EXPLANATORY REPORT

I. INTRODUCTION

1. Persons residing in or going to a country other than that where they were born or that where events affecting civil status that modified their personal or family status took place are frequently called upon to prove their civil status. To this end, they must not only produce documents from their country of origin but also, often, have them legalised or certified by an apostille and provide a translation by a sworn translator. It is to facilitate this proof of civil status in a foreign country that the ICCS has, since more than sixty years, drawn up various instruments providing for the issue of international multilingual documents that eliminate the need for translation and are exempted from legalisation or any equivalent formality. In so doing, the ICCS is achieving two aims: facilitating the citizen's life and dealings with the administration by saving him or her from delays and expenses and fulfilling the objective, stated in its Rules, of facilitating international co-operation in civil-status matters.

II. HISTORICAL OVERVIEW

2. The first ICCS instrument in this area was the Convention on the issue of certain extracts from civil-status records for use abroad, signed at Paris on 27 September 1956 (Convention No. 1). It provided that extracts from civil-status records concerning births, marriages or deaths might, when their use in the country where they were required would have necessitated a translation, be drawn up in accordance with the provisions of the Convention (and notably in the seven languages therein mentioned) and the models appended thereto. Extracts so prepared were accepted without legalisation and translation in each of the Contracting States.

3. The ICCS found it necessary to amend Convention No. 1, partly because of the accession of new members to the ICCS and Yugoslavia's accession to the Convention (entailing the use of languages additional to the seven already in use) and partly because it seemed advisable to harmonise the models with those in the international family record booklet, created by the ICCS Convention signed at Paris on 12 September 1974 (Convention No. 15). The extent of the changes led to the drafting of a new Convention, namely the Convention on the issue of multilingual extracts from civil-status records, signed at Vienna on 8 September 1976 (Convention No. 16). The evident utility of this new instrument is demonstrated by the success it encountered on the part of the States: on 5 June 2013, the date of Romania's accession, it was in force between 22 States and is the ICCS Convention that has attracted the most ratifications.

4. Conventions Nos. 1 and 16 both govern the issue of extracts from civil-status records concerning births, marriages or deaths. However, whereas Convention No. 1 provided for no more than an option to issue a multilingual extract when the use of an extract drawn up in only one language would have necessitated a translation, Convention No. 16 provides that in such a case, but also when a party so requests, the issue of a multilingual extract is obligatory. The member States took the view that this modification met the interest of the parties, a matter that should not be left to evaluation by the authority holding the record.

5. Convention No. 16 contains detailed provisions on the languages to be used in the multilingual extracts. The multilingual model, which enables foreign authorities to understand the document, is based on a system of numbered spaces on the front and back of the extracts, which make it easy to find the translation of the standard entries and the meaning of the symbols in the official language or one of the official languages of most of the ICCS member States and of the Contracting States.

6. Convention No. 16, which was designed to replace Convention No. 1, provides that the latter shall cease to be applicable between the States in respect of which Convention No. 16 has entered into force. As from 18 July 1997, the date of entry into force of Convention No. 16 in respect of Germany, Convention No. 1 remained in force in respect of no State. It is, however, surprising that some States still use the extracts of Convention No. 1 in their relations with some third States, at the latter's request, particularly because they contain more precise indications.

7. To complete this historical overview, reference should also be made to other developments which gradually led the ICCS to draft a third Convention on the issue of international extracts from civil-status records.

8. The first reason is linked to the success met with by Convention No. 16: the number of States party to that instrument made it necessary to add to the multilingual models pre-printed translations into other languages but, on account of the formulation and layout prescribed by the Convention, it proved impossible to make such additions. So it was that a new system had to be devised that would make it possible not only to by-pass the material difficulties created by the number of languages to be included in the international extracts but also to preserve one of the major advantages of those documents, namely that they are directly understandable abroad. The idea was then born of collecting together all the entries appearing in the international documents, grouping them in a glossary and giving each of them a code number, that number being used subsequently to find the translation into the different languages. This idea was implemented by the drafting of the Convention on the coding of entries appearing in civil-status documents, signed at Brussels on 6 September 1995 (Convention No. 25). The States party to that Convention undertake to give all the entries in documents drawn up pursuant to, notably, Conventions Nos. 1 and 16 a code number in conformity with the list appended to Convention No. 25. The coding system was also developed to take account of the increasing use of computers and the new technologies in civil-status departments; it enables data to be exploited more easily and translations of extracts into the language of the State where they are presented to be produced simply and automatically. The coding system, designed to replace the pre-printed translations in the existing models, was to have taken the place of the multilingual system and made it possible to present a duly coded document to a civil registrar in another State. That was what was done in the models appended to several ICCS Conventions adopted after 1995, but in this new instrument the States nevertheless wished to combine the two systems, that is to say by giving the entries appearing in the new models a code number, that number referring to the translations on the back page.

9. Amongst the other reasons, mention should be made of the work on computerisation and the use of the new technologies which resulted, notably, in the creation by the ICCS of its Platform for the international communication of civil-status data by electronic means. In order to take into account the gradual computerisation of civil-status departments and as a logical follow-up to the coding system created by Convention No. 25, the ICCS was led to begin work aimed at making it possible to use the new technologies for the international exchanges provided for in its conventions, including Conventions Nos. 1 and 16. By 2001 the ICCS had drafted Convention No. 30 on international communication by electronic means, which made available to States party to the relevant conventions a legal framework enabling them to benefit from technological progress when applying those instruments. However, that Convention, signed at Athens on 17 September 2001, has not come into force as it has not been ratified, partly because the technical developments in the various countries were not sufficiently advanced. So it was that the ICCS was led to create the "ICCS Platform" that provides States with the technical tool that enables them to effect exchanges in a dematerialised form when applying the ICCS conventions that they have ratified and to draft a new instrument setting out the legal framework for its utilisation. Use of the ICCS Platform enables a computerised civil-status document to be sent in place of a paper

one and electronic instead of postal means to be used as the method of transmission; the States are thus provided with a secure tool for implementing their international obligations resulting from the ICCS conventions. As will be explained below, the new models of extracts and certificates were elaborated bearing their future use constantly in mind, in particular their use with computerised means and their electronic transmission by the ICCS Platform. The ICCS Convention on the use of the International Commission on Civil Status Platform for the international communication of civil-status data by electronic means (Convention No. 33) was signed at Rome on 19 September 2012.

III. THIS CONVENTION

A. Reasons for revising Convention No. 16

10. Besides the above-mentioned developments, other reasons caused the ICCS to revise its Convention No. 16, namely:

(a) need to adapt to the new legal provisions: Convention No. 16 and the models of extracts to be issued thereunder were no longer adapted to the evolution of family law since the signature of the Convention in 1976 ; thus, for example, the introduction in ever more numerous countries of marriage between persons of the same sex and of registered partnerships meant that the Convention could no longer achieve its object to the full because the international extracts could no longer be delivered to an increasing number of persons, thus depriving them of a right granted to others and obliging them to present to the foreign authorities national documents requiring translation and legalisation or apostille;

(b) need to adapt to the new technologies: since the use of computerisation and the new technologies in the management of civil-status departments and the working methods of civil registrars was developing at national or local level in the States, it was necessary to draw the consequences at the level of international co-operation, take the existence of the ICCS Platform into consideration and develop models that were more adapted;

(c) wish to extend the scope of Convention No. 16 : it was advisable to extend the scope of the convention beyond births, marriages and deaths in order to facilitate proof of other personal and family events, such as acknowledgments of a child and registered partnerships;

(d) wish to complete and improve the models of Convention No. 16 : in order to harmonise the application of the Convention and avoid divergences in the issue of extracts, it was advisable to make the content of the models more precise so that the States would find therein the entries that were useful and indispensable for them, but also so that those entries were drafted in a wording acceptable to all;

(e) wish to combat documentary fraud and the circulation of incorrect documents: to take account of the increasing phenomenon of forged or erroneous civil-status documents encountered by the authorities in all countries, a control mechanism capable of extending to the content as well as the form of the document was put into place by the introduction of a verification procedure, something that did not exist in Convention No. 16.

B. Form of the revision

11. It had initially been envisaged to revise Convention No. 16 by drafting a protocol, but the extent of the modifications to be made finally caused the States to abandon that solution and to prefer the preparation of a new Convention, a course having the further advantage of permitting a more structured up-dating.

C. Outline of the Convention

12. After stating its scope, namely the issue of extracts from civil-status records or certificates concerning births, acknowledgments of a child, marriages, registered partnerships and deaths (Article 1), the Convention indicates the conditions for the issue of these documents and the persons or authorities entitled to obtain them (Article 2). Article 3 sets out the manner in which the extracts and certificates are prepared and prescribes the use of the ICCS models appearing in Appendix 1. Article 4 lays down the obligations which States must fulfil before depositing an instrument of ratification, acceptance or approval of or accession to the Convention or making the declaration of provisional application. Article 5 specifies the evidential value of the extracts and certificates; they are accepted without legalisation, but provision is made for a possibility of checking the authenticity or the content. The Convention is open to any State, but accession by a State which is not a member of the ICCS has effect only as regards the relations between that State and a Contracting State which has not raised an objection to the accession (Articles 8, 9 and 10). The text also deals with: the procedure to be followed in order to become party to the Convention (Articles 8 and 9); its entry into force (Article 12); the option of making certain reservations (Article 11); the option of applying the Convention on a provisional basis pending its entry into force in respect of the State that made the declaration of provisional application (Article 13); a procedure for modifying the Appendices (Article 15); and the relationship between the Convention and certain earlier ICCS conventions (Articles 17 and 18).

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

Preamble

13. The first part of the Preamble lists the other ICCS conventions which have links with this Convention and led to its preparation. The second part highlights the principal aim pursued by the ICCS: on the one hand, facilitating the international circulation of civil-status documents in order to simplify the steps to be taken by persons having to prove their personal and family status with a foreign authority and, on the other, facilitating the task of the authorities. The Preamble recalls that such facilitation depends on mutual confidence between the Contracting States.

Article 1 – Scope

14. Article 1 states the scope of the Convention. It applies to the events covered by Convention No. 16 and provides for the issue of extracts from civil-status records concerning births, marriages and deaths, but goes beyond scope of the latter instrument: it takes into consideration the consequences of the introduction of same-sex marriages and new forms of parenthood; it also covers other events and provides for the issue of an extract from the record of acknowledgment of a child and of documents relating to registered partnerships.

15. Article 1 also specifies that the extracts and certificates in question will, like those under Convention No. 16, be multilingual but also coded in order to take account of the coding system implemented by the ICCS through the adoption of Convention No. 25 of 6 September 1995.

16. Paragraph 1 adds to the extracts provided for by Convention No. 16 extracts from records concerning the acknowledgment of a child. In order to take account of States where an acknowledgment is not the object of a specific civil-status record, it had initially been envisaged to prepare one single model serving as an extract from a record of an acknowledgment but also as a certificate confirming the acknowledgment ; in the end this solution was not retained on the grounds that the acknowledgment of a child was in all cases mentioned on his or her record of birth and that the issue of an extract from that record would therefore be sufficient.

17. Paragraph 1 also adds to the extracts provided for by Convention No. 16 extracts from records concerning registered partnerships. Paragraph 2 takes account of the fact that in certain States registration of a partnership or a similar institution is not effected by a civil registrar and does not give rise to the preparation of a civil-status record, but is the object of another procedure, for example, an inscription by another authority or in another public register, such as a population register, or a notarial deed. In such cases, the competent authority is not in a position to issue an extract from a civil-status record and will therefore issue a certificate confirming the registration of a partnership. Unlike model 2 “Extract from record of acknowledgment”, model 4 in Appendix 1 was designed so as to permit the issue of a single document in both cases, either an extract from a record or a certificate.

18. The Convention does not specify which authority is competent to issue the extracts, but it is clear that, save for the certificate confirming the registration of a partnership (one of the possibilities in model 4), this can only be the authority holding the record from which an extract is issued. Unlike certain other ICCS conventions, issue by consular authorities is not specifically mentioned either. Article 5 of the Vienna Convention on Consular Relations, of 24 April 1963, in principle allows consular authorities to be authorised to issue these documents so long as the receiving State does not object. The present Convention does not prohibit such issue, but evidently it depends on the system set up by the various States, and in particular whether they have made provision for the consular registers to be up-dated in the same way as the registers held by local authorities or whether consulates have access to the national centralised system. It is highly probable that in future more consular civil registrars will be led to issue the extracts covered by the Convention, as and when developments in computerisation occur in the States.

Article 2 – Issue of the extracts and certificates

19. Article 2 deals with the issue of the extracts and certificates. Paragraph 1 repeats the provisions of the first paragraph of Article 1 of Convention No. 16 and in particular the one introducing an obligation to issue in case of a request by an individual rather than a mere option as provided for in the 1956 Convention. Such a request will most often be made when a civil-status extract or certificate has to be produced abroad and its use would have necessitated a translation and/or a legalisation or apostille. However, nothing prevents a request for an extract or certificate being made for reasons other than those rendering its issue obligatory, or even its use in the same State. It was considered that to be able to fulfil this obligation to the maximum, the civil registrar should inform interested parties of the existence of the international extracts and certificates.

20. Paragraph 2 of Article 2 repeats and at the same time extends paragraph 2 of Article 1 of Convention No. 16 since it expressly provides for issue to authorities as well as to individuals. Accordingly, any

interested party or a competent authority may request an extract or certificate, provided that the applicant is entitled under the domestic law of the issuing State to obtain a verbatim copy of the record or of the document confirming the registration of a partnership. This condition, which is already found in Conventions Nos. 1 and 16, reflects the obligation of the Contracting States to take measures to ensure that the accessibility to the public of civil-status records does not infringe the right of individuals to respect for their private and family life. The ICCS Recommendation relating to the accessibility to the public of civil-status registers and records, adopted by the General Assembly in Rome on 5 September 1984 (Recommendation No. 4), sets out principles on this subject. During the discussions it was recalled that since the international extracts are issued only to persons entitled to obtain verbatim copies, it should, whenever circumstances so permit, be possible to dispense with the production of verbatim copies or supplementary documents. See also below, commentary on the Appendices (§ 49-70).

Article 3 – Preparation of the extracts and certificates

21. Article 3 concerns the preparation of the extracts and certificates. Paragraph 1 repeats Article 2 of Convention No. 16 and provides that the extracts and certificates prepared shall indicate the status of the person concerned at the time of issue of the document, that is including any changes that may have occurred since the original record was drawn up. Account can be taken of matters that do not appear in the record but can be easily deduced from application of the law and other legal rules. See also below, commentary on the models (§ 49-66).

22. As compared with Convention No. 16, paragraphs 2 and 3 effect some restructuring, in that the detailed provisions which were laid down in that instrument for the preparation of the extracts and were one of the reasons for abandoning the solution of drafting a protocol, are now relegated to the Appendices to the Convention, as was done in the more recent ICCS conventions. Accordingly, in addition to the models of extracts and certificates contained in Appendix 1, one finds in Appendix 2 a list of the standard entries that appear in the Appendix 1 models, with the code number given to each of them, and in Appendix 3 the rules applicable to their preparation. Relegating these details to the Appendices rather than inserting them into the text of the Convention itself has the advantage that they can be modified by the simplified procedure set out in Article 15.

23. It is noteworthy that Article 3 does not repeat the provisions of Article 3 of Convention No. 16 which conferred on States the option of supplementing the models with spaces and symbols and of adding a space for the insertion of an identity number. This is because those provisions had become superfluous with the new models and the introduction of the procedure set out in Article 15. Since these options of making additions to Convention No. 16 meant that the extracts could vary according to the State of issue, a greater degree of harmonisation was sought in order to avoid the addition by certain States of spaces that were specific to them. So that the content of the models issued by all the Contracting States did not differ, particular attention was paid, during the elaboration of the models, to the entries that would have to appear therein. As a result, the models were considerably completed so as to take account of everyone's needs and they contain supplementary spaces in which more data, including the identity number, can be entered if need be.

Article 4 – Deposit of translations and list of symbols

24. Article 4 concerns the States' obligation to deposit various translations. This obligation already appeared in Convention No. 16, in that Article 6 thereof provides that a State shall communicate to the

Swiss Federal Council, “when depositing its instrument of accession, â€¦ a translation in its official language or languages of the standard forms of words and the meaning of the symbols”. The said Article 6 also set out other practical steps to be taken in the preparation of the extracts, in particular the inclusion of a summary of various Articles. The present Convention contains this obligation to communicate translations whilst making it more precise in order to avoid the difficulties encountered in its application in practice, and it sets out again, notably in Appendix 3, the above-mentioned steps in a more structured form. See also below, commentary on the Appendices (§ 49-70).

25. Article 4, paragraph 1, modifies in various ways the mechanism concerning the translations and their communication. It provides first of all that the States are to deposit the translation of Appendices 2 and 3, which contain, respectively, a list of the entries and the symbols that are pre-printed in the models and the rules applicable to their preparation, and that those translations, and subsequent modifications thereof, are to be adopted by the ICCS Bureau. Paragraph 1 then provides that the prescribed translations are to be deposited with the ICCS Secretary General and no longer with the Swiss depository, notably in order to facilitate the latter’s task. Finally, it further provides that the communication of the prescribed translations is to take place before a State deposits the instrument of ratification, acceptance, approval or accession or makes a declaration of provisional application. This deposit in advance should guarantee that the Convention can be applied as soon as it enters into force or as soon as the said declaration takes effect and should bring about greater harmonisation in the application of the Convention. Fulfilment of this obligation will be the object of an attestation which must, in conformity with Articles 8, 9 and 13, accompany the instrument of ratification, acceptance, approval or accession or the declaration of provisional application when it is deposited with the depositary.

26. Paragraph 2 of Article 4 is an innovation as compared with Convention No. 16. Its aim is to bring about a more effective application of the present Convention by seeking to avoid misunderstandings due in particular to a misreading of the provisions in force in foreign States in the matter of up-dating of records. In a large number of countries, but not in all, civil-status records are up-dated by inserting subsequent annotations that are added to a record when an event affecting civil status has occurred after the preparation of the original record, in order to complete or modify it. This up-dating of original records by adding subsequent annotations, which can, as the case may be, be entered in the margin or at the foot of the record, varies from country to country, since some enter certain categories of annotation in certain records only (for example, annotations relating to parentage and name in the record of birth, but annotations relating to the dissolution of marriage in the record of marriage) whilst others also insert all the categories of annotation in a central record, namely the record of birth. Thus, in some countries like France or Italy, for example, any subsequent event affecting a person’s status will be the object of a subsequent annotation in the record concerned (in particular, divorce in the record of marriage), but also in the margin of the record of birth of the person in question. In other countries, this is not the case. In the Netherlands, for example, a person’s subsequent marriage will be entered in the population register but will not be the object of an annotation in his or her record of birth. Appendix 4 of the Convention should make it possible to know which subsequent annotations the Contracting States insert in their various records, so that the foreign authority to which the document is presented will be able to interpret in the best way the symbols which will appear in the spaces “Other entries” in models 1, 3 and 4 in Appendix 1 to the Convention and will not draw an incorrect conclusion from the absence of one of the symbols which it would itself have been led to include. By referring to the table in Appendix 4 to the Convention, the user of the extract from a record or the certificate will know that the absence an annotation relating to a marriage does not necessarily mean that the person concerned is unmarried. To be useful and effective, the Appendix must obviously be up-dated whenever a State modifies the list of its annotations.

Article 5 – Evidential value of the extracts and certificates

27. Article 5 on evidential value repeats, with some stylistic changes, the content of Article 8 of Convention No. 16. It provides that the extracts and certificates issued pursuant to the present Convention shall have the same evidential value as extracts from records and certificates issued in accordance with the rules of domestic law of the issuing State (paragraph 1) and that they shall be accepted without legalisation or equivalent formality such as the apostille (paragraph 2). The latter, liberal provision was, however, coupled with a possibility of control, inserted in paragraph 3.

28. With a view to combating fraud, paragraph 3 of Article 5 introduces a verification procedure that did not feature in Convention No. 16. The clause was derived from Articles 3 to 5 of the ICCS Convention on the exemption from legalisation of certain records and documents, signed at Athens on 15 September 1977 (Convention No. 17), but paragraph 3 of Article 5 of the present Convention enables a request to be made for verification of the content of the record as well as its authenticity. In this way the authors of the Convention are going further than legalisation, a procedure that concerns only the form of a document and not the correctness of its content. Use of the verification procedure is, however, confined to cases where there is a serious doubt.

29. Requests for verification are addressed directly to the issuing authority, without passing through an intermediate authority or the hierarchy. The same goes for replies.

30. It may be added that the question of the period of validity of documents issued pursuant to the Convention was examined but that it was decided not to specify it, the more so as the States' position and provisions on this point may vary. In principle, the extracts constitute for ever proof of the facts they set out, subject to subsequent annotations that might possibly affect their validity, but it is always open to authorities to ask for a document issued more recently depending on the purpose for which it is requested.

Article 6 – Charging of fees

31. Article 6 repeats, with some stylistic changes, the content of Article 9 of Convention No. 16. It provides that the charges payable for extracts and certificates issued pursuant to the Convention may not be higher than those payable for extracts or certificates prepared in conformity with the rules of domestic law of the issuing State. The same provision appeared already in Convention No. 16 which, as appears from its explanatory report, was able only to recommend, but not to prescribe, that no charge should be made. Article 6 in no way modifies the provisions of international agreements relating to issue free of charge in this area, such as the ICCS Convention on the issue free of charge and the exemption from legalisation of copies of civil-status records, signed at Luxembourg on 26 September 1957 (Convention No. 2).

32. Neither does Article 6 affect Article 3, paragraph 5, of ICCS Convention No. 33 which lays down that where an extract from a record or a certificate is issued via the ICCS Platform only the authority delivering the extract or certificate to the individual may charge a fee.

Article 7 – Obtainment of verbatim copies

33. Article 7, which repeats the content of Article 10 of Convention No. 16, provides that the present Convention shall not prevent the obtainment of verbatim copies of records or the issue of other civil-status documents, such as documents prepared in accordance with national law.

Article 8 – Signature, ratification, acceptance and approval

34. Article 8 repeats a standard clause on the signature, ratification, acceptance and approval of the Convention. Under paragraph 1, signature is reserved for member States alone. Paragraph 2 recalls the obligation introduced by Article 4 by repeating that instruments of ratification, acceptance or approval must be accompanied by the attestation of the Secretary General referred to in Article 4, concerning the deposit of the translations and the list of symbols.

Article 9 – Accession

35. Article 9 permits accession by ICCS member States and by non-member States, but the latter may accede only after the Convention has entered into force (paragraphs 1 and 2). Paragraph 3 recalls once again that the instrument of accession must be accompanied by the attestation of the Secretary General referred to in Article 4, concerning the deposit of the translations and the list of symbols.

Article 10 – Objection to an accession

36. Although the Convention is open to any State, Article 10 confers the option of objecting to an accession by a State that is not an ICCS member. This provision was introduced in order to afford each member State freedom to choose with which States that are not ICCS members it wishes to be bound as regards use of the extracts or certificates governed by the Convention. Article 10 lays down that an accession by a State that is not an ICCS member shall have effect only as regards the relations between the acceding State and a Contracting State which has not raised an objection to the accession in the five months following notification of that accession. Such an objection may be raised against an accession by a non-member State by a member State which ratifies, accepts, approves or accedes to the Convention, even if the accession by the non-member State occurred previously and it is already bound by the Convention as regards another member or non-member State. A non-member State that acceded to the Convention previously may also raise an objection to an accession by another non-member State.

Article 11- Reservations

37. Article 11 confers on States which so wish the option of not applying the Convention to extracts or certificates concerning marriages of persons of the same sex and registered partnerships (paragraph 1). The inclusion of this reservation is explained by the fact that these institutions are not known or not recognised in certain States. Such a reservation can be withdrawn following the procedure indicated in paragraph 3. No other reservation is permitted (paragraph 2).

38. As regards registered partnerships, the reservation could apply to any partnership or be limited to one or more of its forms (paragraph 1, letter (b)). Thus, a State could reserve the right not to apply the Convention to partnerships between persons of different sex, whilst applying it to partnerships between persons of the same sex, or vice versa.

39. Such a reservation could also be made by a federal State which has not recognised a registered partnership introduced in one or more of its federated States, if such recognition is required by federal law.

40. It should also be pointed that, unlike Article 11 of Convention No. 16, the new Convention does not provide for the option of reserving the right not to apply it to extracts from records of birth of adopted children. This reservation was intended to protect adopted children by not revealing their adoptive parentage, but the authors of the present Convention considered, for several reasons, that it would not be justified to keep it. The first reason is based on the observation that this option in Convention No. 16 has scarcely been exercised because, since 1976, the reservation has been made by only one out of the 22 States that have ratified that Convention and was, moreover, confined to adoptions leaving the original parentage in existence. It also transpires that, on account of the evolution of legislation and societies, these questions are not only less sensitive than they were when Convention No. 16 was being drafted but are also tackled by reference to other criteria, notably the taking into account and the recognition of the right to know one's origins. Another reason is linked to the fact that plenary adoptions are often limited to minor children and subject to their agreement after a certain age, and that the documents issued pursuant to the Convention set out the status of the person concerned at the time of issue, so that the adoptive parentage will appear but rarely. Finally, maintaining the reservation option might have deprived some persons of the possibility of obtaining an international extract from the record of birth.

Article 12 – Entry into force

41. Article 12 sets out the conditions for the entry into force of the Convention. Whereas Convention No. 16 provided for its entry into force from the thirtieth day following the date of deposit of the fifth notification, the entry into force of the present Convention will occur, as is the case for recent ICCS conventions, following the deposit of an instrument of ratification, acceptance, approval or accession by two member States. The period between the deposit of the instrument and any entry into force of the Convention has been increased to four months, notably to allow for any adaptations that might be necessary for issuing the documents, in particular via the ICCS Platform. It will also be noted that, for the entry into force of the Convention in respect of an acceding State that is not an ICCS member, the period will begin to run only following the expiry of the five-month period referred to in Article 10.

Article 13 – Provisional application

42. In conformity with Article 25 of the Vienna Convention on the Law of Treaties, of 23 May 1969, Article 13 enables an ICCS 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 on a provisional basis. The Article aims at avoiding the use of the revised and harmonised models appended to the Convention being delayed by lengthy ratification procedures. Thus, for example, the Convention could be applied provisionally by two States that have signed but not ratified it, or by a State that has signed and a State that has ratified. It will, however, be noted that the period during which a State can apply the Convention provisionally cannot exceed five years.

Article 14 – Territorial application

43. Article 14, concerning the territorial application of the Convention, introduces a new procedure that differs from that found in Convention No. 16 and other ICCS instruments. Its wording, derived from provisions included in a certain number of the conventions of the Hague Conference on Private International Law, enables a State composed of several units to make a declaration limiting the application of the Convention to only one or more of them (paragraph 1) and provides that in the absence of such a declaration the Convention shall extend to the whole of that State's territory (paragraph 2). The declaration may subsequently be modified or withdrawn (paragraph 3). A declaration will take effect either on the date of the entry into force of the Convention in respect of that State or on the first day of the fourth month following the month of receipt of the notification by the Swiss Federal Council.

Article 15 – Revision of the Appendices

44. Article 15 lays down a procedure for modifying Appendices 1 to 3 to the Convention, a procedure for which provision was not made in Convention No. 16. This is because experience and the development of rules of law may show that it is advisable to add a model or to delete, add or modify standard entries appearing in the models. It is to be noted that Article 15 concerns only the Appendices; it does not make it possible to modify the text of the Convention itself, for example in order to add an event affecting civil status to the events referred to in Article 1. The procedure for such a modification involves a resolution adopted at an ad hoc General Assembly by a simple majority of the ICCS member States and by a simple majority of the Contracting States. This is because it was thought advisable to attain a broad consensus whilst avoiding the blocking by one or more States of an up-dating considered indispensable by the others.

Article 16 – Duration and denunciation

45. Article 16 repeats standard clauses concerning denunciation of the Convention.

Article 17 – Relationship with the Convention of 8 September 1976

46. Article 17 provides that as soon as it enters into force the present Convention shall replace Convention No. 16 but that Convention No. 16 shall remain in force between the States party thereto as long as one of them continues to be bound by that instrument alone (paragraph 1). Article 17, which thus reflects the authors' intention that Convention No. 16 shall be gradually replaced, also excludes for the future any new ratification of or accession to that Convention.

Article 18 – Relationship with the Patras Protocol of 6 September 1989

47. The ICCS Convention on the international exchange of information relating to civil status, signed at Istanbul on 4 September 1958 (Convention No. 3), provides that the transmission of the information mentioned therein shall be effected by sending a notice set out in accordance with the models appended to Convention No. 3. The Protocol to Convention No. 3, signed at Patras on 6 September 1989 (Convention No. 23), provides that the States may also use for such transmission either the model multilingual extracts in Conventions Nos. 1 and 16 or "another model drawn up for the purpose by the International Commission on Civil Status". Article 18 of the new Convention states that the ICCS models

3 and 5 in Appendix 1 (extract from a record of marriage and extract from a record of death) shall be regarded as such other models that may be used for the transmission between the States party to the new Convention and to the above-mentioned Protocol of the information referred to in Convention No. 3.

Article 19 – Obligations of the depositary

48. Article 19 lists the obligations of the Swiss Federal Council as depository.

V. COMMENTARY ON THE APPENDICES

49. The Convention has four Appendices. Appendix 1 contains the models of the extracts and certificates the issue whereof is governed by this Convention (§ 50-66). Appendix 2 reproduces the list of entries and code numbers used in the models in Appendix 1 and Appendix 3 sets out the rules applicable thereto (§ 67-69). Appendix 4 groups together the symbols that may be inserted by the Contracting States in the spaces "1-4-4 Other entries" appearing in models 1, 3 and 4 (§ 70).

A. Appendix 1

50. Since the effectiveness of the Convention depends largely on the international models for whose issue it provides, particular attention was paid to their elaboration. Appendix 1 reproduces, completes and clarifies the model extracts for the events already referred to in Convention No. 16 (births, marriages and deaths), notably by adding other standard entries and symbols, but it also contains new models for other events (in particular, acknowledgments of a child and registration of partnerships) (§ 52-55). All the models contain a greater number of items, which enables more information to be supplied (§ 56-64). The detailed rules applicable to the models are set out in Appendix 3 (§ 68-69).

51. As indicated above, the States wanted the models in Appendix 1 to combine the multilingual system, used by the ICCS in Convention No. 16 and in a large number of other conventions, and the entry-coding system, introduced by the ICCS through the above-mentioned Convention No. 25. Accordingly, a code number was given to each entry appearing on the front or first page of the models, translations of those entries being found on the back or second page. These code numbers and entries (a list whereof appears in Appendix 2) are taken from a glossary prepared by the ICCS which is common to all the Contracting States, those States having to supply translations into their official language or languages before becoming bound by the treaty. This combination of the two systems has a twofold aim. On the one hand, it should further facilitate a better circulation of documents by making it possible for them to be directly understood when they are presented abroad, not only to an authority or administration but also to any public or private service. On the other hand, it should facilitate recourse to computerisation and the new technologies, and notably use of the ICCS Platform; moreover, electronic versions of the models have been prepared in the context of the creation of the ICCS Platform in order to enable civil registrars to issue these documents easily and to avoid the numerous difficulties linked to the different languages that have to appear therein.

52. The models in Appendix 1 then take account of the legislative developments occurring since the adoption of Convention No. 16, such as the introduction of the institution of registered partnership and the opening of marriage to persons of the same sex (§ 54-55). The models also seek to provide solutions to various difficulties of application arising from Convention No. 16, concerning in particular a person's

surname and precise identification, having regard to the divergent effects produced by national laws even when they are correctly applied (§ 56-64).

53. As regards taking account of the new institutions, two points should be mentioned: the addition of a specific model for registered partnerships (§ 54) and the adaptation of the other models (§ 55).

54. Model 4 was designed so as to be usable irrespective of the type of registered partnership introduced in the various States and of the sex of the partners. It can therefore be issued to all registered partners, whether of the same or different sex. A special feature is that it is both an extract from the record of registered partnership, when a record of partnership is drawn up on its conclusion, and a certificate confirming the registration of a partnership, when it does not give rise to a record drawn up in a civil-status register but is the object of another public registration; it will be for the issuing authority to tick the appropriate space.

55. Models 1, 2, 3 and 5, for their part, were adapted so as to permit their issue in all cases, whether the spouses or the parents are of different or the same sex. It was no simple matter to negotiate a single model usable in all the potential situations, but the solution finally followed makes it possible to know precisely the sex of each parent or spouse. Having regard to the linguistic impossibility of finding a sex-neutral term in all languages and the refusal of some States to use the wording “parent 1” and “parent 2” or “spouse 1” and “spouse 2”, the solution chosen consists of reproducing, in the column relating to each parent, the two entries “father” and “mother” and, in the column relating to each spouse, the two entries “husband” and “wife,”, which the civil registrar will tick according to the situation with which he or she is confronted. For the parents, he or she will tick “father” in one column and “mother” in the other if the parents are of different sex, or “father” and “father” or “mother” and “mother” if they are of the same sex. For the spouses, he or she will tick “husband” in one column and “wife” in the other if they are of different sex, or “husband” and “husband” or “wife” and “wife” if they are of the same sex. Also to be noted are the addition of various symbols in models 1, 3 and 4 and the addition, in model 5, of a space “Last partner” to the space “Last spouse” which existed already in the extract from the record of death appended to Convention No. 16. Model 5 also contains a new space “Previous marriages or partnerships,” which is to be filled in only by “yes” or “no” since it is aimed simply at collecting a supplementary item of information which will be useful in most of the States to enable them to determine subsequently the possible beneficiaries of pensions which the deceased was receiving.

56. In order to take account of the various difficulties notified as regards the application of Convention No. 16, the models in Appendix 1 include more items, making it possible to supply more information. Generally speaking, the spaces are to be filled in as precisely as possible, so as to avoid, as far as can be done, asking users to produce verbatim copies or supplementary documents that are not covered by this Convention and so would not benefit from the same advantages, namely exemption from translation and from legalisation or apostille. The provision in Article 7 of Convention No. 16, to the effect that “If a space â€¦ cannot be filled in from details appearing in the record, that space … shall be scored through” has been retained and appears in Appendix 3; this rule does not prevent an issuing authority from filling in the space whenever it has definite knowledge of the information, if the information is deduced from other annotations in civil-status registers or from the effect of the law or other legal rules.

57. The models include information that the Contracting States wished, over the course of time, to be able to include in the extracts pursuant to the options conferred by Article 3 of Convention No. 16 of “supplementing [the extracts] with spaces and symbols showing other entries or annotations in the record” and “a space for the insertion of an identity number”. Thus, the absence of the item “maiden

surname", which appeared in the extracts appended to Convention No. 1 but was not taken up again in the extracts of Convention No. 16, revealed that it was impossible to indicate the mother's surname at birth when marriage affected her surname, often by operation of law; the introduction in some domestic laws of an option allowing spouses to choose a married surname that could be that of the husband or that of the wife compounded this difficulty (§ 59-62). Other States had sought the addition of a space for indicating the place and number of the family register, which they needed to up-date their registers, or the addition of other symbols, such as one making it possible to mention the existence of a marriage contract. These requests had led to resolutions of the ICCS General Assembly authorising the additions, but this solution was not considered satisfactory and resulted in more divergences in the international extracts issued by the States.

58. As regards the identity number, which the States already had the option of adding in the extracts they issued, without the other Contracting States being informed, it was inserted systematically in all the models. This personal (sometimes also called "individual") identity number will be indicated whenever it is technically possible and is permitted by domestic law, even if the number is not found on the face of the record but appears in other official documents (extracts from other registers, identity card or passport); it will be followed by the name of the State that attributed it, thus making it possible to distinguish these numbers in cases where both the issuing State and the receiving State use them to identify the person for civil-status purposes.

59. The models go above all into details as regards the items relating to the surname of the persons mentioned in the record, in order to take account of the legal systems which govern the question of the surname in a manner that varies significantly from one country to another. This is because, as indicated above, some States make provision for a common married surname, chosen by the spouses on or during their marriage, which will subsequently be the surname of the children they have together. In other States marriage has no effect on the surname of the spouses, following the principle that the surname is attributed at birth, by operation of law or after a declaration of choice on the part of the parents, and that a subsequent change of this surname can only be exceptional, occurring most often following proceedings. A more liberal third group allows a surname to be changed by a simple declaration. The consequence of these diverging provisions is that the same person may bear a different legal surname in different countries and that this divergence of surnames, besides the fact that the person concerned may find himself or herself issued with identity and travel documents under a different identity, makes it impossible, or difficult, to identify the person when events concerning him or her are transcribed in the registers of another country. This is why the models include a whole series of items concerning the surname: "Surname at birth", "Surname at the time of issue" of the document, "Surname before the marriage", "Surname before the partnership" "Surname before the acknowledgment", "Surname after the acknowledgment" or "Other part(s) of the name".

60. The space "Surname at birth" is found in the models, sometimes in several places. This systematic addition meets the need previously mentioned and replaces the provisional solution that had been authorised by a resolution of the General Assembly on 30 March 2006, namely to insert, in the "symbols" section, the words « né/née ». The item "Surname at birth" must be understood as being the surname attributed at birth and inserted in the record of birth, or the surname that replaced it following a subsequent change, effected by a voluntary declaration or following a name-change decision or a modification of parentage, notably because of an adoption; in such a case "Surname at birth" must be understood as the surname resulting from the change that occurred in that way. This item can also be filled in when the surname at birth does not appear directly on the face of the record but can be deduced very easily from application of the law and other legal rules; this would notably be the case for a parent's surname at birth which was not entered in the record of marriage of his or her

children because, for example, that parent bore a married name in which his or her own surname at birth did not appear.

61. The space “7-7-6 Other part(s) of the name” appears in all the models and should in particular make it possible to insert the other parts of the name such as the middle names or the patronymics which exist in numerous legal orders. To facilitate identification of a name indicated in the space “Other part(s) of the name”, it will be followed by a symbol, namely “Ni” for a middle name and “Np” for a patronymic. Other names or ingredients of a name will be followed by the symbol “Na”. Titles will also be entered in this space, followed by the symbol “Nob”.

62. The items “Surname before the marriage”, “Surname before the partnership” and “Surname at the time of issue” of the document should make it possible to cover all the potential situations, and notably those where, before the celebration of a marriage or the registration of a partnership, a person’s surname was not his or her surname at birth (in the meaning given above) but a common surname chosen during a previous marriage or partnership which that person had been able to keep after dissolution of that marriage or partnership, as is allowed by certain domestic laws.

63. As regards the indication of forenames, and on account, here also, of the divergent provisions as between the States, in principle they should all be indicated, in the manner and in the order in which they were inserted in the original record or subsequently modified; attention is, however, drawn to the fact that some States enable the persons concerned to choose the forename or forenames which they would like to appear in extracts issued on the basis of the registers.

64. Note should also be taken of the following points, which differentiate the models issued pursuant to this Convention from those provided for by Convention No. 16:

– the reference to the Convention appears on the front page (or page 1), with the ICCS’s new logo so as to render the documents more readily recognisable;

– a space “Extract number” has been added to the space “Record number”; most often only one of the two will be ticked. This addition was thought necessary in order to take account, notably, of the States which have abolished “paper” registers and no longer have numbered original records but attribute to each access to the computerised system a “transaction” number; such States will in principle tick only the second space and indicate therein the number of the said transaction; in this way they will give, in the absence of an immutable reference to an original record, a reference that, if need be, will make it possible to check the basis on which the document was issued. More rarely, it will be possible to tick both spaces, in particular when, besides the number given to the original record, a State has put in place a system for numbering the extracts which it has had occasion to issue;

– the list of the symbols to be inserted in the space “1-4-4 Other entries” has been completed to take account of the annotations which the various States enter in their records. Attention is drawn in particular to the addition of symbols indicating the dissolution or annulment of a partnership and the existence of a marriage or partnership contract. The symbol for a marriage or partnership contract is designed only to give the necessary information to certain States: it will be inserted only to indicate that a contract governing the property of the spouses or partners exists, and will not enter into the details of the type of contract they have concluded.

65. Appendix 3 contains a list of all the symbols (§ 69). A list setting out the symbols used by each Contracting State will appear in the table in Appendix 4 (§ 70). The States will insert the relevant symbols followed, if appropriate, by the date and place of the event and the name and forenames of the spouse or partner.

66. Another problem that was discussed at length should be mentioned, namely that of the characters used in foreign languages. This is because there have been regular reports of difficulties relating to the absence of various diacritic marks in the names of persons and places and some States have even formulated official requests that, in the international extracts, all the characters of a national language appearing in those names should be reproduced identically. Despite the consequences of some States being prevented by the absence of these specific marks from identifying clearly those persons or, to a lesser degree, those places, it was not possible to impose a common rule for everyone. This was because some States saw this as less a matter for the Convention than for the national provisions on the drawing up of records or sometimes even for their Constitution. In the absence of a possible rule, all the States are nevertheless encouraged to reproduce these distinctive marks found in a foreign language even if they are not found in their own language, in particular if the civil-status documents relate to persons holding only the nationality of a foreign State concerned.

67. The question was also raised whether, as is done by some States unilaterally, special security measures should be laid down for the issue of the documents, such as the use of security paper or the numbering of the documents issued. Although these measures were considered useful for combating the circulation of forged civil-status documents, they could not be imposed on account of their cost and the fact that various States make no charge at all for the documents which they issue. However, there is nothing to prevent a Contracting State from having recourse to these measures; on the contrary, their generalisation can only be recommended.

B. Appendices 2 and 3

68. Appendix 2 simply groups together in a structured form the list of the standard entries appearing in the models (the translation whereof is required by the Convention) and the code numbers given to them in the ICCS's official glossary.

69. Appendix 3 sets out the rules applicable to the ICCS models, the translation of those rules also being required by the Convention. As was done in more recent ICCS conventions, it groups together in an appendix the rules which previously appeared, in Convention No. 16 and other conventions, in the body of the convention itself. Its aim is to facilitate a uniform application of the Convention by indicating to the authorities of the Contracting States how the wording appearing in the models should be understood and how the models should be filled in. Appendix 3 also specifies the languages which should be used in the documents issued; it is clear that these provisions will contribute significantly to the circulation of the models and their understanding abroad, but their implementation will be facilitated by the use of the ICCS Platform and the computerised versions prepared in the course of its construction.

70. 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, and their subsequent modifications, must be deposited with the ICCS Secretary General and adopted by the ICCS Bureau. These formalities have to be completed before the deposit of the instrument of ratification, acceptance, approval or accession or the declaration of provisional application with the Swiss Federal Council and their completion will be the object of an attestation which the State will have to join to that deposit (pursuant to Article 4, paragraphs 1 and 3, Article 8, paragraph 2, Article 9, paragraph 3, and Article 13, paragraph 2, of the Convention.

C. Appendix 4

71. To reinforce its effectiveness, the Convention contains an Appendix 4 with a table in which can be set out a list of the symbols which the States may insert in the spaces “Other entries”. This table serves only to inform a foreign authority, to which models 1, 3 and 4 (extracts from records of birth, marriage and registered partnership) may be presented, about the provisions in force in the issuing States in the matter of the subsequent annotations that they insert in the original records, in order to avoid incorrect conclusions being drawn by that authority, due to misreading of the foreign law, from any absence of symbols. This table will be up-dated by the Secretary General as and when States become bound by the Convention. The procedure is similar to that laid down for the translations: the list of symbols and any subsequent modification thereof must be deposited with the Secretary General before the deposit by a State of the instrument of ratification, acceptance, approval or accession or the declaration of provisional application, and completion of this formality will be the object of an attestation which the State will have to join to that deposit (pursuant to Article 4, paragraphs 2 and 3, Article 8, paragraph 2, Article 9, paragraph 3, and Article 13, paragraph 2, of the Convention).