

Conditions for requesting translations and certified copies under the EPC procedure

NON-PAPER FOR THE GROUP OF COORDINATORS

The purpose of this non-paper is to clarify the conditions under which the competent authorities of Member States may require translations and certified copies of documents submitted in support of an application for the issuance of a European Professional Card (EPC).

This issue has already been discussed in the Group of Coordinators. In order to ensure the proper functioning of the EPC procedure, the members of the Group of Coordinators are requested to communicate the clarifications that follow to the relevant national competent authorities.

1. Information displayed in the EPC document repository

The principles defining this issue are set out in Commission Implementing Regulation 2015/983 (the Regulation).

By mid-January 2016, each Member State had to notify, via a dedicated module of the Internal Market Information System (the IMI), their national document requirements, i.e., documents that they, acting as host country authority under the EPC procedure, would require from applicants. The Commission has assisted Member States during this phase and pointed out obvious contradictions between the notified requirements and binding EU rules. The resulting lists of documents, which are compiled for each and every host Member State and for each and every profession covered by the EPC, are extremely important for home country authorities since they are the ones who have been entrusted with the responsibility of verifying the completeness of EPC applications.

However, “approval” by the Commission of national notifications in IMI does not (and cannot) override the binding provisions of the Regulation, such as the rules concerning translation and certification requirements.

Taking into account the above, the position as regards requests for submission of translations and certified copies of documents is as follows.

2. Translations

Article 17(1) of the Regulation sets out a list of documents generally exempted from requests for translations. The following categories of documents are covered:

- (i) proof of identity (passport or ID),
- (ii) diplomas that entitle their holders for automatic recognition, if the diploma was issued in home country, and
- (iii) certain certificates issued by the authorities dealing with EPC applications or other relevant national bodies of the home Member State. These include, more specifically:
 - certificates of conformity,

- certificates for a change of title of formal qualification,
- certificates of acquired rights,
- attestations of professional experience of at least 3 years for the applicants with third country qualifications,
- attestations of legal establishment,
- certificates attesting good character or repute, absence of bankruptcy, no prohibition or suspension from practice or no criminal convictions.

The purpose of Article 17(1) of the Regulation is to limit translation requirements.

Since the information contained in these documents can be verified, and assurances can be given, by the competent authorities of the home Member State, translations do not seem necessary.

Thus, as a general rule, the home country authority should abstain from requesting translations of the above listed documents when checking the completeness of the file. This is so, even in cases where the host country has indicated in the IMI repository a translation requirement for the general/broader document category notified ¹⁾.

Equally, host country authorities should not request translations of the documents exempted by Article 17(1) on a systematic basis; as a general rule they should rely on the information provided by the home country authority in the IMI.

For example, if a pharmacist benefiting from automatic recognition did not provide translations of his/her diplomas, certificates of conformity and/or certificates attesting the absence of prohibitions from practice issued by the authorities of the home country, the home country authority shall accept the file as complete even if in the IMI repository the host country has specified a need for translation with respect to the categories covering these documents.

However, if there are „duly justified doubts“ concerning any of the documents listed in Article 17(1), the host country authorities may ask for translations pursuant to Article 18(1) of the Regulation. Such request has to be made after the file has been transferred to them by the home country authority. The assessment of what constitutes “duly justified doubts” should be well-founded and carried out on a case-by-case basis. In the exceptional case of „duly justified doubts“ the authorities must clearly explain to the professional why a translation is required. The explanation should be recorded in IMI as part of the message which is sent to the professional, when requesting a translation.

Any decision to refuse the issuance of an EPC on the sole ground that translations of the documents referred to in Article 17(1) were not provided by the applicant would be inconsistent with the EU law, especially in cases where the host country authority did not identify justified doubts as to the reliability of these documents, or (if such doubts were identified), the host country did not try to obtain the missing information or the document from the applicant or from the home country authority within a reasonable timeframe.

3. Conditions for requesting certified copies

Articles 14 and 15 of the Regulation introduce specific rules concerning the verification of the authenticity and of the validity of supporting documents. They also provide for the conditions for requesting certified copies of these documents.

Home country authorities can only request certified copies of documents if they cannot verify their

authenticity through other means, such as internal records, checks in public registries or through administrative cooperation means (e.g., checking with the relevant authorities concerned).

On this basis, should the home country authorities be in a position to verify and certify the authenticity of the documents, certified copies shall not be requested (even if the host country has indicated a requirement for certified copies in the IMI repository)²⁾.

The host country authorities shall also abstain from requesting certified copies of documents that were so authenticated by the home country authorities, unless there are “duly justified doubts” in respect of such documents or attestations provided by the home country authority.

For instance, where a host country has specified a need for a certified copy in the free text field of the IMI repository “Additional information” for a given document category, the home country would only have to request certified copies in cases where it has tried but failed to authenticate a given document via internal records or administrative cooperation. Please note that such authentication of documents is not part of the initial completeness check; the verification of authenticity of documents and, if needed, any requests for certified copies shall be done at a later stage (typically, after the file was accepted as complete in the IMI and before the transfer of the file to the host country).

In the exceptional case of „duly justified doubts“ the authorities must clearly explain to the professional why a certified copy is required. The explanation should be recorded in IMI as part of the message which is sent to the professional, when requesting a translation.

1)

The Member States notified their translation requirements in the light of the following disclaimer displayed in the IMI: “Translations might only be required from the applicant within the limits provided by in Article 17 (1) of Regulation 2015/983.”

2)

The Member States notified their requirements for certified copies in the light of the following disclaimer displayed in the IMI: “Include an indication of whether a certified copy of the document is required under the conditions provided in Article 15 (1)-(2) of Regulation 2015/983.”

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