

10th International Forum on the electronic Apostille Program (e-APP)

CONCLUSIONS & RECOMMENDATIONS

On 1 November 2016, over 180 experts from over 65 States (both Contracting and non-Contracting Parties), as well as other invited observers, convened in The Hague, Netherlands to attend the *10th International Forum on the electronic Apostille Program (e-APP)*, this being the highest ever number of participants in the history of the e-APP.

The Forum was organised by the Permanent Bureau to coincide with the meeting of the Special Commission on the practical operation of the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (Apostille Convention or Convention).

Participants emphasised that the interest in the Apostille Convention and the e-APP continues to increase, with many accessions to the Convention expected and further implementation of the e-APP envisaged.

This being the 10th such Forum, and while recognising the value of past Fora, participants decided to mark the occasion by compiling the numerous Conclusions & Recommendations (C&R) from previous Fora in addition to adopting new Conclusions, in order to produce the following authoritative omnibus of e-APP Forum C&R, which was unanimously agreed upon:

The electronic Apostille Program (e-APP) in general

1. The participants noted with great satisfaction that over 200 Competent Authorities from 29 Contracting Parties have, to date, implemented one or both components of the e-APP. They particularly welcomed the jurisdictions that have joined the e-APP since the 2014 Hong Kong Forum, namely Australia, Austria, Brazil, Chile, Romania, Tajikistan and one state of Mexico (Baja California Sur). In addition, participants congratulated those Contracting Parties that are progressing with the implementation of one or both components of the e-APP. Participants noted with satisfaction that a high percentage of newly acceding Contracting Parties join as e-APP Parties.
2. Participants reiterated that the e-APP enables the Apostille Convention to continue to grow from strength to strength. They recalled the value of the e-APP as a tool to further the secure and effective operation of the Convention more broadly. In addition, participants noted the continuing increase in the issuance of e-Apostilles, with demand growing steadily, and in the number of verifications of Apostilles using e-Registers.
3. Participants reiterated that the spirit and letter of the Apostille Convention do not constitute an obstacle to the usage of modern technology and their application and operation can be further improved by relying on such technology.
4. Participants strongly encouraged both existing and future Competent Authorities to consider implementing both components of the e-APP. In this respect, participants noted the increasing ease of implementing these components, largely due to the fact that there is an increasing number of Contracting Parties that have the requisite implementation experience. These Contracting Parties are thus available for consultation and to provide assistance to new Contracting Parties, particularly with respect to addressing privacy, security, technological or other concerns. Participants thus confirmed that effective communication between Competent Authorities with regard to the implementation of the e-APP will facilitate the development of good practices and enhance awareness among authorities of the different e-APP systems in operation.

5. Participants reaffirmed the good practice of informing the Permanent Bureau of the Hague Conference when Contracting Parties begin issuing e-Apostilles or operating an e-Register. In the past, some Contracting Parties have informed also the depositary (*i.e.*, the Ministry of Foreign Affairs of the Kingdom of the Netherlands).
6. Participants noted with interest the developments reported and updates provided by the experts in attendance, from both Contracting Parties and the invited observers. In particular, the Forum noted with great interest the initiatives of the DONA Foundation and the InterPARES International Research Project, acknowledging the utility of harnessing the power of technologies such as the Handle System, Cloud-facilitated document preservation and Blockchain. Participants were invited to continue to study the relevance of these and other related technologies for the e-APP.

e-Apostilles

7. Participants noted that two different systems relating to the issuance of e-Apostilles are currently in use among the Contracting Parties to the Convention: the *dynamic* system and the *static* system, the former being used in the majority of Contracting Parties that have implemented the e-Apostille component and the latter in one Contracting Party. Under the *dynamic* system, the electronic file containing the e-Apostille and the electronic public document is transmitted electronically from the "State of origin" to the "State of destination".¹ The e-Apostille can be subsequently verified in the e-Register of the Competent Authority. Under the *static* system, the electronic file containing the e-Apostille and the electronic public document is stored in a repository of the Competent Authority (usually, its e-Register) and is not transmitted. The file can then be viewed by the applicant and / or recipient by accessing the Competent Authority's repository.
8. Participants noted that despite the differences between the systems relating to the issuance of e-Apostilles, both systems work well in practice. Several Contracting Parties reported receiving positive feedback with respect to the issuance of their e-Apostilles.
9. The participants noted the increase in the number of electronic public documents issued around the globe and that e-Apostilles offer the only solution for apostillising electronic public documents in their original format. Participants noted that some Contracting Parties that have not implemented the e-Apostille component are currently issuing paper Apostilles for electronic public documents. This is done by attaching a paper Apostille to a printout of an electronic public document, which would seem to undermine the purpose and utility of electronic public documents. In practice, e-Apostilles offer the only solution for apostillising electronic public documents, thereby maintaining the advantages of these documents in terms of security, efficiency and ease of transmission.
10. Participants also noted that Competent Authorities are increasingly issuing e-Apostilles for paper public documents which are subsequently scanned or digitalised. The law of the issuing Party determines how and by whom paper public documents are to be scanned or digitalised. The participants noted the different practices and reaffirmed the fundamental function of Competent Authorities to verify the authenticity of public documents and the need to adopt practices which allow assessing the genuine character of all documents presented as public documents for the issuance of an Apostille.
11. Participants noted that some Competent Authorities have started issuing only e-Apostilles for both electronic documents and paper public documents that are subsequently scanned or digitalised. In these jurisdictions, paper Apostilles will no longer be issued and only e-Apostilles will be issued for public documents.
12. Participants recognised the benefits of using modern technologies in providing Apostille services (incl. reducing the turnaround time in the issuance of Apostilles) and noted that at least one Contracting Party (Colombia) has implemented an online e-Apostille service, which is available 24 hours a day, seven days a week. In addition, the use of modern technologies facilitates the implementation of a one-step process (*i.e.*, there is no need for prior authentication within the "State of origin" before the public document may be presented to the Competent Authority for apostillisation).

¹ Throughout these C&R, the terms "State of origin" and "State of destination" are used as terms of art and are to be given the meaning ascribed to them in the Glossary of the Apostille Handbook.

13. Participants noted that some e-APP jurisdictions have passed laws or regulations specifically to enable their Competent Authorities to issue e-Apostilles, whereas others have not seen the need for such measures. It is for the law of the issuing Party to determine whether such measures are necessary (see also C&R No 18).
14. Participants also recalled that Apostilles, whether in paper or electronic form, must be attached to the underlying public document (Art. 4 of the Apostille Convention).

Acceptance of e-Apostilles

15. Participants again emphasised the fundamental principle of the Convention according to which an Apostille validly issued by one Contracting Party must be accepted in other Contracting Parties; the Forum participants stressed that this principle equally applies to e-Apostilles issued in accordance with domestic law of the issuing Party. Not extending this basic principle to e-Apostilles would provide receiving Parties with more power in the electronic environment than they have in the paper environment. Such a double standard would be both undesirable and unsatisfactory as the use of e-Apostilles offers a far higher security standard than paper Apostilles, because paper Apostilles may be more easily falsified or tampered with than e-Apostilles. This acceptance of foreign e-Apostilles is further supported by the fact that the majority of Contracting Parties have adopted legislation to the effect that electronic signatures are the functional equivalent of manuscript (wet) signatures. Finally, Forum participants stressed the great advantage of the parallel use of an e-Register if and when a Competent Authority issues e-Apostilles; the possibility to also verify the origin of an e-Apostille in the relevant e-Register should provide recipients of e-Apostilles with all the necessary assurance.
16. Participants noted that a "State of destination" may not reject e-Apostilles on the sole ground that the "State of origin" or the "State of destination" does not have legislation concerning e-Apostilles. Participants further recalled that Apostilles, whether in paper or in electronic format, do not affect the acceptance, admissibility or probative value of the underlying public document.
17. Reference was made to the model laws promulgated by UNCITRAL in relation to e-commerce and e-signatures. Participants were invited to work with their relevant authorities to ensure, where suitable, that domestic law is compatible with the receipt of underlying public documents in the electronic form, so as to reduce, as far as possible, the risk of rejection of underlying public documents in the "State of destination".
18. The participants noted that e-Apostilles are being widely accepted and have been of great benefit to users. Where there have been instances of rejection because the underlying public document must be presented in paper form under the domestic law of the "State of destination", Competent Authorities have attempted a variety of actions, such as contacting the diplomatic missions of the "State of destination" and engaging in a dialogue to explain the process of issuance in further detail to alleviate security and other concerns. As a result of this dialogue, some Competent Authorities then issue a paper Apostille to accommodate the (often urgent) needs of the applicants.

Design and layout

19. Participants also noted that the design and layout of Apostilles (both paper and electronic) must conform with the model annexed to the Convention. In order to facilitate the circulation of public documents, participants recalled the utility of conforming as closely as possible to this model, as well as the importance of bilingual or trilingual Apostille Certificates and the inclusion of additional text outside the area of the 10 standard informational items.

Electronic signatures and digital certificates

20. The participants noted that the majority of Contracting Parties have adopted legislation recognising that electronic signatures are functionally equivalent to handwritten signatures.
21. Forum participants reaffirmed the good practice of applying high standards to the issuance and management of digital credentials for use in applying digital signatures to e-Apostilles. This includes choosing a Certificate Authority that is well recognised in providing digital certificates which run on all major browsers and suit the document format chosen by the Competent Authority.

22. Participants acknowledged the good practice of providing information about how to validate signatures on e-Apostilles and, where applicable, of ensuring that all e-Apostilles issued are included in the e-Register.

Non-expiry of e-Apostilles

23. The participants further recalled that as Apostilles do not have an expiration date, e-Apostilles continue to be valid even after the digital certificate of the person signing the e-Apostille expires, provided that the digital certificate was valid when the e-Apostille was issued. Participants invited Competent Authorities to take this situation into account when selecting and using digital certificates to issue e-Apostilles, noting the availability of Long Term Signatures that remain valid beyond the expiry of the digital credential, such as "Advanced Electronic Signatures" for PDF (PAdES) and HML (XAdES-T).

e-Registers

24. Participants reaffirmed that an e-Register is an invaluable tool to facilitate and enhance the use of Apostille registers to verify the origin of Apostilles, providing an efficient means of verification and thus additional assurance for users.
25. Participants further noted the proven benefits of e-Registers in facilitating the verification of Apostilles in *both* paper and electronic form, but also that non-repudiation of e-Apostilles in particular is greatly enhanced by the parallel use of an e-Register.
26. Participants emphasised that frequent and more systematic verification of Apostilles is essential in combatting fraud. To facilitate this, participants recommended that Contracting Parties consider implementing e-Registers that allow searches in English and French, with simple, user-friendly interfaces.
27. Participants noted that like registers in paper form, e-Registers must comply with the requirements set out in Article 7 of the Apostille Convention. Accordingly, an e-Register must at least record the following particulars: (i) the number and date of the Apostille; and (ii) the name of the person signing the public document and the capacity in which he has acted, or in the case of unsigned documents, the name of the authority which has affixed the seal or stamp. The e-Register must also allow the recipient of the Apostille (whether a paper Apostille or e-Apostille) to verify each of the above particulars.
28. Participants noted that basic e-Registers (Category 1 e-Registers that simply confirm whether or not an Apostille matching the number and date entered by the user has been issued) do not allow the relevant Competent Authority to discharge its obligations under Article 7 of the Apostille Convention, as it does not allow the recipient to verify the name of the person who has signed the public document and the capacity in which that person has acted, or in the case of unsigned documents, the name of the authority which has affixed the seal or stamp. Furthermore, Category 1 e-Registers do not provide the assurance that the relevant Apostille is indeed being used with the underlying public document for which it was originally issued. Competent Authorities are therefore encouraged to operate e-Registers that provide at least a basic description and / or image of the Apostille and / or of the underlying public document (Category 2 e-Registers) or which also provide for a digital verification of the Apostille and / or of the underlying public document (Category 3 e-Registers). Participants further recalled that the full display of the Apostille and / or the underlying public document is subject to data protection laws of the jurisdiction operating the e-Register.
29. Participants stressed the importance of preventing fishing expeditions (*i.e.*, attempts by users of an e-Register to collect information about Apostilles that they have not received) in the use of e-Registers and suggested the entry of unique information associated with an Apostille received; the most efficient means to accomplish this goal is for Competent Authorities to number Apostilles non-sequentially (or otherwise randomly) and for the e-Register to request the recipient to enter this unique identifier in the e-Register, together with the date of issuance of the Apostille. If Apostilles are numbered sequentially, it is recommended to include a code on the Apostille (ideally alphanumeric and generated electronically) outside the area containing the 10 standard informational items of the Apostille and to request the recipient to enter this code together with the number and date of the Apostille to access the e-Register.

30. In order to ensure a comprehensive system of verification for all Apostilles issued, participants encouraged Contracting Parties to, where possible, implement a centralised e-Register connecting the Competent Authorities of that Contracting Party.
31. Participants once again acknowledged the value and importance of clearly displaying instructions for accessing the e-Register on the Apostille certificate, together with an accompanying message that the origin of the Apostille may be verified online via an e-Register. To this end, participants noted with satisfaction the various practices of Contracting Parties, ranging from providing a simple URL with a unique identifier, to the use of a Quick Response (QR) code. In particular, participants noted that e-Registers are regularly requiring users to enter a randomly generated word and / or number to ensure that the user is a person and not a computer. This practice is to be encouraged as it helps avoiding spam. The participants noted that relevant technology is evolving and that other means can produce the same results.
32. In the interests of securing the relevant website, participants encouraged Contracting Parties to use an SSL Certificate of similar technology (often indicated by a green colour in the URL bar of the web browser), which provides proof of an independent third party verification that the website itself belongs to the authority, person or company to which it purports to belong. Thus providing visitors to the website (*i.e.*, in this case, those seeking to verify an Apostille) with proof of the identity and confidence in the integrity and security of the online communications.
33. Subject to any domestic legal and practical requirements, issuing Competent Authorities are encouraged to keep e-Register entries accessible online for as long as possible, so as to allow for continued online verification of Apostilles.