

## Report from the Chair on the Experts' Group on the e-APP and New Technologies

- 1 At its meeting of 3 to 6 March 2020, the Council on General Affairs and Policy (CGAP) of the HCCH invited the Permanent Bureau (PB) to convene an Experts' Group to further explore whether the broader use of new technologies, including distributed ledger technology (DLT), may further enhance the electronic Apostille Programme (e-APP), in particular in relation to e-Registers. CGAP further noted that the findings of the Experts' Group would inform the work of the meeting of the Special Commission on the practical operation of the Apostille Convention, to be held in October 2021.<sup>1</sup>
- 2 The Group met from 3 to 6 May 2021 via videoconference. It was attended by over 100 participants representing 28 Members, and members of the PB.
- 3 Ms Vesna Bratušek of the Ministry of Justice of the Republic of Slovenia was proposed as Chair of the Group and was elected without opposition.
- 4 This Report, prepared by the Chair, provides a short overview of the main points of discussion.
- 5 States introduced e-APP components currently used by their Competent Authorities and reported on components in development or future implementation plans. Delegations expressed an interest in better understanding how other systems operate and the challenges faced by States.
- 6 Delegations were invited to make presentations on DLT-based use cases, including local, regional, and global solutions. These presentations provided context when discussing whether there are opportunities for new technologies to further enhance the e-APP.
- 7 The Group discussed the value of developing further guidance to assist Contracting Parties with the implementation of the e-APP. The Group emphasised that any such guidance must be non-binding and technology neutral to maintain the flexibility afforded to Contracting Parties by the Convention and the e-APP.
- 8 The PB presented a non-paper for discussion that proposed some key principles and good practices for the implementation of the e-APP. The Group welcomed the document and made suggestions for its amendment. The document, as adopted by the Group, is included below in Annex I and will be submitted to the Special Commission for endorsement.
- 9 Other solutions discussed include a universally available system and smaller-scale cross-border solutions. The Group considered the best way forward was to continue with the current flexible approach whereby Contracting Parties are encouraged to explore their own solutions while increasing efforts to share information and experience.
- 10 Experts suggested the development of an online forum to facilitate intersessional discussion and information-sharing, including in relation to best practices, between meetings of the Special Commission and the International Forum on the e-APP. The Group invited the PB to assess what form this may take, noting it should be accessible to technical and legal experts from Members and Contracting Parties, enable exchange of resources, and facilitate ongoing dialogue.

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<sup>1</sup> C&D No 33 of CGAP 2020.

- 11 In an effort to raise awareness of the e-APP and prevent rejections of e-Apostilles, the Group also invited the PB to formalise a notification system to inform Contracting Parties of the implementation of e-APP components, as well as continue to offer assistance to Contracting Parties as requested.
- 12 Other subjects that were raised throughout the meeting, which may be considered for further discussion at future meetings of the Special Commission and the International Forum on the e-APP include compliance with data protection laws and the right to be forgotten; reference to international standards (e.g., from the International Organization for Standardization (ISO)); and licensing and third-party accreditation.
- 13 The Group, recognising that further work of the e-APP is best enhanced through information-sharing, recommends that the Special Commission:
- a. Approve the “The e-APP: Key Principles and Good Practices” as endorsed by the Experts’ Group.
  - b. Invite the PB to develop an online forum which enables the exchange of information, experience, and best practices, facilitating ongoing dialogue.
  - c. Note the notification system whereby the PB informs Contracting Parties of the implementation of e-APP components.
- 14 A Preliminary Document will be prepared by the PB, in consultation with the Group if necessary, to assist the Special Commission in consideration of sub-paragraph (b).



## The e-APP: Key Principles and Good Practices

*Recalling the framework of the Apostille Convention and the value of the e-APP as a tool to enhance the secure and effective operation of the Convention, and reiterating the fundamental principle that an Apostille validly issued in one Contracting Party must be accepted by all other Contracting Parties, the Experts' Group on the e-APP and new technologies has endorsed the following compilation of key principles and good practices. This document is non-binding and Contracting Parties retain full discretion in the implementation of e-APP components in accordance with applicable laws and regulations, including on privacy and data protection.*

### 1. e-Apostilles, and related services, should be accessible for all users.

Good practices include:

- providing guidance on e-Apostille services to applicants.
- streamlining online submissions for e-Apostille applications.
- issuing e-Apostilles within one working day of application.
- using file formats compatible with commonly used software and web browsers.
- ensuring conformity with the Model Apostille as much as possible.

### 2. Competent Authorities should preserve the integrity of the e-Apostille and the underlying public document to which it relates.

Good practices include:

- issuing an e-Apostille when the underlying public document is executed in electronic form.
- combining the e-Apostille and the underlying public document in a single file.
- preserving the initial digital signature on the underlying public document when issuing an e-Apostille.
- preserving the digital signature and electronic format of the e-Apostille when presenting to the receiving authority.
- using a process allowing the validity of electronic signatures and digital certificates to be preserved over time.
- securing end-to-end access to ensure only authorised persons can issue and access e-Apostille services.

### 3. e-Registers should facilitate frequent and reliable verification of Apostilles.

Good practices include:

- having a single e-Register for all Apostilles, irrespective of format or issuing Competent Authority, per Contracting Party.
- providing guidance on how to access and use an e-Register, including adding this information to Apostilles.
- displaying a visual check of the Apostille as issued.
- retaining details regarding Apostille certificates in the e-Register indefinitely.

#### **4. Contracting Parties should have systems in place to facilitate the acceptance of e-Apostilles.**

Good practices include:

- adding information to e-Apostilles instructing users to preserve the electronic format of the file.
- ensuring legal frameworks and procedures are compatible with the acceptance of e-Apostilles and receipt of electronic public documents.
- resolving difficulties in relation to the acceptance of e-Apostilles and receipt of electronic public documents directly with authorities of the issuing Contracting Party, including informing the Permanent Bureau of systemic difficulties.

#### **5. Competent Authorities should regularly update and upgrade their Apostille practices, including e-APP infrastructure.**

Good practices include:

- informing the Permanent Bureau of any developments in relation to the issuance of e-Apostilles and the operation of e-Registers.
- considering whether technical and security developments, including relevant regional and international standards, can improve existing technology.