. It is also possible to limit the application of the Convention to the issue of certificates to nationals only, thus excluding the issue of certificates to foreign residents in the same way that it is permissible to limit the issue of certificates of matrimonial capacity to couples or individuals exclusively (paragraph 1). No further reservations are permitted (paragraph 2). Depending on the development of the law in the various States, the reservations may be withdrawn (paragraph 3). In accordance with international practice and without it being necessary

to make express provision for this in the body of the Convention, States may deposit interpretative declarations with the instrument of signature, ratification, acceptance, approval or accession. These declarations are not explicitly envisaged by the Vienna Convention on the Law of Treaties of 23 May 1969. An interpretative declaration may be defined as a unilateral statement by a State intended to clarify the meaning or scope of a convention or of certain of its provisions within the legal framework defined by the standard. The practical challenge lies in distinguishing between reservations and declarations. The decisive factor is not the name of the declaration (unilateral or interpretative), but the fact that it modifies or excludes the application of the provisions of the treaty. An interpretative declaration becomes part of the interpretation of the convention, unless it is a disguised reservation. If a State declares that certain provisions are to be interpreted in a certain way, this may amount to a reservation, depending on the circumstances (AUST, Modern Treaty Law and Practice, pp. 115-117). If, as in this case, the Convention contains provisions on the admissibility of reservations, these apply only to reservations and not to interpretative declarations. In principle, interpretative declarations are always possible for all provisions. As for reservations, they are subject to the general limitation in the Vienna Convention on the Law of Treaties under which they must not run counter to the object and purpose of the Convention. When, as in this instance, the Convention does not provide otherwise, States are free to issue unilateral declarations. Given that Article 14 of the Convention provides for different types of reservations, declarations made in the context of such reservations (for example, with regard to same-sex marriages) are also admissible a fortiori.

Article 15 – Entry into force

Article 15 specifies the conditions for the entry into force of the Convention. Whereas Convention No. 20 provided for entry into force on the first day of the third month following that of the deposit of the third instrument of ratification, acceptance or accession, the entry into force of the present Convention will take place, as in the case of recent ICCS Conventions, following the deposit of the instrument of ratification, acceptance, approval or accession by two States. The period between the deposit of the instrument and any entry into force of the Convention has been extended to four months, in particular to take account of the possible adaptations that would be necessary for the issue of documents, notably via the ICCS Platform.

Article 16 – Provisional application

This provision does not exist in Convention No. 20; it is taken from Article 13 of Convention No. 34.

This provision allows, in accordance with Article 25 of the Vienna Convention on the Law of Treaties of 23 May 1969, a member State which has signed the Convention but in respect of which the Convention has not entered into force, to declare that it will apply the provisions of the Convention provisionally. The purpose of the article is to prevent the length of a ratification procedure from delaying the use of the revised and harmonised models appended to this Convention. Thus, for example, the Convention could be provisionally applied by two States that have signed but not ratified the Convention, or by one State that has signed and one State that has ratified. It should be noted, however, that the period during which a State may provisionally apply the Convention may not exceed five years.

Article 17 – Territorial application

This provision departs from the system provided for in Article 15 of Convention No. 20. The new wording is based on Article 14 of Convention No. 34, which introduced a new procedure inspired by the provisions contained in a number of the Hague Conference on Private International Law Conventions. This new rule allows a State composed of several entities to make a declaration limiting the application of the Convention to only one or more of them (paragraph 1) and provides that it will apply to the whole territory of that State in the absence of such a declaration (paragraph 2). The declaration may subsequently be modified or withdrawn (paragraph 3). A declaration will take effect either on the date of entry into force of the Convention for that State or on the first day of the fourth month following that of the receipt of the notification by the Swiss Federal Council.

Article 18 – Revision of the Appendices

The provision is new and inspired by Article 15 of Convention No. 34. The Appendices 1 to 3 referred to in Article 4 are subject to a simplified revision procedure. Article 18 thus provides for a procedure for amending Appendices of the Convention which was not provided for in Convention No. 20. Indeed, experience and the development of legal rules may show that it is appropriate to be able to add a model or to delete, add or modify standard entries in the models. It should be noted that the article only concerns the Appendices; it does not allow the text of the Convention itself to be amended. The procedure for such an amendment provides for the adoption of a resolution, at an ad hoc General Assembly, by a vote of a simple majority of the ICCS member States and a simple majority of the Contracting States. It was considered appropriate to achieve a broad consensus while avoiding the possibility of one or more States hindering an updating that the others considered indispensable. This simplified procedure applies in particular to the modification of certificate models of matrimonial capacity and of capacity to enter into a registered partnership referred to in Article 1 and drawn up in accordance with the ICCS models in annex 1. With regard to the method of calculating the majority, the following should be noted. If the ICCS has 15 member States and the Convention has been ratified by 5 States, the double majority will be reached when at least 8 ICCS member States and 3 States that have ratified the Convention have approved the resolution aimed at amending one or more Appendices. The ad hoc General Assembly referred to in Article 18 is fixed in accordance with the ICCS Rules, currently that of 24 September 2020. Pursuant to Article 9 of the Rules, the dates and venues of the Meeting are fixed once a year in September at the seat of the ICCS; these dates and places may be modified by the General Assembly or the Bureau. In accordance with Article 7 of the Rules, decisions are taken by a simple majority of the votes cast. Abstentions are not taken into account. In other words, in the above example, if 2 ICCS member States do not take part in the Assembly and only 3 States that have ratified the Convention attend the said Assembly, the simple majorities will be reached when 7 ICCS member States and 2 States that have ratified the Convention have approved the resolution taken in application of Article 18 of the Convention. It should also be pointed out that only States take part in the vote on the resolution referred to in Article 18. This means in particular that the other members of the ICCS, i.e. the international organisations, do not take part in the vote on resolutions, even though these organisations will of course have participated in the preparation of the new appendices. As far as the regional economic integration organisations are concerned, they will take part in the vote through the States of which they are composed, respectively en bloc according to the competences of the said organisations.

Article 19 – Duration and denunciation

Article 19 is slightly modified compared with Convention No. 20; it corresponds to the usual provisions of the latest ICCS Conventions.

Article 20 – Relationship with the Convention of 5 September 1980

Article 20 provides that this Convention shall, as from its entry into force, replace, in relations between its Contracting States, Convention No. 20 (paragraph 1); the latter shall remain in force between the States parties thereto for as long as any one of them remains bound solely by it. Article 20 corresponds materially to Article 17 of Convention No. 34; it reflects the intention of the authors that Convention No. 20 should be progressively replaced; consequently, it also excludes for the future any further ratification of Convention No. 20 (paragraph 2). States which have ratified this Convention but not yet Convention No. 35 are not formally obliged to recognise the effect of certificates issued under the new Convention. These States are encouraged to ratify the new convention and, in the meantime, to accept on a voluntary basis certificates issued by other States on the basis of Convention No. 35. Here again, the option of formalising provisional application of the convention is recalled (Article 16).

Article 21 – Obligations of the depositary

Article 21 lists the obligations of the Swiss Federal Council as depositary.

IV. COMMENTARY ON THE APPENDICES

Appendix 1

Appendix 1 contains four certificate models. The first model certificate is a modernised version of the model certificate of marital capacity, based on Convention No. 20. In States that so wish, it will now be possible to use optional headings (see Article 4) to enter gender categories other than male and female and to reflect the personal status of people who have previously been in a registered partnership. This model contains two versions, one for couples (model 1A) and the other for single people (model 1B).The second group of models has been created to reflect the capacity of entering into a registered partnership again with two variants, one for couples (model 2A) and the other for single persons (model 2B). In principle, persons who are issued with a certificate of legal capacity to marry or to enter into a registered partnership are free to engage because, at the time the document is issued, they are neither married nor bound by a registered partnership. For this reason, the document in question does not specify this, but does state that a previous union has been dissolved.In drafting this Convention, it was decided not to include in the certificate models of capacity to enter into a registered partnership information on the name of the partnership, on the registration authority, on impediments to marriage or partnership with third parties and on the possibility of a declaration concerning the name, as provided for in the models of Convention No. 32 on the recognition of registered partnerships. In this respect, practitioners may refer to the studies carried out in particular by the Swiss Institute of Comparative Law (see the opinion on the possibility of entering foreign unions in the Swiss civil status register published on the website of the Swiss Institute of Comparative Law www.isdc.ch). See also the comments on articles 4 and 18 of the Convention.

Appendices 2 and 3

Annex 2 simply lists, in a structured form, the standard entries that appear in the models and the codes assigned to them in the official ICCS lexicon, the translation of which is required by the Convention.Annex 3 specifies the rules applicable to the ICCS models, the translation of which is also

required in the Convention. Like Appendix 3 to Convention No. 34, it brings together in an appendix, the rules that previously appeared in Convention No. 20 and other Conventions, in the body of the Conventions themselves. Its purpose is to promote uniform application of the Convention by indicating to the authorities of the Contracting States how the wording on the models should be understood and how they should be filled in. Annex 3 also specifies the languages that should appear on the documents issued; it is clear that these provisions will greatly contribute to the circulation of the models and their understanding abroad.The list in Appendix 2 and Appendix 3 must be translated into at least one of the official languages of the Contracting States and these translations, as well as any subsequent amendments, must be deposited with the Secretary General of the ICCS and adopted by the ICCS Bureau. These formalities must be carried out before the instrument of ratification, acceptance, approval or accession or the declaration of provisional application is deposited with the Swiss Federal Council and their completion will be the subject of the certificate which the State must attach to the said deposit (in application of Articles 5 and 16 of the Convention).Article 13 of Appendix 3 expressly refers to the issue of electronic certificates; these must be accepted by the authority of the receiving State if it can be sure of the authenticity of the electronic signature. This is particularly the case where the document bears a QR code and its authenticity can be verified on an Internet platform. See also the comments on articles 5 and 18 of the Convention.