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

The e-APP and International Fora: Progress Made and Outcomes to Date

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Structure of the presentation:

1. *International Fora: The first decade of the e-APP*
2. *e-Apostilles: Key Outcomes*
3. *e-Registers: Key Outcomes*
4. *Implementation Considerations*

International Fora:

The first decade of the e-APP

International Fora: The Numbers

10 *Host Cities*

7 *Host States*

Las Vegas
Washington D.C.
Los Angeles
New Orleans
London
Madrid
Izmir
Montevideo
Hong Kong
The Hague

International Fora: The Numbers

An average of
110 *Participants*

from
32
(on average)
States

Over
200 *Presentations*

Over
130 *Expert Speakers*

Almost
140 *C&Rs*

4 *Languages*

A Decade of the e-APP

Important C&R on general aspects of the e-APP:

- Implementation spans ***many geographical regions*** and a ***diverse range of jurisdictions*** and ***legal systems***
- Neither the spirit nor letter of the Apostille Convention are an obstacle to the use of modern technologies: ***no need to revise the Convention text***
- Proven great **practical value** and enhances the **effective** and **secure** operation of the Convention
- Over the last decade ***consistent increase in the issuance*** of e-Apostilles and the number ***verifications using e-Registers***

e-Apostilles:

Key Outcomes

The e-Apostille Component

- ***What is an e-Apostille?***

Electronic file that has been digitally signed (usually using Adobe® PDF technology) which is transmitted by electronic means, such as email, or otherwise made available for download or viewing from a website

Electronic file contains an Apostille with an electronic public document or a paper document which has been subsequently scanned

- ***How about paper Apostilles that have been digitally signed?***

No, these are not e-Apostilles!

It is the paper Apostille the one that circulates.

PDF file

Signed and all signatures are valid. Signature Panel

[Această [illegible]stila este semnată digital șipoate fi verificată la următoarea adresă: www.apostila.gov.md]

Codul de siguranță:2013071550969

This Apostille only certifies the authenticity of the signature and the capacity of the person who has signed the public document, and,
where appropriate, the identity of the seal or stamp which the public document bears.This Apostille only certifies the authenticity of the signature and the capacity of the person who has signed the public document, and,
This Apostille does not certify the content of the document for which it was issued.
[This Apostille is not valid for use anywhere within Republic of Moldova]
[This Apostille is digitally signed and can be verified on the following address: www.apostila.gov.md]

Security code:2013071550969

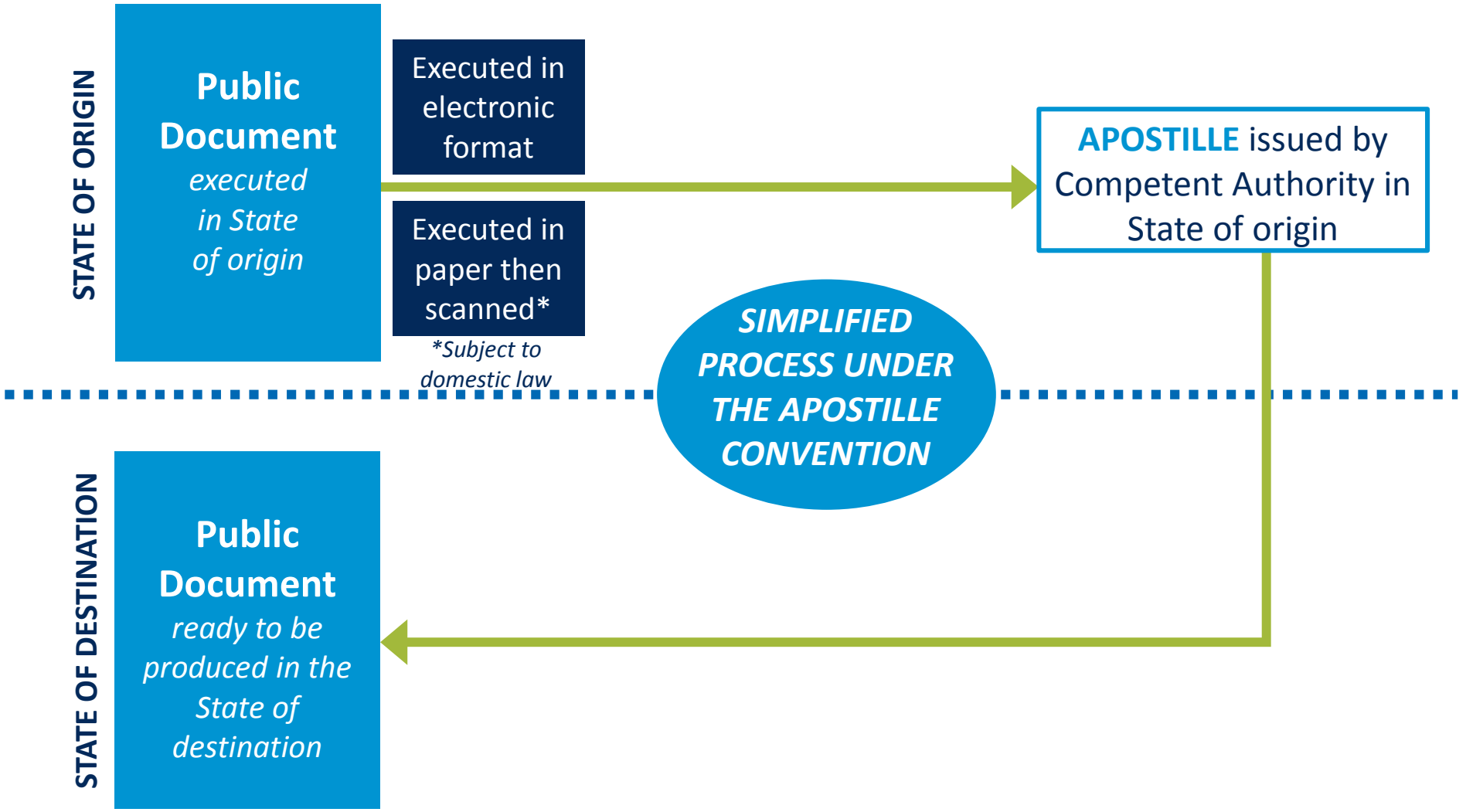
Le cas échéant, l'identité du sceau ou timbre dont cet acte public est revêtu.Cette Apostille atteste uniquement la véracité de la signature, la qualité en laquelle le signataire de l'acte a agi et,
Cette Apostille ne certifie pas le contenu de l'acte pour lequel elle a été émise.
[L'utilisation de cette Apostille n'est pas valable en République de Moldova]
[Cette Apostilleest signée numérique et peut être vérifiée à l'adresse suivante: www.apostila.gov.md]

Code de sécurité:2013071550969

Digitally signed by Frimu Valeriu
Date: 2014.07.10 09:55:44 EEST
Reason: MoldSign Signature
Location: Moldova

MoldSign

The e-Apostille Component



The e-Apostille Component

"Dynamic" System

Electronic file
(e-Apostille and electronic public document)
transmitted electronically
(from State of origin to State of destination)

1

e-Apostille
can then be subsequently verified in the e-Register
of issuing Competent Authority

"Static" System

Electronic file
(e-Apostille and electronic public document)
stored in a repository
of Competent Authority
(usually, its e-Register)
and not transmitted

2

Electronic file
can only be viewed (and verified)
by accessing the repository
of issuing Competent Authority

Both approaches were acknowledged by the 2013 Montevideo Forum and reaffirmed by the 2014 Hong Kong Forum

The e-Apostille Component

“Dynamic” System

Example

Electronic file
(e-Apostille and electronic public document)
transmitted electronically
(from State of origin to State of destination)

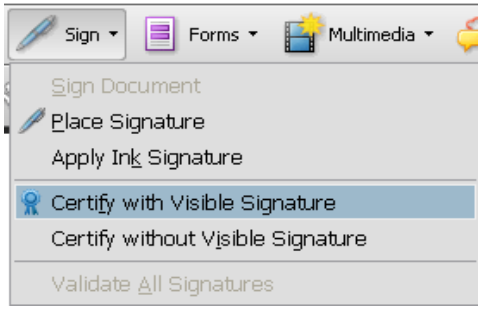
1

e-Apostille
can then be subsequently verified in the e-Register
of issuing Competent Authority

2

To create a single e-Apostille that is transmittable under this system:

- Apostille is typically ***completed on a computer*** and ***saved electronically***
- ***Both files are then merged***
  (e.g. Apostille file and electronic public document file combined in a single PDF file)
- The authorising ***official electronically signs*** the e-Apostille ***using a digital certificate***



The e-Apostille Component

- ***How many Contracting States have implemented the e-Apostille component?***

9 ***Austria, Bahrain, Chile, Colombia, New Zealand, Republic of Moldova, Slovenia, Spain, a state in the USA***

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Key C&Rs:
Issuance and Acceptance

- **An Apostille validly issued in one State Party must be accepted in other States Party; this principle equally applies to e-Apostilles issued in accordance with domestic law of the issuing State.**
- Not extending this basic principle to e-Apostilles would provide receiving States with more power in the electronic environment than they have in the paper environment. Such a double standard would be very unsatisfactory as the use of e-Apostilles offers a far higher security standard than paper Apostilles.
- Good policy to inform other Contracting States (*i.e.* via the **Permanent Bureau**) when begin to issue e-Apostilles
- Majority of States have adopted legislation recognising that electronic signatures are functionally equivalent to handwritten signatures.

Key C&Rs:
Issuance and Acceptance

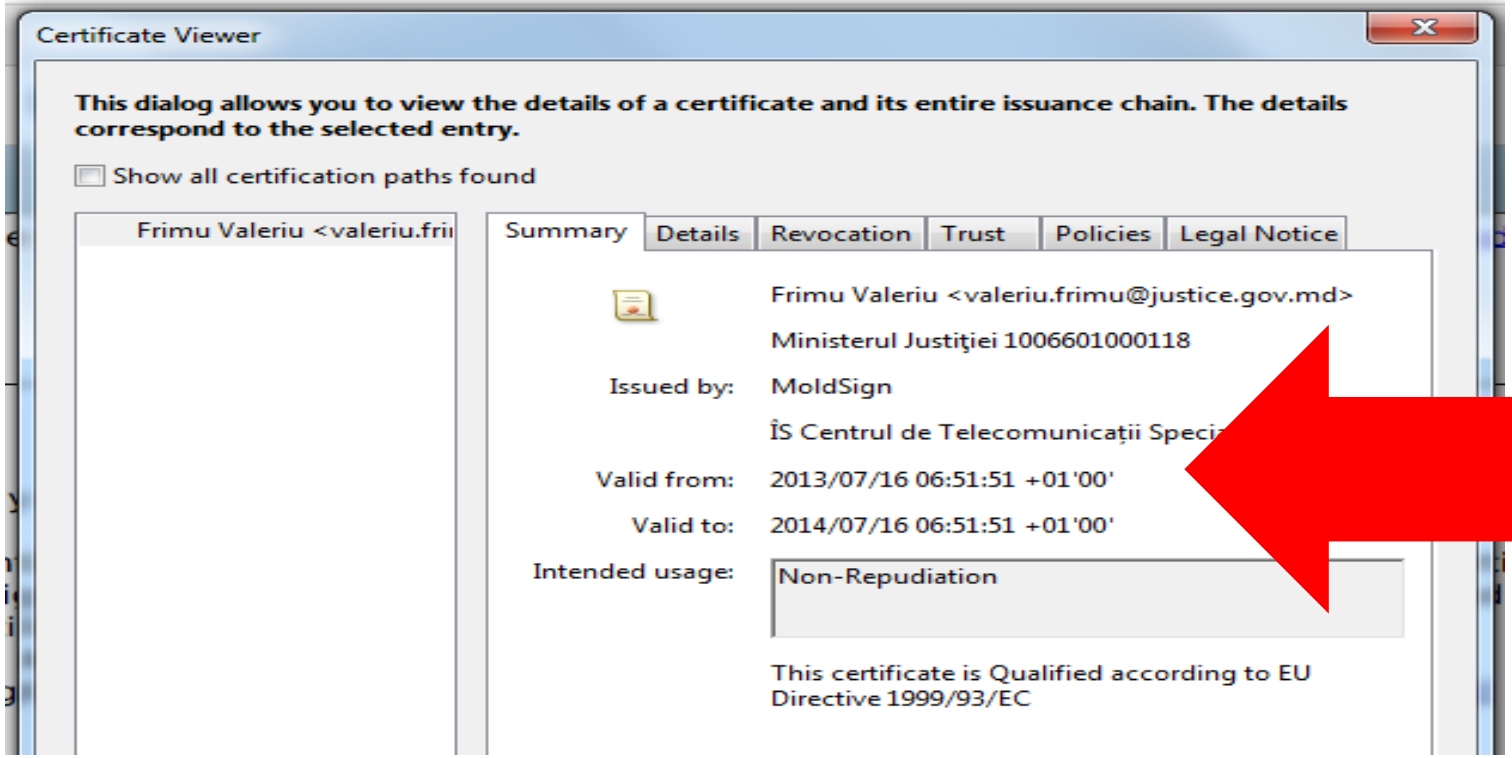
- A State of destination may not reject e-Apostilles on the sole ground that the State of issuance of the State of destination does not have legislation concerning e-Apostilles.
- The participants noted that e-Apostilles are being widely accepted and have been of great benefit to users.

Key C&Rs:
Paper vs Electronic Form

- Apostilles, whether **paper or electronic**,
  - do not affect the acceptance, admissibility or probative value of the **underlying public document**– remains subject to the relevant rules of the State of destination
    - ❖ Acceptance of underlying public documents such as electronic public documents?
  - must be **attached** to the underlying public document

Key C&Rs:
Non-expiration of e-Apostilles

- e-Apostilles do not expire!
- 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 Apostille was issued.
- **Apostille was issued on 10 July 2014**



Key C&Rs:
Digital certificates

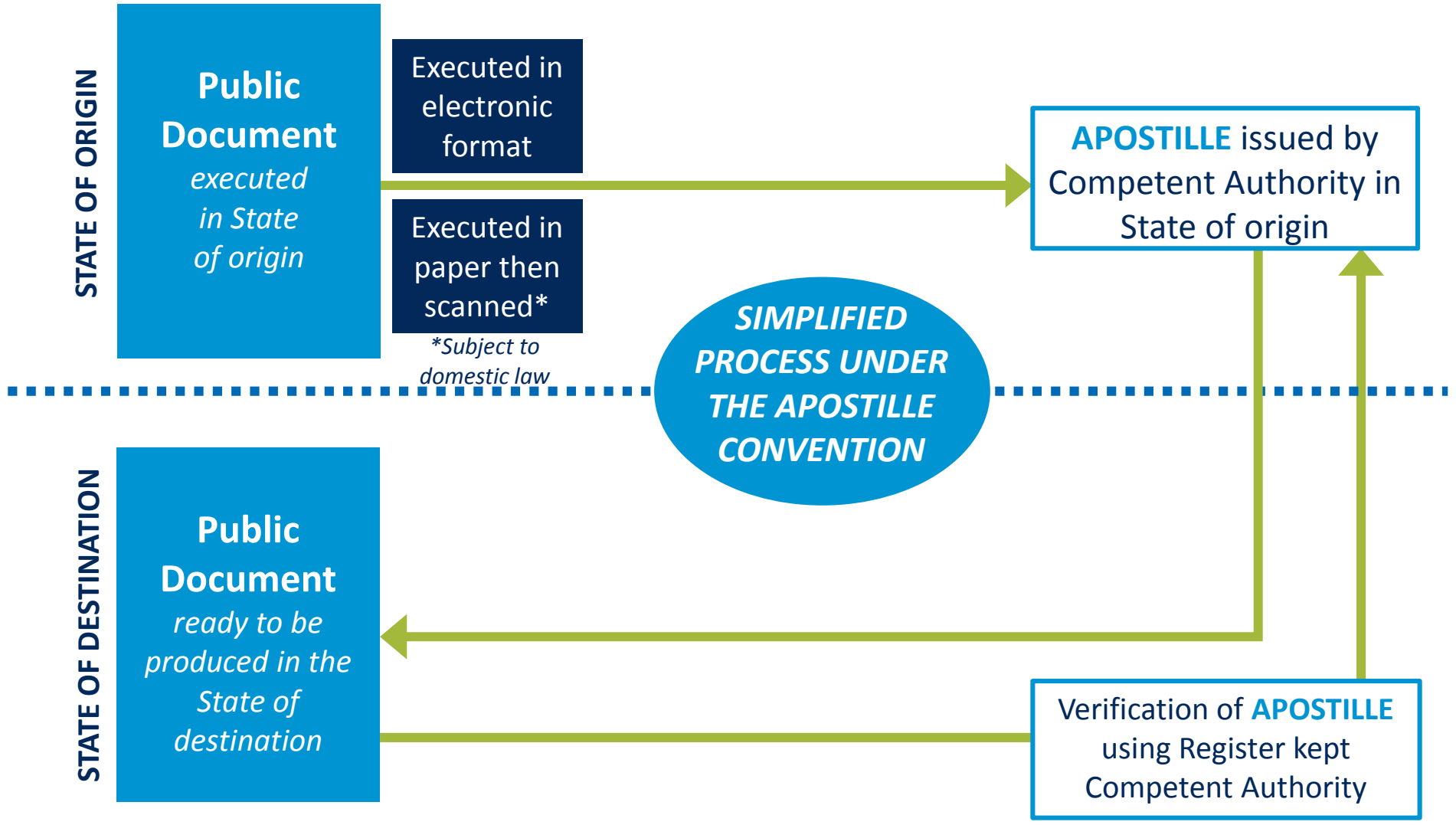
- Good practice of applying **high standards** to the issuance and management of digital credentials for use in applying digital signatures to e-Apostilles. This includes choosing a Certificate Authority that is well recognised in providing digital certificates which run on all major browsers and suit the document format chosen by the Competent Authority.
- While some States have chosen government certificate authorities, others have chosen private companies. Example:

3

e-Registers:

Key Outcomes

The e-Register Component



The e-Register Component

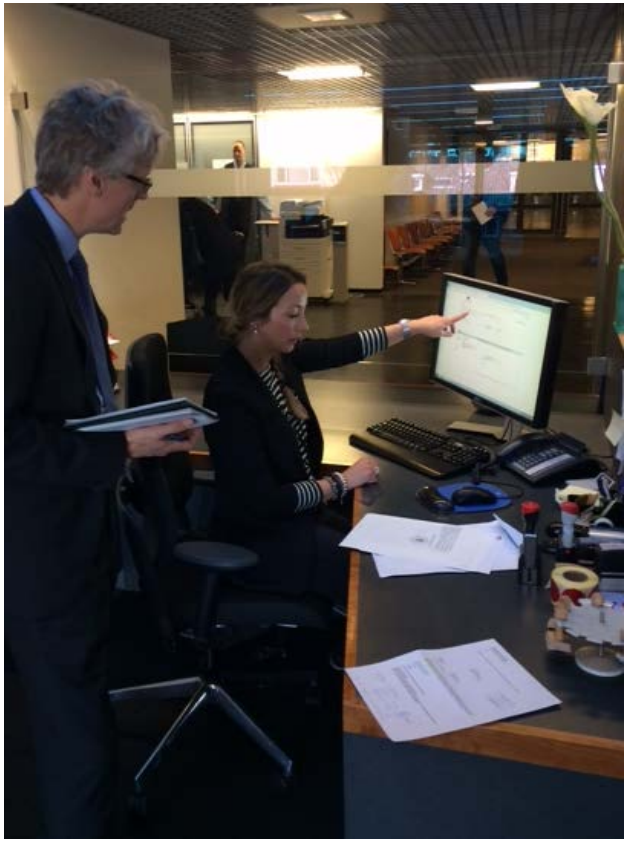
- ***Article 7*** requirements:
  - *Apostille **number** and **date***
  - ***name** and **capacity** of the person signing*
  - *and/or name of the **authority** affixing the seal/stamp*
- Enables recipient to ***verify the origin*** of an Apostille ***easily and securely online*** (typically via the website of the Competent Authority)
- e-Register is used to record the particulars of **all Apostilles issued** by the Competent Authority (*i.e.*, both paper and electronic Apostilles)

Categories of e-Register

Functionality	Category	Information displayed
Basic	1	"Yes" / "No" *[Not recommended by Permanent Bureau]*
Additional	2	"Yes" / "No" + information on Apostille and/or underlying document (possibly visual check)
Advanced	3	"Yes" / "No" + information on Apostille and/or underlying document (possibly visual check) + digital verification of Apostille and/or underlying document

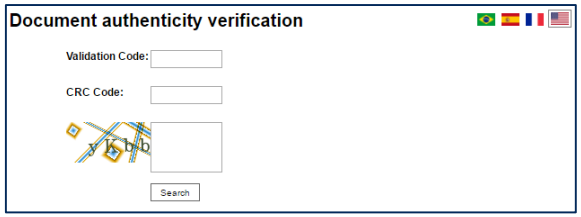
The e-Register Component
Accessibility

- ***Frequent*** and ***systematic*** verification essential for combatting fraud
- User ***awareness*** – access instructions clearly displayed on the Apostille *(e.g.* the URL*)*, promotional initiatives
- ***Centralised*** e-Register where possible
- ***Multilingual*** searches (English/French)
- Long-term ***retention*** of entries
- ***Technology*** to facilitate accessibility *(e.g. QR codes, Digital Object Architecture)*

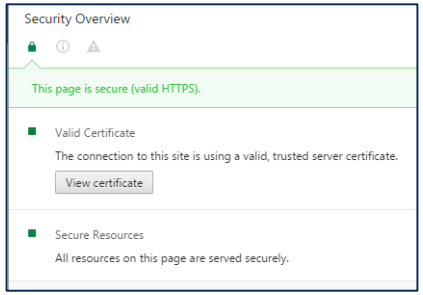


The e-Register Component
Security

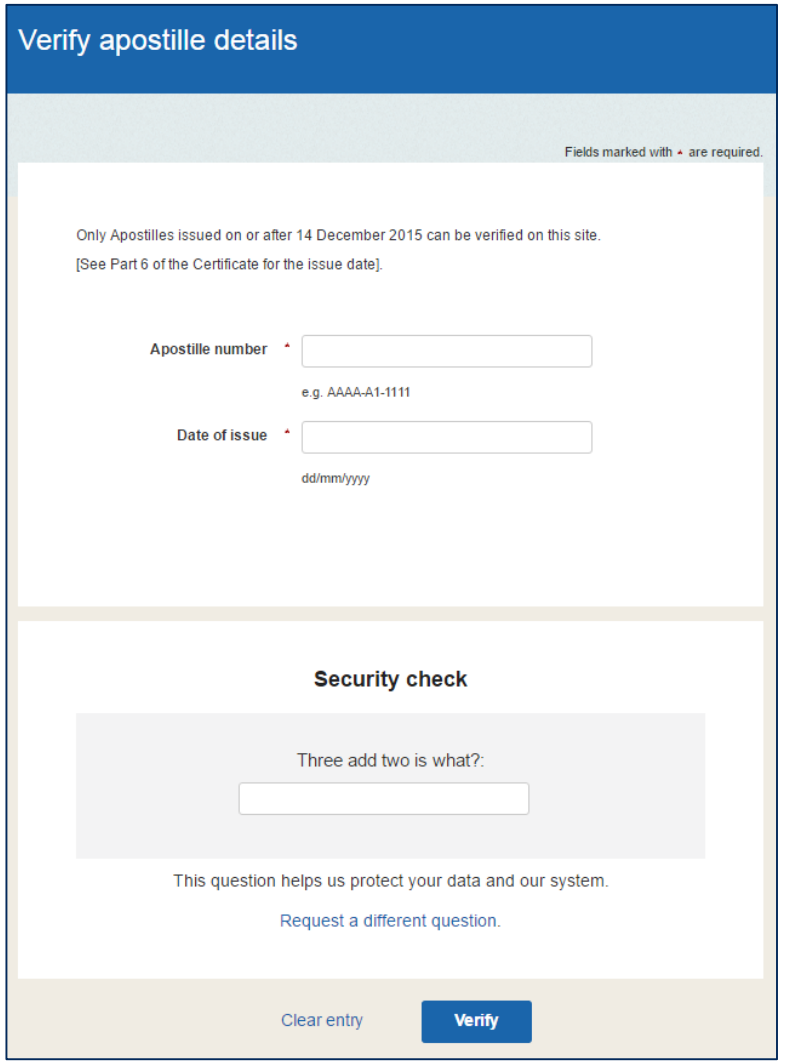
- Preventing "***fishing expeditions***"
- ***Unique identifier*** combined with, *e.g.* date of issue



- ***SSL Certificate*** for securing the relevant website



- **Privacy considerations** relevant to each jurisdiction (*e.g.* signatures, underlying public document)



4

Implementation Considerations

Implementation

Comprehensive and co-ordinated approach

- Either or both e-APP components may be implemented independently

No additional obligation upon States

- Participation not contingent on a formal agreement or binding commitment
- No requirement for the Permanent Bureau to "approve" or otherwise "endorse", but updates and information are welcome

No provision of technological assistance

- Permanent Bureau does not have technological expertise to assist, nor does it have software available, but *does* have contacts
- Importance of actively involving IT experts at the early stages

Communication and exchange

- Value of dialogue with other States – good practices, assistance and awareness
- Sharing of experiences, resources and statistics (both with other States and the Permanent Bureau)

Final Thoughts

- States consistently seeking to ***improve the operation*** of the Convention
- ***New* technologies** being embraced, but must ***continue to keep pace***
- All States, both current, new and those considering, ***strongly encouraged to implement*** the e-APP
- Best advice is to ***consult with, and seek guidance from States that have experience*** – a growing number of States and authorities available

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