

Convention Apostille / Apostille Convention
Avril / April 2005



**CONVENTION DE LA HAYE DU 5 OCTOBRE 1961
SUPPRIMANT L'EXIGENCE DE LA LÉGALISATION DES ACTES PUBLICS ÉTRANGERS
(CONVENTION APOSTILLE)**

Questionnaire :
**Diplômes et autres documents scolaires dans le cadre
de la Convention Apostille**

préparé par le Bureau Permanent

* * *

**HAEGUE CONVENTION OF 5 OCTOBER 1961
ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC
DOCUMENTS
(HAEGUE APOSTILLE CONVENTION)**

Questionnaire:
**Diplomas and other education documents within the framework
of the Apostille Convention**

prepared by the Permanent Bureau

**CONVENTION DE LA HAYE DU 5 OCTOBRE 1961
SUPPRIMANT L'EXIGENCE DE LA LÉGALISATION DES ACTES PUBLICS ÉTRANGERS
(CONVENTION APOSTILLE)**

Questionnaire :
**Diplômes et autres documents scolaires dans le cadre
de la Convention Apostille**

préparé par le Bureau Permanent

* * *

**HAQUE CONVENTION OF 5 OCTOBER 1961
ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC
DOCUMENTS
(HAQUE APOSTILLE CONVENTION)**

Questionnaire:
**Diplomas and other education documents within the framework
of the Apostille Convention**

prepared by the Permanent Bureau

HAEGUE CONVENTION OF 5 OCTOBER 1961
ABOLISHING THE REQUIREMENT OF LEGALISATION FOR FOREIGN PUBLIC
DOCUMENTS
(HAEGUE APOSTILLE CONVENTION)

Questionnaire:
Diplomas and other education documents within the framework
of the Apostille Convention

prepared by the Permanent Bureau*

Introduction

Pursuant to Recommendation No 9 of the Special Commission held in October / November 2003 on the practical operation of the Hague Apostille Convention, as well as the Evidence and Service Conventions¹, the Permanent Bureau is currently preparing a practical Handbook on the operation of the Apostille Convention. Because of the increasing number of Apostilles issued in relation to *diplomas* and other education documents,² the Handbook will include a section on this particular category of documents. Diplomas raise specific issues as to their *nature* (diplomas issued by 'public' institutions as opposed to 'private' institutions) and *origin* (fraud, diploma mills, on-line diplomas, etc.). Against this background, and with a view to gathering further information on relevant State practices, the Permanent Bureau has prepared the following Questionnaire.³

Diplomas within the framework of the Apostille Convention – some general remarks

The Apostille Convention only applies to *public* documents (see Art. 1). Thus, traditionally the following distinction is being made with respect to diplomas:

- (i) diplomas issued by *public institutions* may be apostillised directly (*i.e.*, the Apostille relates to the diploma itself and is placed on the document itself or on an allonge);
- (ii) diplomas issued by *private institutions* may not be apostillised directly; however, if a 'private' diploma bears a certificate issued by a Notary, Solicitor, Agency or any other person or authority competent under the law of the State of origin of the certificate, an Apostille may be issued to authenticate the certificate on the diploma – in other words, the Apostille does not relate to the

* We wish to thank Mr Herman de Leeuw, from the Informatie Beheer Groep (an agency of the Dutch Government, see further comments in this Questionnaire) for his valuable contribution to the preparation of this Questionnaire.

¹ The full text of the Conclusions and Recommendations of the 2003 Special Commission is available on the HCCH website at www.hcch.net, under the headings "Apostille Homepage", "Special Commission related documents".

² In this Questionnaire, the expression *diploma* covers any education document or academic certificate (in particular school and university degrees) validly issued by a duly recognized institution in a State party to the Apostille Convention; it also includes *transcripts* of academic records. Furthermore, the expression *diploma* covers both *original* and *certified copies* of diplomas. The expression "Apostilles issued in relation to" covers both Apostilles which are issued for a *diploma itself* (either on the diploma or on an allonge) and Apostilles issued for a *certificate* on a diploma (see further comments in the Questionnaire).

³ This issue was already briefly addressed in a document to the attention of the Special Commission of 2003, see Prel. Doc. No 3, p. 8. This document is entitled "2003 Questionnaire" and is also available on the abovementioned website.

diploma itself and only certifies the authenticity of the official certificate on the diploma (the Apostille may be placed on the certificate itself or on an allonge).

However, in light of the increasing number of '*mixed*' institutions (e.g., 'private' institutions which largely benefit from public subsidies and/or whose academic program is duly accredited or otherwise recognised by the relevant State authorities; 'public' institutions which offer private programmes which may not be recognised by the relevant State authorities), it is often difficult to assert whether or not a diploma is a public document. Furthermore, there is growing concern about *falsified* diplomas and diplomas from so called *diploma or degree mills* (i.e., diplomas that are being offered over the Internet by institutions which are not officially recognised, characteristically with no need for any course work as credit is being given for 'life experience'). Diploma mills routinely offer the possibility of having an Apostille attached to a perfectly valid notarized copy of the diploma, thus creating the appearance of an official or otherwise recognised diploma.⁴

With a view to overcoming these difficulties, some States have adopted special rules / procedures / policies for the issuing of Apostilles in relation to diplomas. These rules / procedures / policies require that the origin of any diploma – be it 'public', 'private' or 'mixed' – first be checked before an Apostille may be issued. In the United Kingdom, for example, since 1 January 2005, the competent authority only issues Apostilles in relation to UK diplomas from a recognised UK accredited institution. This is an important qualification: if the competent authority in the UK is requested to authenticate a certificate issued by a UK notary public but which relates to a *foreign* diploma, the competent authority will refuse to authenticate the UK certificate and thus avoids creating the appearance of a recognised diploma. In addition, and most importantly, before issuing an Apostille, the competent authority will check the qualifications / institutions against the list of accredited providers available from the Department of Education and Skills, the British Accreditation Council for independent Further and Higher Education, the Open and Distance Learning Quality Council or from any other available source. This is in addition to the fact that academic documents still need to be certified by a Solicitor or Notary Public.⁵ In the Netherlands, a State agency (the Informatie Beheer Groep, which has its offices in Groningen and whose acts are commissioned by the Minister of Education, Culture, and Science) verifies the origin of any Dutch diploma in relation to which an Apostille has been requested; once this State agency has issued its certificate, an Apostille is issued *for this certificate* (i.e., not for the underlying diploma) by the competent authority (i.e., the Rechtbank Groningen).

⁴ On Diploma mills in general, see, for example, ALLEN EZELL/JOHN BEAR, *Degree Mills, The Billion Dollar Industry That Has Sold Over a Million Fake Diplomas*, Amherst (NY), Prometheus Books, 2005; see also: <http://www.ed.gov/about/offices/list/ous/international/usnei/us/edlite-accred-fraud.html>.

⁵ See the official website of the Foreign and Commonwealth Office at: <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391458>, under the heading "Academic Certificates". It is worth noting that the same procedure applies for original diplomas and certified copies. In addition, all the Apostilles issued by the Foreign and Commonwealth Office bear the following Notice: "An Apostille or legalisation certificate only confirms the signature, seal or stamp on the document is genuine. It does not mean that the contents of the document are correct or that the Foreign and Commonwealth Office approves of the contents."

Questions

1. ***Criterion for characterising diplomas as public documents:*** Do the competent authorities of your State issue Apostilles for diplomas and any other education documents (see comments in footnote 2)? If so, do the competent authorities make a distinction between diplomas issued by 'private' institutions and diplomas issued by 'public' institutions? If any, what are the other criteria under the law of your State to determine whether or not a diploma is a public document falling within the scope of the Apostille Convention? Please describe any relevant State practice in this respect.
2. ***Procedure leading to an Apostille in relation to diplomas – Nature of the public document to which the Apostille relates:*** Has your State adopted special rules / procedures / policies for the issuing of Apostilles in relation to diplomas (see the comments above on the relevant practices in the United Kingdom and the Netherlands)? In particular, are diplomas apostilled directly or does the relevant procedure require a prior ***certification*** of the diploma (by a Notary, Solicitor, Agency, or any other competent authority or person) and the Apostille is then being issued for this certificate? Please describe the full procedure to get an Apostille in relation to a diploma (whether directly or for a prior certificate). If any, which authorities are competent to certify the diploma prior to the issuance of an Apostille?
3. ***Competent authority to issue Apostilles:*** Some States (such as Estonia, Kazakhstan, Slovakia, Ukraine) have designated one or more specific competent authority to issue Apostilles in relation to diplomas only. For these States, what were the reasons for the designation of a distinct body to deal with these documents? What is your experience with respect to the practical operation of this body? If your State has not (yet) designated a specific competent authority for the issuing of Apostilles in relation to diplomas, does it intend to do so? Please explain.
4. ***Original or certified copy?*** The 2003 Special Commission concluded that an Apostille may also be issued on a certified copy of a public document; however, States may decline to issue an Apostille for a certified copy of a document on the grounds of public policy (see Conclusion and Recommendation No 11 of the 2003 SC meeting). Does your State consider that diplomas fall within the public policy exception and that, therefore, Apostilles may not be issued in relation to certified copies of diplomas (whether directly or indirectly)?
5. ***On-line diplomas:*** Do the competent authorities in your State issue Apostilles in relation to on-line diplomas? If so, what are the means and procedures to ensure that an on-line diploma has indeed been issued by an institution of your State?
6. ***Raising the public awareness?*** To the general public, it may not always be clear what the Apostille certifies. People tend to overlook the fact that an Apostille only authenticates "the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears" (see Arts. 2 and 3 of the Convention). If, for example, the Apostille relates to a notarial certificate, it may not always be clear to the general public that it is the notary's signature that is certified by the Apostille, not the signature(s) on the underlying diploma to which the notarial certificate relates. Do you think it is necessary or, if not, at least desirable, to emphasise

for diplomas in particular that an Apostille does not relate to the content of the underlying public document (*e.g.*, by adding a special Note or caveat to the Apostille certificate, see comments in footnote 5 *in fine*)?

7. Do you have ***any other comments or suggestions*** relating to the issuance of Apostilles in relation to diplomas?

Please send your responses **before Tuesday 31 May 2005**, by email to Christophe Bernasconi, First Secretary (cb@hcch.nl), with a copy to the Permanent Bureau (secretariat@hcch.net). We thank you in advance for your cooperation and look forward to receiving your responses.

The Hague, 20 April 2005