

## **6<sup>th</sup> International Forum on the electronic Apostille Pilot Program (e-APP)**

**Madrid (Spain) – 29 & 30 June 2010**

**co-organised by  
Hague Conference on Private International Law  
Ministry of Justice, Spain**

**With the financial support of the European Union**

### **CONCLUSIONS & RECOMMENDATIONS**

On 29 and 30 June 2010, approximately 70 experts<sup>1</sup> from over 20 countries<sup>2</sup> met in Madrid (Spain) to attend the 6<sup>th</sup> International Forum on the electronic Apostille Pilot Program (e-APP). The participants expressed their thanks to the organisers, as well as to the European Union for its generous financial support, and welcomed the first holding of the e-APP Forum in a civil law jurisdiction. The participants witnessed the successful launch of *the e-APP for Europe project* and expressed their hope that this project will further promote and facilitate the implementation of the e-APP in Europe and beyond. The participants acknowledged that this sixth edition of the Forum once more allowed for a most valuable and informative dissemination and exchange of relevant expertise and experience regarding the implementation and operation of e-Registers of Apostilles and the issuance of e-Apostilles.

The participants unanimously adopted the following Conclusions & Recommendations:

#### ***The e-APP in general***

1. The Forum participants noted with great satisfaction that a variety of jurisdictions are actively preparing the implementation of one or both components of the e-APP. Particular congratulations were presented to the twelve jurisdictions<sup>3</sup> that already have one or both components of the e-APP in operation. The Forum participants also congratulated Spain for

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<sup>1</sup> The list of participants included representatives from Competent Authorities designated under the Hague Apostille Convention, other government representatives, lawyers, as well as representatives from the Hague Conference on Private International Law (HCCH) and the Spanish Ministry of Justice.

<sup>2</sup> Albania, Andorra, Argentina, Belgium, Colombia, Czech Republic, Ecuador, Estonia, Finland, France, Georgia, Ireland, Latvia, Lithuania, Luxemburg, Mauritius, Mexico, New Zealand, Panama, Peru, Poland, Spain, United Kingdom, United States of America.

<sup>3</sup> Andorra, Belgium, Bulgaria, Colombia, Georgia, Mexico (Federal District), New Zealand, Republic of Moldova, Murcia (Spain), Kansas, Rhode Island and Texas (all USA).

its commitment to implement a centralised e-Register of Apostilles as well as the nationwide issuance of e-Apostilles. Finally, the Forum participants took note with great interest of Delaware's upcoming implementation of both components of the e-APP as well as the strong expressions of intention of other participating jurisdictions to implement one or both components of the e-APP.

2. The participants emphasised once more that the operation of e-Registers of Apostilles and the issuance of e-Apostilles have proven the great practical value of the e-APP as a means to further increase the effective and secure operation of the Hague Apostille Convention. The practical implementation of the e-APP in various jurisdictions has confirmed the Convention's ability to embrace technological innovation and standard forms of electronic communication. The participants reaffirmed the view expressed in previous Fora according to which there is no need for a revision of the Convention or the development of a specific protocol to the Convention to allow for the implementation of the e-APP and the use of modern technologies.

### *e-Registers of Apostilles*

3. The implementation of operational e-Registers in multiple jurisdictions and their growing use has proven the ease with which the origin of Apostilles can be verified, independently of whether the Apostille has been issued in paper or electronic form. While participants recognised the obvious benefit of an e-Register to verify the origin of paper Apostilles, they also stressed the particular value that an e-Register offers when recipients wish to verify the origin of e-Apostilles. In particular, the non-repudiation of e-Apostilles is greatly enhanced by the parallel use of an e-Register.

4. Participants expressed their hope that e-Registers will continue to lead to much more frequent and indeed systematic verifications of the origin of Apostilles (whether issued in paper or electronic form).

5. The participants concluded that the following should be considered best practices when implementing an e-Register:

- a) With a view to preventing "fishing expeditions" (*i.e.*, attempts by users of an e-Register to collect information about Apostilles that he / she has not received), the use of e-Registers should require the entry of unique information associated with an Apostille received; the most efficient means to accomplish this goal is to number Apostilles non-sequentially (or otherwise randomly) and to request the recipient to enter this unique identifier in the e-Register, ideally together with the date of issuance of the Apostille.
- b) While the mere confirmation that an Apostille has been issued (or not) may be sufficient to accommodate the basic needs of most recipients of Apostilles, Competent Authorities are encouraged to provide additional information in their e-Register. This additional information could in particular include the full image of the relevant Apostille. If and to the extent allowed under applicable law, a Competent Authority may wish in addition to make available information relating to the content of the underlying public document.
- c) Even if an Apostille was issued in paper form, the registration in the e-Register may be accompanied by an electronic signature of the Apostille so that the recipient can

also verify the origin of the signature on the paper Apostille (system introduced by Mexico).

- d) Where a Contracting State has designated several Competent Authorities (or one Competent Authority has several offices on the territory of the Contracting State), all Competent Authorities (offices of the Competent Authority) should use one central e-Register, to the extent possible provided by the domestic law.
- e) Searches in an e-Register should (also) be possible in English or French, in addition to any other language used by the Competent Authority.
- f) The URL of the e-Register should be clearly indicated on the Apostille Certificate, with an accompanying message that the origin of the Apostille may be verified online via the e-Register.
- g) Subject to any domestic legal and practical requirements, issuing Competent Authorities are encouraged to keep e-Register entries accessible online for as long as possible, so as to allow for continued online verifications of Apostilles.
- h) Competent Authorities are encouraged to keep statistics of the use of their e-Register.

### ***e-Apostilles***

6. Echoing the Conclusions & Recommendations of previous e-APP Fora on this specific subject matter, the 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.

7. Forum participants recognised that the issuance of e-Apostilles for public documents that have not been issued electronically may be subject to specific conditions in the issuing State (*e.g.*, there might be restrictions on the efficacy of scanning public documents executed in paper form).

8. Forum participants encouraged Competent Authorities to inform other Contracting States when they begin issuing e-Apostilles.

9. Forum participants reaffirmed the good practice of applying high standards to the issuance and management of digital credentials for Competent Authorities (incl. personal appearance before a qualified Registration Authority operating on behalf of a Certificate Authority issuing digital certificates used to digitally sign e-Apostilles).

### ***Conclusion***

10. The Forum participants encouraged all Contracting States to implement one or both components of the e-APP. They also expressed their hope that the e-APP Forum will

continue to be held on a regular basis as it constitutes a unique opportunity to discuss and exchange relevant expertise in relation to the implementation of the e-APP. In doing so, the participants again recognised the importance and value in considering geographic variety and legal diversity when choosing future venues of the Forum. Finally, the Forum participants encouraged the active involvement of judges and IT-experts at future Fora in order to facilitate the further development and dissemination of best practices in implementing the e-APP.