

Convention (No. 35) on the issue of certificates of matrimonial capacity and capacity to enter into a registered partnership *signed at Strasbourg on DD.MM.202X*
(draft of 16/04/2024)

The signatory States to this Convention, working in the frame of the International Commission on Civil Status, desiring to establish common provisions relating to the issue of certificates of matrimonial capacity to their nationals and to persons habitually resident on their territory with a view to the celebration of marriage abroad or to the establishment of certificates of capacity to conclude a registered partnership abroad,

Having regard to the Convention governing Conflicts of Laws concerning Marriage, signed at The Hague on 12 June 1902,

Having regard to the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, signed at New York on 10 December 1962,

Having regard to the Convention on Celebration and Recognition of the Validity of Marriages, signed at The Hague on 14 March 1978,

Having regard to the Convention (No.20) on the issue of certificate of legal capacity to marry, signed at Paris on 5 September 1980,

Having regard to the Convention (No.32) on the recognition of registered partnerships, signed at Munich on 5 September 2007,

Having regard to the Convention (No.34) on the issue of multilingual and coded extracts from civil-status records and multilingual and coded civil-status certificates, signed at Strasbourg on 14 March 2014,

Having regard to the Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012,

Bearing in mind the Resolutions 65/156, 71/175,73/22, 75/167 and 77/202 of the General Assembly of the United Nations of 18 December 2014, 19 December 2016,15 November 2018, 16 December 2020 and 15 December 2022 on child, early and forced marriage, the Resolutions 1468 (2005) and 2233 (2018) of the Parliamentary Assembly of the Council of Europe of 5 October 2005 on forced marriages and child marriages and 28 June 2018 on forced marriage in Europe, the Resolution of the Council of the European Union of 4 December 1997 on measures to be adopted on the combating of marriages of convenience, as well as the

Recommendation (No.2) on the law of marriage adopted in Vienna on 8 September 1976 and the Recommendation (No.10) on marriage adopted in Paris on 26 September 2014,

Have agreed as follows:

Article 1st – Scope of application

1. Each Contracting State undertakes to issue a certificate of matrimonial capacity when one of its nationals or a person whose habitual residence is within its territory so requests and the applicant fulfils the conditions for entering into marriage under the law of the State issuing the certificate.
2. Where its law provides for other forms of cohabitation than marriage, giving rise to registration by a public authority, each Contracting State undertakes furthermore to issue, at the request of one of its nationals or a person whose habitual residence is on its territory a certificate of capacity to enter into a registered partnership, that is to say, a document attesting to the absence of any legal impediment to the conclusion of such a union under its domestic rules.
3. The certificate of legal capacity to enter into a matrimonial relationship issued in a State may be used for the conclusion of any other union in accordance with the wishes of the persons concerned and in accordance with the internal rules of the receiving State. Similarly, the certificate of capacity to enter into a registered partnership may be used for the celebration of a marriage if this corresponds to the wishes of the persons concerned and to the requirements of the internal rules of the receiving State.
4. The certificate of matrimonial capacity to marry or to enter into a registered partnership may be issued to a single person or to a couple.

Article 2 – Definitions

For the purposes of this Convention :

- a "registered partnership" is a commitment to live together, other than a marriage, entered into by two persons of the same sex or different sex, giving rise to registration by a public authority.
- the receiving State is the State in which the certificate issued on the basis of this Convention is presented with a view to the conclusion of the marriage or registered partnership.

Article 3 - Refugees and stateless persons

For the purposes of this Convention, refugees and stateless persons whose personal status is governed by the law of a Contracting State shall be treated as nationals of that State.

Article 4 - Preparation of the certificates

1. The certificates referred to in Article 1 shall be prepared in conformity with the International Commission on Civil Status models appearing in Appendix 1 to this Convention. The standard entries appearing therein shall bear the code numbers appearing in Appendix 2.
2. The rules applicable to the International Commission on Civil Status models are set out in Appendix 3.
3. Accession to the present Convention does not imply recognition by the Contracting States of institutions foreign to their internal legal system, which would be reflected in the content of the Convention, its model certificates or its other appendix.
4. The model certificates may contain optional boxes which may be added at the discretion of the Member States, provided that they notify the General Secretariat. Any changes made in this respect must be

communicated to the ICCS Secretary General. Optional headings will be designated as such in the model certificates by a footnote.

Article 5 - Deposit of translations and list of symbols

1. Before ratifying, accepting, approving or acceding to this Convention or making the declaration of provisional application provided for in Article 14, each State must deposit with the International Commission on Civil Status Secretary General the translation into its official language or languages of the standard entries which must appear in the certificates in conformity with Appendix 2 to this Convention, and also the translation of the applicable rules appearing in Appendix 3. Any modification of these translations must be deposited with the International Commission on Civil Status Secretary General. These translations and any subsequent modifications must be adopted by the International Commission on Civil Status Bureau.
2. Completion of the formalities referred to in paragraph 1 will be object of an attestation by the Secretary General.

Accession

Article 6 - Evidential value of the certificates

1. The certificates issued pursuant to this Convention shall be accepted without legalisation or equivalent formality in each of the Contracting States.
2. The certificates issued do not oblige the authorities of the receiving State of conclusion to celebrate a marriage or register a partnership.
3. The authorities of the receiving State may require other documents in order to proceed with the considered union and may carry out such investigations as are necessary to ensure the free, full and informed consent of the future spouses or partners and to combat child marriages, forced marriages and unions of convenience.
4. In case of serious doubt as to the authenticity or the content of a certificate issued pursuant to this Convention, the authorities of the receiving State may request the issuing authority to effect a verification of its authenticity or its content or, in case of an error, to send to them a new extract or certificate. The exchanges between these authorities shall take place directly.

Article 7 - Indication of the authorities competent to issue certificates

- 1 Before ratifying, accepting, approving or acceding to this Convention or making the declaration of provisional application provided for in Article 14, the Contracting States shall indicate to the Secretary General of the International Commission on Civil Status the authorities competent to issue certificates. Any change in this respect must be communicated to the Secretary General of the International Commission on Civil Status.
2. Completion of the formalities referred to in paragraph 1 will be object of an attestation by the Secretary General of the International Commission on Civil Status.

Article 8 - Territorial units with different systems of law

Where a State has two or more territorial units in which different systems of law apply in relation to marriage or other a commitment to live together which give rise to registration by a public authority, any reference to the law of the State of celebration or conclusion shall be construed as referring to the law of the territorial unit in which the union in question is or has been celebrated.

Article 9 - Signature, ratification, acceptance and approval

1. The present Convention is exclusively open for signature and ratification by the States and regional economic integration organizations, members of the ICCS, as well as to the States non members of the ICCS

which undertake to carry out the work relating to the monitoring of the present Convention and to pay each year a financial contribution to the ICCS amounting to 2 000 euros (value on the day of adoption of the present Convention). This amount will be re-evaluated every 3 years by decision of the ICCS Bureau by comparison with the French consumer price index of the Institut national de la statistique et des études économiques (INSEE).

2. The Convention shall be ratified, accepted or approved. The instruments of ratification, acceptance or approval, accompanied by the attestations provided for in Articles 5 paragraph 2 and 7 paragraph 2, shall be deposited with the Swiss Federal Council.

Article 10 - Regional economic integration organisations

1. A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may sign, accept, approve or accede to this Convention. In that case, the Regional Economic Integration Organisation shall have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by this Convention.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to the delegation of competence specified in the most recent notification under this paragraph.

3. For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation declares under Article 11 that its Member States will not be Parties to this Convention.

4. Any reference to a "Contracting State" or "State" in this Convention applies equally, where appropriate, to a Regional Economic Integration Organisation.

Article 11 - Regional Economic Integration Organisation as a Contracting Party without its Member States

1. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare that it has competence over all the matters governed by this Convention and that its Member States shall not be Parties to this Convention but shall be bound by virtue of the signature, acceptance, approval or accession of the Organisation.

2. Where a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 1, any reference to a "Contracting State" or "State" in this Convention applies equally, where appropriate, to Member States of the Organisation.

Article 12 – Reservations

1. At the time of signature, ratification, acceptance, approval or accession, any State may reserve the right not to apply this Convention to certificates:

(a) concerning marriage of persons of the same sex ;

(b) concerning registered partnership or one or more forms thereof ;

(c) concerning marriage or registered partnership of persons habitually resident in its territory but who are not its nationals ;

(d) requested by a single person;

e) requested by a couple.

2. No other reservation shall be permitted.

3. Any State may at any time withdraw a reservation made pursuant to paragraph 1. The withdrawal shall be notified to the Swiss Federal Council and shall take effect on the first day of the fourth month following the month of receipt of the notification.

Article 13 - Entry into force

1. This Convention shall enter into force on the first day of the fourth month following the month of deposit of the second instrument of ratification, acceptance, approval or accession by two International Commission on Civil Status member States.

2. In respect of the State ratifying, accepting, approving or acceding after its entry into force, the Convention shall enter into force on the first day of the fourth month following the month of deposit by that State of the instrument of ratification, acceptance, approval or accession.

Article 14 - Provisional application

1. Pending the entry into force of this Convention in its respect in the conditions laid down in Article 13, a State that has signed the Convention may at any moment declare that the provisions of this Convention shall apply to it on a provisional basis. The period of provisional application shall not exceed five years.

2. Any declaration made pursuant to paragraph 1, accompanied by the attestation referred to in Article 4, paragraph 3, shall be notified to the Swiss Federal Council. It will take effect on the first day of the fourth month following the month of receipt of the notification.

Article 15 - Territorial application

1. At the time of signature, ratification, acceptance, approval or accession or at any later date, any State having several territorial units may declare that the Convention shall extend only to one or more of them.

2. If a State makes no declaration under paragraph 1, the Convention shall extend to all territorial units of that State.

3. A declaration made pursuant to paragraph 1 may be modified or withdrawn by a new declaration.

4. Any declaration made pursuant to paragraphs 1 or 3 shall be notified to the Swiss Federal Council. It shall take effect when the Convention enters into force for the State concerned or, subsequently, on the first day of the fourth month following the month of receipt of the notification.

Article 16 - Revision of the Appendices

1. Appendices of this Convention may be modified by a resolution adopted by a simple majority of the International Commission on Civil Status member States and by a simple majority of the Contracting States, meeting in an ad hoc General Assembly. Any modifications adopted shall be binding on all the Contracting States.

2. Any resolution adopted pursuant to paragraph 1 shall be deposited with the Swiss Federal Council. It shall take effect on the date which it fixes.

Article 17 - Duration and denunciation

1. This Convention shall remain in force indefinitely.

2. However, any State party to this Convention shall have the option of denouncing it at any time after the expiry of a period of one year from the date of entry into force of the Convention in respect of that State. Denunciation shall be notified to the Swiss Federal Council and shall take effect on the first day of the seventh month following the month of receipt of that notification. The Convention shall remain in force among the other States.

Article 18 - Relationship with the Convention of 5 September 1980

1. On its entry into force, this Convention shall replace the Convention (No.20) on the issue of certificate of legal capacity to marry, signed at Munich on 5 September 1980. However, the latter Convention shall remain in force between the States party thereto as long as one of them continues to be bound by that instrument alone.
2. On the entry into force of this Convention, any new ratification, acceptance or approval of or accession to the Convention of 5 September 1980 shall be excluded.

Article 19 - Obligations of the depositary

1. The Swiss Federal Council shall notify the International Commission on Civil Status member States and any other State that has acceded to this Convention of :
 - (a) the deposit of any instrument of ratification, acceptance, approval or accession ;
 - (b) any date of entry into force of the Convention ;
 - (c) any declaration made pursuant to Article 7 ;
 - (d) any reservation made pursuant to Article 13, paragraph 1, or its withdrawal, together with the date on which the withdrawal will take effect ;
 - (e) any declaration made pursuant to Article 15, paragraph 1 ;
 - (f) any declaration made pursuant to Article 16, paragraph 1, its modification or its withdrawal, together with the date on which the declaration, the modification or the withdrawal will take effect ;
 - (g) any resolution adopted pursuant to Article 17, paragraph 1, together with the date on which it will take effect ;
 - (h) any denunciation of the Convention made pursuant to Article 18, paragraph 2, together with the date on which it will take effect.
2. The Swiss Federal Council shall inform the International Commission on Civil Status Secretary General of any notification made pursuant to paragraph 1.
3. On the entry into force of this Convention, a certified copy shall be transmitted by the Swiss Federal Council to the Secretary General of the United Nations for the purposes of registration and publication, in accordance with Article 102 of the United Nations Charter.

In witness whereof, the undersigned, duly authorised to this end, have signed this Convention.

Done at Strasbourg on DD.MM.202X, in a single copy, in the French and English languages, both versions being equally authentic, which shall be deposited in the archives of the Swiss Federal Council, and of which a certified copy shall be sent, through diplomatic channels, to each of the International Commission on Civil Status member States and to the acceding States. A certified copy will also be sent to the Secretary General of the International Commission on Civil Status.