

Council on General Affairs and Policy – March 2020

Document	Preliminary Document <input checked="" type="checkbox"/> Information Document <input type="checkbox"/>	Prel. Doc. 12 of December 2019
Title	1961 Apostille Convention and the e-APP: Preparations for the 2021 meeting of the Special Commission and 12 th International Forum on the electronic Apostille Programme (e-APP)	
Author	Permanent Bureau	
Agenda item	Item IV-2-a	
Mandate(s)	C&R Nos 35-37 of the 2019 meeting of the Council on General Affairs and Policy	
Objective	To report on preparations for the 2021 meeting of the Special Commission and 12 th International Forum on the e-APP, including the outcomes of the 11 th International Forum on the e-APP.	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input checked="" type="checkbox"/> For Information <input type="checkbox"/>	
Annexes	Annex I: C&Rs of the 11 th International Forum of the e-APP	
Related documents	C&Rs of the 2016 Special Commission on the Practical Operation of the Apostille Convention C&Rs of the 10 th International Forum on the e-APP	

I. Introduction

1. Pursuant to the mandate of CGAP at its 2019 meeting,¹ the Permanent Bureau (PB) has begun preparations for the next meeting of the Special Commission on the practical operation of the *HCCH Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention), to be held in 2021.
2. Noting the desire expressed by CGAP to combine Special Commission meetings with a meeting of the International Forum on the electronic Apostille Programme (e-APP Forum),² the PB has also taken the preparations for the 12th e-APP Forum into account in its planning.

II. Scheduling

3. In light of the overall work programme of the HCCH, the PB proposes to hold the Special Commission meeting and 12th e-APP Forum in early October 2021 (tentatively the week commencing 4 October 2021), in order to coincide with the 60th anniversary of the Convention.
4. With respect to the number of meeting days, the PB considers that three and a half to four meeting days would be sufficient. This would include one day for the Forum and two and a half to three days for the Special Commission. As such, the PB proposes to hold the 12th e-APP Forum on Tuesday 5 October 2021, which would then be followed by the Special Commission meeting from Wednesday 6 October to Friday 8 October 2021.

III. Preparatory work

5. Since the March 2019 meeting of CGAP, and pursuant to its mandate, the PB has initiated a number of projects to prepare for the 2021 meetings of the Special Commission and Forum, some of which have already been completed. These are outlined below, in chronological order based on an approximate indication of timing listed below each sub-heading.

A. 11th International Forum on the e-APP (October 2019)

6. The 11th e-APP Forum was held from 16 to 18 October 2019 in Fortaleza, in the Federative Republic of Brazil. This Forum was the second to be held in the Latin American region and was also the largest ever, with a record number of participants from both Contracting and non-Contracting Parties to the Convention.
7. The PB would like to acknowledge the significant contributions of its co-hosting organisations: the Brazilian National Council of Justice (CNJ), Brazilian Ministry of Foreign Affairs, the Association of Notaries and Registrars of Brazil (ANOREG), the Federal Council of the Notarial College of Brazil (CNB-CF) and the National Association of Registrars of Natural Persons of Brazil (ARPEN).
8. The presentations and discussions during the Forum will prove useful in the preparations for both the next (12th) Forum and the meeting of the Special Commission. In particular, the PB invites CGAP to consider C&R No 9, which reads as follows:

“9. In light of the discussions during the 11th Forum, participants also invited the PB to consider including a number of topics in the agenda for discussion at the next meeting of the

¹ C&R No 36 of CGAP 2019.

² C&R No 35 of CGAP 2019.

Special Commission on the practical operation of the Apostille Convention. These topics, as suggested by the Forum participants, include:

- a. an assessment of whether broader use of distributed ledger technologies, may further support and enhance the e-APP in the practical operation of the Convention, in particular in relation to e-Registers. With a view to preparing these discussions, the participants invited the Council on General Affairs and Policy (CGAP) to consider the possibility of establishing an Experts' Group, which would also include IT experts, to further explore these matters;
- b. possible efforts to further promote the consistent interpretation and application of the Article 1(3) exclusions;
- c. ways in which the PB could make more information about the practices of Contracting Parties, including digital mechanisms of certification, available on the Apostille Section of the HCCH website."

9. Against this background, and in the context of preparations for the Special Commission meeting and 12th Forum, the PB will continue to monitor technological developments and plans to explore solutions or partnerships which can harness the power of technology, keeping in mind the continued need for interoperability in e-APP implementation and preserving the integrity of the Apostille system. The full C&R of the 11th Forum are annexed to this document, and the specific invitation referred to in C&R No 9.a. (above), is explored in more detail at E, below.

**B. Review of information (on Competent Authorities and Practical Information)
(October– December 2019)**

10. In early October 2019, the PB initiated a comprehensive review of the contact details of Competent Authorities and of the practical information provided by Contracting Parties to the Convention. This review was conducted via *notes verbales* sent to current Competent Authorities, as well as to National Organs and diplomatic missions.

11. The purpose of this review is to ensure that the most updated details are used for all communications in relation to the Special Commission and 12th Forum, in particular as concerns the circulation of the questionnaire on the practical operation of the Convention (as discussed at D, below).

12. The review also assesses the implementation of the e-APP among Contracting Parties, comprising a verification of the level of sophistication of the e-APP implementation and confirmation if the e-Apostille and / or the e-Register components are being implemented by Competent Authorities. This information will also serve to inform the drafting of the questionnaire as well as the assembling of the draft agenda for the Special Commission and Forum.

13. As of December 2019, *notes verbales* have been sent to all Contracting Parties to the Convention. To date, over 80% of the responding Contracting Parties were prompted to provide updated details and over 75% provided the PB with sample Apostilles. In addition, 41% of responding Contracting Parties provided new or updated information in relation to the status of e-APP implementation.³ This demonstrates that the audit has proven to be a very useful exercise which will facilitate the work of the PB and of Contracting Parties in preparing for the Special Commission and Forum.

³ The e-Register component has now been implemented in 40 Contracting Parties and the e-Apostille component in 16 Contracting Parties. See the "Implementation Chart of the e-APP" (available on the HCCH website at < www.hcch.net > under "Apostille", then "e-APP").

**C. Apostille Handbook (2nd Edition)
(January 2020 to October 2021)**

14. Since the publication of the first edition of the *Handbook on the Practical Operation of the Apostille Convention* (Apostille Handbook) in 2013, there have been 13 new Contracting Parties to the Convention (representing an increase of 12%),⁴ and the Competent Authorities of 21 Contracting Parties have implemented one or both components of the e-APP.⁵ There has been a Special Commission meeting, a Working Group convened and three meetings of the e-APP Forum. During the same period, the PB estimates that more than 50 million Apostilles were issued.⁶

15. Over the course of the last six years, the PB has been monitoring these and other relevant developments, with a view to preparing an updated and revised second edition of the Apostille Handbook. This work intensified in light of the mandate received from CGAP in 2017⁷ and following the endorsement of the ongoing work in 2019.⁸ While work on the new edition has continued in the background for the Apostille team, it is expected that the bulk of the remaining (re-)drafting and updating will be undertaken in the course of 2020. It is anticipated that both English and French versions of a preliminary draft of the second edition of the Apostille Handbook will be circulated to Members and Contracting Parties for comment in either the fourth quarter of 2020 or the first quarter of 2021. These comments will then be taken into account in the draft version which will be submitted to the Special Commission for approval at its October 2021 meeting.

**D. Questionnaire
(January to May 2021)**

16. As in previous years, and as mandated by CGAP,⁹ the PB intends to circulate a questionnaire on the practical operation of the Convention to all Contracting Parties to the Convention. Pursuant to CGAP's mandate, the PB will ensure that appropriate reference is made to new technological developments, and relevant challenges related to the use of different technologies.

17. The PB will also use the questionnaire to seek relevant statistical data from Competent Authorities. In order to obtain the most updated statistical information recorded over the course of a full year, the PB intends to circulate the questionnaire in the first quarter of 2021, seeking information primarily relating to the five-year period which has elapsed since the circulation of the last questionnaire (*i.e.*, 2016-2020).

18. The PB also proposes to send a separate questionnaire to selected non-Contracting Parties, both Members and non-Members of the HCCH, to assess the current state-of-play of processes of legalisation of public documents and the prospect of them becoming Contracting Parties.

**E. Experts' Group
(May 2021)**

19. As noted at **A** above, the participants of the 11th e-APP Forum, recognising the impact of recent technological developments, including the rise of distributed ledger technologies (DLT), invited CGAP to consider the possibility of establishing an Experts' Group to explore in more detail whether broader

⁴ See the "Updated List of Contracting Parties" (Status Table) of the Apostille Convention (available on the HCCH website at < www.hcch.net > under "Apostille").

⁵ See the "Implementation Chart" of the e-APP (available on the HCCH website at < www.hcch.net > under "Apostille").

⁶ Based on the average number of Apostilles reported by Contracting Parties. See "Synopsis of Responses to the Questionnaire of April 2016 relating to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention)" (available on the HCCH website at < www.hcch.net > under "Apostille" then "Questionnaires and Responses").

⁷ C&R No 28 of CGAP 2017.

⁸ C&R No 37 of CGAP 2019.

⁹ C&R No 36 of CGAP 2019.

use of DLT may further enhance the e-APP in supporting the practical operation of the Convention, in particular in relation to e-Registers. The PB supports the establishment of such an Experts' Group.

20. This invitation was presented together with an invitation for the PB to consider the inclusion of this and other topics on the agenda for the 2021 Special Commission meeting. Therefore, the work of any possible future Experts' Group would ideally be carried out prior to October 2021, to ensure that the outcomes can inform the discussions of both the Special Commission meeting and the e-APP Forum. As such, CGAP is invited to mandate the PB to convene this Experts' Group in the second quarter of 2021, so as to take advantage of the data obtained from responses to the 2021 questionnaire, but also to ensure that the outcomes of any such Experts' Group can be submitted sufficiently in advance of the Special Commission meeting and Forum.

IV. Proposal to CGAP

21. The PB invites CGAP to take note of this update and proposed timeline provided by the PB with respect to the preparations for the Special Commission on the practical operation of the Apostille Convention and the 12th e-APP Forum, tentatively scheduled for October 2021. CGAP may also wish to welcome the work undertaken to date, including the successful organisation of the 11th e-APP Forum in Brazil.

22. Finally, the PB invites CGAP to mandate the convening of an Experts' Group to further explore whether broader use of DLT may further enhance the e-APP in supporting the practical operation of the Convention, in particular in relation to e-Registers.

ANNEX



11th International Forum on the electronic Apostille Programme (e-APP) Conclusions & Recommendations

1. From 16 to 18 October 2019, over 350 experts from over 40 Contracting and non-Contracting Parties, convened in Fortaleza, Brazil to attend the 11th International Forum on the electronic Apostille Program (e-APP). To date, this is the highest ever number of participants to attend a Forum in the history of the e-APP.

2. The Forum was jointly organised by the Permanent Bureau (PB) of the Hague Conference on Private International Law (HCCH), together with the Brazilian National Council of Justice (CNJ), Brazilian Ministry of Foreign Affairs, the Association of Notaries and Registrars of Brazil (ANOREG), the Federal Council of the Notarial College of Brazil (CNB-CF) and the National Association of Registrars of Natural Persons of Brazil (ARPEN). Participants thanked and congratulated the organisers on yet another successful meeting of the Forum, the second to be held in the Latin American region.

Global Significance and Promotion of the e-APP

3. It was with great satisfaction that participants noted the continuing global interest in both the *HCCH Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (HCCH Apostille Convention) and the e-APP specifically. Participants praised the firm resolve of Competent Authorities to ensure the secure and effective operation of the Convention through the e-APP.

4. Recognising the significant positive impact that the e-APP has on facilitating procedures for Apostille issuance and verification, as well as improving access to services for citizens worldwide, Competent Authorities of current and future Contracting Parties to the HCCH Apostille Convention are encouraged to consider implementing both components of the e-APP (*i.e.* the e-Apostille and e-Register components).¹⁰

5. In addition to the promotional work of the PB, participants acknowledged the great importance of promotional activities which are driven by the Competent Authorities which have already implemented the e-APP. These Competent Authorities are able to share their positive experiences and can testify to the true value and impact of the e-APP, inspiring other Contracting Parties in the region

¹⁰ The e-APP comprises two components, the e-Apostille and the e-Register. The e-Apostille component is the actual issuance of the Apostille certificate in electronic form, with an electronic signature. The e-Register component is the same register required by Art. 7 of the Convention, but when entries in the register are able to be consulted electronically (typically online) and the Apostille verification takes place electronically.

or across the globe. In this regard, Competent Authorities are encouraged to record statistical data, and to share it with the PB on a regular basis. Such information would include not only the number of Apostilles issued and the type of underlying documents, but also information in relation to savings made in terms of time and resources, as compared to previous Apostille procedures (e.g. paper issuance/verification) and traditional legalisation. This information should be made available on the Apostille Section of the HCCH website. The PB was further invited to consider standardising statistical criteria with a view to ensuring quantitative and qualitative analysis aimed at supporting related and relevant policy analysis.

Implementation Practices

6. Recalling that the participants at the previous meeting of the Forum marked the occasion of the tenth meeting by compiling an authoritative omnibus of e-APP Forum Conclusions and Recommendations (C&R), the participants of this 11th Forum took the opportunity to reaffirm the C&R of the 10th Forum and encouraged Contracting Parties to refer to these C&R when considering implementation of either or both components of the e-APP, in particular C&R Nos 20-22 on digital mechanisms of certification.

7. Participants recommended that Competent Authorities which are considering e-APP implementation explore the use of the latest technological developments and solutions, including, where possible, distributed ledger technologies. Participants further recommended that Competent Authorities which have already implemented the e-APP monitor developments and consider, where possible, updating or upgrading their e-APP infrastructure as appropriate, to keep pace with technology.

8. When either component of the e-APP is implemented, or if Contracting Parties make changes to e-APP practices and procedures, the importance of informing the PB, other Contracting Parties (and in some cases the depositary for the Convention, *i.e.* the Ministry of Foreign Affairs of the Kingdom of the Netherlands) was recalled, as well as making information available for the general public.

9. In light of the discussions during the 11th Forum, participants also invited the PB to consider including a number of topics in the agenda for discussion at the next meeting of the Special Commission on the practical operation of the Apostille Convention. These topics, as suggested by the Forum participants, include:

- a. an assessment of whether broader use of distributed ledger technologies, may further support and enhance the e-APP in the practical operation of the Convention, in particular in relation to e-Registers. With a view to preparing these discussions, the participants invited the Council on General Affairs and Policy (CGAP) to consider the possibility of establishing an Experts' Group, which would also include IT experts, to further explore these matters;
- b. possible efforts to further promote the consistent interpretation and application of the Article 1(3) exclusions;
- c. ways in which the PB could make more information about the practices of Contracting Parties, including digital mechanisms of certification, available on the Apostille Section of the HCCH website.

Next Forum

10. As mandated by the CGAP of the HCCH (in C&R No. 35 of its 2019 meeting), the 12th e-APP Forum will be held in The Hague to coincide with the next meeting of the Special Commission, tentatively scheduled for October 2021 on the occasion of the 60th anniversary of the HCCH Apostille Convention.