

## **For the attention of the CNUE's New Technologies working group members!**

Dear Chair, Dear Sir/Madam,

Further to our email of 2 June 2009, we are pleased to send you some information on the 5<sup>th</sup> International Forum on the Pilot Programme on e-Apostilles (e-APP) and Digital Authentication, organised jointly by the Hague Conference and the UINL and which was held in London on 13 June 2009. The programme for the event is attached.

During his speech, Mr Bernasconi, in his capacity as first secretary of the Hague Conference, drew attention to the two components of the e-APP pilot project which are 1) the issuing and use of the e-Apostille on the one hand and 2) the creation and use of electronic registers that host/would host the e-Apostille on the other. In this context, Mr Bernasconi underlined that certain competent authorities make accessible both the apostille and the document to which it refers. Electronic registers are already in place in Belgium, Bulgaria, Moldavia and Colombia.

Finally, the first secretary recalled the main principles of the Hague Convention, namely mutual trust (in response to the question of whether an e-Apostille should be recognised abroad) and the fact that the Convention is neutral regarding the form of the e-Apostille. With respect to the e-Apostille's probative value, he underlined that it is determined in accordance with the laws in force in the Member State of destination.

Following Mr Bernasconi's speech, certain States/regions presented their initiatives relating to the e-Apostille, such as New Zealand, the State of Delaware, the Bermudas, the United Kingdom and Spain.

As an example, you will find below some information on the Spanish model.

First, with respect to the Spanish model, it should be specified that the solution presented has only been implemented in the Murcia region. Furthermore, it has only been tested in a limited domain, namely the cross-border adoption of children.

The Spanish speakers first recalled that in Spain both the President of the Regional Chamber of Notaries and the secretaries of State are competent for matters regarding the apostille.

Regarding the draft e-Apostille more specifically, it is part of the Spanish law of 2003 on electronic signatures. This law distinguishes between three categories of signature, namely the normal electronic signature, the advanced electronic signature and the recognised electronic signature. The latter is the one used in the e-Apostille project.

The first e-Apostille with electronic signature was used in an adoption case with Colombia in November 2008. The next stages to complete involve extending the practice of the e-Apostille to other areas of activity and other Spanish regions.

Moreover, the Spanish model (Murcia region) integrates the underlying document in the apostille, a solution considered interesting by the first secretary, Mr Bernasconi. Finally, it should be highlighted that the region of Murcia has not yet established an electronic register, the idea being to set it up during 2010.

In general, participants shared the opinion that the Convention withdrawing the requirement of the legislation on foreign public acts of 5 October 1961 remains ill adapted to current needs, and that there is no need to amend it. Moreover, this is illustrated by the large numbers that have adhered to the Convention since 2000. The 'obligation' to accept the e-Apostille also met with the unanimous agreement of participants.

Finally, the question of whether an electronic apostille can be affixed to a photocopy or a scan of an original document was raised. According to the first secretary of the Hague Conference, the Convention permits a copy to have an apostille affixed. In such a situation, the question should be raised of whether the apostille thus relates to 1) the copied document or 2) the

certificate conforming that the copy constitutes a certified copy. Both scenarios apparently apply in practice.

Following this remark, it was stated that a photocopy would not appear to be considered as an official act in most Member States of the Convention (according to the legislation of the State of origin), which constitutes a requirement for affixing the apostille. It should be noted that the Convention of course does not have any influence regarding the question of whether a photocopy is considered to be an official document in this case.