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**DOCUMENTS EXECUTED BY
INTERGOVERNMENTAL AND SUPRANATIONAL ORGANISATIONS**

drawn up by the Permanent Bureau

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**ACTES ÉTABLIS PAR DES
ORGANISATIONS INTERGOUVERNEMENTALES ET SUPRANATIONALES**

établi par le Bureau Permanent

*Preliminary Document No 3 of October 2016
for the attention of the Special Commission of November 2016 on the
practical operation of the Apostille Convention*

*Document préliminaire No 3 d'octobre 2016
à l'attention de la Commission spéciale de novembre 2016 sur le
fonctionnement pratique de la Convention Apostille*

Introduction

1. With the increasing number of documents being issued by intergovernmental and supranational organisations, and the need for these documents to produce effect in multiple jurisdictions, the question of how to authenticate them is becoming ever more relevant. For that reason, this topic has been proposed for discussion at the 2016 meeting of the *Special Commission on the Practical Operation of the Apostille Convention* under agenda item 2. This document aims to inform the discussion on this agenda item and would like to invite delegations to consider this matter further.

Background

2. The topic of documents executed by intergovernmental and supranational organisations is not new to the Hague Conference. It was discussed at the 2012 meeting of the Special Commission, which noted the practical difficulties of authenticating such documents and the concerns that have been raised with regard to documents issued by the European Patent Organisation and the European Union. This meeting recommended that “the Permanent Bureau continue to study the questions raised as they relate to the possible application of the Apostille Convention to these documents, and to suggest solutions. These could include the possibility of developing a Protocol to the Convention, designed to enable international organisations to issue Apostilles for their documents” (see Conclusion & Recommendation (C&R) [No 17](#) of the 2012 Special Commission meeting). This topic was also referred to in the Apostille Handbook at paragraphs [180-181](#).

3. Moreover, it should be noted that the Apostille Convention does not directly address documents executed by intergovernmental and supranational organisations. By way of example, some of the documents which are regularly issued by these organisations are patents, court documents, educational documents and other administrative documents. At present, there appears to be no international solution for the authentication of these documents, which hampers their circulation internationally. To deal with this problem, some intergovernmental and supranational organisations have sought for their documents to be brought into the *legalisation* system by depositing the signatures and seals of their issuing officials with Embassies and Consulates of potential Parties of destination or with an intermediate authority, whose signature would then be legalised by the Embassies or Consulates of the receiving Contracting Party located in the host jurisdiction.¹

The European Union Context

4. With regard to documents issued by European Union authorities, the Permanent Bureau is aware that this topic had been discussed in the context of the new *Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012*, the purpose of which is to exempt from legalisation or similar formality certain public documents among EU Member States. An earlier draft of this regulation included within its scope public documents “issued by authorities of a Member State **or by Union authorities**”.² The reference to “Union authorities” was not included in the final text of the Regulation adopted on 6 July 2016, which entered into force on 15 August 2016 and which is scheduled to be applied as of February 2019.³

¹ For an example of the latter, see the procedure implemented by the European Union Intellectual Property Office (EUIPO) available at < <https://euipo.europa.eu/ohimportal/en/authentication-or-legalisation-of-certified-copies> >. As indicated on their website, the EUIPO is “the European Union Intellectual Property Office responsible for managing the EU trade mark and the registered Community design. [It] also work[s] with the IP offices of the EU Member States and international partners to offer a similar registration experience for trademarks and designs across Europe and the world.”

² See Article 3 of the Position of the European Parliament adopted at first reading on 4 February 2014 with a view to the adoption of Regulation (EU) No .../2014 of the European Parliament and of the Council on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union and amending Regulation (EU) No 1024/2012 available at: < <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0054> >.

³ Whether documents issued by Union authorities should be subject to authentication requirements when presented within the Union is a question that the Permanent Bureau is not in a position to answer.

5. Given the ongoing developments at the European Union level, the Permanent Bureau did not, at that point in time, conduct further research on this matter, instead awaiting until a final regulation had been adopted.

Options for Further Consideration

6. In the context of the Apostille Convention, and as indicated in paragraph 180 of the Apostille Handbook, documents issued by intergovernmental and supranational organisations may be brought indirectly into the Apostille system in two ways:

- a) The signature on the document may be authenticated by a notary, in which case the notarial authentication may then be apostilled by the Competent Authority of the host jurisdiction. In such cases, the Apostille will relate only to the notarial certification and not to the underlying public document.
- b) The law of the host jurisdiction considers the document itself to be a public document (possibly on the basis of an agreement between the Contracting Party to the Apostille Convention and the organisation), in which case the document may be apostilled by the Competent Authority of the host jurisdiction. This presumes that the host jurisdiction would have sample signatures and seals of the people who issue the public-like documents for the organisation.

7. Such systems could be implemented without the need to contemplate further amendments to the Apostille Convention. The Special Commission may wish to endorse or express a preference for one of the above approaches.

8. With a view to facilitating the circulation of such documents, an additional option may be contemplated whereby the host jurisdiction designates, on the basis of the host agreement, an entity within the relevant intergovernmental or supranational organisation as a Competent Authority under Article 6 of the Apostille Convention, which may thus issue Apostilles for its own documents. As each Contracting Party is free to designate its own Competent Authorities such a system may be implemented without amending the Apostille Convention. However, it could be argued that at its origin the Apostille Convention contemplated that Contracting Parties designate only their own national authorities to apostillise their own documents and that the Convention therefore does not allow designation of intergovernmental and supranational organisations as Competent Authorities.

9. If none of the options mentioned above are satisfactory, a more formal option as contemplated in 2012 would be to develop a protocol to the Convention. It should be noted that the possible nature and content of the scope of such protocol was never discussed in detail. Nor was the issue of who can become a party to such a protocol.

10. Delegations, in particular those whose territories are host to intergovernmental and supranational organisations, are encouraged to discuss this topic in more detail, to comment on the desirability of seeking to apply the Apostille Convention, and if necessary, to provide suggestions for possible alternatives. In particular, it would be of particular interest to know whether delegations would see any merit in negotiating a protocol to the Apostille Convention in order to formally bring these documents within the scope of the Apostille Convention. If so, further work would need to be conducted. Such work would have to be identified in the Conclusions & Recommendations of the Special Commission and then submitted for approval to Hague Conference's governing body, the Council on General Affairs and Policy.