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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 A LA JUSTICE (2 – 12 FÉVRIER 2009) – MISE À JOUR NO 1

établi par le Bureau Permanent

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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 1

drawn up by the Permanent Bureau

Document préliminaire No 13 de mars 2011 à l'intention du Conseil d'avril 2011 sur les affaires générales et la politique de la Conférence

Preliminary Document No 13 of March 2011 for the attention of the Council of April 2011 on General Affairs and Policy of the Conference

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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). The present document sets out an *updated chart*, reflecting developments since April 2010.

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. Unless otherwise indicated, the C&R are implemented within the constraints of current resources. The chart only reflects work resulting from the SC 09 – it does not reflect any of the other work conducted by members of the PB with responsibility for judicial / administrative co-operation matters (*e.g.*, other work relating to judicial and administrative co-operation, finance law, commercial law, litigation or general administration matters).

Part II of the chart reflects the most important C&R that require specific action on the part of the *Contracting States*.[1]

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

C&R	Description	Conv	Status / resources
Handbooks / Guides / Brochures / Guidelines			
99	Complete a Practical Handbook (HB) on the operation of the Apostille Convention	A	• Project progressing well (consultation draft expected to be circulated to Members and Contracting States in second half of 2011 for comment) – 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 Supplementary Budget 2011-2012, Part I, Art. 23 a). • **Russian** translation has been prepared by the Department of State, USA (see Info. Doc. No 5, Part I) – redesign and finalisation of electronic and paper versions all subject to additional resources (see Supplementary Budget 2011-2012, Part I, Art. 23 b).

[1] To enable completion of all the tasks listed in Part I and organise the follow-up to activities relating to Part II, a second Legal Officer is required to undertake research, draft documents, respond to requests and progress projects. A position for this Legal Officer is currently on the Supplementary Budget (see Part I, Art. 20) and funding is needed to ensure the continuity of this position.

C&R	Description	Conv	Status / resources
			• **German** translation has been prepared by the Ministry of Justice of Austria and the PB (see Info. Doc. No 5, Part I) – redesign and finalisation of electronic and paper versions all subject to additional resources (see Supplementary Budget 2011-2012, Part I, Art. 23 b).
99	*Brief Implementation Guide* (spin-off of work on HB – guide for States interested in joining the Apostille Convention)	A	• Consultation draft circulated to Members and Contracting States to the Apostille Convention in January 2011 (L.c. ON No 2(11) of 21 January 2011). • Final **English** and **French** versions published in electronic form (available on the Apostille Section of the HCCH website) – paper form expected mid-2011. • Translation and publication of versions in other languages subject to additional resources (see Supplementary Budget 2011-2012, Part I, Art. 23 e).
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 should be published in electronic form on the Evidence Section by mid-2011. • Revised and expanded case law digest (including researching case law and preparing accompanying commentary) is ongoing and subject to availability of human resources (*e.g.*, interns).
41	Prepare revised (updated) edition of Service HB	S	• Relevant developments are being monitored, including new case law. • Drafting of new edition has not started yet (awaiting publication of Spanish version). • Spanish translation of current (third) edition ready – however, publication subject to additional resources (see Supplementary Budget 2011-2012, Part I, Art. 23 d). • Portuguese and two Chinese (traditional and simplified) versions of the third edition have been published by Macao Special Administrative Region.
30	Prepare guidelines for the completion of the Model Form	S	• No action taken yet – lack of 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 undertaken by the PB. • Drafting has commenced on a short Guide, which will form part of the new edition of the Evidence HB.

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. • It is suggested that this Guide be completed with the assistance of an informal expert group to be convened during FY 2011-2012 (see Supplementary Budget 2011-2012, Part I, Art. 21).
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 – lack 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	• PB has received Spanish, Czech, Polish, Portuguese, Slovak and Turkish versions of the Form – preparation of trilingual forms ongoing. • Need to improve trilingual forms in Russian and Ukrainian already available online on the Service Section – ongoing. • Final Forms to be made available in both PDF and Word (if possible).

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 (French / English / Spanish) 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	• Funding application successful – substantial financial support has been accorded by the European Commission for the *e-APP for Europe* project (see announcement on 11 May 2010, L.c. ON No 17(10)). • The Ministry of Justice of Spain is a partner, and the Ministries of Justice of Finland, the Czech Republic and France are associate partners, of the Hague Conference for the project, which is part of the general e-APP. The project is an 18-month endeavour which commenced on 20 May 2010 and includes, in particular: o the development of a central e-Register of Apostilles for Spain – ongoing; o the promotion of e-Registers across other EU Member States and beyond – ongoing; o the promotion of e-Apostilles across the EU and beyond – ongoing; o the *6th Forum on the e-APP* (which was held in Madrid in June 2010); and o 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 will take place in Prague (Czech Republic) on 27 May 2011; the final meeting will be in Paris (France).
98	Consider questions of implementation of e-Apostille through exchange of technical and legal information	A	• Ongoing.

Website			
58	Create "Evidence Section" on HCCH website	E	• The Evidence Section was launched in September 2010 – this section of the HCCH website contains detailed practical information on Contracting States and brings together explanatory documentation, electronically-fillable model forms, Special Commissions' documents, questionnaire responses and analysis, and other reference material. • The FAQs, explanatory charts, application tables and case law digest (discussed above) will be published on the Evidence Section when finalised.
99	Revamp Apostille Section (spin-off of work on HB and ABCs of Apostilles)	A	• Finalised.
N/A	Revamp of Service Section	S	• Ongoing.
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).
71	Create automated e-mail alerts informing Competent Authorities about new Contracting States	A	• Project discussed with relevant IT-company – implementation subject to available resources.
71	Include information on previously designated Competent Authorities in the "Apostille Section"	A	• Ongoing (information included systematically).
11	Explore if Service HB can be made available online in parts or in its entirety	S	• Plans to make current (third) edition of the Service HB available online – subject to review of financial implications (incl. loss of revenue from sale of hard-copy HB; likelihood as to whether or not the Spanish version can indeed be published).

Part II: Conclusions and Recommendations requiring specific action on the part of Contracting States (communication to the Permanent Bureau)[2]

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	A number of 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	
57	Exchange with other States about experience on use of video-link and other modern technologies and communicate information to PB	
	Access to Justice Convention	
64	Provide PB with Model Form in view of creating multilingual forms and to make them available online	
65	Feasibility study on the provision of enhanced legal assistance in particular categories of cases, such as small and / or uncontested claims	CGAP 2009:[3] "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."

[2] 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.
[3] Council on General Affairs and Policy of the Hague Conference (31 March – 2 April 2009).

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.
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)	
84	Maintaining confidence in Apostilles – monitor use of Apostilles in relation to diplomas, including "diplomas" issued by diploma mills	
85	Addition of a statement to Apostille Certificate indicating the limited effect of an Apostille	Mexico, Spain and various states of the USA.
89	Send a copy of Apostille Certificate to the PB for it to develop multilingual versions	
96	Consider implementation of the e-APP	• Since April 2010, three jurisdictions have implemented an e-Register: North Carolina (USA); California (USA) and West Virginia (USA). • Fifteen jurisdictions have now implemented at least one of the two components of the e-APP. • Among the jurisdictions expected to join the e-APP in 2011 are: Bermuda; Spain (in addition to Murcia); Virginia (USA); Pennsylvania (USA); Delaware (USA) and Colorado (USA).