

The Hague Convention of 1961

Concerning 1:

Apostilles are mainly issued in conjunction with notary documents (e.g. sales contracts), commercial register and nautical vessel registry extracts, translations, certificates on the status of a person (birth, marriage and death), judgments (particularly in cases of divorce) and deeds, and – although somewhat less common – school and university diplomas.

Concerning 2:

We do not have any statistical data on the number of apostilles issued in Germany. However, the number must be considerable and increasing.

In order to serve as an example, a mid-sized regional court (in Oldenburg) was selected.

Over the past 5 years, registrations were filed as follows:

1998: 266 cases (221 notary certificates, 29 register extracts, real estate deeds and the like, 12 translations)

1999: 307 cases (251 notary certificates, 41 register extracts etc., 15 translations)

2000: 340 cases (293 notary certificates, 38 register extracts etc., 9 translations)

2001: 426 cases (354 notary certificates, 63 register extracts etc., 9 translations)

2002: 525 cases (453 notary certificates, 66 register extracts etc., 6 translations)

2003: As of 22 August: 376 cases, which is already 20 more than 2002 during the same time period.

The aforementioned cases often involve more than one certificate per case. E.g. in 2002, of 525 cases, 768 certificates were attached with apostilles.

In Rhineland-Palatinate (*Rheinland-Pfalz*), e.g. the President of the eight regional courts issues a total of approx. 4800 apostilles annually.

Concerning 3.

The question as to whether an international organisation such as the European Union should become a party to the Hague Convention of 1961 and in what form existing

treaties on this should be concluded can only be discussed in the context of the general question of the European Commission's becoming a member of the Hague Conference on Private International Law. Reference is made in this respect to Germany's observations which have already been submitted.

Concerning 4:

The necessity is not seen to adopt a protocol which is designed to enable a State to extend the application of the Convention to only a portion of its territory. However, if such a desire is voiced on the part of other States, this is not fundamentally objected to.

Concerning 5:

Fees for the issuance of apostilles are governed under numbers 100 and 101 of the fee schedule of the annex to section 2(1) of the Judicial Administration Regulation (*Justizverwaltungskostenordnung*). They are set on the basis of the value of the certificate. The costs incurred by the applicant are between a minimum of €10 and a maximum of €130. On average, the fees amount to between €10 and €20.

Concerning 6:

German agencies have reported the following difficulties in the application of the Convention:

a) Translation of apostilles

In individual cases, foreign consulates and applicants have reported that German agencies have required a translation of not only the document concerned, but also the apostille itself (costs to be borne by the applicant). The reason was apparently that it could otherwise only be ascertained with difficulty whether the apostille had been issued by the competent foreign authority.

The respective areas of business are then informed by the competent federal ministries that the translation of an apostille itself cannot be required, as long as there are no specific indications of forgery.

b) Recognisability of the issuing German apostille authority

According to the German declaration, for court documents, the president of the respectively competent regional or local court is authorised to issue apostilles. In individual cases, foreign authorities who were presented with the document did not accept it at first, if instead of the president the vice president or his deputy signed the apostille.

This would appear to be incorrect. Definitions of respective court presidents differs according to domestic law. This means that, under courts constitutional law, deputising is permissible. The respective court president is first deputised by the vice president, and in his absence, by the most senior judge. Therefore there is no cause for alarm if it is not the court president himself, but rather his respective deputies who sign the apostille.

c) Requirement of legislation

In individual cases it has been reported that a foreign agency has required legislation instead of an apostille for certain documents, although the State presenting the documents is a party to the Convention.

This procedure seems unjustified and has been objected to via diplomatic channels.

d) Documents which have been produced and signed automatically or electronically.

See question 11.

Concerning 7:

Apostilles are printed on a piece of paper whose size is regulated according to the German industry norm, i.e. a DIN A 4 sheet, and is affixed to the certificate with paste.

Seals are affixed at the points of attachment.

Documents comprising several pages often no longer need to be additionally affixed with an apostille, since the document has already been affixed by the notary, the translator or the court.

Concerning 8:

Consultation of the apostille register has not arisen.

Concerning 9:

The apostille itself is not filled in mechanically or electronically. The issuing authority affixes its seal/stamp. Apostilles are always signed by hand by the court president or his appointed deputy (vice president, then the most senior judge).

Concerning 10:

There is – in addition to registers on paper as a general rule – also an electronically managed register. However, this differs between courts.

For example, the courts of Lower Saxony report that their register for the current year is being kept electronically. At the end of every year, they reported further, the entire register is printed out on paper, put in files and then erased from the electronic data system. On computer, only the most recent register from the current year could be accessed.

Concerning 11:

In practice, the question repeatedly came up as to whether German documents issued with an automatically produced signature could be affixed with an apostille. This involved, e.g. commercial register extracts or criminal records of the Federal Central Register's office, and also machine produced enforceable default summonses.

Pursuant to Article 3(1) of the Hague Apostille Convention of 5 October 1961, apostilles are affixed "in order to certify the authenticity of the signature". Machine-produced comments do not suffice as a "signature".

Commentaries on the Convention do not contain any statements as to whether the definition of a signature was even the object of discussions between the Contracting States. An autonomous interpretation of this term has not arisen. Thus, the definition of this term remains a matter which is to be determined according to the law of the issuing State, i.e. domestic law.

In the context of section 126 of the German Civil Code (*Bürgerliches Gesetzbuch* - BGB), a signature in German civil law is always understood to be a hand-written original signature. A machine-produced signature represents another category; it lacks the component of having been done by hand. For the production of such signatures, the text form was added to the BGB as a new category of signature (section 126b BGB) and in appropriate places – e.g. section 57 of the Commercial Register Regulation – existing conditions on written forms under civil law were opened for the text form.

In the context of legislation, section 13 of the Consular Act also requires the hand-written signature. Mechanically produced documents, e.g. facsimile name stamps or photocopied signatures cannot be ratified (cf. Hoffmann/Glietsch, Consular law, 68th supplementary edition, dated: 1 September 2001, section 13 Consular Act, number 2.1). A signature within this meaning also rules out signatures which have been scanned. No less requirements should be made in respect of the affixing of apostilles to a document as is made in respect of legislation.

Documents which have been produced automatically can therefore only be affixed with an apostille if either the hand-written signature is obtained after the fact or the document is certified with a hand-written signature. However, this involves a complicated process, which works at cross-purposes to the improvement of administration efficiency which automation strove to achieve. This process appears to be manageable at present in terms of figures. However, suggestions for better solutions should be discussed for this area, which simultaneously address the danger of falsifying such documents.