AFFAIRES GÉNÉRALES ET POLITIQUE
GENERAL AFFAIRS AND POLICY

Doc. prél. No 11
Prel. Doc. No 11

mars / March 2012

HccH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

LISTE DE TÂCHES ET ÉTAT DE MISE EN ŒUVRE DES CONCLUSIONS ET RECOMMANDATIONS ADOPTÉES PAR LA COMMISSION SPÉCIALE SUR LE FONCTIONNEMENT PRATIQUE DES CONVENTIONS DE LA HAYE APOSTILLE, NOTIFICATION, OBTENTION DES PREUVES ET ACCÈS À LA JUSTICE (2 – 12 FÉVRIER 2009) – MISE À JOUR NO 2

établi par le Bureau Permanent

* * *

TASK LIST AND STATUS OF IMPLEMENTATION OF CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE SPECIAL COMMISSION ON THE PRACTICAL OPERATION OF THE HAGUE APOSTILLE, SERVICE, TAKING OF EVIDENCE AND ACCESS TO JUSTICE CONVENTIONS (2-12 FEBRUARY 2009) – UPDATE NO 2

drawn up by the Permanent Bureau

Document préliminaire 11 de mars 2012 à l'attention du Conseil d'avril 2012 sur les affaires générales et la politique de la Conférence

Preliminary Document No 11 of March 2012 for the attention of the Council of April 2012 on General Affairs and Policy of the Conference

Permanent Bureau | *Bureau Permanent*
6, Scheveningseweg 2517 KT The Hague | *La Haye* The Netherlands | *Pays-Bas*
telephone | *téléphone* +31 (70) 363 3303 fax | *télécopieur* +31 (70) 360 4867
e-mail | *courriel* secretariat@hcch.net website | *site internet* http://www.hcch.net

LISTE DE TÂCHES ET ÉTAT DE MISE EN ŒUVRE DES CONCLUSIONS ET RECOMMANDATIONS ADOPTÉES PAR LA COMMISSION SPÉCIALE SUR LE FONCTIONNEMENT PRATIQUE DES CONVENTIONS DE LA HAYE APOSTILLE, NOTIFICATION, OBTENTION DES PREUVES ET ACCÈS À LA JUSTICE (2 – 12 FÉVRIER 2009) – MISE À JOUR NO 2

établi par le Bureau Permanent

* * *

TASK LIST AND STATUS OF IMPLEMENTATION OF CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE SPECIAL COMMISSION ON THE PRACTICAL OPERATION OF THE HAGUE APOSTILLE, SERVICE, TAKING OF EVIDENCE AND ACCESS TO JUSTICE CONVENTIONS (2-12 FEBRUARY 2009) – UPDATE NO 2

drawn up by the Permanent Bureau

EXPLANATION

Preliminary Document No 15 for the attention of the Council of April 2010 set out a chart showing the status of implementation of Conclusions and Recommendations (C&R) adopted by the Special Commission of February 2009 (SC 09). An updated version of this chart was presented as Preliminary Document No 13 at the Council of April 2011. This chart has been further updated and supplemented to reflect developments since April 2011 and is set out below.

Part I of the updated chart reflects the most important C&R that require specific action on the part of the *Permanent Bureau* (PB), and the general status of their implementation. This work is completed by the Deputy Secretary General (DSG) as part of his overall responsibilities with the assistance of two Legal Officers (1.6 FTE). The chart only reflects work resulting from the SC 09 – it does not reflect any of the other work conducted by the DSG and these Legal Officers (*e.g.*, other work relating to judicial and administrative co-operation, finance law, commercial law, litigation or indeed general administration matters conducted by the DSG).

Part II of the chart reflects the most important C&R that require specific action on the part of the *Contracting States*.

Please note that the chart makes reference to two documents drawn up by the Permanent Bureau for the attention of the Council of April 2012 on the Supplementary Budget, *i.e.*, Preliminary Documents Nos 9 A and 9 B (hereinafter referred to as "SB 9A" and "SB 9B", respectively).

Part I: Conclusions and Recommendations requiring specific action on the part of the Permanent Bureau

C&R	Description	Conv	Status / resources
Special Commissions (SC)			
100	Prepare a SC on the Apostille Convention	A	• The next SC is scheduled from 6 to 9 November 2012. A convocation letter confirming the timetable for the SC will be sent out to Members in due course. • An Apostille Questionnaire has been prepared and sent out to Members, non-Member Contracting States to the Apostille Convention, and other interested States in January 2012. • The PB will be actively following up the responses to the Questionnaire to ensure as widespread a coverage as possible. • Work on the synopsis and analysis of the responses to the Questionnaire will begin in May 2012. The agenda for the SC will also depend on the analysis of the responses to the Questionnaire. • Work on the Practical Handbook (which will be presented as a Prel. Doc. to the SC) is well underway (see below).
N/A	Prepare a SC on the Service and Evidence Conventions	S, E	• Subject to the Council's approval, preparations for this SC will begin later this year. The Permanent Bureau suggests holding this SC in the fourth quarter of 2013 (or first quarter of 2014).

Handbooks / Guides / Brochures / Guidelines			
99	Complete a Practical Handbook (HB) on the operation of the Apostille Convention	A	• A draft HB will be finalised soon. • The PB plans to submit the draft to an experts group to be convened in mid-May 2012 at the PB. • A revised draft will then be circulated to Members and non-Member Contracting States for comment in preparation for the 2012 Special Commission. • The SC will be asked to approve the HB. • HB is being developed internally as well as with the assistance of Bill Fritzlen, Attorney Adviser at the Department of State, USA (on flexible, part-time secondment).
99	*ABCs of Apostilles* (spin-off of work on HB – brochure for general audience)	A	• **English** and **French** versions published in both paper and electronic form (available on the Apostille Section of the HCCH website). • **Spanish** version published in electronic form only – paper form subject to additional resources (see SB 9A: Part B, Art. 15 a). • **Russian** translation has been prepared by the Department of State, USA – publication of electronic and paper versions subject to additional resources (see SB 9A: Part B, Art. 15 b). • **German** translation has been prepared by the Ministry of Justice of Austria and the PB – redesign and finalisation of electronic and paper versions all subject to additional resources (see SB 9A: Part B, Art. 15 b).
99	*Brief Implementation Guide* (spin-off of work on HB – guide for States interested in joining the Apostille Convention)	A	• **English** and **French** versions published in both paper and electronic form (available on the Apostille Section of the HCCH website). • **Spanish** translation has been prepared by the Ministry of Justice of Spain - publication of electronic and paper versions subject to additional resources (see SB 9A: Part B, Art. 15 d). • **Arabic** translation has been prepared by the Ministry of Justice of Qatar - publication of electronic and paper versions subject to additional resources (see SB 9A: Part B, Art. 15 d). • Translation and publication of versions in other languages subject to additional resources (see SB 9A: Part B, Art. 15 d).

C&R	Description	Conv	Status / resources
58	Create a new edition of HB on the Operation of the Evidence Convention	E	• All content of the old edition of the HB excluding case law digest has been updated and is now available on the Evidence Section (discussed below). • FAQs, explanatory charts and application tables, which will form part of the new, more comprehensive edition of the HB, are currently being finalised and once translated will be published in electronic form on the Evidence Section. • Revised and expanded case law digest (incl. researching case law and preparing accompanying commentary) is ongoing and subject to availability of human resources (*e.g.*, interns). • Work on HB (other than what is mentioned above) on hold because of lack of resources.
41	Prepare revised (updated) edition of Service HB	S	• Relevant developments are being monitored, including new case law. • Updating of current edition (published in 2006) has started and is ongoing (in English only for the time being). • **Spanish** version of the 2006 edition has been published in 2011 thanks to a financial contribution of the United States. • **Portuguese** and two **Chinese** (traditional and simplified) versions of the 2006 edition have been published by Macao Special Administrative Region in 2010.
30	Prepare guidelines for the completion of the Model Form	S	• No action taken yet – subject to additional resources (next priority after Apostille HB).
58	Develop Guide to Good Practice on use of video-link technologies to assist in taking of evidence abroad under the Convention	E	• Survey of national and regional law and practice, and literature review has been started by the PB and is ongoing. • Drafting has commenced on a short Guide, which will form part of the new edition of the Evidence HB. • The PB has met with registry officials of the International Criminal Tribunal for the former Yugoslavia (ICTY) regarding their use of videoconferencing and is monitoring developments within other international organisations.

C&R	Description	Conv	Status / resources
			• Completion of the Guide will be subject to consultation with Members and Contracting States to the Evidence Convention, which may involve a short questionnaire on aspects of the use of video-link technology not covered in the 2008 questionnaire. • The PB plans to complete the Guide with the assistance of an informal expert group (see SB 9A: Part B, Art. 14). With current level of resources timely completion of this project is uncertain.
39	Follow and study impact of modern technologies on Service Convention (in particular electronic transmission and electronic execution of requests for service presented under the Convention)	S	• Contact with the International Union of Judicial Officers has been established – future co-operation in this matter very likely.
40	Study issue of compelling persons under threat of sanctions to provide evidence in Requesting State by use of a request for service transmitted under the Convention	S	• No action taken yet (low priority with current level of resources).
15	Study on extrajudicial documents	S	• Monitoring of recent developments ongoing (in particular the comments by the European Court of Justice in the 2009 *Roda Golf* case in respect of the corresponding EU Regulation, and in the context of applying the Service Convention to arbitration proceedings).
Forms			
29	Develop multilingual PDF versions of Model Form to support its mandatory use	S	• Trilingual forms are available in both PDF and Word versions on the Hague Conference website in English, French and any one of the following other languages: Czech, Polish, Russian, Slovak, Spanish, Turkish and Ukrainian. • The finalisation of trilingual forms in Portuguese and Chinese (traditional and simplified) is pending.

C&R	Description	Conv	Status / resources
54	Develop multilingual PDF versions of Model Form to support its use	E	• In progress. • Final Forms to be made available in both PDF and Word (if possible).
89	Develop a bilingual model (French / English) and several multilingual models of the Apostille Certificate	A	• Bilingual (French / English) and trilingual (Spanish / English / French and Arabic / English / French) electronically-fillable models in both PDF and Word are now available on the Apostille Section.
electronic Apostille [Pilot] Program (e-APP)			

97	Further develop and promote the e-APP	A	• Promotion of the e-APP at a global level and assistance with its implementation is ongoing. The e-APP is attracting significant interest.
			• Over 60 Competent Authorities in 13 States have now implemented either or both components of the e-APP (the number of the Competent Authorities does not include the regional offices of the officially designated Competent Authority(ies), which may also have implemented either or both components of the e-APP).
			• The substance of the *e-APP for Europe* project was successfully completed in November 2011.
			• Administrative and financial arrangements for the closing of the *e-APP for Europe* project are about to be finalised.
			• The main achievements of the project were:
			  ○ the development of a e-APP system for Spain, which comprised the creation of a centralised e-Register and the nationwide issuance of e-Apostilles. The Spanish e-APP system has so far been rolled out in 42 out of the 44 Spanish Competent Authorities; implementation in the two remaining Competent Authorities is expected to be finalised soon.
			  ○ the *6th International Forum on the e-APP* (which was held in Madrid in June 2010); and
			  ○ three regional meetings, one in each of the associate partners – the first of these meetings was held in Helsinki (Finland) on 14 February 2011; the second meeting was held in Prague (Czech Republic) on 27 May 2011; the final meeting took place in Paris (France) on 5 October 2011.
			• The *7th International Forum on the e-APP* will take place in Izmir (Turkey) on 14-15 June 2012. The preparations for this Forum, which is being co-organised by the Permanent Bureau, are well underway.

C&R	Description	Conv	Status / resources
98	Consider questions of implementation of e-Apostille through exchange of technical and legal information	A	• Ongoing (part of general discussions on and assistance with implementation of the e-APP, see above).
Website			
58	Create "Evidence Section" on HCCH website	E	• Finalised.
99	Further improve the design of the Apostille Section (spin-off of work on HB and ABCs of Apostilles)	A	• Finalised. Separate e-APP page of the HCCH website to be launched soon.
N/A	Further improve the design of the of the Service Section	S	• Finalised.
Miscellaneous			
84	Maintaining confidence in Apostilles – monitor use of Apostilles in relation to diplomas, including "diplomas" issued by diploma mills	A	• Ongoing (contacts with national authorities).
7, 66	Promoting the Conventions	A, S	• The PB has co-organised or otherwise participated in seminars and conferences in Costa Rica, Mexico, Oman, Qatar, the Philippines, and Vietnam to promote or assist with the implementation of the Service and/or the Apostille Conventions. Future missions are planned (see SB 9B: tables 2, 3 and 4, Part A, Art. 2). • The PB is developing a brochure on the various legal co-operation and litigation conventions; relevance of these instruments for international trade and investment will be highlighted.

C&R	Description	Conv	Status / resources
71	Create automated e-mail alerts informing Competent Authorities about new Contracting States	A	• This task is part of the general revision of the HCCH website and is subject to appropriate resources.
71	Include information on previously designated Competent Authorities in the "Apostille Section"	A	• Ongoing (information included systematically). There is currently information of previously designated Competent Authorities for 17 States.
11	Explore if Service HB can be made available online in parts or in its entirety	S	• The FAQ section of the Service HB is now available on the Service Section. • Further thought is needed as to whether or not to make the HB (current edition and the future editions) available on the Hague Conference website and whether it should be made available for free or for a fee. PB prefers to wait a little longer before making the current edition available (for free) on the website as some of the language versions have only recently been published.

Part II: Conclusions and Recommendations requiring specific action on the part of Contracting States (communication to the Permanent Bureau)[1]

C&R	Task	Status
	Service Convention	
8, 16, 27	Yearly update of relevant information, including about authorities, practices and developments for inclusion in the Service Section of HCCH website	Only a few States have sent updated information.
	Evidence Convention	
51	States which have made a general, non-particularised declaration under Article 23 are invited to revisit and amend their declaration	No State that has made such a declaration has amended it.
57	Exchange with other States about experience on use of video-link and other modern technologies and communicate information to PB	No information received.
	Access to Justice Convention	
64	Provide PB with Model Form in view of creating multilingual forms and to make them available online	No information received.
65	Feasibility study on the provision of enhanced legal assistance in particular categories of cases, such as small and / or uncontested claims	CGAP 2009:[2] "The Council decided not to include in the work programme of the Conference a feasibility study on the provision of enhanced legal assistance in particular categories of cases, such as small and / or uncontested claims (suggested in Conclusion and Recommendation No 65 of the February 2009 Special Commission on the Apostille, Service, Evidence and Access to Justice Conventions) and to reserve the topic for future consideration."

[1] C&R which invite States to take specific actions but which do not necessarily require communication to the PB are not listed here (*e.g.*, promote relevant Conventions, promote uniform interpretation of relevant Conventions, use Model Forms, etc.) – for these other actions, reference is made to the relevant C&R of the SC 09.
[2] Council on General Affairs and Policy of the Hague Conference (31 March – 2 April 2009).

C&R	Task	Status
	Apostille Convention	
67	Continue assessing relevance of objections to new accessions to the Convention	• Netherlands has withdrawn its objection to the accession of Azerbaijan. • Germany has withdrawn its objection to the accession of Ukraine. • Italy has withdrawn its objection to the accession of Albania. • Austria, Belgium, Germany, and Greece have objected to the accessions of Kyrgyzstan and Uzbekistan.
70, 78	Provide the PB with yearly updates of information relating to their State in order to make available online in the "Apostille Section", including the competences of each Competent Authority	A number of States have sent updated information.
79	Inform the PB about Apostille issuance procedure (in particular, one-step vs. multiple-step process, on the necessity of intermediate certifications)	No information received.
84	Maintaining confidence in Apostilles – monitor use of Apostilles in relation to diplomas, including "diplomas" issued by diploma mills	No developments.
85	Addition of a statement to Apostille Certificate indicating the limited effect of an Apostille	Costa Rica, Mexico, Spain, various states of the USA and the United Kingdom.
89	Send a copy of Apostille Certificate to the PB for it to develop multilingual versions	Only a few samples were received. The 2012 Apostille Questionnaire thus asks States again to provide the Permanent Bureau with a copy of their Apostille certificate(s).

C&R	Task	Status
96	Consider implementation of the e-APP	• Over 60 Competent Authorities in 13 States have now implemented either or both components of the e-APP. • The following jurisdictions expressed to the PB their interest in implementing either or both components of the e-APP: Australia, Bermuda; Delaware (USA); Pennsylvania (USA); Virginia (USA); Turkey, Philippines and Uruguay. • Several jurisdictions have requested information and/or assistance with implementing the e-APP.