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**PROJET DE MANUEL SUR LE FONCTIONNEMENT PRATIQUE DE LA CONVENTION APOSTILLE**

*établi par le Bureau Permanent*

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**DRAFT HANDBOOK ON THE PRACTICAL OPERATION OF THE APOSTILLE CONVENTION**

*drawn up by the Permanent Bureau*

*Document préliminaire No 2 d'août 2012  
à l'attention de la Commission spéciale de novembre 2012 sur le  
fonctionnement pratique de la Convention Apostille*

*Preliminary Document No 2 of August 2012  
for the attention of the Special Commission of November 2012 on the  
practical operation of the Apostille Convention*

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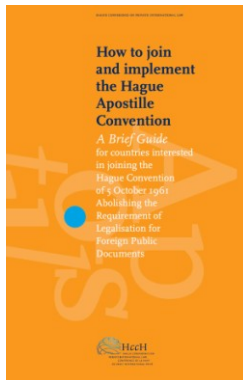
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## FOREWORD

The Handbook is the final publication in a series of three produced by the Permanent Bureau of the Hague Conference on Private International Law on the Apostille Convention following a recommendation of the 2009 meeting of the Special Commission on the practical operation of the Convention.

The first publication is a brochure entitled "[The ABCs of Apostilles](#)", which is primarily addressed to users of the Apostille system (namely the individuals and businesses involved in cross-border activities) by providing them with short and practical answers to the most frequently asked questions.



The second publication is a brief guide entitled "[How to join and implement the Hague Apostille Convention](#)", which is addressed to the authorities in States that are charged with assessing the possibility of their State's accession to the Apostille Convention, or with its implementation. Each of these publications is available on the [Apostille Section](#) of the Hague Conference website.



This Handbook completes the triptych. It is primarily addressed to the hundreds of Competent Authorities that have been designated by Contracting States to the Apostille Convention to issue "Apostilles", a simple authentication certificate that ensures that the origin of the underlying public document is recognised in other Contracting States, which currently number over 100 and rising.

The Handbook has been prepared by Mr Christophe Bernasconi, Deputy Secretary General of the Hague Conference, and Mr William Fritzlen, Attorney Adviser at the Department of State of the United States of America (on part-time secondment to the Permanent Bureau), with the assistance of Ms Mayela Celis (Senior Legal Officer) and Mr Alexander Kunzelmann (Legal Officer). It has also benefitted from the input of a group of experts designated by various Hague Conference Members and non-Member Contracting States.\* I would like to thank all those involved in the preparation of this substantial publication.

Hans van Loon  
Secretary General

\*

The group was comprised of Mr Fernando Andrés Marani (Argentina), Ms Pavla Belloňová (Czech Republic), Mr Tomáš Kukal (European Union), Mr Toni Ruotsalainen (Finland), Ms Mariam Tsereteli (Georgia), Mr A. Sudhakara Reddy (India), Mr Jorge Antonio Méndez Torres-Llosa (Peru), Mr Łukasz Knurowski (Poland), Ms Thanisa Naidu (South Africa), Mr Javier L. Parra García (Spain), Ms Silvia Madarasz-Garolla (Switzerland), Mr Marcelo Esteban Gerona Morales (Uruguay) and Mr Peter M. Beaton and Mr Peter Zabłud as observers.

## INTRODUCTION

Fifty years after its adoption, the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* ("Apostille Convention") is the most widely accepted and applied of all the international treaties concluded under the auspices of the Hague Conference on Private International Law. With the aim of facilitating the worldwide circulation of public documents, the Apostille Convention is finding new life in an age of unprecedented global interconnectivity, in which international trade and investment, as well as the cross-border movement of people, find support in the mutual recognition given by States to these documents.

The Handbook is designed to assist Competent Authorities in performing their functions under the Convention, which is fundamental to its sound operation. The Handbook is not designed to provide an article-by-article commentary on the text of the treaty, and is not meant to replace the [Explanatory Report](#) by Mr Yvon Loussouarn. At the same time, the Handbook is designed to address issues that arise in the contemporary operation of the Convention, which may not have been envisaged when the Explanatory Report was finalised in 1961. It also seeks to discuss common practical issues in greater depth.

The Handbook is structured as follows:

- [Part I](#) provides an overview of the background and context of the Convention;
- [Part II](#) provides information on the role and functioning of Competent Authorities;
- [Part III](#) describes the scope of the Convention, including a detailed analysis of its substantive scope (*i.e.*, the documents to which it applies);
- [Parts IV](#) and [V](#) describe the various stages of the Apostille process – from the moment an Apostille is requested in one Contracting State, to the moment it is produced in another – and offers Competent Authorities advice on good practice;
- [Part VI](#) provides an introduction to the electronic Apostille Program (e-APP), and explains what it means for Competent Authorities and the international circulation of public documents in the electronic age.

A [Glossary](#) of key terms is set out at the beginning of the Handbook, and a range of ready-reference material is set out in the Annexes.

This Handbook has been prepared in consultation with Member States and non-Member Contracting States. A preliminary draft of the Handbook was submitted to a group of experts specifically designated by Members of the Hague Conference and non-Member Contracting States, which met in The Hague in May 2012. A final draft, incorporating the comments and suggestions of the expert group, was then submitted to the Special Commission on the practical operation of the Apostille Convention at its meeting in November 2012 for approval.

The Handbook makes frequent reference to the Conclusions & Recommendations adopted by meetings of the Special Commission on the practical operation of the Convention. These Conclusions & Recommendations are an important and often indispensable authority for interpreting the Convention, and they are widely followed and implemented in practice. The Handbook also makes reference to the Conclusions & Recommendations adopted by the various international fora on the e-APP, which establish models of good practice for States that have implemented, or intend to implement, the e-APP.

Christophe Bernasconi  
Deputy Secretary General

## GLOSSARY

This glossary provides a definition for key terms used in this Handbook. Where applicable, terms used in the Convention are used in this Handbook and are given the same meaning.

Terms preceded by “☞” are defined in a separate entry.

### ABCs of Apostilles

The brochure entitled “[The ABCs of Apostilles](#)”. This is the first in a series of publications produced by the Permanent Bureau on the Apostille Convention. The other two publications are the ☞[Brief Implementation Guide](#) and this Handbook. The brochure is primarily addressed to users of the Apostille system (namely the individuals and businesses involved in cross-border activities) by providing them with short and practical answers to the most frequently asked questions. A copy is available on the [Apostille Section](#) of the Hague Conference website.

### Accession

An international act, whereby a State establishes its consent to be bound by a treaty, such as the ☞[Apostille Convention](#) (see Art. 2 of the *Vienna Convention of 23 May 1969 on the Law of Treaties*).

In the case of the ☞[Apostille Convention](#), any State other than a State for which the Convention is open for signature and ☞[ratification](#) may accede to the Convention (Art. 12(1)), thereby “joining” the Convention as a ☞[Contracting State](#). This is done by depositing an instrument of accession with the ☞[Depositary](#) of the Convention. The effect of accession as between the acceding State and existing Contracting States is subject to an acceptance procedure.

A State not represented at the Diplomatic Session that adopted the final text of the ☞[Apostille Convention](#) in 1960 may accede to the Convention. A State may accede to the Apostille Convention even if it is not a ☞[Member](#) of the Hague Conference.

☞ For more on the **accession procedure**, see [Annex II](#) (see also Part III of the *Brief Implementation Guide*).

☞ For more on the **acceptance of accessions** in particular, see paras 91 et seq.

### Allonge

A slip of paper, attached to the underlying ☞[public document](#), on which an ☞[Apostille](#) is placed. An allonge is used as an alternative to placing the Apostille directly on the underlying document (see Art. 4(1) of the ☞[Apostille Convention](#)).

### Apostille

A certificate issued under the ☞[Apostille Convention](#) authenticating the origin of a ☞[public document](#).

☞ For more on the **effect of Apostilles**, see paras 24 et seq.



### **The origin of the word "Apostille"**

The word "Apostille" (pronounced a-pos-TEE, not a-pos-TEAL or a-pos-TILL-ee) is of French origin. It comes from the French verb "apostiller", which derives from the old French word *postille* meaning "annotation", and before it the Latin word *postilla*, a variation of the word *postea*, which means "thereafter, afterwards, next" (Le Nouveau Petit Robert: *Dictionnaire alphabétique et analogique de la langue française*, Paris, 2004). Usage of the words "Apostille" and "apostiller" dates back to the end of the 16<sup>th</sup> century in France; they were included in the first edition of the Dictionary of the *Académie française* in 1694, which provided the following definition:

"Apostille, *n.*: An addition in the margin of a written document or at the bottom of a letter. There are two lines in an Apostille.

*Apostiller, ACT. v.*: To insert comments on the side of a written document. An Ambassador's telegrams are apostilled by the Minister." [Translation by the Permanent Bureau].

Thus, an Apostille consisted of an annotation in the margin of a document or at the end of a letter (e.g., Napoleon, *Ordres et apostilles* (1799-1815)).<sup>2</sup>

During the negotiations on the Convention, the term "Apostille" was preferred because of its novelty. According to the reporter: "Following a discussion on terminology [in the French language], the word *Apostille* may have been preferred because of its appealing novelty (it was adopted by 7 votes to 3, the other suggestion having been *attestation*)." [Translation by the Permanent Bureau.]<sup>3</sup>

The meanings of the word Apostille described above are still valid today.<sup>4</sup>

### **Apostille Convention**

An international treaty developed and adopted by the [Hague Conference](#). The full title of the Convention is the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*. The final text of the Convention was adopted by the Hague Conference at its Ninth Session on 26 October 1960 and was first signed on 5 October 1961 (hence the date in its full title). In accordance with its Article 11(1), the Convention entered into force on 21 January 1965, 60 days after the deposit of the third instrument of ratification. The [Hague Conference](#)

<sup>2</sup> Napoléon, *Ordres et apostilles* (1799-1815), published by A. Chuquet (4 volumes, 1911-1912). In the 19<sup>th</sup> century, the word Apostille was also employed in the context of recommendations. In this case, the purpose of making an annotation was to recommend the person who had signed a document. This additional meaning was acknowledged in the 6<sup>th</sup> edition of the Dictionary of the French Academy (1832-5), which states: "[...] *Il se dit, particulièrement, des recommandations qu'on écrit à la marge ou au bas d'un mémoire, d'une pétition*". "[...] It notably makes recommendations that are written in the margin or at the bottom of a memoir or petition". [Translation by the Permanent Bureau]. The term Apostille was extensively used in this sense by prominent writers such as Stendhal (*Le rouge et le noir*, 1830) and Alexandre Dumas (*Le maître d'armes*, 1840). An excerpt of Dumas' book reads as follows: "[...] *et toi, viens que j'apostille ta demande. Je suivis le grand-duc, qui me ramena dans le salon, prit une plume et écrivit au bas de ma supplique : 'Je recommande bien humblement le soussigné à Sa Majesté Impériale, le croyant tout à fait digne d'obtenir la faveur qu'il sollicite'*" (available at < [http://www.dumaspere.com/pages/dictionnaire/maitre\\_armes.html](http://www.dumaspere.com/pages/dictionnaire/maitre_armes.html) >). English translation: "[...] and you, come here so I can apostillise your request. I followed the Grand Duke, who led me to the sitting room, took a quill and wrote at the bottom of my petition; 'I humbly recommend the undersigned to His Imperial Majesty, believing him entirely worthy of obtaining the favour he solicits'". [Translation by the Permanent Bureau.]

<sup>3</sup> See Conférence de La Haye de droit international privé, *Actes et documents de la Neuvième session* (1960), Tome II, *Légalisation*, The Hague, Imprimerie Nationale, 1961, p. 27.

<sup>4</sup> According to the 2004 edition of the French dictionary Petit Robert, an apostille is the "1. *Addition faite en marge d'un écrit, d'une lettre* → *annotation, note, post-scriptum*. 2. *Mot de recommandation ajouté à une lettre, une pétition*" and *apostiller* consists in "*mettre une apostille, des apostilles à [...]*". English translation: "1. An addition in the margin of a written document, a letter – annotation, note, post-scriptum. 2. A recommendation note added to a letter, a petition". *Apostiller*. "To add an apostille, apostilles to [...]" [Translation by the Permanent Bureau].

has adopted many other international treaties (known as the [Hague Conventions](#)). The full text of the Convention is set out at [Annex I](#).

➤ For more information on the **entry into force and current status of the Apostille Convention**, see the [status table](#).

## Apostille Section

A section of the website of the [Hague Conference](#) dedicated to the [Apostille Convention](#). The [Apostille Section](#) can be accessed via a link on the home page of the Hague Conference website < [www.hcch.net](http://www.hcch.net) >.

## Apostillisation / apostillising

The act of issuing an [Apostille](#) under the [Apostille Convention](#). A document for which an [Apostille](#) has been issued under the Convention is referred to as having been “apostillised”. The issuance of an Apostille replaces the often cumbersome, time-consuming and costly process of [legalisation](#). The term “apostillisation”, while not utilised in the Convention, has subsequently come into widespread use.

## Applicant

The person making a request for an [Apostille](#) to be issued.

➤ For more on **requesting an Apostille**, see [paras 198 et seq.](#)

## Authenticate / authentication

Authentication is a generic term that commonly refers to the process of verifying, or “authenticating”, the origin of a public document. “Authentication” and [“legalisation”](#) are sometimes used synonymously, and “authentication” may also be used to refer to the [apostillisation](#) process.

## Brief Implementation Guide

The full name of this Guide is “How to join and implement the Hague Apostille Convention”. This Guide is the second in a series of publications produced by the Permanent Bureau on the Apostille Convention. The other two publications are the [ABCs of Apostille](#) and this Handbook. The [Brief Implementation Guide](#) is addressed to the authorities in States that are charged with assessing the possibility of their State’s accession to the Apostille Convention, or with its implementation. The [ABCs of Apostille](#), the [Brief Implementation Guide](#) and this Handbook are all available on the [Apostille Section](#) of the Hague Conference website.

## Capacity

In the context of the Convention (see Arts 2 and 3), capacity generally refers to the legal authority to perform a prescribed function (*i.e.*, the role in which a person executed the underlying public document). Capacity is defined by the law of the State of execution. An Apostille certifies, among other things, the capacity of the person who executed the underlying public document.

## Certificate

For purposes of this Handbook the term “certificate” refers to an [Apostille](#). This should not be confused with an “official certificate”, which is a public document referred to in Article 1(2)(d) of the [Apostille Convention](#).

➤ For more on **official certificates**, see [paras 128 et seq.](#)

## Competent Authority

An authority designated by a [Contracting State](#) that is competent to issue [Apostilles](#). A State may designate one or more Competent Authorities, and may designate Competent Authorities that are only competent to issue [Apostilles](#) for certain categories of [public documents](#). Information about designated Competent Authorities may be found on the [Apostille Section](#) of the Hague Conference website under "[Competent Authorities](#)".

➤ For more on the **establishment and function of Competent Authorities**, see para. 43.

## Contracting State

A State that has joined the [Apostille Convention](#), whether or not the Convention has entered into force for that State (see Art. 2(1)(f) of the *Vienna Convention of 23 May 1969 on the Law of Treaties*). A Contracting State for which the Convention has actually entered into force may also be referred to as a [State Party](#). An updated list of all Contracting States, called the [status table](#), is available on the [Apostille Section](#) of the Hague Conference website.

The Convention uses the term "Contracting State" in numerous provisions but with varying meanings. For example, in Articles 1(1) and 14(5), the Convention uses the term "Contracting State" to mean "*State Party*" only, whereas in Articles 6 and 9 it uses the term "Contracting State" to mean both a "Contracting State" or a "State Party".

➤ For more on particular issues concerning the **entry into force of the Convention** for particular States, see paras 96 et seq.

## Copy

For a detailed discussion of copies, see paras 153 et seq.

## Depositary

An authority charged with administering an international treaty. In the case of the [Apostille Convention](#) (and all other [Hague Conventions](#)), the Depositary is the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The contact details of the Depositary are as follows:

### Treaties Division, Ministry of Foreign Affairs

Office address:	DJZ/VE, Bezuidenhoutseweg 67 2594 AC The Hague The Netherlands
Postal address:	DJZ/VE, PO Box 20061 2500 EB The Hague The Netherlands
Telephone:	+31 70 348 49 22
E-mail:	djz-ve@minbuza.nl
Website:	www.minbuza.nl/treaties

The website of the Ministry of Foreign Affairs includes information about the performance of its depositary duties in relation to the [Apostille Convention](#), as well as the status and recent notifications concerning the Convention.

## e-APP

“e-APP” is the acronym for “electronic Apostille Program” (previously known as the electronic Apostille *Pilot* Program). Launched in 2006 by the Hague Conference and the National Notary Association of the United States of America (NNA), the e-APP aims at promoting and assisting in the implementation of secure software technology for the issuance of [e-Apostilles](#), and operation of [e-Registers](#).

➔ *For more on the e-APP, see paras 29 et seq. and 319 et seq.*

## e-APP Forum or Forum

One of the international fora on the [e-APP](#) organised by the [Permanent Bureau](#) (see para. 325). Conclusions & Recommendations of the various fora, as well as other related information, are available on the [Apostille Section](#) of the Hague Conference website.

## e-Apostille

An [Apostille](#) that is issued in electronic format with an electronic signature. The issuance of e-Apostilles is one of the two components of the [e-APP](#) (the other being the operation of [e-Registers](#)). Under the e-APP, e-Apostilles must have a digital certificate. In this Handbook, the term e-Apostille is used in the e-APP context only.

## e-Register

A [register of Apostilles](#) that is kept in electronic form and which is accessible online by a [recipient](#). The operation of e-Registers is one component of the [e-APP](#) (the other being the issuance and use of [e-Apostilles](#)). An e-Register may include both paper Apostilles and e-Apostilles.

## Execution of a public document

The act of generating a [public document](#). This will generally involve drafting the document, and having it signed by the issuing official and / or sealed or stamped by the issuing authority. The execution of a public document is governed by the law that applies in the territory where the document is executed (the “*lex loci actus*”). The meaning of the term “execution” in this Handbook is not the same as the meaning associated with traditional requests for international judicial assistance such as the execution of requests for service of process abroad or the execution of judgments abroad.

## Explanatory Report

The report drawn up by Mr Yvon Loussouarn that describes the background and preparatory works of the [Apostille Convention](#), and provides article-by-article commentary on its text. The full text of the Explanatory Report, which was first published in 1961, is available on the [Apostille Section](#) of the Hague Conference website.

## Hague Conference on Private International Law (“Hague Conference” or “HCCH”)

A permanent intergovernmental organisation whose purpose is to work for the progressive unification of the rules of private international law and under the auspices of which the [Apostille Convention](#) was negotiated and adopted.

➔ *For more on the Hague Conference, visit the Hague Conference website < [www.hcch.net](http://www.hcch.net) >.*

## Hague Conventions

International treaties developed and adopted by the Hague Conference. A list of all the Hague Conventions is available on the [Hague Conference](#) website < [www.hcch.net](http://www.hcch.net) >

under “Conventions”. The [↻\*Apostille Convention\*](#) is the 12th Hague Convention (including the Statute of the Hague Conference).

### Issuance of an Apostille

The act of completing an [↻\*Apostille\*](#) and attaching it to the underlying public document in order to confirm its origin.

### Legalisation

The process for [↻\*authenticating\*](#) foreign public documents (as described in paras 8 *et seq.*). [↻\*Apostillisation\*](#) has the same effect as legalisation but is the result of the simplified process established by the Convention (as described in paras 12 *et seq.*).

### Member of the Hague Conference

Any State or Regional Economic Integration Organisation may seek to become a Member of the Hague Conference.

Being a Member of the Hague Conference should not be confused with being a [↻\*Contracting State\*](#) to the [↻\*Apostille Convention\*](#) (or any other [↻\*Hague Convention\*](#) for that matter). A Member does not have to be (or become) party to the [↻\*Apostille Convention\*](#) and a [↻\*Contracting State\*](#) to the [↻\*Apostille Convention\*](#) does not have to be (or become) a Member of the [↻\*Hague Conference\*](#). Not all Members have joined the [↻\*Apostille Convention\*](#).

➡ *For an updated list of Members of the Hague Conference, see the Hague Conference website < [www.hcch.net](http://www.hcch.net) > under “HCCH Members”. For an updated list of Contracting States, see the [status table](#).*

### Notarial act

For a detailed discussion of this term, see paras 125 *et seq.*

### Permanent Bureau

The secretariat of the [↻\*Hague Conference\*](#).

➡ *For more on the **role of the Permanent Bureau** in monitoring the practical operation of the Apostille Convention, see paras 34 *et seq.**

### Production of a public document

The act of presenting a [↻\*public document\*](#) in the [↻\*State of destination\*](#). The production of a [↻\*public document\*](#) may be required or provided for (i) by the law of the [↻\*State of destination\*](#) (e.g., in court proceedings, or in applications for residency), or (ii) by another arrangement (e.g., by virtue of a business contract or an application process conducted by a private institution). In this Handbook, “producing” a public document does not mean “generating” the document (cf. “[execution of a public document](#)”).

### Public document

A broad concept that is the focal point of the [↻\*Apostille Convention\*](#). Essentially, a public document is a document that is executed by an authority or a person acting in an official capacity, and includes the categories of documents listed in Article 1(2) of the Convention. The determination of what constitutes a public document is entirely a matter for the law of the [↻\*State of execution\*](#).

➡ *For more on the **nature and scope of public documents** for the purposes of the Apostille Convention, see paras 109 *et seq.**

## Ratification

An international act, whereby a State establishes its consent to be bound by a treaty, such as the [🔄Apostille Convention](#) (see Art. 2 of the *Vienna Convention of 23 May 1969 on the Law of Treaties*).

In the case of the [🔄Apostille Convention](#), only States that were represented at the Ninth Session of the [🔄Hague Conference](#) (i.e., the meeting that adopted the final text of the instrument in 1960) could sign and ratify the Convention. These States were: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and Yugoslavia, as well as the United States of America, which attended the Session as an observer. In addition Iceland, Ireland, Liechtenstein and Turkey were also entitled to sign and ratify the Convention (Art. 10(1)).<sup>5</sup> All the States referred to above have joined the Convention. Any other State wishing to join the [🔄Apostille Convention](#) may do so by *accession*.

## Recipient

The person to whom an [🔄apostilled](#) [🔄public document](#) is produced in the State of destination.

## Register of Apostilles

A register in which a [🔄Competent Authority](#) records the particulars of each [🔄Apostille](#) issued. The [🔄Apostille Convention](#) requires each [🔄Competent Authority](#) to maintain a register of Apostilles (Art. 7(1)).

➡ For more on **registering Apostilles**, see *paras 277 et seq.*

## Special Commission

A Special Commission ("SC") is convened by the Secretary General of the [🔄Hague Conference](#) to develop and negotiate new [🔄Hague Conventions](#), or to review the practical operation of existing [🔄Hague Conventions](#).

Special Commissions are composed of experts designated by [🔄Members](#) of the Hague Conference and, in the case of Special Commissions convened to review the practical operation of existing [🔄Hague Conventions](#), experts designated by [🔄Contracting States](#) to the relevant Hague Convention. Special Commissions may also be attended by representatives of other interested States (including those that have expressed an interest to the *Permanent Bureau* in joining the Convention) and relevant international organisations in an observer capacity.

The Conclusions & Recommendations ("C&R") adopted by Special Commissions on the practical operation of a Convention play an important role for the uniform interpretation and practical operation of the Convention. References to the C&R adopted by meetings of the Special Commission on the practical operation of the [🔄Apostille Convention](#) are made throughout this Handbook together with the year of the relevant meeting.

➡ For more on the meetings of the **Special Commission** convened to review the practical operation of the *Apostille Convention*, see *paras 38 et seq.*

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<sup>5</sup> The reasons for allowing these four States to sign and ratify the Convention were several (see the Explanatory Report under § B, IX. Final Clauses). Ireland and Turkey were both Members of the Hague Conference at the time of the Ninth Session but were unable to attend. It seemed therefore legitimate to allow both States to sign and ratify the Convention. As regards Iceland and Liechtenstein, it was decided to open the Convention to their signature upon the requests made by the Council of Europe for Iceland, and by Austria and Switzerland for Liechtenstein.

## State of destination

The State other than the [State of execution](#) where a (an apostilled) [public document](#) has to be [produced](#).

## State of execution

The State whose law governs the [execution](#) of (i.e., generating) a [public document](#) and whose Competent Authority is requested to issue an Apostille. The meaning of the term “execution” in this Handbook is not the same as the meaning associated with traditional requests for international judicial assistance such as the execution of requests for service of process abroad or the execution of judgments abroad.

## State of issuance

The State of the [Competent Authority](#) issuing the [Apostille](#).

## State Party

A State that has joined the [Apostille Convention](#), and for which the Convention has entered into force (see Art. 2(1)(g) of the *Vienna Convention of 23 May 1969 on the Law of Treaties*). This term may be distinguished from [Contracting State](#).

➡ *For more on particular issues concerning the **entry into force** of the Convention for particular States Party, see paras 96 et seq.*

## Status table

An updated list of [Contracting States](#) that is maintained by the [Permanent Bureau](#) based on information received from the [Depositary](#). The status table also includes important information relating to each [Contracting State](#), including:

- the method by which it joined the Convention;
- the date of entry into force of the Convention for the State;
- any declarations it has made to extend the application of the Convention;
- the authorities it has designated as competent to issue Apostilles (i.e., [Competent Authorities](#)); and
- any reservations, notifications, or other declarations it has made under the Convention.

➡ *The [status table](#) is available on the [Apostille Section](#) of the Hague Conference website at < [www.hcch.net](http://www.hcch.net) >, together with explanations as to How to read the status table.*

## Underlying public document

The [public document](#) to which an [Apostille](#) relates, or for which an [Apostille](#) is to be issued.

# I. ABOUT THE APOSTILLE CONVENTION

## 1. Origins and growth of the Convention

1. In the early 1950s, the legalisation process (see paras 8 *et seq.*) was increasingly seen as the cause of inconvenience for persons and businesses needing to use public documents from one State in situations or transactions taking place in other States. Therefore, at the suggestion of the Council of Europe, the Hague Conference on Private International Law decided to develop a Convention that would facilitate the authentication of public documents to be produced abroad. After discussions on the proposal at the Eighth Session of the Hague Conference held in 1956,<sup>6</sup> a Special Commission met in 1959 at The Hague to develop a preliminary draft Convention. This draft was further refined and the final text of the Convention approved by the Hague Conference at its Ninth Session on 26 October 1960.<sup>7</sup> The Convention was first signed on 5 October 1961 – hence the date in its full title: the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, commonly known as the “Apostille Convention”.<sup>8</sup> In accordance with its Article 11(1), the Convention entered into force on 21 January 1965, 60 days after the deposit of the third instrument of ratification.



### **The Explanatory Report**

2. For more on the history and preparatory work of the Apostille Convention, see the *Explanatory Report* by Mr Yvon Loussouarn. A collection of documents and minutes of the Ninth Session is contained in the *Actes et documents de la Neuvième session* (Proceedings of the Ninth Session) Tome II. Details of these publications are available on the of the Hague Conference website.

3. The Apostille Convention is the most widely ratified and acceded to of all the Conventions adopted under the auspices of the Hague Conference (known as the “Hague Conventions”). It is in force in over 100 States from all major regions representing all major legal systems of the world, making it one of the most successful international treaties in the area of international legal and administrative co-operation.

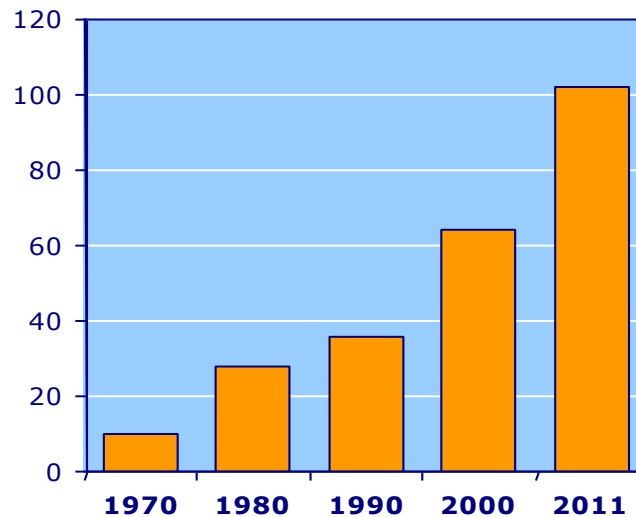
4. While the Apostille Convention was adopted over half a century ago, it continues to attract new Contracting States at a remarkably high rate in comparison with other Conventions drafted at the same time. Of all the States that had joined the Convention by October 2011, when the 50th anniversary of the Convention was celebrated,<sup>9</sup> two-thirds of them had joined in the preceding 25 years alone, demonstrating the exponential growth in the Convention.

<sup>6</sup> See *Actes et documents de la Huitième session* (1956), pp. 356 *et seq.*

<sup>7</sup> Only States represented at the Ninth Session, as well as a few others, could sign and ratify the Convention (for further explanations, see the Glossary under “[Ratification](#)”).

<sup>8</sup> Five States signed the Convention on 5 October 1961: Austria, Germany, Greece, Luxembourg and Switzerland.

<sup>9</sup> The 50th anniversary of the Apostille Convention was commemorated by an event hosted by the Ministry of Justice and Liberties of France in Paris on 5 October 2011. The event, which was attended by approximately 100 government representatives, notaries, judicial officers, dignitaries and other subject-matter experts from almost 30 States and international organisations, provided an opportunity to take stock of the Convention and consider its future directions. Further information on the event, including Conclusions & Recommendations adopted by participants, is available on the [Apostille Section](#) of the Hague Conference website.



The exponential growth in the number of Contracting States to the Apostille Convention (1961-2011)

5. It is equally remarkable that this growth has occurred without the need for amendment of the original text or the adoption of a protocol to the Convention.

6. Apostilles are used whenever public documents need to be produced abroad. This may occur in a multitude of cross-border situations: international marriages, international relocations, applications for studies, residency or citizenship in a foreign State, intercountry adoption procedures, international business transactions and foreign investment procedures, enforcement of intellectual property rights abroad, foreign legal proceedings, etc. The situations where an Apostille is needed are countless. As a result, **several million Apostilles are issued around the world every year**, making the Apostille Convention the most widely applied of all the Hague Conventions. With the rise in cross-border movements and activities as a result of globalisation, the Apostille Convention is expected to continue to grow. The electronic Apostille Program (e-APP) is designed to ensure the continuing operation of the Convention in changing circumstances, in particular by improving and enhancing its effective and secure operation in an electronic environment through the issuance of e-Apostilles and the operation of e-Registers.

➡ For more on the **e-APP**, see paras 29 et seq. and 319 et seq.

## 2. Purpose of the Convention

7. The purpose of the Convention is to abolish the requirement of legalisation and to facilitate the use of public documents abroad (see the Explanatory Report under § A; C&R No 77 of the 2009 SC).

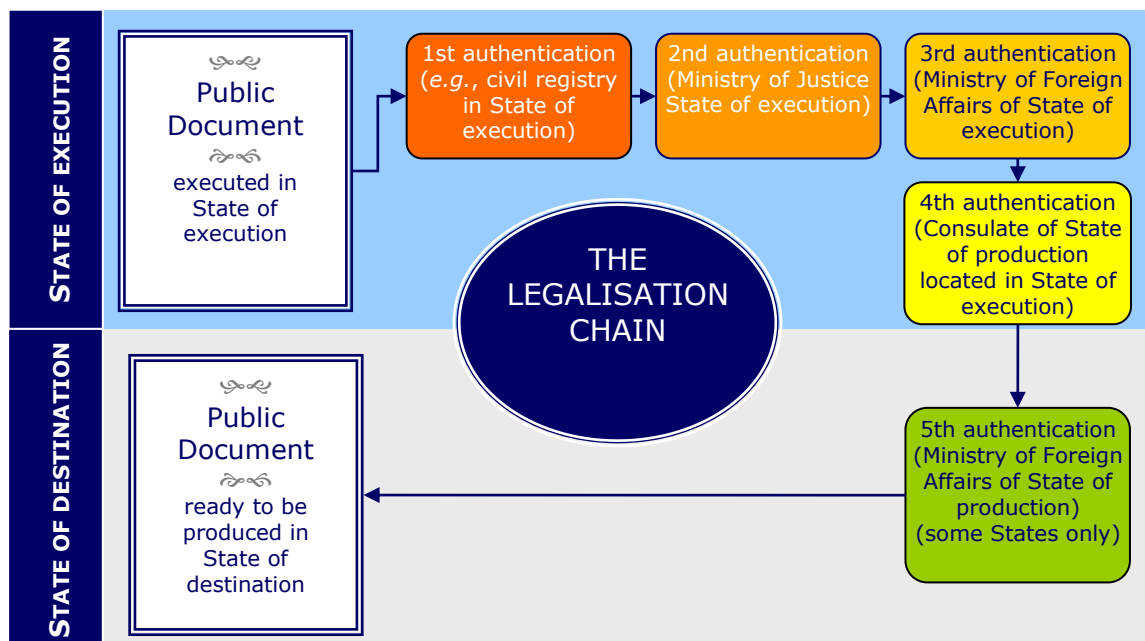
### A. Abolishing the requirement of legalisation

8. In general, a public document may be produced in the State in which it is executed without the need for its origin to be verified. This is based on the principle that the origin of the document lies in the document itself (*acta probant sese ipsa*), without the need for additional verification of its origin. When the document is produced abroad, however, its origin may require verification. This is because the recipient may not be familiar with the identity or official capacity of the person signing the document, or the identity of the authority whose seal / stamp it bears. As a result, States began to require that the origin

of a foreign public document be certified by an official who is familiar with the document. It is against that background that the procedure known as "legalisation" developed.

9. Legalisation describes the procedures whereby the signature / seal / stamp on a public document is certified as authentic by a series of public officials along a "chain" to a point where the ultimate authentication is readily recognised by an official of the State of destination and can be given legal effect there. As a practical matter, Embassies and Consulates of the State of destination located in (or accredited to) the State of execution are ideally situated to facilitate this process. However, Embassies and Consulates do not maintain samples of the signatures / seals / stamps of every authority or public official in the State of execution, so an intermediate authentication between the authority or public official that executed the public document in that State and the Embassy or Consulate is often required. In most cases, this involves an authentication by the Ministry of Foreign Affairs of the State of execution. However, depending on the law of the State of execution, a series of authentications may be required before the document can be presented to the Embassy or Consulate for authentication. Then, depending on the law of the State of destination, the seal / stamp of the Embassy or Consulate may be recognised directly by the official in that State, or may need to be presented to the Ministry of Foreign Affairs of that State for a final authentication.

10. While differences exist among States, the legalisation "chain" typically involves a number of links, which results in a cumbersome, time-consuming and costly process.



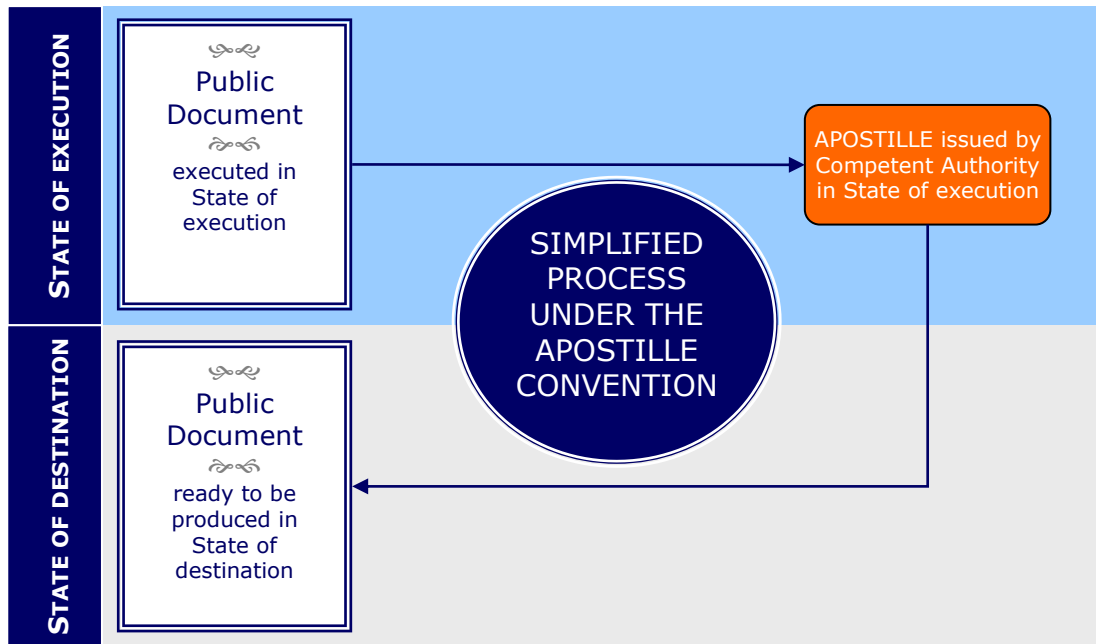
***Apостилле Convention useful even for States that do not require legalisation for incoming documents***

11. Not all States impose the requirement of legalisation on foreign public documents that have to be produced in their territory. This is particularly the case for many States with a common law tradition. However, the Convention is still important for these States, as it facilitates the circulation of public documents executed in their own territory that have to be produced in another Contracting State. Otherwise, the document could be subjected to the cumbersome legalisation process. This explains why many States that do not impose legalisation requirements on foreign public documents have joined the Convention: their citizens and businesses benefit from the Convention when they have to produce public documents in a State that does impose a legalisation requirement.

## B. Facilitating the use of public documents abroad

### a) *The simplified process put in place by the Apostille Convention*

12. Where it applies, the Apostille Convention abolishes the legalisation process and replaces it with a single formality: the issuance of an authentication certificate – called an “Apostille” – by an authority designated by the State of execution – called the “Competent Authority”. The simplified process established by the Convention can be illustrated as follows:



13. At the same time, the Apostille Convention serves and upholds the same important end result of legalisation: the authentication of the origin of a public document executed in one State and to be used in another State.

### b) *The ideal of the "one-step process"*

14. By introducing a simplified authentication process, the Convention facilitates the use of public documents abroad. Ideally, this purpose is pursued by allowing all public documents to be apostilled *directly* without the need for prior authentication within the State of execution. Indeed, this “one-step process” is what the drafters had in mind when the Apostille Convention was being developed, and it is how Apostilles are issued in most Contracting States.

15. In other States, some or all public documents must be authenticated by one or more authorities (e.g., professional or regional authentication bodies) before eventually being apostilled. This is usually the case where the Competent Authority does not have the capacity to verify the origin of all public documents for which it has competence to issue Apostilles. Such a “multi-step process” is obviously more cumbersome than the one-step process. It may result in an Apostille being issued either for the (final) authentication, or for the primary (initial) public document. In either event, this results in the production of multiple levels of authentications. These processes are inherently more cumbersome and may lead to confusion about the document to which the Apostille relates.



### **Competent Authorities to strive towards the "one-step process"**

16. Whilst the multiple-step process is not necessarily inconsistent with the Apostille Convention, it does maintain aspects of the legalisation chain that the Apostille Convention was designed to abolish. The one-step process is thus the preferred model, and Contracting States are encouraged to adopt it to the widest extent possible (see C&R No 79 of the 2009 SC). Competent Authorities are encouraged to liaise with relevant authorities in their State with a view to moving towards the one-step process.

#### *c) Contracting States' obligation to prevent legalisation where the Convention applies*

17. Under Article 9, Contracting States are required to take the necessary steps to prevent their diplomatic and consular agents from performing legalisations where the Convention applies. At the implementation stage, this typically includes a Contracting State informing its Embassies and Consulates abroad about the upcoming entry into force of the Convention (see [Annex V](#)). As emphasised by the 2009 Special Commission, compliance with the requirements of Article 9 should be continuously monitored (see C&R No 69). This may be accomplished through the development of directives or guidance in accordance with the practices of each Contracting State.

#### *d) Relationship with domestic law and other treaties dealing with the authentication of public documents*

18. The simplified process under the Apostille Convention is the only formality that may be required to authenticate foreign public documents. However, the Convention does not preclude Contracting States from agreeing (e.g., in the form of a bilateral or multilateral treaty) to eliminate, limit, or further simplify authentication requirements.

19. Nor does the Convention *require* a foreign public document to be apostilled before being produced in the State of destination. Any such requirement is a matter for the domestic law of the State of destination. That State is also free to eliminate, limit or further simplify authentication requirements (such as legalisation or apostillation), or simply not impose any such requirements at all. As noted in paragraph 11, some States do not impose authentication requirements for foreign public documents.

20. As the Apostille Convention is designed to abolish legalisation and facilitate the use of public documents abroad, it does not create a requirement for foreign public documents to be apostilled, namely where:

- the domestic law of the State of destination has eliminated, limited or further simplified the authentication requirement;
- the domestic law of the State of destination does not impose any authentication requirement; or
- an applicable treaty, convention, agreement or other similar instrument (incl. a regulation) has eliminated, limited or further simplified such a requirement.<sup>10</sup>

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<sup>10</sup> A number of multilateral, regional and bilateral treaties seek to eliminate authentication requirements altogether for certain categories of documents. For example:

- the International Commission on Civil Status has concluded the *Athens Convention of 15 September 1977 on the exemption from legalisation of certain records and documents*, which abolishes the requirement of legalisation or similar formality for certain civil status documents (for more information on this treaty, see < [www.ciec1.org](http://www.ciec1.org) >);



### **Hague Conventions that eliminate authentication requirements altogether**

21. A number of Hague Conventions establishing legal co-operation mechanisms eliminate the requirement of legalisation or similar formality (such as apostillisation) for public documents coming within their scope. For example:

- the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* eliminates such requirements for formal requests to serve documents abroad
- the *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* eliminates such requirements for formal requests to take evidence abroad
- the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* eliminates such requirements in the context of this Convention
- the *Hague Convention of 30 June 2005 on Choice of Court Agreements* eliminates such requirements for "all documents forwarded or delivered under th[e] Convention", including documents required to apply for the recognition and enforcement of a foreign judgment.

- 
- the Council of Europe has concluded the *London Convention of 7 June 1968 on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers*, which abolishes the requirement of legalisation or similar formality for documents executed by diplomatic or consular agents;
  - within Member States of the Southern Common Market (MERCOSUR), documents transmitted under the *Protocol of Las Leñas of 27 June 1992 on Judicial Cooperation and Assistance in Civil, Commercial, Labour and Administrative Matters* are exempt from authentication or similar formality;
  - Member States of the (then) European Communities concluded the *Brussels Convention of 25 May 1987 abolishing the legalisation of documents in Member States of the European Communities*, which eliminates the requirements of legalisation for all public documents. (While this Convention has not yet entered into force, it is nonetheless applied provisionally in seven Member States: Belgium, Cyprus, Denmark, France, Italy, Ireland and Latvia.);
  - a number of instruments adopted by the European Union in the area of judicial co-operation also abolish the requirement of legalisation or similar formality among EU Member States for documents coming within their scope. These include *Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters* (the "Brussels I Regulation"), *Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility* (the "Brussels IIa or IIbis Regulation"), *Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters* (the "Service Regulation"), *Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters* (the "Evidence Regulation"), and *Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations* (the "Maintenance Regulation").



### **Facilitating intercountry adoption procedures**

22. A significant number of public documents are exchanged among States of origin and receiving States in intercountry adoption procedures carried out under the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Intercountry Adoption Convention). Interestingly, this Convention does *not* abolish the requirement of legalisation or similar requirement. Accordingly, the Apostille Convention has great potential to streamline and facilitate the operation of the Adoption Convention. To this end, States that are party to the Intercountry Adoption Convention are encouraged to consider joining the Apostille Convention (C&R No 68 of the 2009 SC). This recommendation was also embraced by the 2010 Special Commission on the practical operation of the Intercountry Adoption Convention.



### **Promoting international trade and investment**

23. The Apostille Convention has been shown to assist States in establishing conditions that are more amenable to international trade and investment. In 2010, the World Bank Group released its first [Investing Across Borders](#) Report, which measures foreign direct investment based on the legal and regulatory framework of individual States. The Report found that by cutting the red tape (*i.e.*, reducing administrative burdens), the Apostille Convention contributes to a regulatory environment that is more conducive to foreign direct investment.<sup>11</sup>

## **3. The (limited) effect of an Apostille**

### **A. An Apostille only authenticates the origin of the underlying public document**

24. The effect of an Apostille is limited. It only authenticates the *origin* of the underlying public document. It does so by certifying the authenticity of the signature on the document, the capacity in which the person signing the document acted and, where appropriate, the identity of the seal or stamp which the document bears (Art. 5(2)).

### **B. An Apostille does not certify the content of the underlying public document**

25. An Apostille does not relate in any way to the *content* of the underlying public document. While the public nature of the document itself may imply that its content is true and correct, an Apostille does not enhance, or add any legal significance to, the legal effect that the signature and / or seal would produce without an Apostille. In this regard, the 2009 SC recommended that Competent Authorities include a notice about the limited effect of the Apostille (See C&R No 85 of the 2009 SC).

➡ For more on the **notice (including suggested wording)**, see paras 252 et seq.

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<sup>11</sup> The Report is available at < <http://iab.worldbank.org> >.

➡ For more on the **distinction between verifying content and verifying origin**, see paras 213 et seq.

**C. An Apostille does not certify that all requirements of domestic law for proper execution of the underlying public document are met**

26. An Apostille does not certify that a public document was executed in accordance with all requirements of domestic law. It is for domestic law to determine whether defects invalidate the public nature of a document and to what degree a Competent Authority is responsible for scrutinising documents for such defects (see para. 229). For example, domestic law may or may not require a Competent Authority to scrutinise whether a notary is authorised under domestic law to execute the particular notarial act or notarial certificate in question. The Convention certainly imposes no obligation upon a Competent Authority to do so. Because an Apostille does not have any legal effect beyond certifying the origin of the underlying public document, its issuance for a document does not cure any such defects.

**D. An Apostille does not affect the acceptance, admissibility or probative value of the underlying public document**

27. The Apostille Convention does not affect the right of the State of destination to determine the acceptance, admissibility and probative value of foreign public documents. In particular, the authorities in the State of destination may determine whether a document has been forged or altered, or whether it has been validly executed. They may also establish time limits on the acceptance of foreign public documents (e.g., the document must be produced within a certain period of time after its execution), even though such limits cannot be imposed on the acceptance of the Apostille itself. Furthermore, it remains for the laws of evidence of the State of destination to determine the extent to which a foreign public document may be used to establish a certain fact.

**E. The effect of an Apostille does not expire**

28. The Convention does not place any time limitation on the effect of an Apostille. A validly issued Apostille therefore has effect for as long as it is identifiable and remains attached to the underlying public document. Accordingly, an Apostille may not be rejected solely on the basis of its age. However, this does not prevent authorities in the State of destination, on the basis of their domestic law, from establishing time limits on the acceptance of the underlying public document (e.g., requesting that a criminal record be executed within a certain maximum time period before production).

➡ For more on **old documents**, see paras 185 et seq.

## **4. Bringing the Convention into the electronic age: the e-APP**

29. The Convention was drafted only with a paper environment in mind (i.e., public documents executed in paper, Apostilles issued in paper, and Apostilles registered in a paper Register).

30. The advent of new technologies is changing how governments operate. E-government initiatives are being pursued in many parts of the world. As a result,

individuals and businesses are just a click away from communicating with government online. A growing trend among government authorities is the execution of public documents in electronic form, including important civil status and commercial documents. In some States, notarial acts and other authentic acts are being executed electronically. At the same time, public registers are becoming increasingly available online, giving members of the public ready access to a range of important information for conducting individual or business activities, including the accreditation of professionals and educational institutions, company details, and the existence and nature of rights and interests in movable and immovable property. They allow users to access extracts from these registers online, which may be regarded as public documents under the law of the State of execution.

31. In view of these developments, the 2003 Special Commission agreed that the use of modern technology could have a positive impact on the operation of the Apostille Convention. Further, it recognised that neither the spirit nor the letter of the Convention constituted obstacles to the use of modern technology and that the Convention's operation could be further enhanced by relying on such technology (see C&R No 4).

32. This paved the way for the development of the electronic Apostille Pilot Program (e-APP), which was launched in 2006 by the Hague Conference on Private International Law and the National Notary Association of the United States of America to promote the issuance of electronic Apostilles (e-Apostilles) and the operation of electronic registers of Apostilles that can be accessed online by recipients to verify the origin of an Apostille they have received (e-Registers). Since then, many Competent Authorities have implemented one or both of these components, confirming the place of the Apostille Convention in the electronic age. In light of the success of the program, its name was changed in January 2012 to the *electronic Apostille Program*.

➡ For more on **the e-APP in general**, see paras 319 et seq.

➡ For more on **issuing e-Apostilles**, see paras 331 et seq.

➡ For more on **operating an e-Register**, see paras 333 et seq.

## 5. Supporting the continued success of the Convention

A. The [Apostille Section](#) of the Hague Conference website as an important source of information

33. The Permanent Bureau maintains a section of the Hague Conference website dedicated to the Apostille Convention (the "[Apostille Section](#)"). The [Apostille Section](#) provides a wealth of useful and up-to-date information on the practical operation of the Convention, including:

- an up-to-date list of Contracting States ([status table](#)), with explanations on how to read the status table
- the name and contact details of all authorities designated by Contracting States to issue Apostilles ("Competent Authorities")
- information on the e-APP

- explanatory material on the Convention, including the *ABCs of Apostilles*, *Brief Implementation Guide*, this Practical Handbook, and the *Explanatory Report*
- documentation relating to Special Commissions convened to review the practical operation of the Apostille Convention
- information received from Contracting States on the practical operation of the Convention in their State.

## B. Monitoring the practical operation of the Convention

### a) *What the Permanent Bureau does (and does not) do*

34. The Permanent Bureau conducts and co-ordinates various activities aimed at promoting, implementing, supporting, and monitoring the practical operation of the Apostille Convention. In particular, the Permanent Bureau develops explanatory documents such as the [\*ABCs of Apostilles\*](#), [\*Brief Implementation Guide\*](#), and this Handbook. It also responds to queries from Contracting States concerning the application of the Convention, conducts missions to advise on the effective implementation and operation of the Convention (often in conjunction with Contracting States and relevant international organisations), and prepares and organises Special Commissions to review the practical operation of the Convention.



#### **Contacting the Permanent Bureau**

35. Competent Authorities are invited to contact the Permanent Bureau (preferably by e-mail to [secretariat@hcch.net](mailto:secretariat@hcch.net)) for matters that relate to the effective operation of the Convention. In particular, each Competent Authority is invited to contact the Permanent Bureau if and when:

- it plans to introduce a new Apostille Certificate (see paras 238 *et seq.*);
- its Apostilles are being rejected abroad;
- it needs information about foreign Apostilles; and
- it needs any information relating to the implementation and operation of the e-APP (see paras 319 *et seq.*).

36. In case of a difference of opinion between Contracting States as to the interpretation or application of the Apostille Convention (e.g., when an official of the State of destination rejects a foreign Apostille that the Competent Authority in the State of issuance considers to be valid), the Permanent Bureau may make contact with the relevant authorities or officials of the States concerned (including the National Organ in the case of a Member State), either by telephone or in writing, to discuss the matter, present the views of the Permanent Bureau, and propose solutions. The Permanent Bureau is most likely to do so only if and when the matter has been addressed in the Conclusions & Recommendations of the Special Commission (see paras 38 *et seq.*) or in another Hague Conference publication. Other than that, the Permanent Bureau has neither the mandate nor the power to police the operation of the Apostille Convention (or any other Hague Convention).



#### **No assistance to applicants**

37. The Permanent Bureau does not play a role in the apostillisation process: it does not provide direct assistance or advice to applicants, nor does it issue or keep a register of Apostilles.

*b) What the Special Commission does*

38. The Apostille Convention (like several other Hague Conventions) greatly benefits from Special Commission (SC) meetings, which allow for in-depth discussions and considered assessments of many important issues relating to the practical operation of the Convention. These meetings are carefully prepared by the Permanent Bureau, typically on the basis of a comprehensive Questionnaire sent to all Members of the Hague Conference, to all Contracting States of the Convention, and to other interested States. The SC meetings are attended by numerous experts, including representatives of Competent Authorities. SC meetings on the practical operation of the Apostille Convention were held in 2003, 2009 and 2012.

39. The Conclusions & Recommendations (C&R) adopted by meetings of the Special Commission summarise the discussions and establish and recommend good practices for Competent Authorities. They also determine future work to be carried out by the Permanent Bureau and the Contracting States. The C&R are extremely valuable in addressing operational issues and greatly assist the uniform interpretation and application of the Convention around the world. This is all the more important given the very large number of Competent Authorities and officials involved in the operation of the Apostille Convention. The C&R are thus vital to the continued success of the Convention. References to the C&R are made throughout this Handbook together with the year of the relevant Special Commission meeting. All C&R are available on the [Apostille Section](#).

## II. COMPETENT AUTHORITIES

### 1. The key role of Competent Authorities

40. Pursuant to Article 6 of the Apostille Convention, each Contracting State is required to designate one or more authorities that are competent to issue Apostilles ("Competent Authorities"). Each State is free to determine the identity and number of Competent Authorities.

➡ For more on **designating Competent Authorities**, see the *Brief Implementation Guide*, paras 24-29.

41. Competent Authorities are the backbone of the sound operation of the Apostille Convention. They perform three fundamental functions under the Convention:

- *verifying* the authenticity (origin) of public documents (see paras 213 *et seq.*);
- *issuing* Apostilles (see paras 238 *et seq.*); and
- *recording* each Apostille issued in a register (see paras 277 *et seq.*) in order to be able to verify, at the request of a recipient, the origin of an Apostille supposedly issued by that Competent Authority (see paras 285 *et seq.*).

42. The sound operation of the Convention is dependent on the diligent, effective and proper performance of these functions.

### 2. The functioning of Competent Authorities

#### A. Resourcing and statistics

43. In carrying out their functions under the Apostille Convention, Competent Authorities perform a number of separate but related tasks, including:

- receiving requests for Apostilles (see paras 198 *et seq.*);
- verifying the origin of each document for which an Apostille is to be issued, including any necessary follow-up with officials and authorities that issue public documents (see paras 213 *et seq.*);
- filling in each Apostille to be issued (see paras 257 *et seq.*);
- attaching each completed Apostille to the underlying public document (see paras 264 *et seq.*);
- recording the particulars of each Apostille issued in the Register of Apostilles (see paras 277 *et seq.*);
- verifying the origin of Apostilles at the request of a recipient (see paras 285 *et seq.*).

44. For Competent Authorities that charge a fee for issuing Apostilles (see paras 273 *et seq.*), another task may include handling payments.

45. Competent Authorities should be sufficiently staffed and have adequate premises and office supplies to carry out these tasks. Relevant supplies include word processors (preferably computer-based), paper (or other stationery used for issuing Apostilles), materials for attaching Apostilles to their underlying documents, and IT equipment to support programs used to maintain any electronic databases or registers. Competent Authorities should also have access to effective means of communication, such as telephones and e-mail.

46. In order to more effectively manage resources, Competent Authorities should be able to assess the demand for Apostille services. In this regard, it is useful for Competent Authorities to be able to record and accurately measure the number of Apostilles that it issues, and have ready access to aggregate data on the particulars of Apostilles issued as recorded in the Register of Apostilles (see paras 283 *et seq.*). Competent Authorities should also ensure that their resources are adapted to the model put in place for delivering Apostille services (see paras 49 *et seq.*).

## B. Desk instructions

47. Competent Authorities should develop desk instructions containing internal procedures and notes on good practice to guide staff members in processing requests for Apostilles. Among other things, desk instructions should provide guidance on how to identify public documents that may be apostilled by the Competent Authority and should prescribe uniform practices for attaching Apostilles.

➤ *For more on identifying **public documents**, see paras 109 *et seq.**

➤ *For more on **attaching Apostilles**, see paras 264 *et seq.**

## C. Training

48. Competent Authorities should consider ongoing training for staff members to develop and uphold good practices. In practice, Contracting States occasionally organise missions (with or without the involvement of the Permanent Bureau) that bring together representatives from their respective Competent Authorities to share experiences and exchange information, particularly on the implementation of the e-APP. These missions are also to be strongly supported.

➤ *For more on the **role of the Permanent Bureau in training missions**, see paras 34 *et seq.**

## D. Delivery of Apostille services

49. It is up to each Competent Authority to determine the Apostille service delivery model to implement. In all cases, it is important for service delivery to respond to the demand for Apostille Services.

50. In most Contracting States, Apostille services are delivered by one or both of the following methods:

- the applicant requests and / or receives an Apostille over the counter at the premises of the Competent Authority, whether with or without an appointment;
- the person requests and / or receives an Apostille by mail.

51. Some Competent Authorities also offer a premium service, whereby the Apostille is issued within a reduced turnaround time (usually at an additional cost).

52. Given the purpose of the Convention to facilitate the use of public documents abroad, Competent Authorities are encouraged to implement a delivery model that promotes easier access to Apostille services.

53. Competent Authorities are also encouraged to consider developing a standard Apostille request form in order to assist applicants and to ensure that the Competent Authority has the information it needs to issue the Apostille (subject to applicable data protection laws). Relevant information includes:

- the applicant's name and contact information;
- the number and description of documents for which an Apostille is requested;
- the name of the State of destination (if known, noting that the Competent Authority should not refuse to issue an Apostille if the applicant does not specify a State of destination – see para. 204);
- payment details (where the Competent Authority charges a fee); and
- the preferred method of delivery (where the Competent Authority offers different methods).

➡ *The Permanent Bureau has developed a **model Apostille request form**, which is set out at [Annex III](#).*

54. In addition, the use of a standard Apostille request form is a convenient tool to advise applicants about the delivery of Apostille services as well as about the Apostille system generally.

## E. Public information

55. Information on the delivery of Apostille services should be made publicly available for the benefit of individuals and business groups that will be making use of Apostilles in their cross-border activities, as well as professional groups that are involved in the circulation of public documents (e.g., lawyers and notaries).

56. A convenient way of doing so is for each Competent Authority to maintain its own website, or for a centralised website to be maintained that covers multiple Competent Authorities. This could be complemented by printed material (e.g., a brochure) that is made available to the public at the office of the Competent Authority and via officials and authorities that execute public documents that are frequently apostilled (e.g., civil registry offices, courts and notaries).

57. Relevant information to provide on the website or in the printed material includes:

- full contact details (street and postal address, telephone, fax, e-mail, contact person) and opening hours;

- how to request an Apostille (incl. access to a downloadable request form and a checklist of things to do before making a request);
- the categories of public documents for which the Competent Authority is competent to issue Apostilles (with a referral to other Competent Authorities of the Contracting State);
- type of services available (e.g., over-the-counter and / or mail, as well as any premium service) and expected turnaround times;
- referral to relevant service providers (e.g., translators, notaries) as well as to the [Apostille Section](#);
- basic information about the operation of the Convention and the effect of an Apostille;
- fee scale (if fees are charged) and accepted forms of payment;
- how to access the e-Register (if any).

## F. Combating fraud

58. To ensure that the Apostille Convention continues to function properly, it is important to maintain confidence in the Apostille process. Examples of activities that may undermine confidence in the Apostille process include:

- holding out to be an authority competent to issue Apostilles where this is not the case (noting that services to assist persons in obtaining Apostilles may nevertheless be acceptable – see para. 201);
- issuing a certificate purporting to be an Apostille where the person issuing the certificate is not (or no longer) a Competent Authority;
- using an Apostille as evidence of the contents of the underlying public document or, in the case of Apostilles issued for official certificates, the document to which the official certificate relates;
- detaching an Apostille from the underlying public document and reattaching it to another document (incl. a document executed by the same authority or official that executed the underlying public document);
- using an Apostille to lend legitimacy to a false document (e.g., fake academic credentials issued by a “diploma mill”).

59. These activities are contrary to the Convention, and Apostilles issued or used as a result are invalid. Although the Convention does not provide any penalties or other sanctions for these activities, these may be provided for under domestic law.

60. The Convention does not make provision for the policing of the Apostille system. In particular, the Permanent Bureau has neither the mandate nor the power to police the operation of the Apostille Convention (see para. 36). That is not to say, however, that Competent Authorities are not encouraged to bring matters relating to the effective operation of the Convention to the attention of the Permanent Bureau (see para. 35), or to the relevant authorities within the State of issuance for discussion at the Special Commission.

61. Moreover, the 2009 Special Commission acknowledged that Competent Authorities *may* take steps outside the process of issuing an Apostille to deal with instances of fraud and other inappropriate uses of Apostilles, or other violations of relevant domestic law (C&R Nos 80 and 84). These steps could include referring the matter to relevant supervisory bodies or law enforcement agencies for further investigation and disciplinary action. They could also include bringing gaps and loopholes in the law to the attention of

law makers with a view to criminalising activities related to the issuance or use of fake documents (incl. Apostilles).

62. It is also open to the Competent Authority to refuse to issue an Apostille if it suspects that fraud is involved (see para. 205), or that the Apostille might be misused (see para. 206).

### **3. Changes to Competent Authorities**

63. Contracting States must notify any change in their designated Competent Authorities to the Depositary (Art. 6(2)). This includes instances where:

- a new Competent Authority is designated;
- an existing Competent Authority ceases to be designated as such;
- the competence of an existing Competent Authority is modified (e.g., the category of documents for which it has competence to issue Apostilles is changed).

64. The full contact details of the Depositary are set out in the [Glossary](#) under "Depositary".

65. The notification to the Depositary should include, where applicable, the name and the full contact details of each new Competent Authority (incl. the name and e-mail address of the contact person) and the classes of documents for which it has competence to issue Apostilles. The designation becomes effective the day the Depositary receives the notification with the changes.



#### ***Changes that do not need to be notified to the Depositary***

66. Minor changes to the name or contact details of a designated Competent Authority, or the establishment of regional offices within a Competent Authority, are not considered changes to a designation, and therefore do not need to be notified to the Depositary. Contracting States are strongly encouraged, however, to provide this information to the Permanent Bureau.

67. The 2009 Special Commission strongly encouraged Contracting States to provide the Permanent Bureau with yearly updates of information on their Competent Authorities, including contact details and practical information so that the information can be included on the [Apostille Section](#) of the Hague Conference website (C&R No 70). Information sent to the Permanent Bureau should also include, where applicable, the URL of any e-Register operated.

### III. APPLICABILITY OF THE APOSTILLE CONVENTION

68. Before issuing an Apostille, a Competent Authority must be satisfied that the Convention is applicable. In this regard, the following three issues need to be considered:

- **where** does the Convention apply – the geographic scope of the Convention (see paras 71 *et seq.*);
- **as of when** does the Convention apply – the temporal scope of the Convention (see paras 96 *et seq.*);
- **to what** documents does the Convention apply – the substantive scope of the Convention (see paras 109 *et seq.*).

69. For a quick answer to the questions as to where and when the Convention applies, go to the [Apostille Section](#) and check the “Updated list of Contracting States” ([status table](#)). For further assistance with reading the status table, follow the link entitled “[How to read the status table](#)” (just below the link to the status table).

70. The following sections provide additional comments on the geographic and temporal scope of the Convention, and provide a detailed analysis of the substantive scope of the Convention.

#### 1. Where does the Convention apply?

A. The Convention only applies among States Parties – which are these States?

71. The Apostille Convention only applies if both the State in whose territory the public document was executed (the “State of execution”) and the State in whose territory the public document is to be produced (the “State of destination”) are State Parties (*i.e.*, Contracting States for which the Convention is actually in force). To find out which States are Contracting States, check the “Updated list of Contracting States” ([status table](#)) on the [Apostille Section](#).



#### **Checking the status table**

72. When checking the [status table](#), always keep in mind the following:

- Check if both the State of execution and the State of destination are listed in either part of the status table (see below paras 83 *et seq.*).
- It does not matter whether either State appears in the first or second part of the status table – the Convention applies equally to Members and non-Members of the Hague Conference.
- Check the date of entry into force of the Convention for both States: look for the column entitled ‘EIF’ – only after that date does the Convention apply in the relevant State (see below paras 96 *et seq.*) – a State that is becoming party to the Convention is listed on the status table approximately six months before the entry into force date for that State.
- However, how the State became a party to the Convention (*e.g.*, by ratification, accession, succession or continuation) has no impact on how the Convention operates in the State.

- If one of the States has joined the Convention by *accession*, check whether the other State has raised an objection to that accession: the Convention does not apply as between a State that joined the Convention by accession and a State that raised an objection to that accession (see below paras 91 *et seq.*) – if a State joined the Convention by accession and an objection has been raised to that accession, this is indicated by "A\*\*" in the column entitled 'Type' next to the State's name. A list of the States that have raised an objection can then be accessed by clicking on "A\*\*". Note that any State seeking to join the Convention may now only do so by way of accession.
- The Convention may be extended to overseas territories of a State (see paras 75 *et seq.*) – if a State has extended the Convention, this is indicated by a number in the column entitled 'Ext' next to the State's name. A list of the territories to which the Convention is extended can then be accessed by clicking on the number.

73. If a public document was executed or has to be produced in a State that is not a party to the Convention, the applicant seeking to have the document authenticated should contact the Embassy or a Consulate of the State of destination located in (or accredited to) the State of execution in order to find out what options are available. *Competent Authorities are advised that the Permanent Bureau does not provide any assistance in such cases.*



#### **Questions about particular territories**

74. Competent Authorities that have questions as to whether a particular territory is part of a Contracting State should first check the [status table](#), in particular the column entitled 'Ext'. If, after completing these checks, a Competent Authority still has questions, it should contact the Ministry of Foreign Affairs of its State, or the Depositary (the contact details for which are set out in the Glossary under "[Depositary](#)").

## **B. Overseas territories**

75. The concept of territory is important as the Apostille Convention only applies to public documents which have been executed "in the territory" of a Contracting State (see Art. 1(1)).

76. The default position is that the Convention does not apply to "overseas territories", which are referred to as territories for the international relations of which the Contracting State is responsible (Art. 13). However, the Convention allows a Contracting State to extend the Convention to its overseas territories as follows:

- at the time of signature, ratification or accession – by declaration; or
- at any other time thereafter – by notification to the Depositary.

77. Whether the territory of a Contracting State is an overseas territory (and how those territories are referred to) is a matter for the law of that State.<sup>12</sup>

<sup>12</sup> A. Aust, *Modern Treaty Law and Practice*, 2nd edition (2007), 5th printing 2011, p. 201.



### **Examples of extensions to overseas and other territories**

78. The **United Kingdom** has extended the Convention to certain “Crown Dependencies” and “Overseas Territories”. **France** has extended the Convention to the “entire territory of the French Republic” (incl. overseas territories). **Australia, Portugal and the Kingdom of the Netherlands** have made similar declarations. For the latter, the Convention applies to the entire Kingdom which consists of four parts: the Netherlands, Aruba, Curaçao and Sint Maarten.

79. Details about extensions are available from the [status table](#). If a Contracting State has extended the Convention, this is indicated by a number in the column entitled “Ext” next to the State’s name. A list of the territories to which the Convention is extended can then be accessed by clicking on the number.

## C. Questions of sovereignty

80. Competent Authorities that have questions about sovereignty over specific territories relating to the applicability of the Convention in those territories should contact the Ministry of Foreign Affairs of their State or the Depositary.

## D. Only among ‘Members of the club’

81. Article 1 of the Convention makes it clear that the Apostille system was designed to operate among members of the club only, *i.e.*, only among States parties to the Convention. The following comments highlight some of the most important practical effects of this approach.

### *a) No Apostilles from States non-Parties*

82. Certificates purporting to be Apostilles issued by States that are not party to the Convention (*i.e.*, States that have not joined the Convention, and States that have joined the Convention but for which the Convention has not entered into force yet; see paras 96 *et seq.*) have absolutely no authority under the Convention to authenticate the origin of the underlying public document. Competent Authorities may only start issuing Apostilles on the day the Convention has actually entered into force for the State of issuance.

### *b) In principle, no Apostilles for States non-Parties*

83. The Convention gives no authority to Apostilles when they are produced in:

- a State non-Party; or
- a State that is party, but the Convention is not in force as between that State and the State of issuance as a result of an objection to accession (see paras 91 *et seq.*).

84. As a matter of public international law, the Convention (and its simplified authentication process) cannot be the source of legal authority in a State for which it is not in force (incl. circumstances in which it does not apply between two States as a result of an objection to accession). While such a State of destination may give effect to the Apostilles under its domestic law, the Permanent Bureau opposes this practice.

Accordingly, the Permanent Bureau recommends that Competent Authorities should not issue Apostilles when the applicant indicates that the intended State of destination is not party to the Convention (or a State in relation to which the Convention does not apply as a result of an objection to accession). An exception to this is where the State of destination is in the process of becoming party to the Convention and the Competent Authority is satisfied that the document will only be produced in the State after the Convention enters into force there (see para. 204).

85. The 2009 Special Commission addressed this matter by recalling “that the Convention applies to public documents ‘which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State’ (Art. 1(1))”. To assist applicants and avoid unnecessary delays and complications in producing the public document abroad, the SC noted that “it is often helpful for Competent Authorities to inquire about the State of destination of the public document to be apostilled” (see C&R No 81). Competent Authorities are encouraged to follow this Recommendation as a matter of good practice.

➡ For more on **enquiring about the State of destination** from the applicant, see para. 199.

86. The 2009 Special Commission also strongly recommended that States Parties to the Convention continue to promote the Convention to other States (C&R No 66).

c) *“Apostilles” that are subject to authentication by an Embassy or Consulate of a State non-Party*

87. Some States parties have chosen to use their regular Apostille Certificate as part of their legalisation process to also authenticate the origin of public documents destined for non-States Parties or States with which the Convention is not in force as a result of an objection to accession (see paras 91 *et seq.*). These are not Apostilles issued under the Convention but rather authentications that are part of a legalisation process and for which the State of execution has decided to use the same certificate. The main advantage of this system is that when authenticating the origin of a public document, the officials of the State of execution do not have to distinguish anymore between States of destination that are parties to the Apostille Convention and States of destination that are not. The authentication is thus always performed in the same way and using the same certificate.

88. When destined for a State non-Party, or a State with which the Convention is not in force as a result of an objection to accession (see paras 91 *et seq.*), the “Apostille” needs to be presented to that State’s Embassy or Consulate located in (or accredited to) the State of execution in order for the signature on the “Apostille” certificate to be authenticated. This authentication is part of the legalisation process and from there, the underlying public document (with “Apostille” and authentication) may be presented to the relevant authority of the State of destination (either the ultimate recipient or the Ministry of Foreign Affairs if this step is required by that State’s legalisation process).

89. There is nothing wrong with this practice as long as the “Apostilles” are not presented as Apostilles under the Convention and, in particular, as long as they are not presented without any further formality in the State of destination. The practice may also be applied for authenticating public documents that fall outside the substantive scope of the Convention.

90. As these “Apostilles” have no legal effect under the Convention, the Permanent Bureau recommends that appropriate wording be included on the certificate to inform the user that if the underlying document is to be presented in a State non-Party, or a State with which the Convention is not in force as a result of an objection to accession (see

paras 91 *et seq.*), the certificate needs to be presented to the nearest Embassy or Consulate of the State of destination located in (or accredited to) the State of execution.

*d) No Apostilles from an acceding State to an objecting State and vice versa*

91. The Convention allows a Contracting State to raise an objection to the accession of a State that is seeking to join the Convention. Such an objection may only be raised within six months after the acceding State deposits its instrument of accession with the Depositary (the "objection period") and must be notified to the Depositary (see Art. 12(2)).

92. Details about the accessions to which objections have been raised are available from the [status table](#). If an objection has been raised, this is indicated by "A\*\*" in the column entitled 'Type' next to the acceding State's name. A list of each Contracting State that has raised an objection can then be accessed by clicking on "A\*\*".

93. The effect of raising an objection within the objection period is that the Convention does not enter into force between the newly acceding State and the State that raised the objection (the "objecting State") (see Art. 12(3)). Accordingly, Competent Authorities in the newly acceding State should not issue Apostilles when the applicant indicates that the intended State of destination is the objecting State and vice versa. The Convention does, however, enter into force between the newly acceding State and all other Contracting States that did not raise an objection (Art. 12(3)), or that raised an objection outside the objection period.

94. A State may withdraw an objection at any time by notification to the Depositary. The effect of withdrawing an objection is that the Convention will enter into force between that State and the acceding State on the day that the Depositary receives notification of the withdrawal.



**Objections are the exception**

95. Objections to a State's accession are relatively rare, particularly considering the number of States that have acceded to the Convention. Moreover, of the States that have raised an objection, a number have subsequently withdrawn their objection in consultation with the relevant acceding State.

## **2. As of when does the Convention apply?**

### **A. Apostilles may only be used in States for which the Convention has entered into force – when does this occur?**

96. The Convention does not immediately enter into force for a State once it joins. There is a *waiting period* that must elapse before the Convention enters into force for that State. The length of the waiting period depends on how the State joins the Convention:

- For States that joined by ratification, the Convention entered into force on the 60th day after the deposit of the instrument of ratification (Art. 11(2)). (All States that are entitled to join the Convention by ratification have done so; see explanation under "[Ratification](#)" in the Glossary.)
- For a State that joins by accession, the Convention enters into force on the 60th day after the expiry of the six-month objection period following the deposit of its instrument of accession (Art. 12(3)). (Any State seeking to join the Convention now, may only do so by way of accession; see explanation under "[Accession](#)" in the Glossary.)

- ➡ For more on the **objection period** and the **effects of an objection**, see paras 91 et seq.
- ➡ For an overview of the **accession procedure**, see the flowchart in [Annex II](#) (see also Part III of the Brief Implementation Guide).

97. Details about the entry into force of the Convention for each State Party are available from the [status table](#). The date of entry into force is indicated in the column entitled 'EIF' next to the State's name.

## B. Apostilles issued in a State of execution before the Convention's entry into force for the State of destination

98. Under the Convention, an Apostille validly issued in one State Party must be given effect in another State Party (Art. 3(1)). For any State of destination, this obligation commences on and from the date of entry into force of the Convention and applies regardless of the status of the Convention for that State at the time the Apostille was issued. Thus, an Apostille issued in a State Party before the entry into force of the Convention for the State of destination must be recognised in the State of destination from the day of the entry into force of the Convention for that State and cannot be refused on the grounds that at the time of issuance the Convention was not in force for that State. This underscores the notion that the validity of an Apostille has no expiration.

- ➡ For more on the **non-expiration of Apostilles**, see para. 28.

## C. Public documents executed before the Convention's entry into force for the State of execution

99. The Apostille Convention does not prescribe any time limit for issuing an Apostille after the execution of the underlying public document. Accordingly, an Apostille may be issued in a State Party for a public document that was issued before the entry into force of the Convention for the State of issuance.

- ➡ For more on issuing **Apostilles for old documents**, see paras 185 et seq.

## D. Public documents legalised before the Convention's entry into force for the State of destination

100. It is possible that a public document (e.g., a birth certificate) may be legalised for production in a certain State, but before production occurs, the Apostille Convention enters into force for that State. From the date of entry into force of the Convention in the State of destination, the only formality that may be required in order to certify the origin of a foreign public document is the addition of an Apostille (Art. 3(1)). Strictly speaking, there is nothing in the Convention preventing the State of destination from requiring the foreign public document to be apostilled, even though it has already been legalised, which would have been sufficient to authenticate the origin of the document before the Convention's entry into force in that State.

101. However, given the purpose of the Convention to facilitate the use of public documents abroad by simplifying the process of authentication, and in the interests of

users, the Permanent Bureau recommends that newly acceding States continue to give effect to legalisations done before the entry into force of the Convention in that State, at least for a reasonable period of time thereafter. At the same time, this situation underlines the need for newly acceding States to publicise their accession to the Convention and its upcoming entry into force. This is particularly important for embassies and consulates abroad to enable them to give appropriate advice to persons seeking to authenticate documents for eventual production in the newly acceding State.

➡ For more on **publicising the upcoming entry into force of the Convention**, see [Annex V](#) and paras 14 et seq. of the *Brief Implementation Guide*.

102. The Permanent Bureau also recommends that, where appropriate, Competent Authorities consider issuing Apostilles to applicants seeking to produce documents in a State that is in the process of *becoming* party to the Apostille Convention, provided that the document is only to be produced in that State after the Convention enters into force there. States that are becoming party to the Convention are listed on the [status table](#) approximately six months before the relevant entry into force date (*i.e.*, upon deposit of their instrument of accession).

## E. Apostilles issued in successor States (including newly independent States)

103. If the Convention is in force in a State Party at the time an Apostille is validly issued, the Apostille must subsequently be given effect in every other State Party. If a State Party or territory of a State Party (known as the “predecessor State”) is succeeded by another State (known as the “successor State”), the Convention remains in force for that successor State if the latter makes a formal declaration to that effect to the Depositary (a “declaration of succession”).

104. In the interests of legal certainty, successor States seeking for the Convention to remain in force in its territory are encouraged to make a declaration of succession within a reasonable time after the date of succession.

➡ For assistance in making a **declaration of succession**, contact the Depositary (the contact details for which are set out in the Glossary under “[Depositary](#)”).

105. A declaration of succession has retroactive effect to the date of succession, and that date will be reflected in the [status table](#) as the entry into force day for the successor State. In the absence of a declaration of succession, the Convention ceases to be in force for the successor State, with the effect that no Apostilles may be issued by that State and Apostilles issued in States Parties cannot be given any effect under the Convention in the successor State. Contracting States can raise an objection to the declaration of succession within an objection period as set by the Depositary. The effect of raising an objection is that the Convention will not enter into force between the objecting State and the successor State (and thus will not apply as between these States as of the date of independence in the case of newly independent States). The Convention does, however, enter into force between the successor State and all other Contracting States that did not raise an objection to the succession.

106. Instead of making a declaration of succession, a successor State may decide to accede to the Convention as provided for in Article 12. Unlike a declaration of succession, a subsequent accession to the Convention has no retroactive effect. Instead, the date of entry into force of the Convention will be determined as for any other accession (see

paras 96 *et seq.*). Apostilles that may have been issued by the State between the date of its independence and the entry into force of the Convention for that State have no effect under the Convention. Similarly, an Apostille issued in another State Party has no such effect in the acceding State during that period.

107. Because the Convention does not contemplate the expiration of Apostilles, an Apostille validly issued in the predecessor State before the date of succession continues to have effect under the Convention despite what the successor State may do (*i.e.*, whether or not the successor State makes a declaration of succession or accedes to the Convention). Nevertheless, it may no longer be possible to verify the origin of the Apostille if the Convention ceases to be in force for the successor State.



### **Examples of State succession in the context of the Apostille Convention**

108. The Socialist Federal Republic of Yugoslavia was one of the first Contracting States to the Apostille Convention. This State ceased to exist in the early 1990s, whereupon the constituent republics of Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (subsequently Serbia and Montenegro), Slovenia, and The former Yugoslav Republic of Macedonia made separate declarations of succession. On 3 June 2006, Montenegro became independent from Serbia and Montenegro and on 30 January 2007, made a declaration of succession.

➞ For more on the **non-expiration of Apostilles**, see para. 28.

➞ For more on **Registers of Apostilles and verifying the origin of Apostilles**, see paras 285 *et seq.*

## **3. To what documents does the Convention apply?**

### **A. Convention only applies to public documents – what are they?**

109. The purpose of the Convention is to facilitate the use of public documents abroad. In this spirit, the substantive scope of the Convention – and thus the concept of public documents – should be understood **widely** and be given a **broad interpretation** with a view to ensuring that as many documents as possible benefit from the simplified authentication process under the Convention.<sup>13</sup>

110. It is clear from the preparatory work of the Convention that the concept of “public document” was intended to be interpreted broadly. The term “public document” extends to all documents other than those issued by persons in their private capacity (*i.e.*, not private documents) (see the Explanatory Report under § B, I. Article 1). Accordingly, any document executed by an authority or a person in an official capacity (*i.e.*, acting in the capacity of an officer endowed with power to execute the document by the State) is a public document.

<sup>13</sup> The drafters of the Convention hesitated between the terms public document (in French “*acte public*”) and official document (in French “*document officiel*”). With a view to better serving the purpose of the Convention, the former expression was adopted because of its wider meaning.

### **The broad scope of “public document”**

111. The 2009 SC recalled the statement in the Explanatory Report that “[a]ll the Delegates were in agreement that legalisation should be abolished for all documents other than documents signed by persons in their private capacity (*sous seing privé*).” It then went on to confirm that the category of public documents should be interpreted *broadly* (C&R No 72). As a rule of thumb, if a document had been subject to the legalisation process before entry into force of the Convention (or if it is still subject to the legalisation process because it is to be produced in a non-Contracting State), it is likely to be a public document. As to the scope of the exclusions under Article 1(3), see paras 134 *et seq.*

#### **B. Law of the State of execution determines the public nature of the document**

112. As set out in the previous paragraph, the term “public document” extends to any document executed by an authority or a person acting in their official capacity. Whether a person is acting in a private or in an official capacity is determined by the law of the State of execution. It follows therefore that the question whether a document is public for the purposes of the Convention is ultimately determined by the law of the State of execution (see C&R No 72 of the 2009 SC). Accordingly a Competent Authority of the State of execution may issue an Apostille for a document that is considered to be a public document under the law of that State, noting that the internal organisation of Competent Authorities in the State may assign exclusive competence for specific public documents to a particular Competent Authority.

113. The 2009 SC noted that it is for the law of the State of execution to determine the public nature of a document (C&R No 72).

114. An Apostille may not be rejected on the basis that the underlying document is not considered to be a public document under the law of the State of destination, although that law may determine what legal effect to give to the underlying document.

➡ For more on invalid grounds for **rejecting Apostilles**, see paras 303 *et seq.*

➡ For more on the **limited effect of an Apostille**, see para. 24.

#### **C. Documents that are not considered public documents under the law of the State of execution but are considered to be so under the law of the State of destination**

115. As the law of the State of execution determines whether a document is a public document for the purposes of the Convention, Competent Authorities have no authority under the Convention to issue an Apostille for a document of a category that may be considered a public document under the law of the State of destination, but not considered so under the law of the State of execution. The Convention is not applicable to such documents. Accordingly, authorities in the State of destination have no authority to require a Competent Authority in the State of execution to issue an Apostille. If and when such documents need to be authenticated, the Competent Authority may wish to refer the applicant to the nearest Embassy or a Consulate of the State of destination located in (or accredited to) the State of execution, in order to find out what options are available. Alternatively, the Competent Authority may wish to refer the applicant to a

notary in order to find out whether the document may be notarised, in which case an Apostille may be issued for the eventual notarial certificate.

➡ For more on **official certificates**, see paras 128 et seq.

#### D. Four categories of public document listed in Article 1(2)

116. It is not possible to establish a complete list of all public documents that may be executed in Contracting States, or to list all officials and authorities which may execute public documents in those States.

117. To provide some guidance and certainty, the Apostille Convention lists the following four categories of documents that are deemed to be "public documents" (see Art. 1(2)):

- "a) documents emanating from an authority or an official connected with a court or tribunal, including those emanating from a public prosecutor, a clerk of a court or a process-server ("*huissier de justice*");
- b) administrative documents;
- c) notarial acts;
- d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures."

##### *a) Nature of the list of public documents in Article 1(2): not exhaustive*

118. The purpose of the list in Article 1(2) is to ensure that these categories of documents are treated as public documents for the purpose of the Convention despite differences in domestic laws. The list is **not exhaustive** (see C&R No 72 of the 2009 SC). Accordingly, the Convention applies to a document that is considered to be a public document under the law of the State of execution even though it does not fall into one of the categories listed in Article 1(2).

119. In practice, most documents that are apostilled under the Convention fall within one of the listed categories.

120. The range of documents falling within each listed category is also determined by the law of the State of execution. Accordingly, this range may vary among Contracting States. Furthermore, it makes no difference to the applicability of the Convention whether the document falls within the category of Article 1(2)(a), (b), (c) or (d), or indeed whether it falls within any of these categories – what matters is that the document is a public document under the law of the State of execution.

##### *b) Article 1(2)(a): Documents emanating from an authority or an official connected with the courts or tribunals of the State*

121. The expression "courts or tribunals" ("*juridiction*" in the French text) should be understood broadly and may apply not only to judicial courts and tribunals but also to administrative and constitutional tribunals, as well as to religious courts. Court decisions clearly fall within this category. Whether a person may be regarded as an authority or an official connected with a court or tribunal is determined by the law of the State of execution. For example, lawyers (attorneys) may be regarded in some States as public authorities or officials, and thus may execute public documents for which an Apostille may be issued. In other States, lawyers (attorneys) may not have the authority to issue public documents (in which case their documents are then most likely to be notarised and an Apostille is then issued for the notarial certificate).

c) *Article 1(2)(b): Administrative documents*

122. An administrative document is a document that is issued by an administrative authority. Whether a person or body is an administrative authority is to be determined by the law of the State of execution, noting that in some States, this may include religious authorities.

➡ For more on **religious documents**, see para. 193.

123. While differences exist among States, administrative documents typically include:

- Birth, death and marriage certificates, as well as certificates of non-impediment;
- Extracts from official registers (e.g., company registers, property registers, intellectual property registers, population registers);
- Grants of patent or other intellectual property rights;
- Grants of licence;
- Medical and health certificates;
- Criminal and police records; and
- Educational documents (see paras 152 *et seq.*).

124. According to Article 1(3)(b), administrative documents dealing directly with commercial or customs operations are excluded from the scope of application of the Convention (see paras 145 *et seq.*).

d) *Article 1(2)(c): Notarial acts*

125. Notaries are found in virtually all countries of the world. In almost every civil law and mixed law jurisdiction, and generally throughout the common law world (with the exception of the United States of America), notaries are legal professionals. In common law jurisdictions of the United States of America, with the exception of "civil law" notaries commissioned by the states of Alabama and Florida, notaries (known as 'notaries public') are not required to be legal professionals, but are rather ministerial officers with limited powers and functions.

126. A "notarial act" is an instrument or certificate drawn up by a notary that sets out or perfects a legal obligation or formally records or verifies a fact or something that has been said, done or agreed. When authenticated by the signature and official seal of the notary, the notarial act is a public document under Article 1(2)(c) of the Convention.

127. Generally within the United States of America, the term 'notarial act' does not refer to an instrument or certification, but rather to a *function* that a notary public is authorised to perform under domestic law, such as taking an acknowledgment or administering oaths. Documents executed by US notaries public in the performance of their function (e.g., jurats, acknowledgments and notarial certificates) are not 'notarial acts' for the purposes of Article 1(2)(c) of the Convention; instead, they fall under Article 1(2)(d).

e) *Article 1(2)(d): Official certifications*

128. A document executed by a person in a private capacity (e.g., a contract, sworn statement, trademark assignment) does not fall within the scope of the Convention.

➡ For more on **private documents**, see paras 190 et seq.

129. However, domestic law may provide for a certificate executed by an official, including a US notary public, to be placed on the document, which relates to aspects of the document such as the genuine nature of the signature it bears, or that the document is a true copy of another document. This official certificate is a public document under Article 1(2)(d) of the Convention.



**The Apostille only relates to the official certificate**

130. In the case of official certifications, it is the official certificate, and NOT the underlying private document, that is the public document for the purposes of the Convention. Therefore, the Apostille will certify the authenticity of the notarial certificate and not that of the underlying private document.

➡ For more on **private documents**, see paras 190 et seq.

➡ For more on the **limited effect of an Apostille**, see paras 24 et seq.

131. The Convention does not specify the officials who may be competent to place official certificates on documents. It only lists a few examples, such as notarial authentications of signatures. The list is not intended to be exhaustive. The question whether an official is competent to place an official certificate on a document is to be determined by the law of the State of execution.

132. The Convention does not specify that the private document itself has to be executed in the territory of the State of the person issuing the official certificate, or of the Competent Authority. Accordingly, it is possible for an official certificate to be apostilled even though the document to which it relates is a foreign document. Whether official certificates may be issued for foreign documents is to be determined by the law of the State where the certificate is to be issued.

133. In practice, this is a very important category of public documents because it extends the benefits of the Convention **indirectly** to private documents, thereby facilitating their circulation abroad.

E. Documents excluded by Article 1(3)

a) *Nature of the exclusions: to be construed narrowly*

134. The Convention does not apply to the following two categories of documents:

- documents executed by diplomatic or consular agents; and
- administrative documents dealing directly with commercial or customs operations.

135. These categories of public documents should be construed narrowly. Each category was excluded from the scope of application of the Convention for practical purposes and to avoid unnecessary formalities and complications. The exclusions must be read in this spirit. The test for determining whether to apostillise a particular category of public document should be whether the category required legalisation before the Convention entered into force for the State where the document has been executed.



### **Basic rule for applying Article 1(3)**

136. It is difficult to clearly define the scope of the exclusions mentioned in Article 1(3), in particular the exclusion in Article 1(3)(b). The following test may serve as guidance:

*If a particular category of documents was legalised in a State before entry into force of the Apostille Convention for that State, it should now be apostillised. If a particular category of documents did not require legalisation before entry into force of the Apostille Convention, it does not require an Apostille now.*

137. This test is a reflection of the Convention's stated purpose, which is to facilitate the international circulation of public documents by abolishing legalisation. This rule does not apply to documents destined for non-Contracting States, for which existing authentication requirements still apply.

## **b) Article 1(3)(a): Documents executed by diplomatic or consular agents**

### **(1) Introduction**

138. This exclusion exists for reasons of practical convenience insofar as documents executed by diplomatic or consular agents are generally considered foreign documents in the State in which they are executed (e.g., a document executed by a diplomatic agent at the Argentine Embassy in the Netherlands, is an Argentinean document, not a Dutch document). Obtaining an Apostille for such documents would necessarily involve sending the document to a Competent Authority in the home State of the diplomatic or consular agent (i.e., to Argentina in the example above).<sup>14</sup> Applying the rules of the Convention to such documents therefore would be inappropriate given that the purpose of the Convention is to facilitate the circulation of documents abroad.

139. As a result, the Convention does not abolish legalisation for documents executed by diplomatic or consular agents. If such a document needs to be produced in the State where the diplomatic or consulate agent exercises his / her functions, it will usually be sufficient for the document to be presented to the Ministry of Foreign Affairs in that State for authentication. If, however, the document is to be produced in another State, some States have adopted the practice where the document is first presented to the Ministry of Foreign Affairs for authentication, and that authentication is then apostillised by a Competent Authority in the host State. Alternatively, the document may be issued

<sup>14</sup> One might think that this obstacle could have been overcome by allowing States to designate Embassies or Consulates as Competent Authorities under the Convention and thus endow them with the authority to issue Apostilles. While not expressly excluded by the Convention, such a system does, however, stretch the basic concept underlying the Convention (Art. 1(1)), according to which public documents are apostillised by a Competent Authority of the State "in the territory of [which]" the public document was executed. Documents executed by an Embassy or Consulate are executed 'on the territory of' the host State (not of the State the Embassy or Consulate represents), although the sovereign powers of the host State do not extend to the premises and archives of the Embassy or Consulate. From this perspective too, therefore, the exclusion from the Convention's scope of documents executed by diplomatic or consular agents is perfectly sensible. Not surprisingly thus, to date only one Contracting State (Tonga) has designated its Diplomatic Missions as Competent Authorities.

together with some other form of official certificate (e.g., notarial certificate), in which case the official certificate may be issued with an Apostille.

➔ For more on **official certificates**, see paras 128 et seq.

➔ For more on official certificates relating to **foreign documents**, see paras 174 et seq.

140. The provision of notarial services is a traditional consular function recognised by Article 5(f) of the *Vienna Convention of 24 April 1963 on Consular Relations* (provided that there is nothing contrary thereto in the laws and regulations of the host State).<sup>15</sup> As a general rule, a notarial certificate is accepted in the home State of the consular agent who executed it without any further formality. The Apostille Convention does not in any way affect this function. Therefore, a consular agent who is authorised to notarise documents continues to be able to do so once the Convention enters into force in the State where the agent performs his / her functions. A person who seeks to produce a notarised document in another Contracting State may therefore either approach a notary in the State of execution, or approach the Consulate or Embassy of the State of destination that is located in (or accredited to) the State of execution.



### **The London Convention**

141. The exclusion of documents executed by diplomatic or consular agents prompted the Council of Europe to conclude the *London Convention of 7 June 1968 on the Abolition of Legalisation of Documents* executed by Diplomatic Agents or Consular Officers. Unlike the Apostille Convention, the London Convention does not replace legalisation with a simplified procedure, but rather eliminates all authentication requirements. For more on the London Convention, visit the Council of Europe website < [www.coe.int](http://www.coe.int) >.

## **(2) *Civil status documents executed by Embassies and Consulates***

142. Embassies and Consulates carry out a range of functions relating to life events involving nationals of the home State (e.g., births, deaths and marriages).

143. The geographic location of the event is the primary consideration in determining which authorities are responsible for initially recording the event. Typically, the local authorities issue civil status documents such as birth, marriage and death certificates, regardless of the nationality of persons involved (e.g., a Swiss authority will issue a birth certificate for a baby born of Australian parents living in Switzerland). In addition to local authorities, foreign Embassies and Consulates located in the State in which the event occurred (e.g., the Australian Embassy or Consulate in Switzerland) may also be responsible under the law of their home State for executing documents (such as citizenship and identity documents) in respect of that event if it involves a national of the home State. Under Article 1(3)(a), these documents fall outside the scope of the Convention.

144. On the other hand, as part of the services offered to nationals of the host State, Embassies and Consulates abroad may also assist in obtaining civil status documents from the home State, such as **extracts of civil registries maintained by an authority in the home State** (e.g., the Estonian Consulate in the United States of America obtaining a birth certificate for an Estonian national who was born in Estonia but is now living in the United States of America). These documents do fall within the scope of the Convention as they are not actually “executed” by the Embassy or Consulate, but rather

<sup>15</sup> *United Nations Treaty Series*, Vol. 596, p. 261.

transmitted by them. In these circumstances, the law of the home State will determine whether the document is a public document for the purposes of the Apostille Convention and may therefore be issued with an Apostille. In this regard, it is recalled that some States do not require Apostilles for extracts of foreign public documents generated by foreign Embassies and Consulates located in their territory.

*c) Article 1(3)(b): Administrative documents dealing directly with commercial or customs operations*

145. This exclusion is to be interpreted narrowly – the basic rule is that if an administrative document was legalised before the Apostille Convention entered into force for the State where the document has been executed, it is now apostilled under the Apostille Convention (see para. 136).

146. “Administrative documents dealing directly with commercial or customs operations” were excluded from the scope of application of the Convention as the States negotiating the Convention (primarily European States, see para. 1) did not require such documents to be legalised, or already subjected the production of such documents to simplified formalities (for example, pursuant to Article VIII(1)(c) of the 1947 *General Agreement on Tariffs and Trade*, in which States parties to that agreement recognise the “need for minimising the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements”). Essentially, the negotiating States did not want to impose additional formalities where such formalities did not exist (see the Explanatory Report under § B, I. Article 1). However, much has changed since the conclusion of the Convention: the vast majority of Contracting States did not participate in negotiating the Convention, and some do require administrative documents dealing directly with commercial or customs operations to be legalised.

147. In practice, a number of Contracting States do apply the Convention to administrative documents that are essential to the operations of cross-border trade and commerce, such as import / export licences, certificates of origin, certificates of destination, certificates of conformity, health and safety certificates.



***Applying the Convention to commercial and customs documents***

148. States apply the Convention to administrative documents dealing directly with commercial or customs operations on the basis that:

- these documents are regarded as being of a public nature under their domestic law; and
- these documents previously required legalisation.

149. By doing so, these States are applying the following basic rule set out in para. 136, *i.e.*, if a particular category of documents was legalised before entry into force of the Apostille Convention, it should now be apostilled. This rule does not apply to documents destined for non-Contracting States, for which existing authentication requirements still apply.

150. The application of the Convention to these documents is valid as it supports the purpose of the Convention to abolish legalisation and to facilitate the use of public documents abroad (see para. 7). This interpretation was explicitly recalled by the 2009 Special Commission (C&R No 77).

151. Where a free trade agreement applies, documents relating to customs operations (*e.g.*, certificates of origin) are often not subject to legalisation or other equivalent formality due to the simplification and harmonisation of customs procedures. In most

cases, customs administrations verify these documents by contacting the relevant authorities in the exporting country.<sup>16</sup>

## F. Specific cases

### a) *Civil status documents*

152. Civil status documents – including birth certificates, marriage certificates, divorce decrees, and death certificates – fall within the scope of “administrative documents” under Article 1(2)(b) (see paras 122 *et seq.*) and are therefore public documents for the purposes of the Convention.

### b) *Copies*

#### (1) *Certified copies of original public documents*

153. Practice differs among Contracting States regarding the application of the Convention to certified copies of public documents:

- In some cases, domestic law may require a public document (*e.g.*, a birth certificate or judgment) to remain in the custody of the issuing authority. The issuing authority may nevertheless be authorised to execute a copy of the original (which may be referred to as a “certified copy” “official copy”, “certified extract”, etc.) . In these cases, an Apostille might be issued to authenticate the copy.
- In some cases, a third party (*e.g.*, a notary, may be authorised to certify a copy of a public document. In these cases, the Apostille will generally be issued to authenticate the origin of the certificate executed by the third party (*e.g.*, a notarial certificate), although some States allow an Apostille to be issued to authenticate the origin of the original document.

154. The 2009 Special Commission noted that these different practices do not seem to cause problems in practice (C&R No 74).

155. In some States, making copies of certain categories of public documents is prohibited.

➡ For more on **official certificates**, see paras 128 *et seq.*

#### (2) *Simple photocopies*

156. The Convention may apply to a simple photocopy of a public document (*i.e.*, a photocopy that is not certified) if the law of the State of execution considers the photocopy *itself* to be a public document for the purposes of the Convention (C&R No 73 of the 2009 SC, which notes that at least one State follows this practice). In this case, an Apostille may be issued for the simple copy. In most States, however, a simple photocopy is not a public document and will therefore need to be appropriately certified before an Apostille is issued.

➡ For more on **certified copies**, see paras 153 *et seq.*

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<sup>16</sup> See the *International Convention on the Simplification and Harmonization of Customs Procedures* (as amended) (Kyoto Convention) adopted in 1974 and amended in 1999 (entered into force on 3 February 2006).

(3) Scanned copies

157. The Convention may apply to an electronic copy of a public document that is done by scanning the public document if the law of the State of execution considers the scanned copy *itself* to be a public document for the purposes of the Convention. The law may provide that a scanned copy will only be a public document if the scanning is done by an authority (such as the one that executed the original document or by the Competent Authority).

158. In most States, however, a scanned copy is not a public document. It may nevertheless be possible for the scanned copy to be electronically certified (e.g., by way of e-notarisation or other form of electronic authentication performed by lawyers, post officers, bank officials etc.). Where this applies, the electronic certificate becomes the public document for the purposes of the Convention, provided that the law of the State in which the electronic certificate is executed considers it to be a public document for the purposes of the Convention.

➡ For more on **electronic public documents**, see paras 169 et seq.

c) *Criminal and extradition matters*

159. There is nothing in the Convention that precludes its application to documents relating to criminal and extradition matters. In general, criminal and police records fall within the category of “administrative documents” under Article 1(2)(b) (see paras 122 et seq.) and are therefore public documents for the purposes of the Convention. They may thus be apostilled.

160. In the case of documents relating to extradition matters, a treaty between Contracting States or the laws of a particular Contracting State may provide for a specific form of authentication in extradition cases. For example, in extradition proceedings in the United States of America, the law provides for certain documents tendered in evidence to be accompanied by a certificate issued by a US diplomatic or consular officer located in the requesting State that the documents are in such form as to be admissible in the tribunals of that State.

161. Moreover, as the Apostille Convention does not affect the right of the State of destination to determine the admissibility and probative value of foreign public documents, there is nothing in the Convention to prevent that State from imposing additional requirements on the production of certain foreign public documents in its territory in order for those documents to be admitted into evidence, or given probative value.

➡ For more on the **acceptance, admissibility, and probative value of the underlying public document**, see para. 27.

d) *Educational documents (including diplomas)*

(1) Introduction

162. Educational institutions issue a range of documents, including certificates (of attendance and achievement), diplomas and extracts of academic records (e.g., transcripts).

163. In some States, an educational document may be considered to be a public document for the purposes of the Apostille Convention by virtue of the status of the

issuing educational institution as either an administrative authority or accredited institution.<sup>17</sup> In other States, the educational document may be considered a private document, in which case it will need to be certified before an Apostille is issued.

➡ For more on **official certificates**, see paras 128 et seq.

(2) Original document or certified Copy

164. As placing an Apostille on original diplomas is not usually desirable or practical, States employ a range of methods for producing copies of diplomas for the purpose of apostillisation, such as certified copies. The methods and legal significance of producing such copies may vary depending on the law of the State in which the copy is produced. In some States, certified copies are prepared and the certifications – as opposed to the actual diplomas – are apostilled.

➡ For more on **copies**, see paras 153 et seq.

(3) Effect of an Apostille issued for an educational document

165. As with any other public document, the effect of an Apostille issued for an educational document is limited to verifying the origin of the document, not its content. Thus, if an Apostille is issued for an educational document directly, the Apostille authenticates the signature of the official who signed the diploma and / or the seal of the academic institution that issued it. However, if the Apostille relates to a certification issued for the educational document (rather than the educational document itself), it only authenticates the origin of the certification and not that of the educational document.

➡ For more on the **limited effect of an Apostille**, see paras 24 et seq.

(4) Notarised Diplomas (incl. from "diploma mills")

166. Competent Authorities are sometimes asked to apostillise notarial certificates attesting to the authenticity of an underlying educational document. Because the effect of an Apostille is limited to the origin of the document to which it relates, this is permissible if the notarial certificate is considered to be a public document under the law of the State of execution for the purposes of the Apostille Convention.

167. Many States have expressed concerns about fake academic credentials issued by "diploma mills", which may benefit from the Apostille process through notarisation. If a notarial certificate issued for a fraudulent educational document is valid, then there is nothing in the Convention to prevent an Apostille from being issued for the notarial certificate, although domestic law may permit or require a Competent Authority to refuse to issue an Apostille where fraud is suspected (see para. 205).

168. The 2009 Special Commission expressed deep concerns about the practice of using Apostilles to attempt to lend legitimacy to fraudulent documents. While recalling that an Apostille does not verify the content of the underlying public documents and thus cannot

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<sup>17</sup> See discussion in "The Application of the Apostille Convention to Diplomas including those issued by Diploma Mills", Prel. Doc. No 5 of December 2008 for the attention of the Special Commission of February 2009 on the practical operation of the Hague Apostille, Service, Evidence and Access to Justice Conventions, available in the [Apostille Section](#) of the Hague Conference website, under "Apostilles & Diplomas".

lend legitimacy to fake credentials, the Special Commission also noted that Competent Authorities may *take steps outside the issuance of Apostilles* to deal with instances of fraud or other inappropriate uses of Apostilles (C&R No 84). These steps could include referring the matter to the relevant authorities in the State for further investigation and possible prosecution.

➔ *For more on the **role of Competent Authorities in combating fraud**, see paras 58 et seq.*

#### e) *Electronic documents*

169. In many Contracting States, the law provides for the execution of public documents in electronic form through the use of an electronic signature. Public documents are increasingly being executed in electronic format, including notarial acts, judicial documents, civil status, adoption, taxation and other administrative documents, and electronically generated extracts from online official registers.



#### **e-APP benefits for electronic public documents**

170. By implementing the e-Apostille component of the e-APP, Competent Authorities may issue electronic Apostilles (e-Apostilles) for electronic public documents *in their original format*, thereby allowing the user to retain the benefits of electronic documents in terms of their improved security and transmittability.

➔ *For more on issuing Apostilles for **electronic public documents**, see paras 233 et seq.*

171. The law of the State of execution may also provide that a simple paper copy of an electronic public document (done by printing out the document) is a public document for the purposes of the Convention. Otherwise, a certified copy may be required.

➔ *For more on **certified copies**, see paras 153 et seq.*

172. In some countries, an electronic copy of a public document (done by scanning the original) may also be considered itself to be a public document for the purposes of the Apostille Convention.

➔ *For more on **scanned copies**, see paras 157 et seq.*

#### f) *Expired documents*

173. Some public documents are stated to have a limited period of validity (e.g., criminal records, identity documents, travel documents, provisional court orders). The expiration of a validity period, although it may terminate the effect of the public document in the State of execution, does not ordinarily deprive the document of its public nature unless otherwise provided for under the law of the State of execution. As long as the expired document is still a public document, it may be apostilled. This result underscores the notion that an Apostille only certifies the origin, not the content, of the underlying public document, and has no effect on the acceptance, admissibility or probative value of the underlying public document in the State of destination.

➡ For more on the **limited effect of an Apostille**, see paras 24 et seq.

#### *g) Foreign documents*

174. Competent Authorities may only issue Apostilles for public documents emanating from their State (Art. 3(1)). A Competent Authority may not issue an Apostille for a foreign public document.

175. This is to be distinguished from the situation where a Contracting State designates a Competent Authority that is physically located in the territory of another State (whether a Contracting State or not). For example, a Contracting State may designate a trade or consular mission located in another State to issue Apostilles for certain categories of public documents that are commonly produced in that other State. Such a practice is not inconsistent with the Convention provided that:

- the Competent Authority only issues Apostilles for the categories of public documents for which it has competence to issue Apostilles; and
- the Competent Authority is able to verify the origin of each public document for which an Apostille is issued.

176. It should also be noted that documents executed in one Contracting State may be certified in another State. Such certifications may then be properly apostilled in that other State – provided that other State is a Contracting State and the certificate is considered to be a public document under the law of that other State.

➡ For more on **official certificates**, see paras 128 et seq.

#### *h) Foreign language documents*

177. The law of the State of execution determines whether a document executed in a language other than the official language of that State may be considered to be a public document. Some States may limit public documents to documents that are executed in the (or one of the) official language(s). In other States, the law does not designate an official language. Apostilles may be drawn up in the official language of the State of execution and may not be rejected for this reason. However, the law of the State of destination determines what effect to give to an underlying public document that is in a foreign language.

➡ For more on the **language requirements of Apostilles**, see paras 250 and 258.

178. For example, if a notarial act has been executed in a language other than (one of) the official language(s) of the State of execution, an Apostille may still be issued for that notarial act. It is not necessary for the Competent Authority to know and understand what the notarial act says in order to issue an Apostille – what matters is that the Competent Authority is able to assess the *origin* of the notarial act (as opposed to its content) before it issues an Apostille. As indicated above, domestic legislation may prevent the issuance of Apostilles for documents that are not in the (or one of the) official language(s) of the State of execution.

#### *i) Intergovernmental organisations*

179. The Apostille Convention does not directly address documents executed by intergovernmental organisations. Such organisations regularly execute documents that are of a public-like nature, such as patents, court documents, educational documents,

and other administrative documents. These documents may have to be produced in the State in which the organisation is located (the host State), or another State, and in both instances, their origin may need to be authenticated. The treatment of documents executed by intergovernmental organisations is currently under review by the Permanent Bureau, with a view to exploring the possibility of bringing these documents within the scope of the Apostille Convention (see C&R No 76 of the 2009 SC). Unless and until intergovernmental organisations are brought directly into the Apostille system, the following methods could be explored to bring documents executed by them indirectly into the Apostille system:

- the law of the host State considers the document itself to be a public document (possibly on the basis of an agreement between the State and the organisation), in which case the document may be apostilled by the Competent Authority of the host State. This presumes that the host State would have sample signatures and seals of the people who issue the public-like documents for the organisation;
- the signature on the document may be authenticated by a notary, in which case the notarial authentication may be apostilled by the Competent Authority of the host State.

180. Alternatively, some intergovernmental organisations have sought for their documents to be brought into the *legalisation* system by depositing sample signature / seals of certain officials of the organisation with Embassies and Consulates of potential States of destination that are located in the host State. As a result, if a document executed by one of those officials is to be produced in one of those States, the relevant Embassy or Consulate authenticates the document in question. For larger organisations, it may not be possible to deposit with the relevant Embassies and Consulates samples of the signature / seal of all its officials, in which case, a document may first need to be authenticated by an intermediate official whose signature / seal has been deposited.

➡ For more on **official certificates and notarial authentications**, see paras 128 et seq.

#### j) *Medical documents*

181. Documents executed by a medical practitioner may be public documents for the purposes of the Convention if the practitioner is considered to be acting in an official capacity under the law of the State of execution (see C&R No 77 of the 2009 SC).

#### k) *Multiple documents*

182. An Apostille only authenticates the signature / seal of a *single* official or authority. In cases where multiple public documents issued by various public officials / authorities are presented for apostillation, a separate Apostille must be issued for each signature and / or seal requiring authentication. In these situations, the 2003 Special Commission suggested that Competent Authorities which charge a fee for issuing Apostilles could charge a single reduced fee for apostilling multiple documents instead of an individual fee for each document apostilled (see C&R No 20).

➡ For more on **fees for multiple documents**, see para. 276.

183. In principle, an Apostille authenticates the origin of a single public document (as suggested by Article 5 and the wording of the Model Apostille Certificate). In practice,

some Competent Authorities issue a single Apostille for a bundle of documents that are executed by the same official / authority in order to offer Apostille services at reduced cost to the applicant. An alternative solution to this is for the applicant to have the bundle of documents notarised, in which case a single Apostille may eventually be issued for the one notarial certificate.

➡ For more on **notarial authentications**, see paras 128 et seq.

#### *l) Offensive documents*

184. As a public document is determined by the capacity in which it was executed, the offensive nature content of the document will not deprive the document of its public nature unless otherwise determined by the law of the State of execution. Nonetheless, a Competent Authority may, as a matter of internal procedure, refuse to issue an Apostille for a public document the contents of which are offensive.

➡ For more on **refusing to issue an Apostille** see paras 203 et seq.

#### *m) Old documents*

185. The age of a document will not deprive it of its public nature, unless otherwise provided under the law of the State of execution (see also “expired documents” at para. 173).

186. In practice, it may be difficult for the Competent Authority to verify the origin of an old document. To overcome this difficulty, the issuing authority (or its successor) may be able to certify the authenticity of the document, in which case its official certificate will become the public document for the purposes of the Apostille Convention.

➡ For more on **official certificates**, see paras 128 et seq.

➡ For more on **verifying the origin of public documents**, see paras 213 et seq.

#### *n) Passports and other identification documents*

187. Passports and other documents that identify the bearer may be public documents for the purposes of the Convention if the law of the State of execution considers them to be so. However, as placing an Apostille on an original identity document may not be practical (or allowed), States may employ different methods of issuing copies of these documents for authentication. The method of making such copies and their legal significance varies depending on the law of the State of execution..

188. The 2003 SC noted that States may refuse to issue Apostilles for certified copies of public documents as a matter of *public policy* (C&R No 11).

➡ For more on **copies**, see paras 153 et seq.

➡ For more on **refusing to issue an Apostille on grounds of public policy**, see para. 206.

➡ For more on **attaching an Apostille** to the underlying public document, see paras 264 et seq.

*o) Patents and other documents relating to intellectual property rights*

189. Grant of patent or other intellectual property rights are “administrative documents” within the meaning of Article 1(2)(b) of the Convention and are therefore public documents for the purposes of the Convention. While these documents can be vital to international commerce, they are not documents “dealing directly with commercial or customs operations”, and therefore do not fall within the Article 1(3)(b) exception (see the Explanatory Report under § B, I. Article 1).

➡ For more on **administrative documents**, see paras 122 et seq.

➡ For more on the **Article 1(3)(b) exception**, see paras 145 et seq.

*p) Private documents*

190. The Convention is only applicable to *public* documents, which are defined as documents executed by a person in an official capacity. The Convention therefore does not apply to documents that are executed by a person in a private capacity (*i.e.*, private documents). The law of the State of execution determines whether a person is acting in an official capacity, and therefore whether a person is acting in a private capacity. In general, persons do not act in an official capacity if they act in their own name alone, or as an official of a private entity (*e.g.*, as a company director or trustee).

191. In some States, the following documents are not considered – in and of themselves – to be public documents for the purposes of the Convention: wills and other testamentary dispositions, contracts, powers of attorney, letters of recommendation, curriculum vitae, and company documents. In some States, the execution of these documents may involve a notary, in which case the notarial act or notarial certificate is a public document for the purposes of the Convention by virtue of Article 1(2)(c) and (d) of the Convention.

➡ For more on **notarial acts**, see paras 125 et seq.

➡ For more on **notarial certificates and other official certificates**, see paras 128 et seq.

192. As a public document is determined by the *capacity* in which it was executed, a document will not be public solely because the law of the State of execution prescribes certain form and content requirements in order for the document to be legally valid.

*q) Religious documents*

193. The law of the State of execution may consider religious documents, such as baptism and marriage certificates, as well as documents executed by religious courts, to be of a public nature and therefore a public document for the purposes of the Convention.

## r) *Translations*

194. The nature of translations differs from State to State.

195. In some States, a translation may be of a public nature where it is executed by an official translator (see C&R No 75 of the 2009 SC). This may include sworn, affirmed and accredited translators. The law of the State of execution determines who is an official translator, the formal requirements of the translation, and whether such a document is a public document.

196. Where the translation itself is not a public document, it may allow still benefit from the Apostille process:

- the translator may swear an affidavit (or make a similar declaration) attesting to the accuracy of the translation before a notary; in this case, the notarial act or notarial certificate becomes the public document for the purposes of the Apostille Convention, and the translation is produced abroad with the apostilled notarial act or notarial certificate.
- the translation may be certified by an official authority; in this case, the certificate of the official authority becomes the public document for the purposes of the Apostille Convention, and the translation is produced abroad with the apostilled certificate.

➞ For more on **notarial acts**, see paras 125 et seq.

➞ For more on **notarial certificates and other official certificates**, see paras 128 et seq.

## s) *Unsigned documents or documents without a seal / stamp*

197. A document that is unsigned, or a document that does not bear a seal or stamp may be a public document for the purposes of the Convention if the law of the State of execution considers it to be of a public nature. Although some States provide for the execution of public documents without a signature and / or a seal, this is not the case in other States.

➞ For more on **verifying the origin of unsigned or unsealed documents**, see paras 213 et seq.

➞ For more on **completing Apostilles relating to unsigned or unsealed documents**, see paras 257 et seq.

## IV. THE APOSTILLE PROCESS IN THE STATE OF EXECUTION: REQUEST – VERIFICATION – ISSUANCE – REGISTRATION

### 1. Requesting an Apostille

#### A. Who may request an Apostille?

198. An Apostille may be requested by either the bearer of the document (*e.g.*, the person who intends to produce the public document abroad), or by the person who executed the document (*e.g.*, an official of an authority or a notary).

199. The Convention does not distinguish between individuals or legal persons (*e.g.*, a company), nor prescribe any eligibility requirements for the applicant (*e.g.*, nationality or personal status). Moreover, the Convention does not require the applicant to state reasons for the request.

200. The Convention does not require the applicant to be the person who intends to produce the public document abroad. Accordingly, an Apostille may be issued at the request of an agent or proxy of the person who intends to use it. However, as a matter of internal procedure, the Competent Authority may require an agent or proxy to provide evidence that it is authorised to make the request by the person who intends to use the Apostille.

201. In some States, third party commercial entities offer services to assist persons in obtaining Apostilles and other relevant documents (*e.g.*, notarial authentications). The Convention neither endorses nor prohibits such practices, which are acceptable if permitted by, and undertaken in accordance with, the relevant applicable law, and provided that the Apostille is only issued by a Competent Authority in accordance with the Convention.



#### ***Asking the applicant about the State of destination***

202. Competent Authorities are encouraged to ask applicants to identify the State in which the document is to be produced in order to determine that the State is a Contracting State. This way, the Competent Authority can be satisfied that the Apostille will have its desired effect. For this reason, it might be useful for the Competent Authority to develop a standard Apostille request form (see para. 53). However, not providing a State of destination (or indeed a wrong State of destination) is not a valid reason for refusing to issue an Apostille, as Competent Authorities have no means to control the use that is made of their Apostilles.

➡ ***For more on delivery of and access to Apostille services, see paras 49 et seq.***

#### B. Refusal to issue an Apostille

##### *a) Grounds for refusal*

203. The Convention does not provide a basis upon which a Competent Authority may refuse to issue an Apostille for a valid public document that needs to be produced in another Contracting State.

204. Against this background, based on the Convention itself, a Competent Authority may only refuse to issue an Apostille if:

- the public document is not to be produced in a State that is party, or is in the process of becoming party, to the Convention (although the Competent Authority should not refuse to issue an Apostille if the applicant does not specify a State of destination);

➡ For more on **issuing Apostilles for States that are in the process of becoming party**, see para. 102.

- the public document is an excluded document (*i.e.*, a document expressly excluded from the scope of application of the Convention by virtue of Art. 1(3))

➡ For more on **excluded documents**, see paras 134 et seq.

- the document is not a public document under the law of the State of execution;

➡ For more on the **applicability of the Convention** in general, see para. 68.

- the Competent Authority is only competent to issue Apostilles for specific categories of public documents and the public document for which the Apostille is requested is not of that category;
- the Competent Authority is only competent to issue Apostilles for public documents executed in a certain territorial unit of a State and the public document for which the Apostille is requested is not executed in that territorial unit;
- the Competent Authority is unable to verify the origin of the public document for which the Apostille is requested.

➡ For more on **verifying the origin of documents**, see paras 213 et seq.

205. In some States, domestic law may permit or require a Competent Authority to refuse to issue an Apostille on additional grounds. For example, the issuance of an Apostille may be refused if:

- the applicant is an agent or proxy of the person who intends to use the Apostille, and does not provide evidence that it is authorised by that person to request the Apostille;
- the applicant does not pay the prescribed fee (if any);

➡ For more on **charging a fee for the issuance of an Apostille**, see paras 273 et seq.

- the contents of the underlying public document (or even, in the case of a notarial certificate, the document to which the notarial certificate relates) are offensive;

➡ For more on **not verifying the contents of documents**, see para. 228.

- the Competent Authority suspects that the underlying public document is a fraud.

➡ *For more on the **role of Competent Authorities in combating fraud**, see paras 58 et seq.*

206. Moreover, the 2003 Special Commission noted that the issuance of an Apostille may be refused for certified copies of public documents as a matter of *public policy* (C&R No 11). On this basis, a Competent Authority may refuse to issue an Apostille in order to avert the fraudulent or otherwise unlawful use of the copied document (e.g., where the copied document is a passport or other identification document and the law of State of issuance prohibits the making of copies of such documents).

*b) Possible further assistance to applicants where Apostille not issued*

207. If an Apostille is not issued because the State of destination is not a party, or in the process of becoming party, to the Convention, or because the document is an excluded document (see para. 134), the Competent Authority is encouraged to refer the applicant to the nearest Embassy or a Consulate of the State of destination located in (or accredited to) the State of execution, in order to find out what options are available.



**No assistance from the Permanent Bureau**

208. The Permanent Bureau is unable to provide advice or assistance to applicants on authenticating documents. This is a matter between the State of execution and the State of destination.

209. If an Apostille is not issued because the document is not a public document, or because the document is an excluded document (see para. 134), the Competent Authority may wish to refer the applicant to a notary in order to find out whether the document may be notarised, in which case an Apostille may eventually be issued for the notarial certificate.

210. If an Apostille is not issued because the Competent Authority is not competent to issue an Apostille for the specific document for which a request is made (e.g., on the basis of the category of document, or the territorial unit in which the document was executed), it should refer the applicant to the proper Competent Authority.

211. If an Apostille is not issued because the Competent Authority is unable to verify the origin of the document, it may wish to refer the applicant to an authority that is able to certify the authenticity of the document (e.g., the official or authority that executed the document or a responsible agency), in which case an Apostille may eventually be issued for the certificate.

*c) Public document that has already been legalised*

212. A public document (e.g., a birth certificate) may need to be produced in multiple States, and therefore may be subject to both legalisation and apostillisation. There is nothing in the Convention to prevent a Competent Authority from issuing an Apostille for a public document that has already been legalised, provided that the Apostille relates to the public document and not the other authentications that may have been placed on the document as part of the legalisation process. As noted in paragraph 87, some States parties also use their regular Apostille Certificate as part of the legalisation process.

## 2. Verifying the origin of the public document

### A. The importance of verifying the origin

213. By issuing an Apostille, the Competent Authority is certifying:

- the authenticity of the signature on the underlying public document (if any);
- the capacity in which the person signing the document has acted; and
- the identity of the seal or stamp which the document bears (if any).

214. It is therefore crucial for the Competent Authority to be satisfied of the origin of the document for which it issues an Apostille. For this reason, each Competent Authority should establish clear procedures that are followed every time an Apostille is issued to verify the origin of the underlying public document.



#### ***The need to verify the origin of ALL public documents***

215. The 2009 SC reminded Contracting States of the importance of assessing the genuine character of all documents presented as public documents to the Competent Authorities for the issuance of an Apostille (C&R No 83).

216. In some situations, a Competent Authority may not be capable of verifying the origin of all public documents for which it has competence to issue Apostilles. This might be the case where a single Competent Authority has been designated to issue Apostilles for all public documents executed in a Contracting State. In these situations, the Competent Authority might find it convenient to make arrangements for an intermediate authority to verify and certify the origin of certain public documents, and then issue an Apostille for the certificate of that intermediate authority.

➡ *For more on this "multi-step process", see paras 14 et seq.*

➡ *For more on official certificates, see paras 128 et seq.*



#### ***Decentralising Apostille services to facilitate the verification process***

217. Recalling that the purpose of the Convention is to simplify the process of authentication, the 2009 SC invited States Parties to consider removing any unnecessary obstacles to the issuance of Apostilles while maintaining the integrity of authentications. This can be done either by decentralising the provision of Apostille services either by designating additional Competent Authorities with competence to issue Apostilles for specific categories of public documents or public documents executed in a particular territorial unit, or by opening local offices of an existing Competent Authority. As a result, the number of public documents whose origin needs to be verified is reduced as is consequently the need to rely on intermediate certifying authorities.

### B. Database of sample signatures / seals / stamps

#### *a) Maintaining a database*

218. With a view to verifying the origin of a document, each Competent Authority should maintain or otherwise have access to a database with sample signatures / seals / stamps

of the officials and authorities that execute the public documents for which it has competence to issue Apostilles. In this way, the origin of the document may be verified by a simple visual comparison of the signature / seal / stamp on the document with the sample held in the database.<sup>18</sup>

219. The database may be maintained in paper or electronic format. Many Competent Authorities now maintain an electronic database of sample signatures, seals and stamps. This trend is very much to be welcomed. Competent Authorities that do not yet have an electronic database are strongly encouraged to develop one. Electronic databases are easier to use, particularly when several officials work at the Competent Authority or generally where the volume of Apostilles issued is high. Electronic databases are also easier to keep up-to-date. Electronic databases thus contribute greatly to the effective and secure operation of the Apostille Convention.

220. In States that have several Competent Authorities, it is good practice to maintain a central electronic database that can be accessed by all of them. Again, such centralised databases are easier to keep updated. In addition, they enable a Competent Authority that may be located in one part of the country to verify the origin of a public document that has been executed in a different part of the country if it is an appropriate Competent Authority to do so. Such centralised databases further improve the effective operation of the Convention.

221. In the case of public documents that have been executed in or converted into electronic form and which bear an electronic signature, the origin of the document may be verified electronically by way of a digital certificate.

#### *b) Updating the database*

222. Competent Authorities should ensure that the database of sample signatures / seals / stamps is updated in view of changes to the identity of officials and authorities. This is particularly relevant in situations when a Competent Authority is presented with a public document executed by a person who has only recently been granted the authority to issue public documents (e.g., a notary who has only just been commissioned or admitted as a notary). In these circumstances, the Competent Authority may not have a sample signature (or seal / stamp) of the relevant person in its database. It is good practice for Competent Authorities to have a standard procedure in place for such situations. Most importantly, no Apostille may be issued until the Competent Authority has had the opportunity to verify the signature (seal / stamp).

223. For the Competent Authority to be in a position to verify the signature (seal / stamp), it should contact the relevant person or authority directly and ask for a sample signature (seal / stamp). To facilitate this process, Competent Authorities should use a standard form for the official or authority to complete. The Competent Authority should also verify the capacity of the new person (e.g., in the case of a notary who has only just been commissioned or admitted as a notary, by contacting the relevant notarial college or equivalent supervisory body).

224. These problems do not arise with public documents that have been executed in or converted into electronic form and which bear an electronic signature. The origin of such documents can always be easily and reliably verified on the basis of the digital certificate.

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<sup>18</sup> It should be noted that such a database is quite different from the register of Apostilles that each Competent Authority is required to maintain under Art. 7 of the Convention (see paras 277 *et seq.*).

*c) No signature / seal / stamp held due to old document*

225. When presented with a public document executed a long time ago, a Competent Authority may not have a sample of the relevant signature / seal / stamp in its database (anymore). For example, this may be the case when an applicant requests an Apostille for his or her birth certificate issued 50 years ago, which bears the signature of an official who has since retired. In such situations, the Competent Authority should make reasonable efforts to verify the signature / seal / stamp by contacting the authority or its successor to inquire if the signature of the person can be verified with their assistance (e.g., based on documents that the authority may have in its archives). If the Competent Authority is subsequently unable to verify the origin of the document, it should refuse to issue the Apostille. The applicant may then wish to try to have the public document newly issued.

➡ For more on **refusing to issue an Apostille**, see para. 203.

*d) No match*

226. If the signature / seal / stamp on the document does not match the sample held in the database, the Competent Authority should not issue an Apostille. The Competent Authority may wish to notify the official or authority that purportedly executed the document of instances of suspected fraud.

227. If there are doubts about the match (e.g., the name of person that purportedly signed the document is differently spelt or formulated in the database, or the signature is different), the Competent Authority should contact the official or authority that purportedly executed the document to verify its origin and, if appropriate, update the database (see para. 222).

*e) No verification of content*

228. It is not a Competent Authority's responsibility or duty under the Convention to verify the content or the validity of the public document. Furthermore, in the case of "official certificates" under Article 1(2)(d) of the Convention, the Competent Authority is not required to verify the content of the private document to which the certificate relates.

229. In practice, most Competent Authorities do not verify the content and validity of public documents. Some, however, do so in accordance with domestic law, to satisfy themselves that the document is actually a public document (i.e., that the person executing the document was actually endowed with the power to execute the document and that the document complies with any content and format requirements established by domestic law). Some Competent Authorities have the power under domestic law to impose sanctions on persons who wrongfully execute a public document (e.g., a notary who issues a notarial certificate that does not comply with legal requirements), or may follow up the matter with the relevant regulatory body. Similarly, the Competent Authority may pursue lines of enquiry to determine whether or not a document is a forgery or has been altered, thereby depriving it of a public nature.



**Competent Authorities are NOT obliged under the Convention to verify the CONTENT of the underlying public document**

230. The 2009 SC recalled that under the Convention, “it is not the responsibility of Competent Authorities to assess the content of public documents for which they are requested to issue an Apostille”. It also noted that “when asked to issue an Apostille for a notarial certificate, Competent Authorities should not consider or assess the content of the document to which the notarial certificate relates”. At the same time, it acknowledged that “Competent Authorities may take steps outside the process of issuing an Apostille to deal with instances of fraud or other violations of relevant domestic law” (see C&R No 80).

### 3. Issuing an Apostille

#### A. Authority to issue

231. An Apostille may only be issued by a Competent Authority (Art. 3(1)). The designation and internal organisation of Competent Authorities are matters for each Contracting State (see the Explanatory Report under § B, V. Article 6).

➞ For more on the **functioning of Competent Authorities**, see paras 43 et seq.

➞ For more on the **designation of Competent Authorities**, see paras 24 et seq. of the *Brief Implementation Guide*.

232. The authority to issue Apostilles is a matter of internal organisation for each Competent Authority. Some Competent Authorities are legal bodies, whereas others are officials, identified by the title of the position. In both cases, internal regulations may delegate the authority to issue Apostilles to a particular person (an “authorised officer”), and the legality of that delegation will be determined by reference to the domestic law applicable to the Competent Authority.

#### B. Paper Apostilles and electronic Apostilles (e-Apostilles)

233. The majority of public documents are still executed in paper form. In most cases, an Apostille is also issued in paper form for these documents.

234. Some States have started converting paper public documents into electronic form by scanning them, for which an Apostille is then issued in electronic form (e-Apostille) provided that the scanned copy is itself considered to be a public document under the law of the State of execution. In some States, a scanned copy will only be a public document if done by the Competent Authority.

➞ For more on **scanned copies**, see paras 157 et seq.

235. Public documents are increasingly being executed in electronic format in many States with the support of laws recognising electronic signatures as the functional equivalent of “wet” signatures. To apply paper Apostilles to such documents involves

reproducing the document in paper form and, depending on the applicable law, having the paper version certified as a true copy of the “original” electronic public document. Not only is this process cumbersome, it also means that the advantages of using the “original” document are lost in terms of improved security and transmittability.

236. As a result, some Competent Authorities issue electronic Apostilles for electronic public documents and / or documents that are originally executed in paper form, but subsequently reproduced in electronic form by scanning the document (provided that the scan itself is considered to be a public document under the law of the State of execution for the purposes of the Convention). An e-Apostille may be issued using a range of file formats, with the most common format being portable document format (or “PDF”).

237. This section applies to the issuance of paper Apostilles and e-Apostilles. Unless otherwise provided expressly or by implication, a reference to “Apostille” is to paper Apostilles and e-Apostilles.

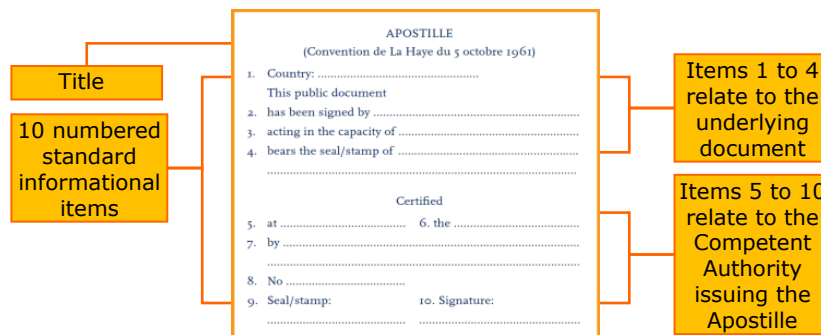
➡ For more on **electronic public documents**, see paras 169 et seq.

➡ For more on **copies**, see paras 153 et seq.

## C. The use of the Model Apostille Certificate

### a) The original model Certificate

238. The Annex to the Apostille Convention provides the following Model Apostille Certificate:



239. The purpose of the Model Apostille Certificate is to ensure that Apostilles issued by the various Contracting States are clearly identifiable in all other Contracting States, thereby facilitating the circulation of public documents abroad. For this reason, Apostilles issued by Competent Authorities should conform as closely as possible to the Model Apostille Certificate (C&R No 13 of the 2003 SC). In particular, an Apostille must:

- bear the title in French 'Apostille (Convention de La Haye du 5 octobre 1961)'; and
- contain the 10 numbered standard informational items.

### b) The multilingual model Certificates developed by the Permanent Bureau

240. In accordance with C&R No 89 of the 2009 SC, the Permanent Bureau has developed a bilingual Model Apostille Certificate in which the 10 numbered standard

informational items are in English and French. It has also developed a trilingual Model Apostille Certificate in English, French and another language (e.g., Spanish). The bilingual and trilingual Model Apostille Certificates are available on the [Apostille Section](#) of the Hague Conference website.

APOSTILLE (Convention de La Haye du 5 octobre 1961)			
1. Country: Pays :			
This public document Le présent acte public :			
2. has been signed by a été signé par :			
3. acting in the capacity of agissant en qualité de :			
4. bears the seal / stamp of est revêtu du sceau / timbre de :			
Certified Attesté			
5. at à :		6. the le :	
7. by par :			
8. N° sous n° :			
9. Seal / stamp: Sceau / timbre :		10. Signature: Signature :	

The bilingual Model Apostille Certificate

APOSTILLE (Convention de La Haye du 5 octobre 1961)			
1. Country: Pays / País :			
This public document Le présent acte public / El presente documento público :			
2. has been signed by a été signé par / ha sido firmado por :			
3. acting in the capacity of agissant en qualité de / agissant en calidad de :			
4. bears the seal / stamp of est revêtu du sceau / timbre de / y está revestido del sello / timbre de :			
Certified Attesté / Certificado			
5. at à / en :		6. the le / el día :	
7. by par / por :			
8. N° sous n° / bajo el número :			
9. Seal / stamp: Sceau / timbre / Sello / timbre :		10. Signature: Signature / Firma :	

The trilingual Model Apostille Certificate



### **Recommended use of the multilingual Model Apostille Certificates**

241. With a view to facilitating the production of public documents abroad, the Permanent Bureau encourages Competent Authorities to adopt either the bilingual or, if their language is not English or French, the trilingual Model Apostille Certificate for Apostilles they issue. Use of the multilingual Model Apostille Certificates developed by the Permanent Bureau will ensure greater uniformity in Apostilles issued by the various Competent Authorities in the various Contracting States. As a result, a State can reduce the risk of Apostilles being rejected, and thus improve the operation of the Convention. In practice, many Competent Authorities have adopted either the bilingual or trilingual versions.

242. The use of a multilingual Model Apostille Certificate allows the Competent Authority to accommodate other languages, such as the language of the State of destination. This task is facilitated by using word processors to generate Apostilles.

➡ **For more on the language requirements for completing Apostilles, see para. 258.**

### **c) Form requirements**

#### **(1) Size and shape**

243. The Model Apostille Certificate is described in the Convention as a square with sides at least nine centimetres long.

244. In practice, the size and shape of Apostilles varies as between Competent Authorities. In many cases, the Apostille is in the form of an oblong. This is due to a range of factors, including the number of languages used for the 10 numbered standard informational items (see para. 250), the accommodation of certain design features, or differences in stationery used. This practice is acceptable, and reflects the intention of the drafters that the dimensions of the Apostille should be flexible. In fact, the drafters of the Convention specifically rejected a proposal to provide uniform dimensions.

245. It should, however, be borne in mind that if the size and shape of an Apostille varies so much from the Model Apostille Certificate that it is clearly no longer identifiable as an Apostille issued under the Convention, the Apostille risks being rejected in the State of destination.

➡ For more on **grounds for rejecting an Apostille**, see paras 290 et seq.

(2) Numbers

246. For ease of reference, each of the 10 standard informational items should be numbered (from "1" to "10") as indicated in the Model Apostille Certificate.

(3) Design

247. In practice, the appearance of Apostilles varies as between Competent Authorities due to the use of different fonts, colours and the incorporation of the emblem of the Competent Authority or the State. There are no formal requirements concerning design features such as the use of letterhead, watermarks or other security features in the Certificate itself.

248. Competent Authorities should ensure uniformity in the appearance of the Apostilles they issue. In particular, the design of Apostilles should not vary depending on the category of underlying public document, or based on the preferences of the applicant. Variations in the design of Apostilles issued by a Competent Authority may lead to confusion in States of destination. In States where there are multiple Competent Authorities, each Competent Authority should endeavour to use a consistent design.

(4) Frame

249. The Model Apostille Certificate depicts a frame around the title and the 10 numbered standard informational items. Many Competent Authorities issue Apostilles without such a frame. In some instances, the frame surrounds not only the title and the area with the 10 numbered standard informational items, but also additional text and emblems. Both of these practices are acceptable provided that the Apostille is clearly identifiable as an Apostille issued under the Convention.

(5) Language of the standard terms

250. The title of the Apostille must be in French, *i.e.*, 'Apostille (Convention de La Haye du 5 octobre 1961)'. The 10 numbered standard information items may be in English or French or the language of the Competent Authority (if not English or French). They may also be in another language (*e.g.*, the language of the State of destination) (Art. 4(2)).



**Recommended use of the multilingual Model Apostille Certificates**

251. With a view to facilitating the production of public documents abroad, the Permanent Bureau encourages Competent Authorities to adopt either the bilingual or, if their language is not English or French, the trilingual Model Apostille Certificate for Apostilles they issue. This use of a multilingual Certificate is particularly pertinent in view of the different languages, alphabets and scripts used among Contracting States.

➡ For more on the use of **multilingual Apostilles**, see paras 240 et seq.

➡ For more on the **language for filling in the Apostille**, see paras 258 et seq.

(6) *Additional text*

252. In addition to the title and the 10 numbered standard informational items, the Apostille may include additional text. To ensure that the Apostille remains clearly identifiable as an Apostille issued under the Convention, any additional text should be placed outside the area containing the 10 standard informational items.

253. In some circumstances, the inclusion of additional text may further facilitate the production of public documents abroad. In this regard, the 2009 SC recommended that Competent Authorities include a notice about the limited effect of the Apostille (See C&R No 85 of the 2009 SC). Indeed, such a notice may assist recipients of the Apostille who may not be familiar with the use of Apostilles. It may also assist Competent Authorities in combating attempts to misrepresent the effect of the Apostille.

254. The SC also recommended that if the Competent Authority operates an e-Register, the additional text should include the web address (URL) where the origin of the Apostille may be verified.

➡ For more on the **limited effect of an Apostille**, see paras 24 et seq.

➡ For more on **verifying the origin of Apostilles**, see paras 285 et seq.

255. In addition, the Permanent Bureau recommends that Competent Authorities include a notice that the Apostille produces no effect in the State of execution. The Competent Authority may also wish to add information regarding the underlying public document.



**Recommended additional text for Apostilles**

256. The Permanent Bureau has developed text that it suggests Competent Authorities add to the Apostilles they issue below the area containing the 10 standard informational items. This text, which is set out in the bilingual and trilingual Model Apostille Certificates that are available on the [Apostille Section](#) of the Hague Conference website, is as follows:

*This Apostille only certifies the authenticity of the signature and  
the capacity of the person who has signed the public documents, and,  
where appropriate, the identity of the seal or stamp which the public document bears.*

*This Apostille does not certify the content of the document for which it was issued.*

*[This Apostille is not valid for use anywhere within [insert the name of the  
State of issuance, incl. where possible and relevant,  
the territories to which the Apostille Convention has been extended].]*

*[To verify the issuance of this Apostille, see [insert the URL of the e-Register].]*

## D. Completing the Apostille

### a) *Filling in the 10 numbered standard informational items*

257. Once the Competent Authority is satisfied of the origin of the document for which an Apostille is requested, the Competent Authority completes the Apostille by filling in the 10 numbered standard informational items. Each item should be filled in to the extent that the relevant information is available. No item should be left blank; instead, where an item is not applicable, this should be indicated (e.g., by writing “not applicable” or “n/a”). The following table is designed to assist Competent Authorities with filling in each of the 10 items:

Item	Information to be filled in
No 1 – ‘Country’	Insert the name of the State of execution.
No 2 – ‘has been signed by’	Insert the name of the person that signed the underlying public document. If the document does not bear a signature, write “not applicable” or “n/a” or otherwise indicate that the item is not applicable. An Apostille only authenticates the signature / seal of a <i>single</i> official or authority.
No 3 – ‘acting in the capacity of’	Insert the capacity in which the person signing the underlying public document acted ( <i>e.g.</i> , the title of the position held by the official). If the document does not bear a signature, write “not applicable” or “n/a” or otherwise indicate that the item is not applicable.
No 4 – ‘bears the seal / stamp of’	Insert the name of the authority which has affixed the seal / stamp on the underlying public document. If the document does not bear a seal or stamp, write “not applicable” or “n/a” or otherwise indicate that the item is not applicable. An Apostille only authenticates the signature / seal of a <i>single</i> official or authority.
No 5 – ‘at’	Insert the name of the place where the Apostille is issued ( <i>e.g.</i> , the city where the Competent Authority is located).
No 6 – ‘the’	Insert the date on which the Apostille is issued.
No 7 – ‘by’	<p>Practice among Competent Authorities in filling in this numbered standard informational item varies. Some Competent Authorities insert the title / name of the Competent Authority (noting that some Competent Authorities are officials identified by the title of the position whereas others are legal bodies identified by their name) and the name of the authorised officer issuing the Apostille. Other Competent Authorities insert <i>either</i> the title / name of the Competent Authority <i>or</i> the name of the authorised officer.</p> <p>The Convention does not require the authorised officer to be named; however, to avoid complications, the name of the issuing officer should be included in item 7 or in item 10.</p>

Item	Information to be filled in
No 8 – ‘No’	<p>Insert the number of the Apostille.</p> <p>➡ For more on <b>numbering Apostilles</b>, see paras 261 et seq.</p>
No 9 – ‘Seal / stamp’	<p>Affix the seal / stamp of the Competent Authority.</p>
No 10 – ‘Signature’	<p>Practice among Competent Authorities in filling in this numbered standard informational item varies. For most Competent Authorities, the authorised officer issuing the Apostille applies his / her own signature. Of these States, many also add the name of the officer in the signature field.</p> <p>The Convention does not require the officer signing the Apostille to be named; however, to avoid complications, the name of the issuing officer should be included in item 10 or item 7 to allow the recipient to associate the signature with the officer signing the Apostille.</p> <p>➡ For more on <b>numbering Apostilles</b>, see paras 261 et seq.</p>

#### b) *Language of information added*

258. The Competent Authority may fill in the 10 numbered standard informational items in English, French, or the language of the Competent Authority (if not English or French). It may also fill in the items in another language (Art. 4(2)). If the language of the Competent Authority is not English or French, the Competent Authority is encouraged to complete the Apostille in one of these languages to ensure that the Apostille readily produces its effects abroad (see C&R No 90 of the 2009 SC).

➡ For more on the **language of the 10 numbered standard information items**, see paras 250 et seq.

#### c) *Multiple documents*

259. An Apostille only authenticates the signature / seal of a *single* official or authority. As a result, one Apostille may not be issued for multiple documents that are executed by different officials. In the interests of expediency, some Competent Authorities do issue a

single Apostille for multiple documents that have been bundled together where each document in the bundle is executed by the same official or authority.

➡ For more on applying the Convention to **multiple documents**, see paras 182 et seq.

#### d) *Applying the signature*

260. The Convention does not specify how Apostilles are to be signed. In practice, paper Apostilles are signed by hand ("wet" signature), by applying a rubber stamp, or by mechanical means (facsimile signature). e-Apostilles are signed by way of an electronic signature using a digital certificate (this is not the same as a facsimile signature). Ultimately, it is the law applicable to the Competent Authority that determines how the Apostille may be signed. In this regard, it is noteworthy that many States have introduced laws recognising electronic signatures as the functional equivalent of wet signatures.

➡ For more on **signing e-Apostilles using a digital certificate**, see paras 346 et seq.

#### e) *Numbering*

261. The Convention does not specify how Apostilles are to be numbered. Ultimately, it is up to each Competent Authority to determine a system for numbering.

262. The number on the Apostille is critical to allowing a recipient to verify the origin of the Apostille (as provided by Art. 7(2) of the Convention). Accordingly, each Apostille issued by a particular Competent Authority should have a unique number. In practice, some Competent Authorities use an alphanumeric system to number Apostilles.

263. In light of the growing use of e-Registers, it is further recommended that Apostilles be numbered non-sequentially (or otherwise randomly) in order to avoid "fishing expeditions", i.e., attempts by users to collect information about an Apostille that he / she has not received (see the C&R of the Sixth (Madrid) Forum, available on the [Apostille Section](#) of the Hague Conference website under "e-APP").

### E. Attaching the Apostille to the underlying public document

#### a) *Direct placement or use of an allonge*

264. Apostilles must be attached to the public document either by being placed directly on the document, or by being placed on a separate slip of paper (an "*allonge*"), which is then affixed to the document (Art. 4(1)).

#### b) *Various methods to attach the Apostille*

265. The Convention does not specify how the Apostille is to be placed on the underlying public document, or how the *allonge* is to be affixed to the underlying public document. Ultimately, it is up to each Competent Authority to determine the methods for attaching Apostilles. In all cases, the Apostille should be securely attached to the document.

### **Tamper-evident methods of attachment**

266. The 2009 Special Commission encouraged Apostilles to be attached in a way that would evidence any tampering (C&R No 91 of the 2009 SC). The easiest and most secure way to evidence tampering is by issuing e-Apostilles (see paras 331 *et seq.*).

#### (1) Paper Apostilles

267. In practice, Competent Authorities employ a range of methods to attach a paper Apostille to the underlying public document. To place an Apostille on an underlying public document or *allonge*, methods include the use of a rubber stamp, glue, ribbons, wax seals, impressed seals, and self-adhesive stickers. To affix an *allonge* to an underlying public document, methods include the use of glue, grommets or staples.

### **Overcoming the difficulties of attaching Apostilles using staples**

268. Although the use of staples is an acceptable means of attaching an Apostille to an underlying public document, a number of States have raised concerns about the potential misuse of Apostilles attached employing this method, particularly the ease in which the Apostille may be detached from the underlying public document and re-attached to another document to lend legitimacy to that other document. In view of C&R No 91 of the 2009 SC (see para. 265), the Permanent Bureau recommends that if staples are used to affix the *allonge*, the Competent Authority should employ an additional method to secure it to the underlying public document (*e.g.*, by folding over the *allonge* and relevant page of the document before stapling, or by applying a seal).

➡ For more on **copies**, see paras 153 *et seq.*

#### (2) e-Apostilles

269. Competent Authorities may employ a variety of methods to “attach” an e-Apostille by logically associating it with the underlying public document. In the case of e-Apostilles issued using PDF technology, the e-Apostille may be attached by incorporating the e-Apostille and electronic public document into a single PDF document. Alternatively, the e-Apostille may be attached to the electronic public document file as a separate file (although in practice it is the electronic public document that is attached to the e-Apostille).

#### c) Placement of the Apostille

270. For a multi-page document, the Apostille should be placed on the signature page of the document. If an *allonge* is used, this should be affixed to the front or the back of the document (see C&R No 17 of the 2003 SC). For practical reasons, an Apostille should be placed on the underlying public document in a way that does not conceal the matters being certified (*e.g.*, the signature), or any content of the document.

271. If attaching the Apostille to a particular document is not practical (or indeed not permitted by the law of the State of issuance), the Competent Authority may wish to instruct the applicant to obtain a certified copy of the document to be apostilled instead.

### **Apostilles should not be detached from the underlying public document**

272. A Competent Authority should inform applicants that the Apostille must remain attached to the underlying public document. In particular, they should advise applicants wishing to make photocopies of apostilled documents that detaching the Apostille from the underlying public document invalidates the Apostille.

## F. Charging a fee for the Apostille

273. The Convention does not address the fees that Competent Authorities may charge for issuing Apostilles. While some Competent Authorities do not charge a fee, most do. It is up to each Contracting State to determine whether to charge a fee and, if so, the amount of the fee, in accordance with applicable laws.

274. For Competent Authorities that do charge a fee, the amount varies as does the fee scale. For some Competent Authorities, the amount is always the same. For other Competent Authorities, fees may differ depending on one or more factors, including:

- the type of applicant (e.g., a company versus an individual);
- the size or transactional value of the document being apostilled;
- the number of documents that the applicant is requesting to be apostilled;
- the category of document being apostilled.

275. In all cases, the fee charged for issuing an Apostille should be reasonable (C&R No 20 of the 2003 SC). Information provided by States on the fees charged by their Competent Authorities can be obtained from the [Apostille Section](#).



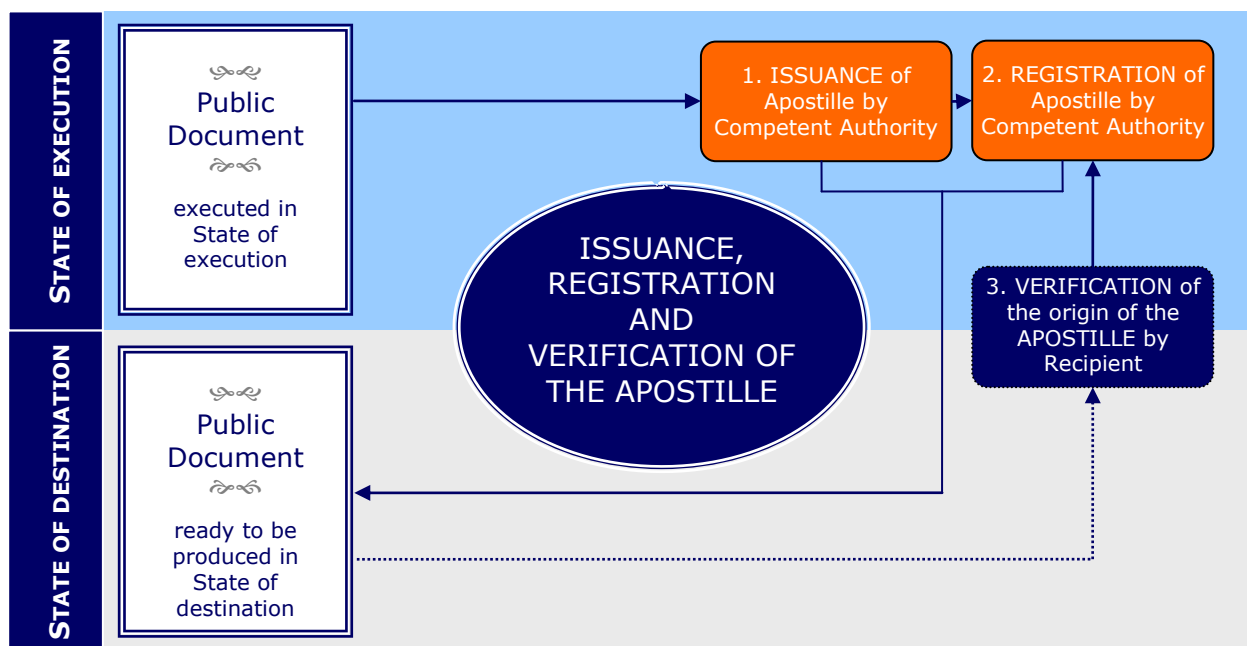
### ***Fees for multiple documents***

276. The 2003 Special Commission suggested that Competent Authorities which charge a fee for issuing Apostilles could charge a single reduced fee for apostilling multiple documents instead of an individual fee for each document apostilled (see C&R No 20). Some Competent Authorities charge a reduced or capped fee for documents that are to be produced abroad for particular purposes, such as an intercountry adoption procedure.

## 4. Registering the Apostille

### A. Requirement to keep a register

277. The Convention requires each Competent Authority to keep a register in which it records the particulars of each Apostille issued (Art. 7(1)). The Competent Authority may also use the same register to record the particulars of legalisations performed, including "Apostilles" issued as part of the legalisation process (see paras 87 *et seq.*). The register is an essential tool to combat fraud and to allow recipients to verify the origin of an individual Apostille (see paras 285 *et seq.*). The register completes the Apostille process, as set out in the following diagram:



## B. Format of the register

### a) Paper and electronic Registers

278. The register of Apostilles may be maintained in paper (card index) or electronic format. A significant number of Competent Authorities maintain a register in electronic format (which, however, is not necessarily accessible online yet). In comparison to a paper register, a register in electronic format offers the following benefits to Competent Authorities in carrying out their functions under the Convention:

- ease of recording particulars of each Apostille issued (see paras 283 *et seq.*);
- easy verification of the origin of an Apostille (see para 285 *et seq.*);
- automatic generation of statistics on Apostille services delivered by Competent Authorities (e.g., number of Apostilles issued over a defined period);
- fewer workspace constraints.

279. Electronic registers may also be accessed by multiple Competent Authorities (in different locations) via a secure network.

### b) e-Registers

280. An e-Register is an electronic Register that can be accessed *online* by recipients of Apostilles. It is an efficient and practical tool that allows recipients to verify easily the origin of Apostilles they have received. An e-Register thus provides a simple, yet powerful deterrent to the fraudulent use of Apostilles.

281. An e-Register can be operated to record the issuance of both *paper* Apostilles and *e-Apostilles*. An e-Register may also record the particulars of legalisations performed (e.g., the e-Register operated by the Secretary of State of the US state of Colorado).

➡ For more on **benefits of e-Registers**, see paras 333 et seq.

➡ For more on **the implementation of e-Registers**, see paras 349 et seq.



### **Register of Apostilles ≠ Database of signatures and seals**

282. Do not confuse the register of Apostilles with the database of sample signatures and seals. The database of sample signatures and seals (discussed in paras 218 et seq.) is used by a Competent Authority to verify the origin of the underlying public document **before** the Apostille is issued. The register of Apostilles is used by a Competent Authority to record the particulars of the Apostille **after** it is issued.

## **C. Information to be recorded in the register**

283. Whether its register is kept in paper format, in electronic format (but not accessible to the recipient) or as an e-Register under the e-APP (*i.e.*, an electronic Register that is accessible online by the recipient), a Competent Authority is required to record the following particulars for each Apostille issued:

- the number of the Apostille (as inserted at standard informational item 8);
- the date of the Apostille (as inserted at standard informational item 6);
- the name of the person who has signed the underlying public document (as inserted at standard informational item 2);
- the capacity in which the person who has signed the underlying public document acted (as inserted at standard informational item 3);
- in the case of unsigned public documents, the name of the authority which has affixed the seal or stamp (as inserted at standard informational item 4).

284. The Competent Authority may record additional information in the register, such as the nature of the underlying public document, the name of the person who requested the Apostille, and the name of the State of destination.

## **D. Verifying the origin of an Apostille**

285. At the request of the recipient, a Competent Authority is required to verify whether the particulars in an Apostille supposedly issued by that Competent Authority correspond with those recorded in the register. Whether any additional information in the register is to be provided to the person making the request is subject to applicable laws, including information disclosure and data protection.

286. Where the Competent Authority operates a paper or an electronic Register (*i.e.*, a Register that is not accessible online by the recipient), the verification process is triggered by a request from the recipient addressed to the Competent Authority by either telephone, fax, e-mail or regular mail. An official of the Competent Authority must then verify in the register of the Competent Authority whether there is a matching record of the Apostille details provided by the recipient. This can be a time-consuming process. Where the Competent Authority operates an e-Register under the e-APP (*i.e.*, a Register that is accessible online by the recipient), the verification process is greatly facilitated and largely automated as the recipient will receive an instant reply from the e-Register in response to his or her query. This process can be completed within a few minutes over long distances without the intervention of an official of the Competent Authority indicated in the (paper or electronic) Apostille.

287. There is no requirement for the person making the request to prove the legitimate nature of his or her interest.

## E. Retention period

288. The Convention does not specify a retention period for particulars and other information recorded in the register. The 2003 Special Commission noted that it was a matter for each State party to develop objective criteria in this regard (C&R No 21).

289. As a practical matter, records should be retained for a reasonable period of time, particularly in view of the fact that the validity of an Apostille has no expiration. The 2003 Special Commission acknowledged that holding information in electronic form makes it easier to store and retrieve records. Indeed, advancements in technology may allow Competent Authorities to retain records practically indefinitely without adverse effect on resources. As a result, where a register is maintained in electronic form (whether or not it is accessible online), records should be retained for as long as possible.

➡ For more on the **non-expiration of Apostilles**, see para. 28.

## V. ACCEPTANCE AND REJECTION OF APOSTILLES IN A STATE OF DESTINATION

### 1. Obligation to accept validly issued Apostilles

290. Each Contracting State is obliged to give effect to Apostilles that have been validly issued by other Contracting States (Art. 3(1)). This obligation does not apply where the Convention is not in force between the two States as a result of an objection to accession.

➞ For more on **objections to accessions**, see paras 91 et seq.

291. A recipient of an Apostille may verify the origin of the Apostille by contacting the Competent Authority indicated in the Apostille or, where available, using the e-Register maintained by the Competent Authority (whose URL should be indicated on the paper Apostille or e-Apostille).

➞ For more on **verifying the origin of an Apostille**, see para. 285.

### 2. Possible grounds for rejecting Apostilles

292. The Convention does not specify any grounds on which a Contracting State may reject an Apostille (in the sense that its effect may be refused to be given).

293. In view of the purpose of the Convention to facilitate the use of public documents abroad, Apostilles should be routinely accepted unless there are serious defects with the Apostille or its issuance. The following section sets out possible grounds for refusal.

#### A. Apostilled document expressly excluded from the scope of application of the Convention

294. An Apostille may be rejected if it relates to a document that is expressly excluded from the scope of application of the Convention by virtue of Article 1(3).



#### **Administrative co-operation in dealing with potentially excluded documents**

295. In view of the narrow scope and evolving nature of these exclusions, in particular the exclusion in Article 1(3)(b) of documents dealing directly with commercial or customs operations, authorities in the State of destination are encouraged to defer to the judgment of the Competent Authority that issued the Apostille as to whether the underlying document is a public document to which the Convention applies.

➞ For more on **excluded documents**, see paras 134 et seq.

## B. Issuing State not a party to the Convention

296. Certificates purporting to be Apostilles that are issued by States that are not parties to the Convention can be given no legal effect under the Convention.

## C. Apostilled document is not a public document of the State of issuance

297. A Competent Authority may not issue an Apostille for a foreign public document (see para. 174). An Apostille may be rejected if it relates to a document that is a public document of a State other than the State of issuance.

## D. Apostille not issued by a Competent Authority

298. An Apostille may be rejected if it was not issued by an authority that was competent to issue the Apostille at the date of issuance. Information on the competence of a Competent Authority at a particular point in time can be easily obtained from the [Apostille Section](#).

## E. Apostille issued for a public document for which the Competent Authority is not competent to issue Apostilles

299. An Apostille may be rejected if it was issued by an authority that was not competent to issue Apostilles for the specific public document at the date of issuance. This information can be easily obtained from the [Apostille Section](#). In case of doubt, the recipient should contact the Competent Authority.

## F. 10 numbered standard informational items not included

300. An Apostille may be rejected if it does not include an area with the 10 numbered standard informational items. However, additional text outside the area containing the 10 standard informational items is not a valid ground for rejecting an otherwise validly issued Apostille (see para. 306). Indeed, additional text noting the limited effect of an Apostille and providing the URL of the e-Register to allow a recipient to verify the origin of the Apostille is recommended (see paras 252 *et seq.*).

## G. Apostille detached from document

301. An Apostille that is not attached to, or has become detached from, a document may be rejected. A Competent Authority should advise users wishing to make photocopies of apostilled documents to avoid detaching the Apostille from the underlying public document.

## H. Forged or altered Apostilles

302. An Apostille that has been forged or altered may be rejected. The recipient of an Apostille with concerns about its authenticity or integrity may contact the Competent Authority indicated in the Apostille to verify its origin by checking that the particulars in the Apostille correspond with those recorded in the register kept by the Competent Authority.

### 3. Invalid grounds for rejecting Apostilles

#### A. Underlying document not a public document under the law of the State of destination

303. The law of the State of execution determines the public nature of the underlying document. An Apostille may therefore not be rejected on grounds alone that the underlying document is not a public document under the law of the State of destination. The Apostille does not in any way affect the acceptance, admissibility or probative value of the underlying document under the law of the State of destination.

➡ For more on **the acceptance, admissibility, and probative value of the underlying document**, see para. 27.

#### B. Minor form defects

304. An Apostille may not be rejected on the basis of its size, shape or design as long as it is clearly identifiable as an Apostille issued under the Convention (see C&R No 13 of the 2003 SC and C&R No 92 of the 2009 SC). In particular, an Apostille may not be rejected on grounds alone that:

- it is not square-shaped;
- it has sides that are less or more than nine centimetres long;
- it has no frame around the title and area containing the 10 numbered standard informational items.

305. Formal defects may nonetheless be reported to the Competent Authority that issued the Apostille.

#### C. Additional text

306. An Apostille may not be rejected on grounds alone that it contains additional text outside the area containing the 10 standard informational items (see C&R No 13 of the 2003 SC and C&R No 92 of the 2009 SC).

➡ For more on **additional text**, see paras 252 et seq.

#### D. The Apostille is an e-Apostille

307. An Apostille should not be rejected on grounds alone that it has been issued in electronic format (*i.e.*, an e-Apostille). This position is confirmed by the following statement that was adopted by the Sixth (Madrid) Forum (C&R No 6) and reaffirmed by the Seventh (Izmir) Forum (C&R No 9):

"[T]he Forum participants again emphasised the fundamental principle of the Convention according to which an Apostille validly issued in one State Party must be accepted in other States Party; the Forum participants stressed that this principle also 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. This recognition of foreign e-Apostilles is further supported by the fact that the majority of States have adopted legislation to the effect that electronic signatures are the functional equivalent of manuscript (holographic) 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.”

308. To facilitate the acceptance of e-Apostilles abroad, Contracting States are encouraged to inform other Contracting States when they begin issuing e-Apostilles. It is recommended that this should be done by notifying the Depositary and by informing the Permanent Bureau (see C&R No 8 of the Seventh (Izmir) Forum).

309. This does not prevent authorities in the State of destination from rejecting the underlying electronic public document on the basis of their domestic law because the document must be produced in paper form, or because the State of destination does not recognise electronic signatures as the functional equivalent of “wet” signatures.

## E. Methods of attachment to underlying public document

310. An Apostille may not be rejected on grounds alone that it has been attached to the underlying public document by a method that it different from that used by the Competent Authorities in the State of destination (see C&R No 92 of the 2009 SC).

## F. No translation

311. An Apostille may not be rejected on grounds alone that it has been drawn up in a language other than the language of the State of destination. The Convention provides that an Apostille may be drawn up in the official language of the Competent Authority that issues it (Art. 4(2)). The Convention also provides that the Apostille must produce its effects in all other Contracting States without any further formality, including translation (Art. 3(1)).

312. This does not prevent authorities in the State of destination from rejecting the underlying public document on the basis of their domestic law because it is in a language other than the language of the State of destination, or that in is not accompanied by a translation.

313. Keeping in mind that an Apostille is designed to produce effects abroad, Competent Authorities should draw up Apostilles in English or French in addition to their official language (if not English or French) (see C&R No 90 of the 2009 SC).

➡ For more on **the language of Apostilles**, see paras 250 and 258.

## G. “Old” Apostilles

314. As the effect of an Apostille does not expire, an Apostille may not be rejected solely on the basis of its age. However, this does not prevent authorities in the State of destination from rejecting the underlying public document on the basis of their domestic law because of its age (e.g., an authority may require that a criminal record be executed within a certain maximum time period before production).

## H. Apostilles not legalised or otherwise further certified

315. The Convention provides that the signature, seal and stamp on the Apostille are exempt from all certification (Art. 5(3)). It also provides that an Apostille is the only formality that may be required in order to authenticate the origin of a public document as between Contracting States (Art. 3(1)). Accordingly, any additional certification placed on an Apostille cannot produce additional legal effect under the Convention, and Competent Authorities should refrain from legalising or otherwise further certifying the issuance of an Apostille. This does not apply to "Apostilles" issued as part of the legalisation process (see paras 87 *et seq.*).



### **No legalisation for Apostilles**

316. The 2009 SC firmly rejected as contrary to the Convention isolated practices among States Parties that require Apostilles to be legalised (C&R No 93). It also recalled that Article 9 does not permit legalisation by diplomatic or consular agents when the Apostille Convention applies and reminded States Parties of their obligation to take the necessary steps to ensure compliance with the provisions of this Article (C&R No 69). Thus, an Apostille may not be rejected on grounds alone that it has not been legalised or subject to any further formality.

317. In particular, authorities in the State of destination may not subject the acceptance of an Apostille to confirmation from the issuing Competent Authority outlining its procedures for issuing Apostilles (e.g., by requesting the user to obtain a letter from the Competent Authority). Competent Authorities are strongly discouraged from acceding to requests for such confirmation. To dispel any doubt as to the origin of an Apostille, the authorities in the State of destination may verify the register of the Competent Authority (see paras 285 *et seq.*). To dispel any doubt as to the competence of the Competent Authority, the authorities in the State of destination may check the information on the [Apostille Section](#) (under "Competent Authorities").

➡ For more on the **non-issuance of confirmation letters**, see the information note on the Apostille Section entitled "[Issuing and Accepting Apostilles](#)".

## I. Underlying public document has been apostilled *and* legalised

318. It is possible that a public document may be legalised and apostilled. As noted above (para. 212), a person may need to produce a public document (e.g., a birth certificate) in multiple States, and therefore have the document both legalised (for production in a non-Contracting State) and apostilled (for production in a Contracting State). There is nothing in the Convention that precludes the effect of an Apostille on grounds alone that other authentications may have to be placed on a document as part of the process required to produce the document in both a Contracting State and non-Contracting State, provided that these do not relate to the Apostille itself (as explained at para. 315).

## VI. THE e-APP

### 1. Introduction

319. The Apostille Convention was drafted only with a paper environment in mind. Since then, the environment in which the Convention operates has changed dramatically due to developments in information and communication technology, such as the use of personal computers and the Internet.



#### **Why the e-APP?**

320. The Apostille Convention must keep pace with e-Government initiatives and developments in order to remain relevant to Governments and users (individuals and business that need to produce public documents abroad). In this regard, it should be noted that increased numbers of public documents are executed in electronic format (incl. e-notarial acts). At the same time, public registers are becoming increasingly available online giving members of the public ready access to a range of important information for conducting individual or business activities.

321. The 2003 Special Commission recognised that modern technologies are an integral part of today's society even if their use could not have been foreseen at the time of the adoption of the Convention. It agreed that the use of modern technology could have a positive impact on the operation of the Convention. Further, it recognised that neither the spirit nor the letter of the Convention constituted an obstacle to the use of modern technology and that its operation could be further enhanced by relying on such technology (see C&R No 4).

322. These findings were endorsed by experts meeting at the First (Las Vegas) Forum in 2005, which was jointly organised by the Hague Conference and the International Union of Latin Notaries and hosted by the National Notary Association of the United States of America (NNA). The Forum also provided an opportunity for experts to establish guidelines for establishing e-Registers and issuing e-Apostilles.

323. With this support, the Hague Conference and the NNA launched the (then) *electronic Apostille Pilot Program* in 2006. The aim of the e-APP is to promote and assist in the implementation of low-cost, operational and secure software technology for:

- the issuance of electronic Apostilles (the "e-Apostille component"); and
- the operation of electronic Registers of Apostilles that can be accessed online by recipients to verify the origin of paper Apostilles or e-Apostilles they have received (the "e-Register component").

324. Competent Authorities in a range of Contracting States have implemented one or both of the components of the e-APP. An up-to-date implementation chart for the e-APP (incl. a separate list of operational e-Registers) is available on the [Apostille Section](#) of the Hague Conference website. In light of the success of the program, the word *pilot* was removed from the title of the e-APP in January 2012; it is now simply referred to as the *electronic Apostille Program*.

325. With a view to promoting good practices, the Hague Conference organises regular international fora on the e-APP. Past fora have been held in several States including the United States of America, the United Kingdom, Spain and Turkey. The international fora on the e-APP attract experts from all around the globe and provide for an exchange of information and relevant experiences on the e-APP and the practical operation of its

components. The fora also provide a good opportunity to discuss related matters such as electronic notarisation, digital evidence and digital authentication.

### ***The importance of the Conclusions & Recommendations of the international fora on the e-APP***

326. The Conclusions & Recommendations of the international e-APP fora are an important source of information as they reflect experiences and practices relating to the implementation of the e-APP and the practical operation of its two components (e-Apostilles and e-Registers). They also establish models of good practice for interested States. All Conclusions & Recommendations of past fora, as well as other relevant information, are available on the [Apostille Section](#) of the Hague Conference website.

## **2. Benefits of the e-APP**

327. The e-APP promotes the use of modern technology to further enhance the secure and effective operation of the Apostille Convention. In doing so, it also streamlines the work-processes of Competent Authorities and brings Apostille Services closer to users (*i.e.*, applicants and recipients of Apostilles). By implementing the e-APP, users and recipients of Apostilles may easily transmit by e-mail e-Apostilles and verify the authenticity of both paper and electronic Apostilles online. In this way, the e-APP introduces a swift and secure paperless procedure to issue, record and verify Apostilles.

328. At the same time, the e-APP provides a powerful tool to combat fraud and abuse of Apostilles by offering a level of security which significantly exceeds current standards in the paper environment. As it promotes the paperless operation of the Apostille Convention, the e-APP is also more environmentally friendly.

### ***The e-APP as an effective tool***

329. The e-APP is an effective tool to further enhance the secure and effective operation of the Apostille Convention (C&R No 3 of the Seventh (Izmir) Forum). The e-APP is flexible, straightforward and green.

330. Below are some specific benefits that both e-APP components offer to applicants, Competent Authorities and recipients of Apostilles:

#### **A. e-Apostilles**

331. Given the surge in the number of electronic documents issued around the world, the e-Apostille component has become more relevant than ever. Competent Authorities that have not yet implemented the e-Apostille component are unable to issue Apostilles for these documents in their original format. 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 (see C&R No 5 of the Seventh (Izmir) Forum). Accordingly, States that are issuing or that are envisaging issuing electronic public documents should consider implementing this component.

332. Additionally, the e-Apostille component aims at:

- rendering the issuance and use of Apostilles faster and more efficient as it reduces the turnaround time;

- increasing security by providing assurance that the file consisting of the e-Apostille and the underlying public document has not been altered by evidencing attempts to tamper with the Apostille and / or the underlying public document (the e-Apostille is automatically rendered "invalid") (*i.e.*, integrity);
- providing assurance as to the origin of the e-Apostille via the appropriate use of a digital certificate (*i.e.*, authentication);
- providing assurance that the e-Apostille was signed by the Competent Authority identified in the e-Apostille, thus avoiding possible rejections based on doubts about the origin of the Apostille (*i.e.*, non-repudiation);
- providing a secure method of attaching Apostilles to the public document;
- facilitating access to Apostille services as requests can be made to the Competent Authority online and Apostilles can be issued to the applicant online (*e.g.*, by e-mail or through a secure site);
- facilitating the verification of the underlying document as the system for issuing e-Apostilles may be integrated into an electronic signature and seal database so that the origin of an underlying document may be verified with one click;
- lowering costs for the issuance of Apostilles as there is no need for expensive security paper or sophisticated methods of attaching paper Apostilles to paper public documents;
- reducing the workload of Competent Authorities as most of the work will be carried out electronically without the need to physically attach, seal and sign Apostilles;
- facilitating the circulation of public documents globally and thus saving on courier charges by eliminating the need to dispatch documents to the State of destination;
- minimising the risk of document loss by allowing storing and transmitting documents through electronic means.

## B. e-Registers

333. Electronic Registers that are accessible online (*i.e.*, e-Registers) enable recipients to readily verify the origin of an Apostille they have received (independently of whether the Apostille has been issued in paper form or in electronic form). e-Registers thus increase the reliability of Apostilles world-wide. They may also help preventing rejections in cases of minor formal deficiencies of an Apostille or indeed in cases of doubts as its origin can easily and quickly be verified without the intervention of an official of the Competent Authority which (supposedly) issued the Apostille.

334. Additionally, the e-Register component aims at:

- facilitating and encouraging more frequent verification of the origin of Apostilles (both paper and e-Apostilles). Statistical information available to the Permanent Bureau confirms these findings;
- facilitating the creation of a centralised e-Register for all Competent Authorities designated by a Contracting State (or for all offices of one Competent Authority) – this is particularly useful where Competent Authorities (or offices of one Competent Authority) are dispersed over the country. A centralised e-Register facilitates access to statistics on the issuance of Apostilles;

- saving resources for Competent Authorities as they do not have to assign resources to answering queries regarding the origin of Apostilles that they have (supposedly) issued;
- freeing up space in the offices of the Competent Authorities as there would be no need to keep paper records.

335. Competent Authorities that already operate a register in electronic format but which is not accessible online (*i.e.*, a register that is only accessible by the Competent Authority itself) are encouraged to make their register accessible online. This would not make the register open to the general public – an e-Register under the e-APP can effectively only be used by recipients of Apostilles. While the URL of an e-Register is public, only the recipient of the Apostille has access to information needed to use the e-Register (*e.g.*, date and number of an Apostille) . If and when properly implemented, e-Registers do not allow for “fishing expeditions” (see *infra* para. 357). While there are differences in the operation of an e-Register, there is a general move towards making (public) registers available online (*e.g.*, to record the accreditation of lawyers, educational institutions, or the existence of rights and interests in movable and immovable property).

### 3. How to implement the e-APP

336. Contracting States are free to choose to implement either or both e-APP components (e-Apostilles and e-Registers). Each component may be implemented independently of the other (*i.e.*, it is not necessary to implement the e-Apostille component at the same time as the e-Register component). In practice, most States that so far have only implemented one component of the e-APP have implemented an e-Register. A Contracting State may of course also choose to implement both components at the same time.

337. Competent Authorities that are interested in implementing either component of the e-APP are encouraged to contact other Competent Authorities that already operate the component in question and to ask for any relevant information or exchange of experience that may facilitate the implementation and future operation of the component (see C&R No 3 of the Seventh (Izmir) Forum). An up-to-date implementation chart for the e-APP (incl. a separate list of operational e-Registers) is available on the [Apostille Section](#) of the Hague Conference website. Upon request, the Permanent Bureau will assist interested Competent Authorities to reach out to Competent Authorities with relevant expertise in the field required.



#### ***The Spanish experience with the implementation of the e-APP***

338. The Spanish Ministry of Justice has published a very useful and comprehensive report after the implementation of its very impressive e-APP model. This model enables all Spanish Competent Authorities to issue e-Apostilles (in addition to streamlining the issuance of paper Apostilles) as well as to operate a central e-Register for all Apostilles they issue and which is accessible online. This Report is available on the [Apostille Section](#) of the Hague Conference website (in Spanish only). The Spanish Ministry of Justice has also published a very informative technical *Report on the exportability of the Spanish e-APP system* (dated May 2011), which is also available on the [Apostille Section](#) (in English, French, German and Spanish).

339. It is recommended that IT experts be involved at an early stage to assess the overall implications of implementing either component of the e-APP.

340. Participation in the e-APP does not require a formal agreement nor does it require a binding commitment to the program. Competent Authorities are strongly encouraged to

inform the Permanent Bureau about their plans to implement either component of the e-APP and the progress made. Competent Authorities that have started to issue e-Apostilles should inform the other Contracting States of this fact (see C&R No 8 of the Sixth (Madrid) Forum). It is recommended that they do so by notifying the Depositary and by also informing the Permanent Bureau (see C&R No 8 of the Seventh (Izmir) Forum). Competent Authorities operating an e-Register are also encouraged to inform the Permanent Bureau of this fact.

➤ *The contact details for the Depositary are set out in the Glossary under "[Depositary](#)".*

341. There is no requirement to have the Permanent Bureau "approve" or otherwise "endorse" the implementation of either e-APP component before it becomes operational. On the up-to-date implementation chart for the e-APP (incl. the separate list of operational e-Registers) that is available on the [Apostille Section](#) of the Hague Conference website, the Permanent Bureau does, however, mark with an asterisk e-Registers that are not entirely compatible with the e-APP yet (mainly when they allow for "fishing expeditions" (see para. 357)).

342. The e-APP is technology neutral and it does not privilege the use of one specific technology over another. It is up to each State to determine which software it chooses to use and should seek advice from relevant subject matter (IT) experts. It should be noted that the Permanent Bureau does not develop software for the issuance of e-Apostilles or the operation of e-Registers in Contracting States (an original model of an e-Register was developed for demonstration purposes only).

343. The e-APP does not affect the application of domestic laws relating to the execution of electronic documents (incl. notarial acts).

## A. Implementation of the e-Apostille component

344. Implementation of the e-Apostille component requires (i) the relevant computer equipment (hardware and software) to fill in an Apostille Certificate electronically in a file format that supports a digital signature (such as Adobe® PDF or other equivalent technology); and (ii) the possibility of transmitting the e-Apostille file by electronic means, such as e-mail, or otherwise make it available for download from a website.<sup>19</sup>

### *a) e-Apostilles for electronic and / or scanned public documents*

345. Some States issue e-Apostilles for electronic generated public documents only - and continue to issue paper Apostilles for paper public documents-, while others issue e-Apostilles for both electronic public documents and for paper public documents which are subsequently scanned or digitalised. It should be noted that the issuance of e-Apostilles for public documents that have not been executed electronically may be subject to specific conditions in the issuing State (*e.g.*, public documents executed in paper form may only be scanned by the Competent Authority) (see C&R No 7 of the Sixth (Madrid) Forum).

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<sup>19</sup> For more technical details on the implementation of the e-Apostille component, see "Electronic Apostille Pilot Program (e-APP) – Memorandum on some of the technical aspects underlying the suggested model for the issuance of electronic Apostilles (e-Apostilles)", Prel. Doc. No 18 of March 2007 for the attention of the Council of April 2007 on General Affairs and Policy of the Conference, drawn up by C. Bernasconi (Permanent Bureau) and R. Hansberger (National Notary Association (this document is available on the [Apostille Section](#) of the Hague Conference website); while some aspects of this paper are slightly outdated (in particular the references to specific software versions), the general description of some of the aspects to consider when implementing the e-Apostille component still stands.

## b) *Digital certificates*

346. To be able to apply a digital signature to an Apostille, a Competent Authority must have been issued with a digital certificate from a trusted commercial Certification Authority or a Government Certification Authority. The acceptance of e-Apostilles is greatly enhanced if the issuance and management of digital credentials (certificates) are subject to high standards. This includes choosing a Certificate Authority that is well recognised in providing digital certificates that run on all major browsers and suit the document format chosen by the Competent Authority (see C&R No 7 of the Seventh (Izmir) Forum).

347. Depending on the software used, it is enough for a Competent Authority to buy one single digital certificate, which can then be shared by various officials of the Competent Authority.

348. Because 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. In this regard, it is important that Competent Authorities take this 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) (see C&R No 6 of the Seventh (Izmir) Forum).

## B. Implementation of the e-Register component

349. To develop an e-Register, Competent Authorities may wish to use open source software<sup>20</sup> (such as, for example, PHP<sup>21</sup> and MySQL<sup>22</sup>) or rely on proprietary software (such as, for example, Oracle).

350. Where a Contracting State has several Competent Authorities (or one Competent Authority has several offices across the country), it is recommended to implement a *central* e-Register for all Competent Authorities (or all offices of the Competent Authority), subject to limitations arising from domestic law (see C&R No 5 d) of the Sixth (Madrid) Forum).

351. Additionally, it is suggested to make e-Registers available in English and / or French, in addition to the language(s) used by the Competent Authority (see C&R No 5 e) of the Sixth (Madrid) Forum).

## a) *Categories of e-Registers*

352. At present e-Registers are classified into three main categories depending on the information displayed in response to a query by a recipient who wishes to verify the

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<sup>20</sup> Open source software is largely understood as software for which the source code is freely available for study, improvement, and redesign. Although open source software can be the basis of marketable software products, the source code is typically licensed so that it remains freely available. Advocates of open source software tend to believe that software designed under the open source model can promote greater innovation, enhance security, and foster the development of more cost-efficient software solutions, among many other potential benefits.

<sup>21</sup> PHP is a programming language used to create websites. Short for "**P**HP: **H**ypertext **P**reprocessor", it is an open source, reflective programming language used mainly for developing server-side applications and dynamic web content, and more recently, a broader range of software applications. PHP allows interaction with a large number of relational database management systems, such as MySQL (and many others).

<sup>22</sup> MySQL is a very widely used relational database management system (RDBMS) that runs as a server providing multi-user access to a number of databases. SQL stands for Structured Query Language.

origin of an Apostille. Depending on the level of sophistication of the e-Register, it will display only basic, additional or advanced information about the Apostille and / or the underlying public document. The categories of e-Registers are as follows:

- Category 1 (Basic): The e-Register displays only basic information as to whether or not an Apostille with the matching number and date has been issued (typically, this is a "Yes" or "No" answer (or similar)).
- Category 2 (Additional): The e-Register not only confirms whether or not an Apostille with the matching number and date has been issued, it also provides information on the Apostille and / or the underlying public document (possibly allowing a visual check of either).
- Category 3 (Advanced): The e-Register not only provides information on the Apostille and / or the underlying public document (possibly allowing a visual check of either), it also allows for the digital verification of the Apostille and / or the underlying public document (*i.e.*, the digital signature of the Apostille and / or the integrity of the underlying public document).

353. The following chart represents the categories of e-Registers:

Functionality	Category	Information displayed
Basic	①	"Yes" / "No"
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

354. While basic e-Registers facilitate the verification of the origin of Apostilles, they do not allow the relevant Competent Authority to discharge its obligations under Article 7 of the Apostille Convention. This is because such e-Registers do not allow recipients 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. Additionally, 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. For example, a recipient who is presented with a paper Apostille that was indeed issued on a given date with a given number, but which was subsequently detached from its original underlying public document and then re-attached to another public document for fraudulent purposes would still receive a "positive" (matching) answer from the e-Register; nothing would indicate that the Apostille, although properly issued, is now being used fraudulently with a document other than the one for which it was issued.

355. 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) (see C&R No 11 *b*) and *c*) of the Seventh (Izmir) Forum). By doing so, Competent Authorities are able to combat fraud more effectively as users would be able to verify that the Apostille in question is authentic and still attached to the underlying public documents for which it was originally issued and that neither of the documents (or files in the case of e-Apostilles) has been tampered with).

356. However, consideration must be given to the laws or regulations on protection of personal data in the issuing State as they might prevent the disclosure of some information in the e-Register, such as information relating to the content of the underlying public document (see C&R No 5 *b*) of the Sixth (Madrid) Forum). The domestic law may even prevent the full display of the signed Apostille in the e-Register. Competent Authorities are strongly encouraged to have this particular aspect of their e-Register examined by relevant experts.

*b) Data fields to be completed by a recipient to access the e-Register*

*(1) Avoiding "fishing expeditions"*

357. In order to avoid fishing expeditions (*i.e.*, attempts by users of an e-Register to collect information about Apostilles that they have not received), e-Register should require 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 that a code be included on the Apostille (ideally alphanumeric and generated electronically) outside the area containing the 10 standard informational items of the Apostille, and that the recipient be required to enter this code together with the number and date of the Apostille in order to access the e-Register (see C&R No 11 *d*) of the Seventh (Izmir) Forum). Otherwise, the e-Register would allow a recipient who, for example, has received a perfectly legitimate Apostille issued on date "X" with the number 2518 to access the e-Register, enter Apostille number 2519 and date "X" (or the following day) and in this way have access to information relating to an Apostille and a public document that the recipient has actually never received. It is easy to imagine how such information could then be used for fraudulent purposes.



358. Where Apostilles are not numbered sequentially but rather randomly or otherwise in a way that makes it nearly impossible for a person to simply guess or find out possible Apostille numbers and their date of issuance, it is not necessary to require the input of a unique identifier (code) to verify the origin of an Apostille. However, given the relative ease with which such features may be implemented – and the additional security they provide – Competent Authorities are encouraged to use such features in their e-Register even if their Apostilles are not numbered sequentially.

(2) Copying a randomly generated word and / or number

359. Increasingly, e-Registers are requiring users to enter a randomly generated word and / or number to ensure that the user is a person and not a computer so as to avoid spam messages. While this practice is to be encouraged, it is noted that relevant technology is evolving and other means can produce the same results (see C&R No 11 e) of the Seventh (Izmir) Forum).



(3) Quick response (QR) code

360. It is considered good practice for Competent Authorities to include in their paper Apostilles a Quick Response (QR) code to allow the recipient to access the Competent Authority's e-register by scanning the code (see C&R No 11 f) of the Seventh (Izmir) Forum).



(4) Use of Extended validation (EV) SSL Certificates

361. In order to protect the online integrity of e-Registers, particularly against the risk of third party websites fraudulently assuming the identity of a Competent Authority to offer false information about Apostilles, Competent Authorities are encouraged to use Extended Validation (EV) SSL Certificates (indicated by a green colour in the URL bar of the web browser) or similar technology to provide assurance to users about the identity of the website operator (see C&R No 11 g) of the Seventh (Izmir) Forum). Below is an example of the Extended Validation (EV) SSL of the New Zealand e-Register:



## **ANNEX I**

### **Text of the Apostille Convention**

CONVENTION ABOLISHING THE REQUIREMENT OF LEGALISATION  
FOR FOREIGN PUBLIC DOCUMENTS

(Concluded 5 October 1961)

The States signatory to the present Convention,

Desiring to abolish the requirement of diplomatic or consular legalisation for foreign public documents,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

**Article 1**

- (1) The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.
- (2) For the purposes of the present Convention, the following are deemed to be public documents:
  - a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("*huissier de justice*");
  - b) administrative documents;
  - c) notarial acts;
  - d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.
- (3) However, the present Convention shall not apply:
  - a) to documents executed by diplomatic or consular agents;
  - b) to administrative documents dealing directly with commercial or customs operations.

**Article 2**

Each Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of 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.

**Article 3**

- (1) The only formality that may be required in order to certify the authenticity of 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, is the addition of the certificate described in Article 4, issued by the competent authority of the State from which the document emanates.
- (2) However, the formality mentioned in the preceding paragraph cannot be required when either the laws, regulations, or practice in force in the State where the document is produced or an agreement between two or more Contracting States have abolished or simplified it, or exempt the document itself from legalisation.

**Article 4**

- (1) The certificate referred to in the first paragraph of Article 3 shall be placed on the document itself or on an "*allonge*"; it shall be in the form of the model [annexed to the present Convention](#).

- (2) It may, however, be drawn up in the official language of the authority which issues it. The standard terms appearing therein may be in a second language also. The title "Apostille (Convention de La Haye du 5 octobre 1961)" shall be in the French language.

#### **Article 5**

- (1) The certificate shall be issued at the request of the person who has signed the document or of any bearer.
- (2) When properly filled in, it will certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which the document bears.
- (3) The signature, seal and stamp on the certificate are exempt from all certification.

#### **Article 6**

- (1) Each Contracting State shall designate by reference to their official function, the authorities who are competent to issue the certificate referred to in the first paragraph of Article 3.
- (2) It shall give notice of such designation to the Ministry of Foreign Affairs of the Netherlands at the time it deposits its instrument of ratification or of accession or its declaration of extension. It shall also give notice of any change in the designated authorities.

#### **Article 7**

- (1) Each of the authorities designated in accordance with Article 6 shall keep a register or card index in which it shall record the certificates issued, specifying:
  - a) the number and date of the certificate,
  - b) 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.
- (2) At the request of any interested person, the authority which has issued the certificate shall verify whether the particulars in the certificate correspond with those in the register or card index.

#### **Article 8**

When a treaty, convention or agreement between two or more Contracting States contains provisions which subject the certification of a signature, seal or stamp to certain formalities, the present Convention will only override such provisions if those formalities are more rigorous than the formality referred to in Articles 3 and 4.

#### **Article 9**

Each Contracting State shall take the necessary steps to prevent the performance of legalisations by its diplomatic or consular agents in cases where the present Convention provides for exemption.

#### **Article 10**

- (1) The present Convention shall be open for signature by the States represented at the Ninth Session of the Hague Conference on Private International Law and Iceland, Ireland, Liechtenstein and Turkey.
- (2) It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

#### **Article 11**

- (1) The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 10.
- (2) The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

**Article 12**

- (1) Any State not referred to in Article 10 may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 11. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.
- (2) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in subparagraph *d*) of Article 15. Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands.
- (3) The Convention shall enter into force as between the acceding State and the States which have raised no objection to its accession on the sixtieth day after the expiry of the period of six months mentioned in the preceding paragraph.

**Article 13**

- (1) Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.
- (2) At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.
- (3) When the declaration of extension is made by a State which has signed and ratified, the Convention shall enter into force for the territories concerned in accordance with Article 11. When the declaration of extension is made by a State which has acceded, the Convention shall enter into force for the territories concerned in accordance with Article 12.

**Article 14**

- (1) The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 11, even for States which have ratified it or acceded to it subsequently.
- (2) If there has been no denunciation, the Convention shall be renewed tacitly every five years.
- (3) Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.
- (4) It may be limited to certain of the territories to which the Convention applies.
- (5) The denunciation will only have effect as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

**Article 15**

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 10, and to the States which have acceded in accordance with Article 12, of the following:

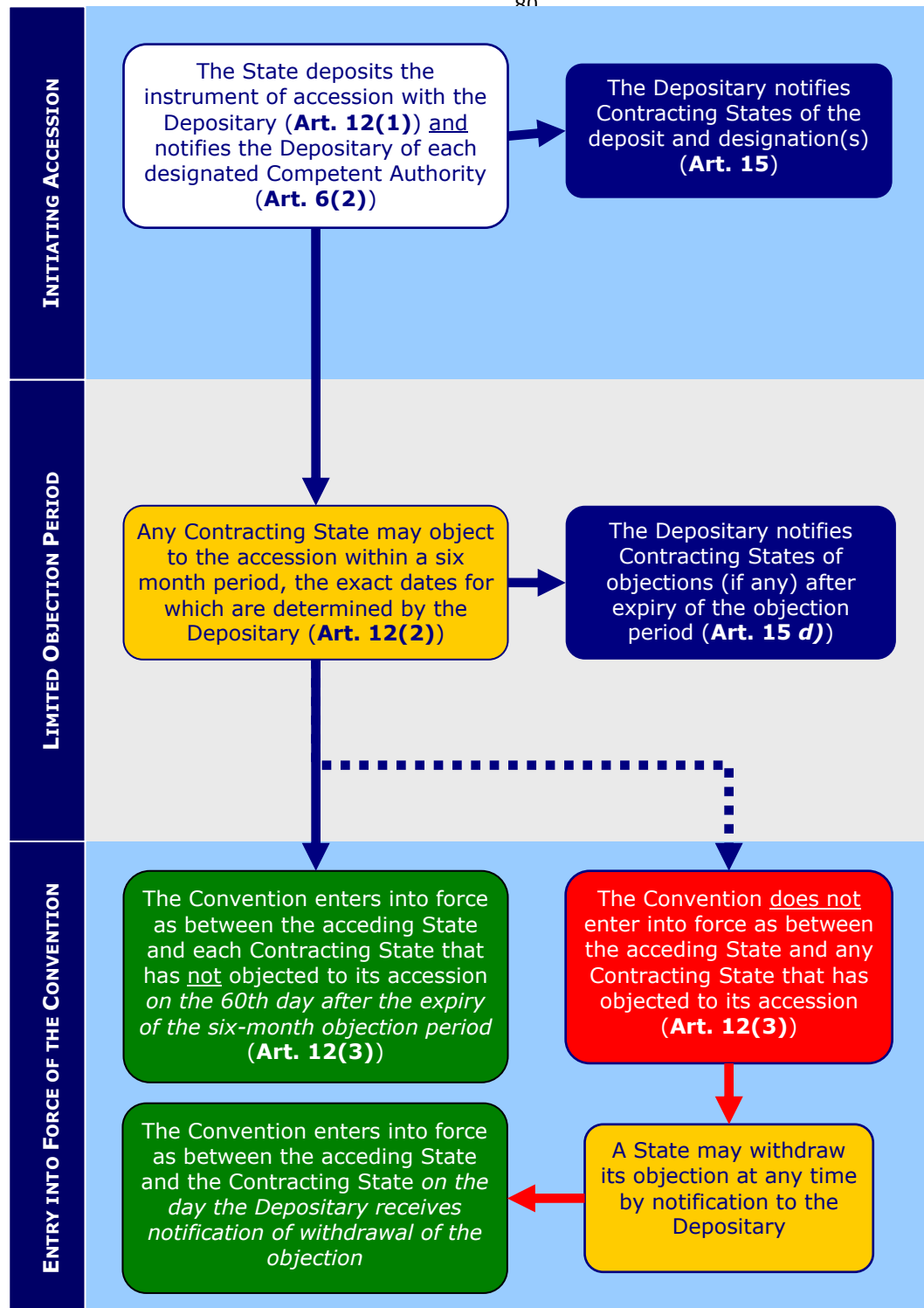
- a)* the notifications referred to in the second paragraph of Article 6;
- b)* the signatures and ratifications referred to in Article 10;
- c)* the date on which the present Convention enters into force in accordance with the first paragraph of Article 11;
- d)* the accessions and objections referred to in Article 12 and the date on which such accessions take effect;
- e)* the extensions referred to in Article 13 and the date on which they take effect;
- f)* the denunciations referred to in the third paragraph of Article 14.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague the 5th October 1961, in French and in English, the French text prevailing in case of divergence between the two texts, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Ninth Session of the Hague Conference on Private International Law and also to Iceland, Ireland, Liechtenstein and Turkey.

## **ANNEX II**

### **Flowchart on the accession procedure**



## **ANNEX III**

### **Model Apostille Request Form**

## Model Apostille Request Form / Modèle de formulaire de demande d'Apostille

### 1. Applicant's information / Informations sur le demandeur

<b>Name / Nom</b>		
<b>Company / Organisation (if applicable) /</b> Entreprise / Organisation (le cas échéant)		
<b>Address / Adresse</b>	<b>Telephone number /</b> Numéro de téléphone	<b>E-mail address / Adresse électronique</b>

### 2. State(s) of destination / État(s) de destination - *An Apostille may only be used in another State Party to the Apostille Convention / L'Apostille ne peut être utilisée que dans un autre État partie à la Convention Apostille.*

--

### 3. Document(s) / Document(s)

Quantity / Quantité	Description of the public document(s) / Description du/des acte(s) public(s)

### 4. Total / Montant total : The fee is \_\_\_\_ per document / Les frais s'élèvent à \_\_\_\_ par acte.

--

### 5. Payment / Paiement

<input type="checkbox"/> <b>Cash / Espèces</b>	<input type="checkbox"/> <b>Check / Chèque</b>	<input type="checkbox"/> <b>Online payment / Paiement en ligne</b>	
<input type="checkbox"/> <b>Credit Card / Carte bancaire</b>	<b>Type of card / Type de carte</b>	<b>Cardholder's name / Nom du titulaire de la carte</b>	
	<input type="checkbox"/> Mastercard <input type="checkbox"/> Visa <input type="checkbox"/> Amex <input type="checkbox"/> Other / Autre	<b>Card number / Numéro de la carte</b>	<b>Expiry date / Date d'expiration</b>
<b>Cardholder's signature / Signature du titulaire de la carte :</b>			

### 6. Delivery details / Détails concernant la livraison

<input type="checkbox"/>	<b>Pick up in person / Retrait en personne</b>	<input type="checkbox"/>	<b>Please return/forward the documents to: / Merci d'adresser l'acte / les actes à :</b>  <input type="checkbox"/> <b>Same address as above / L'adresse précédemment indiquée</b>  <input type="checkbox"/> <b>Send to a different address / Une autre adresse :</b>
<input type="checkbox"/>	<b>I have enclosed a prepaid envelope / Ci-joint l'enveloppe affranchie</b>		
<input type="checkbox"/>	<b>I have enclosed a self-addressed carrier label (Fedex, UPS, Airborne, or DHL) / Ci-joint l'enveloppe pré-adressée (Fedex, UPS, Airborne ou DHL)</b>		

<b>Done at / Fait à</b>	<b>The / Le</b>	<b>Signature</b>
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For office use only / Réservé à l'administration :

Reception date / Date de réception :

Fees paid / Frais acquittés :

No of Docs / Nombre de documents :

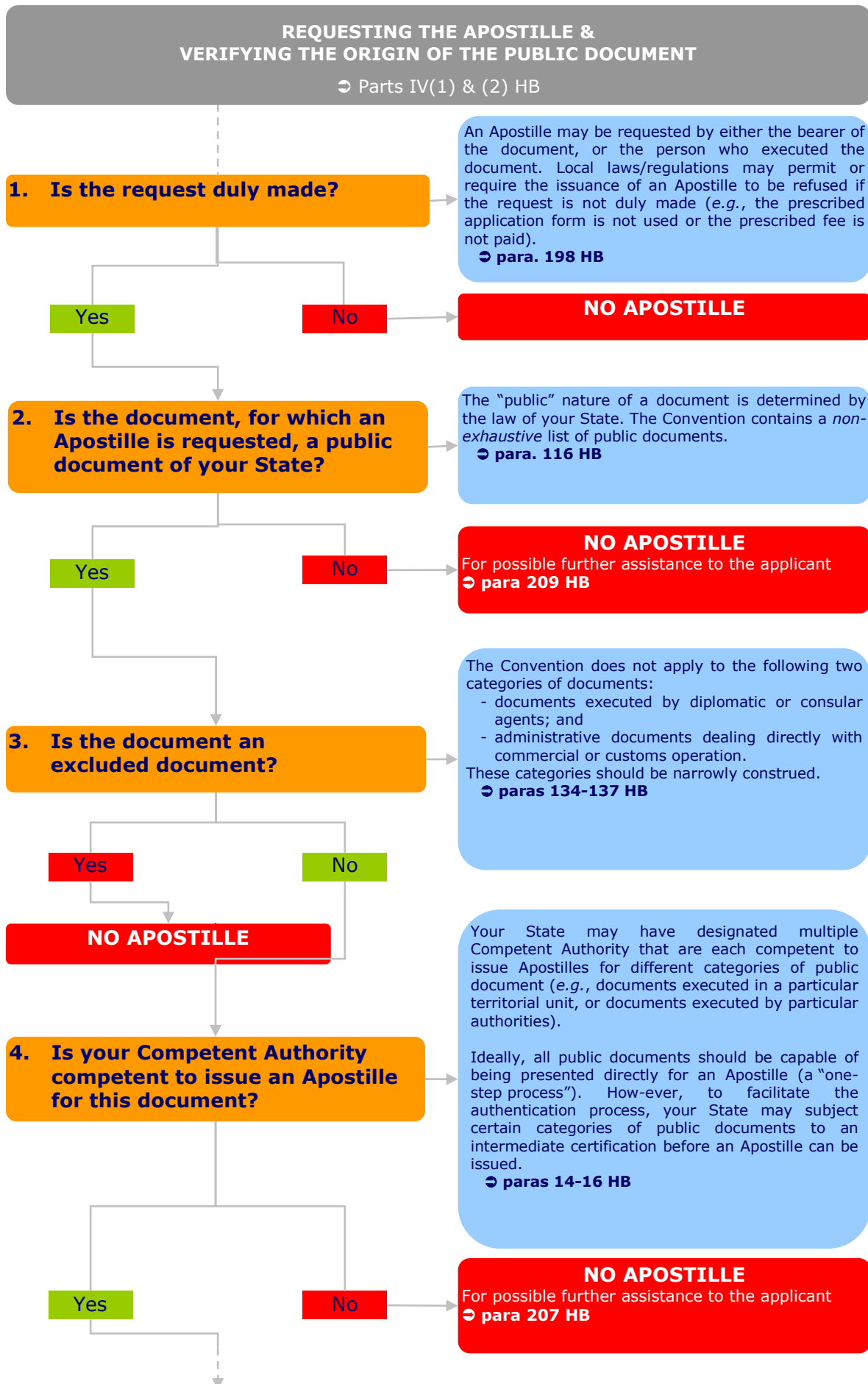
Postal method / Mode d'envoi :

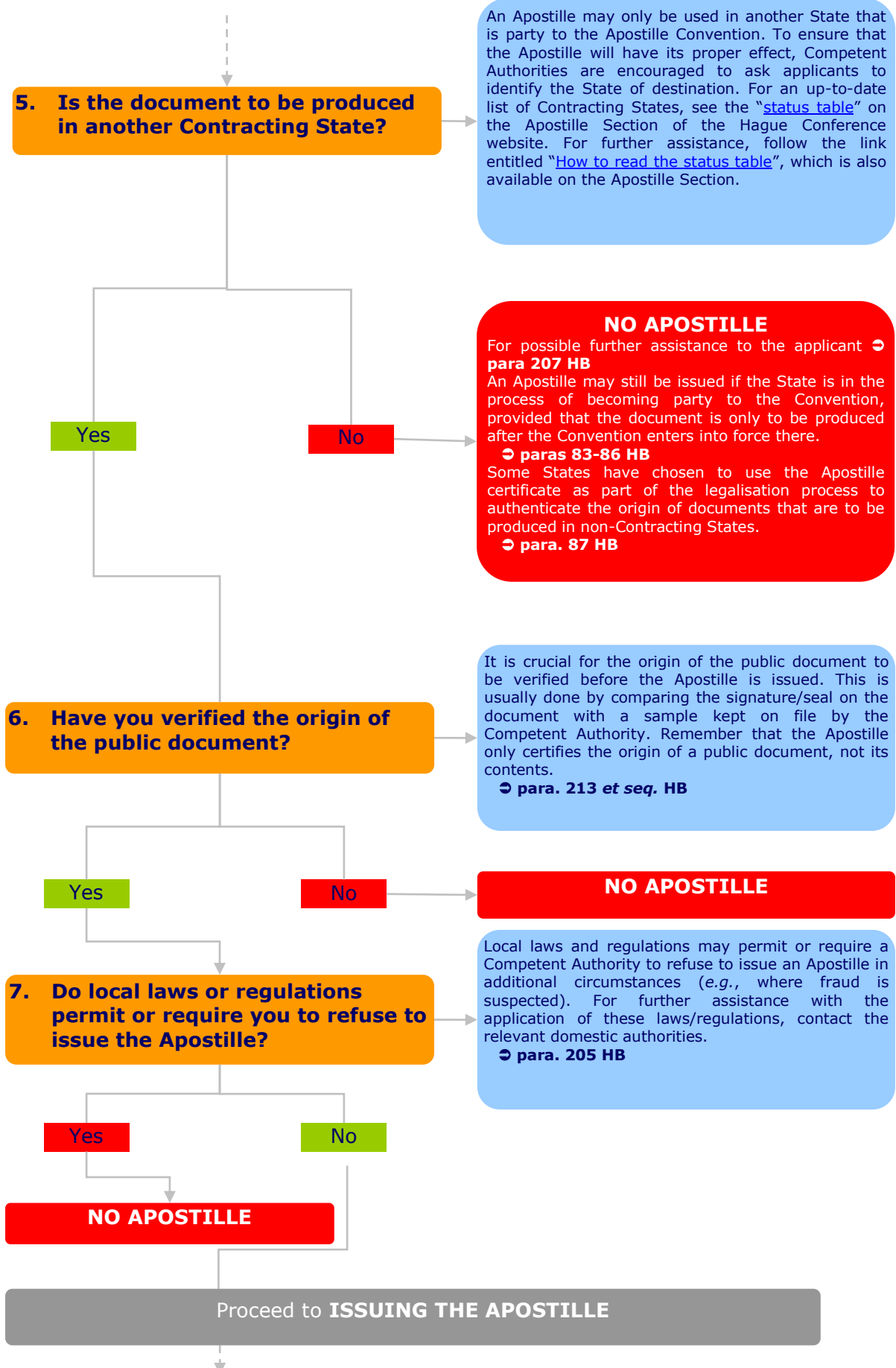
Date Processed / Date de traitement :

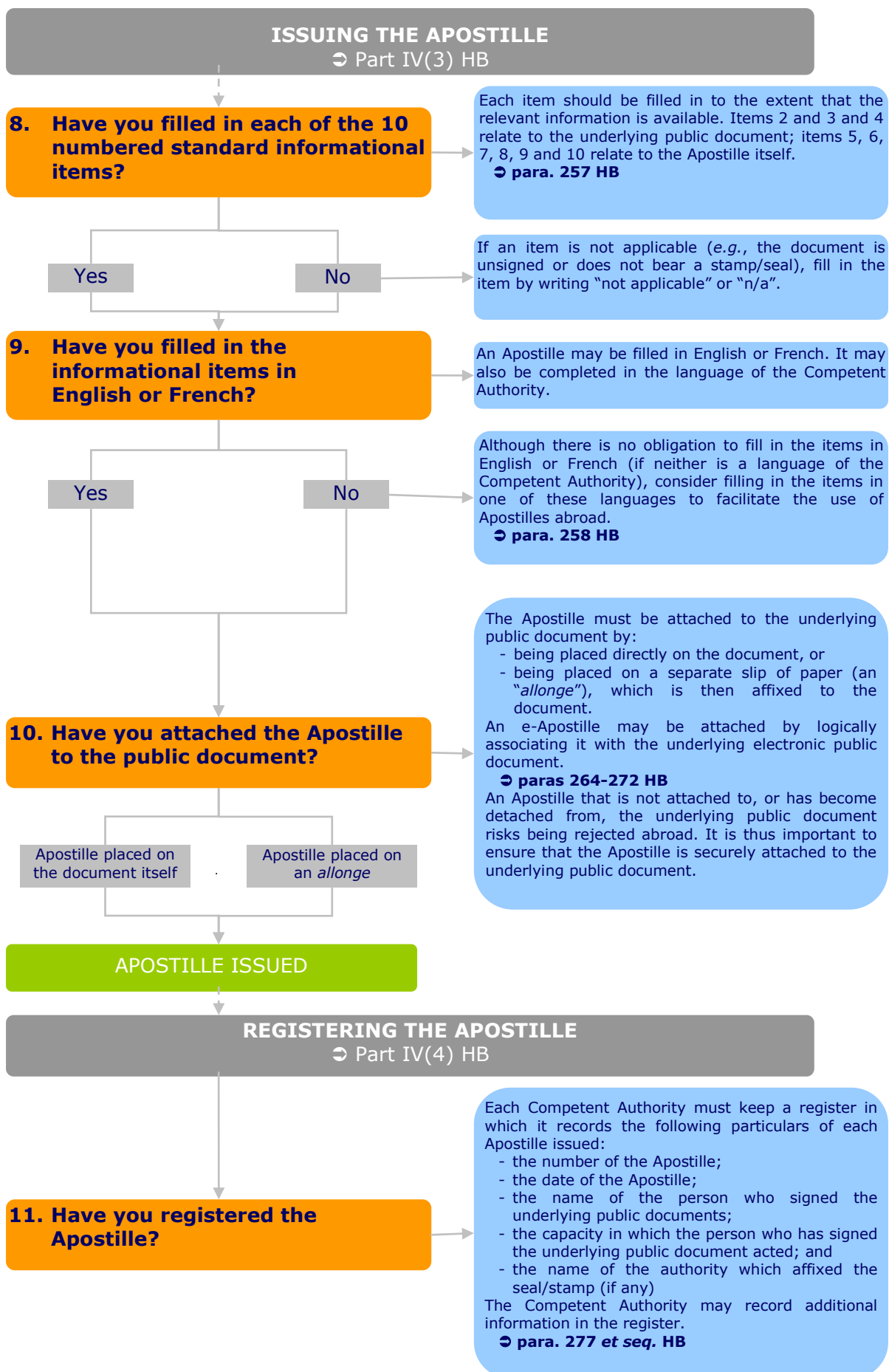
Processed by/Traité par :

## **ANNEX IV**

### **Flowchart on requesting, issuing and registering Apostilles**







## **ANNEX V**

### **Notice for newly acceding States wishing to inform relevant authorities and the general public of the upcoming entry into force of the Convention**

*This Notice is designed to help newly acceding States publicise the accession and the upcoming entry into force of the Convention among relevant stakeholders (see paras 14-18 of the [Brief Implementation Guide](#)). This Notice also outlines the procedure for authenticating both domestic and foreign public documents under the Convention. Gray fields have been added to facilitate entering the relevant information of the newly acceding State.*

On **date of entry into force**, the 1961 *Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* enters into force for **State**. This Convention – commonly referred to as the **Apostille Convention** – introduces a simplified procedure for:

- authenticating **State** public documents that are to be used abroad (see below **I.**), and
- authenticating foreign public documents that are to be used in **State** (see below **II.**).

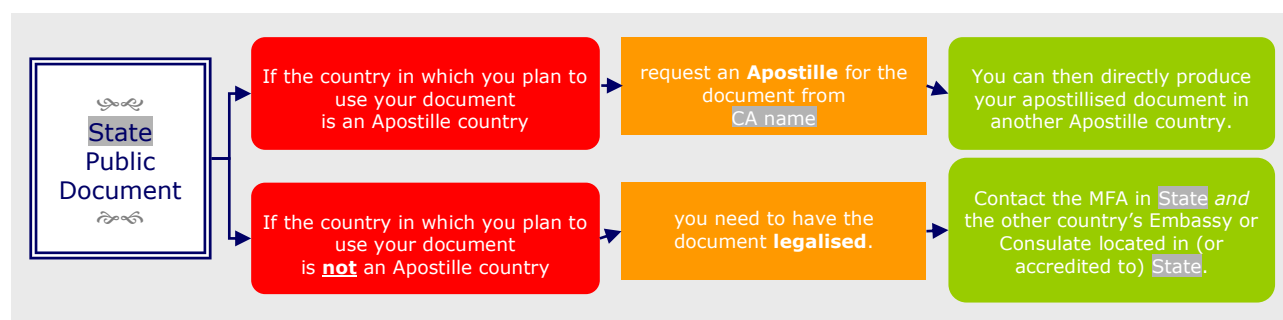
As its title indicates, the Apostille Convention abolishes the cumbersome and expensive legalisation procedure, which involves multiple authorities in different countries. *With the Apostille Convention in force in over 100 countries, the circulation of public documents is about to get much easier.*

An **updated list of Apostille countries** is available on the website of the Hague Conference on Private International Law (*i.e.*, the Organisation under whose auspices the Apostille Convention was adopted) → go to [www.hcch.net](http://www.hcch.net), click on the **Apostille Section**, then look for the link entitled “**Updated list of Contracting States**”.

## I. Procedure for authenticating a **State** document

Under the new Apostille procedure, only **one single formality** is required: take your public document to **name(s) / location(s) of Competent Authority(ies)**,<sup>1</sup> which will verify the origin of your document and, if applicable, issue an “Apostille” certifying its origin. This certificate is automatically recognised in all other Apostille countries.

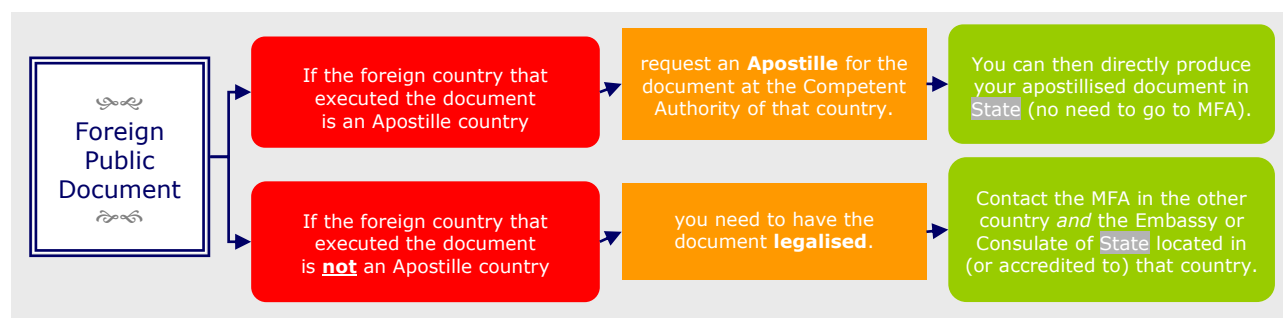
For non-Apostille countries, existing legalisation procedures continue to apply.



## II. Procedure for authenticating a foreign public document

Under the new Apostille procedure, only **one single formality** is required: take your document to the “Competent Authority” of the foreign Apostille country that executed the document and ask for an “Apostille”. This certificate is automatically recognised in **State**. For non-Apostille countries, existing legalisation procedures continue to apply.

A **list of Competent Authorities** in each Apostille country (including contact details) is available on the **Apostille Section** of the Hague Conference website → look for the link entitled “**Competent Authorities**”.



For more information about obtaining and using an Apostille, see the brochure entitled **The ABCs of Apostilles**, which is available for download on the **Apostille Section** of the Hague Conference website.

<sup>1</sup> If multiple Competent Authorities are designated, where relevant, list the documents for which each Competent Authority may issue Apostilles (*e.g.*, specific categories of public documents, or public documents executed in a particular territory): see paras 24 *et seq.* of the [Brief Implementation Guide](#).

## **INDEX**

To be included in final version