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**RÉSUMÉ DES RÉPONSES AU QUESTIONNAIRE DE JUILLET 2008 PORTANT SUR LA  
CONVENTION NOTIFICATION, AVEC COMMENTAIRES ANALYTIQUES  
(RÉSUMÉ ET ANALYSE)**

*établi par le Bureau Permanent*

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**SUMMARY OF RESPONSES TO THE QUESTIONNAIRE OF JULY 2008 RELATING TO THE  
SERVICE CONVENTION, WITH ANALYTICAL COMMENTS  
(SUMMARY AND ANALYSIS DOCUMENT)**

*drawn up by the Permanent Bureau*

*Document préliminaire No 14 de janvier 2009  
à l'intention de la Commission spéciale de février 2009 sur le fonctionnement pratique des  
Conventions de La Haye Apostille, Notification, Preuves et Accès à la Justice*

*Preliminary Document No 14 of January 2009  
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*

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**RESPONDING STATES AND REGIONAL ECONOMIC INTEGRATION ORGANISATION (REIO)<sup>1</sup>**

States and REIO	Non-Contracting States and REIO
<ol style="list-style-type: none"> <li>1. Argentina</li> <li>2. Australia</li> <li>3. Bahamas</li> <li>4. Brazil</li> <li>5. Bulgaria</li> <li>6. Canada</li> <li>7. China – Hong Kong Special Administrative Region<sup>2</sup></li> <li>8. Croatia</li> <li>9. Czech Republic</li> <li>10. European Community</li> <li>11. Finland</li> <li>12. France</li> <li>13. Georgia</li> <li>14. Germany</li> <li>15. Iceland</li> <li>16. Ireland<sup>3</sup></li> <li>17. Japan</li> <li>18. Latvia</li> <li>19. Luxembourg</li> <li>20. Malaysia</li> <li>21. Mexico</li> <li>22. Moldova</li> <li>23. Monaco</li> <li>24. Montenegro</li> <li>25. New Zealand</li> <li>26. Norway</li> <li>27. Paraguay</li> <li>28. Poland</li> <li>29. Romania</li> <li>30. Serbia</li> <li>31. Slovak Republic</li> <li>32. South Africa</li> <li>33. Spain</li> <li>34. Sweden</li> <li>35. Switzerland</li> <li>36. The former Yugoslav Republic of Macedonia</li> <li>37. Turkey<sup>4</sup></li> <li>38. United Kingdom</li> <li>39. United States of America (USA)</li> </ol>	<ol style="list-style-type: none"> <li>1. Australia</li> <li>2. Brazil</li> <li>3. European Community</li> <li>4. Georgia</li> <li>5. Malaysia</li> <li>6. Moldova</li> <li>7. Montenegro</li> <li>8. New Zealand</li> <li>9. Paraguay</li> <li>10. Serbia</li> <li>11. South Africa</li> </ol>
	Contracting States
	<ol style="list-style-type: none"> <li>1. Argentina</li> <li>2. Bahamas</li> <li>3. Bulgaria</li> <li>4. Canada</li> <li>5. China (Hong Kong SAR)</li> <li>6. Croatia</li> <li>7. Czech Republic</li> <li>8. Finland</li> <li>9. France</li> <li>10. Germany</li> <li>11. Iceland</li> <li>12. Ireland<sup>5</sup></li> <li>13. Japan</li> <li>14. Latvia</li> <li>15. Luxembourg</li> <li>16. Mexico</li> <li>17. Monaco</li> <li>18. Norway</li> <li>19. Poland</li> <li>20. Romania</li> <li>21. Slovak Republic</li> <li>22. Spain</li> <li>23. Sweden</li> <li>24. Switzerland</li> <li>25. The former Yugoslav Republic of Macedonia</li> <li>26. Turkey<sup>6</sup></li> <li>27. United Kingdom</li> <li>28. United States of America (USA)</li> </ol>

<sup>1</sup> It is recalled that three more Contracting States (China, Denmark, Netherlands, and Israel) as well as one non-Contracting State (Chile) submitted their responses or gave their permission to upload their response after the cut-off date for inclusion in this Summary and Analysis document.

<sup>2</sup> Henceforth China (Hong Kong SAR).

<sup>3</sup> A preliminary response has been received by Ireland, but as per their request the Permanent Bureau awaits the finalised version before including it in this Summary and Analysis document.

<sup>4</sup> A response was received from Turkey, however in keeping with their request not to upload their response their responses do not appear in this document but are analysed in this Summary and Analysis document.

<sup>5</sup> A preliminary response has been received by Ireland, but as per their request the Permanent Bureau awaits the finalised version before including it in this Summary and Analysis document.

<sup>6</sup> A response was received from Turkey, however in keeping with their request not to upload their response their responses do not appear in this document but are analysed in this Summary and Analysis document.

## INTRODUCTION

1. In July 2008 the Permanent Bureau of the Hague Conference on Private International Law issued a Questionnaire to Member States and State Parties to the Hague Service Convention, in preparation for the Special Commission on the practical operation of the Hague Service (and Apostille, Evidence, and Access to Justice) Convention to be held in February 2009.<sup>7</sup> This Questionnaire was designed to provide a better understanding of how the Service Convention operates in practice, and to assist the Permanent Bureau in defining key issues that need to be addressed by the Special Commission.
2. This document synthesises and analyses the responses received by the Permanent Bureau before 1 January 2009.
3. The Permanent Bureau of the Hague Conference is very grateful to the 38 States (10 non-Contracting States<sup>8</sup> and 28 Contracting States<sup>9</sup>), as well as to the European Community (EC), that responded to the Service Questionnaire. The responding States represented 47% of the Contracting States to the Service Convention.<sup>10, 11</sup>
4. These responses contain a wealth of information and it is immediately apparent that considerable thought and effort went into preparing them. Establishing such a comprehensive overview of State practice in relation to the Service Convention is crucial to the continuing relevance of the Convention and of the Practical Handbook on the Operation of the Service Convention. It will also inform the future work of the Hague Conference. The information will also assist all those interested in the practical operation of the Convention.

## METHODOLOGY

5. This document follows the structure of the Questionnaire, and seeks to summarise and, where appropriate, comment upon the answers of the responding States. This process of summarisation requires, in large measure, the counting of responses provided by States. This process of counting raises some methodological issues which are dealt with in this section.
6. First, not all responding States responded to each and every question included in the Questionnaire. To accommodate this fact, the discussion of each Question often refers to the number of responding States that responded to that particular question. The reader will note that the number of responding States varies, therefore, between Questions.
7. Secondly, a number of States often responded to certain questions to the effect that it was not possible for them to provide a response. As it is of little analytical assistance to refer, for each question, to the particular States that were unable to provide an answer, these responses are only reflected in this document where it is relevant to do so. However, where a State has provided such an answer, the State is counted amongst the number of responding States. For this reason, the number of responding States does not always tally with the total number of States that are listed as having provided particular responses to a Question. The States that provided a positive answer are always mentioned expressly in the footnote.

<sup>7</sup> "Questionnaire of July 2008 relating to the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Service Convention)*", Prel. Doc. No 2 of July 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 (hereinafter "the Questionnaire").

<sup>8</sup> Australia, Brazil, Georgia, Malaysia, Moldova, Montenegro, New Zealand, Paraguay, Serbia, South Africa.

<sup>9</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong Special Administrative Region), Croatia, Czech Republic, Finland, France, Germany, Iceland, Ireland, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovak Republic, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, United Kingdom, United States of America (USA).

<sup>10</sup> As at the date of writing (16 January 2009) there were 59 Contracting States.

<sup>11</sup> It is worth mentioning that four more Contracting States (China, Denmark, Netherlands, and Israel) as well as one non-Contracting State (Chile) submitted their responses or gave their permission to upload their response after the cut-off date for inclusion in this Summary, increasing the percentage of responding Contracting States to 53%.

8. Thirdly, some States provided multi-faceted answers to questions that it was relevant to count as falling into more than one category of response. For this additional reason, the total number of responding States does not always tally with the total number of States referred to as providing particular answers. Any confusion can be remedied by consulting the footnotes.



## EXECUTIVE SUMMARY

### NUMBER OF RESPONSES

9. By 1 January 2009, the Permanent Bureau received 39 responses in total: 10 came from non-Contracting States,<sup>12</sup> 28 from Contracting States,<sup>13</sup> and one response from the European Community (EC). The State responses represent 47% of the Contracting States to the Service Convention.<sup>14</sup>

### RESPONSES FROM NON-CONTRACTING STATES

10. Whilst non-Contracting States provided a number of reasons why they are not yet party to the Service Convention, most of these States are actively considering becoming a Party to the Convention, with a number of States in advanced stages of the accession process. Brazil, Iceland and The former Yugoslav Republic of Macedonia advised that accession awaits government approval. Iceland deposited its instrument of accession on 10 November 2008. On 20 January 2009, the Permanent Bureau was informed that The former Yugoslav Republic of Macedonia had deposited its instrument of accession on 23 December 2008. Only Montenegro and New Zealand advised they have not yet considered accession.

### RESPONSES OF CONTRACTING STATES

11. The responses of Contracting States indicate that in general the Service Convention works well. There are, however, often cases where execution of a Request for service takes too long. Also, in general, responding States find the "Service Section" of the HCCH website to be very useful, or at least useful.

#### a) Statistics

12. The limited number of responses in relation to Statistics only allow for some conclusions to be drawn. First, the Statistics indicate that the rate of use of the Convention has grown since the last Special Commission, which is consistent with the growth in Contracting Parties to the Convention. Secondly, 20 States received 30,792 incoming requests in 2007, and 15 States sent 37,177 requests abroad in 2007. Thirdly, the vast majority of both incoming and outgoing requests were processed in four months or less. 66% of incoming requests were issued with a certificate within two months, and 10.3% were returned unexecuted. 18.3% of incoming requests took 12 months or more to be issued with a certificate, which is of significant concern. However only 1% of reported outgoing cases took 12 months or more.

13. Finally, the vast majority of both incoming and outgoing requests were effected using formal service under Article 5(1) a).

#### b) General appreciation of the Convention

14. The Service Convention and its general operation are generally highly considered by States Parties, although specific problems have arisen even for those States that consider the general operation to be excellent. A number of problems were reported, in particular delays in service and delays in information being provided.

15. Problems were also reported concerning the Model Forms such as: they are not used at all or incorrectly completed; lacking information; completed in a foreign language

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<sup>12</sup> Australia, Brazil, Georgia, Malaysia, Moldova, Montenegro, New Zealand, Paraguay, Serbia, South Africa.

<sup>13</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Iceland, Ireland, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovak Republic, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, United Kingdom, USA.

<sup>14</sup> See comment in note 11.

other than English, French or the language of the requesting State. Other problems related to finding the defendant or to the translation of the underlying document. A number of suggestions were made by States and are reflected in this document.

**c) Service Handbook**

16. There were some distribution problems in relation to the Service Handbook, which the Permanent Bureau has worked to remedy. Amongst responding States the Service Handbook is regarded as a (very) useful resource. There remains an emphasis on consulting websites and it was suggested that the Handbook be made available online.

**d) Non mandatory but exclusive character of the Service Convention**

17. It is very encouraging to note that the 2003 Conclusion and Recommendation No 73, which states that the Service Convention is non-mandatory but exclusive, is very widely accepted and has not caused any problems amongst responding States. The non-mandatory but exclusive nature of the Service Convention now seems to be uncontroversial; this conclusion, however, is yet to be referred to in judicial proceedings.

**e) Scope of the Convention – “Civil or Commercial”**

18. The majority of States have not experienced any major difficulty with the interpretation of the phrase “civil or commercial”. Six States have experienced difficulties, most of which were resolved, in general relying on the 2003 Conclusions and Recommendations Nos 69-72, but not necessarily as a result of a direct contact between the relevant Central Authorities.

19. There appears to be broad support that the following matters fall within the scope of the Convention:

- bankruptcy or insolvency;
- reorganisation under bankruptcy laws;
- insurance;
- employment;
- consumer protection.

20. Opinion is divided as to whether the following matters fall within the scope: social security, anti-trust and competition, regulation and oversight of financial markets and stock exchange.

21. There is broad support for the view that matters relating to Proceeds of Crime and taxation do not fall within the scope of the Convention.

**f) Scope of the Convention – Extrajudicial documents**

22. The concept of “extrajudicial documents” is known to the majority of responding States. Within these States a vast array of documents are considered “extrajudicial” and may be served under the Convention.

23. Transmissions of Requests for service of extrajudicial documents under the Service Convention were, however, rare in 2007.

**g) Scope of the Convention – Service upon States or State Officials**

24. A majority of States have used the Service Convention to transmit documents for service upon other States. Many States also referred to the use of diplomatic channels for this purpose. The Permanent Bureau recalls that, under the Service Convention, diplomatic channels may be used if exceptional circumstances so require (Art. 9(2)). A number of difficulties arose when forwarding requests for service upon States or State officials.

#### **h) The main channel of transmission**

25. The majority of responding States have not experienced difficulties in determining the competence and legitimacy of forwarding authorities. Those States that have experienced difficulties have all followed the 2003 Conclusions and Recommendations Nos 47-49 to resolve those difficulties. Responding States mainly use the postal method for forwarding requests for service abroad. Use of courier services is fairly evenly divided between responding States and no clear trend emerges from the responses.

26. The most common methods of service appear to be the postal method or personal service. The majority of States reported that personal service is used when service is requested under Article 5(1) *a*). Almost all States are in agreement with the Permanent Bureau that Article 5(1) *a*) allows for the specification of a method of service. States provided descriptions of the methods they had been requested to use, and have used to effect service. States are almost equally divided in whether or not their internal law allows for informal service. There is little consistency of practice in relation to whether formal service is attempted when informal service fails and vice versa.

27. Most States impose a translation required upon documents served in their State under Article 5. The nature of these requirements varies considerably, particularly in relation to different methods of service. There is no clear consensus in relation to which law determines issues relating to the translation of documents. Given the problems States have already mentioned with translation, this issue clearly merits discussion at the Special Commission.

28. Overall, the majority of States consider that the requested State is to bear the costs of service, although there is no consensus in the case where a particular method is requested (Art. 5(1) *b*)). Most States do not yet allow for the use of modern technology in effecting service of documents, despite Conclusions and Recommendations Nos 60-62 of the 2003 Special Commission. Those States which do allow such technology often do so only in limited circumstances.

#### **i) Alternative channels of transmission**

29. Most States do not impose translation requirements for documents transmitted through alternative channels of transmission. Most States do not systematically send the "summary" followed by the "warning" when using alternative channels of transmission. In light of previous Recommendations to this effect, this merits discussion at the Special Commission.

30. Most States have not used consular channels within the past five years. Those States that used consular channels do not have consistent practices (*e.g.*, in some cases the States used the channel very infrequently). Most States reported that no "exceptional circumstances" requiring the use of diplomatic channels had arisen. The majority of States have not effected service via diplomatic or consular channels using electronic forms of communication.

31. States provided their reasons for their position to the postal channel in Article 10 *a*). Some States continue to use the postal channel for outgoing service, despite their objection to Article 10 *a*). No States advised that they have had any difficulty with the interpretation and application of Article 10 *a*). Information regarding the frequency of requests being sent via postal channels is too limited to draw any conclusions. State Practice indicates that States do not yet regard private couriers as the equivalent of the postal channel under the Service Convention despite Conclusion and Recommendation No 56 of the 2003 Special Commission.

32. There are a variety of reasons why States oppose Article 10 *b*). A wide variety of individuals are considered by States to be competent persons under Article 10 *b*) and the practicality of this method of service greatly varies between States.

33. States were asked about their opposition to Article 10 *c*) and the practical operation of service effected under that Article, however the responses were too diverse to identify clear trends in relation to these responses.

**j) Final refusal to execute the request**

34. The majority of States have neither rejected the execution of any incoming request nor had an outgoing request for service rejected in accordance with Article 13.

**k) Protection of parties' interests**

35. Opinion is almost evenly divided as to whether or not receipt of a certificate reporting that there has been no service would trigger Article 15(2). More States would recognise and enforce a default judgment entered in the situation where all the conditions of Article 15(2) are met than those who would not. Some States explained why they had not filed an Article 15(2) declaration, generally relating to procedural fairness. Only one State reported that it was considering filing an Article 15(2) declaration. The judicial actions that would be taken in the case of non-issuance of the certificate of service and non-appearance vary from State to State. Reasons for Article 16(3) declarations were also discussed; only one State responded that it was considering the possibility of introducing such a declaration.

**l) Date of Service**

36. States explained how they determine the date of service in regards to both channels of transmission, including using Point 1 on the Certificate of Service, which was the preference of a number of States. State responses regarding whether their internal law was sufficient to protect the interests of the applicant where documents had to be served abroad were relatively evenly divided. The absence of an explicit rule as to the date of service of documents has not caused practical difficulties in the majority of cases.

**m) Model Form**

37. The Permanent Bureau will continue to prepare trilingual versions of the Model Form and make them available on the HCCH website. Almost all responding States consider the applicant to be the forwarding authority on the Model Form, and most States include information regarding the forwarding authorities on their Model Forms, although not always information regarding their competences. Some States consider the inclusion of such information on the HCCH website sufficient and therefore do not include it in the model forms.

**n) E-service**

38. Most of the responding States' internal law does not allow e-service, not even in exclusively domestic situations. The majority of States who do not allow such service do not plan to introduce such possibilities. Those States that allow for e-service outlined their procedural laws (the majority of which require secure transmission). States also outlined how service is proven when it is effected electronically.

39. Very few States have received requests that specifically asked for e-service to be effected. States who had not received such requests were asked how they would respond hypothetically and provided such a broad range of answers that no trend could be identified. However, the majority of States advised that they would be unlikely to enforce a judgment resulting after e-service had been effected in another State; similarly, the majority of States would not honour an agreement among parties allowing for e-service to be effected.

40. Postal Channels have not yet been interpreted to include modern forms of communication.

41. Very few States have had recent developments in relation to e-service, and most of the reported developments relate to the expansion of existing Procedural Laws to cover e-service. There is broader support for the development of Conclusions and Recommendations specifically in relation to e-service than for the development of a Protocol, but some States remain wary in light of practical obstructions to implementation. The matter clearly merits discussion at the Special Commission.

## **PART ONE – GENERAL INFORMATION AND STATISTICS (Q. 1-19)**

### **I. Questions for non-Contracting States (Q. 1-3)**

42. Twelve non-Contracting States replied to the Questionnaire.<sup>15</sup> The EC, although it is not a contracting party to the Service Convention, provided answers to the questions asked of Contracting States on behalf of those EU Member States who are Contracting States. Therefore those responses do not appear in this section of the Summary and Analysis Document, but rather are analysed together with the responses of Contracting States.

43. Non-Contracting States were asked three questions: why they are not a party to the Convention; which relevant bilateral or regional instruments and treaties they are party to; and whether they are currently studying the Convention with a view to becoming a State Party.

#### **A. Reasons why not a Party (Q. 1)**

44. States were asked the reasons why they are not a Contracting State to the Service Convention. Three States<sup>16</sup> advised that the limited availability of possibilities where the Service Convention could be utilised meant there was no added value in becoming a Party to the Service Convention. South Africa considered that legal obstacles in its domestic legal system preclude it from becoming a Party, although the subject is under discussion. Two States<sup>17</sup> indicated that they had never examined the possibility of becoming a State Party.

45. Australia advised that it is currently establishing domestic arrangements to enable accession. Brazil indicated that the Convention is currently being examined by its parliament. Iceland indicated that amendment to the Code of Civil Procedure No 91/1991 enables accession but the instrument has not yet been deposited.<sup>18</sup> The former Yugoslav Republic of Macedonia advised that the accession process is ongoing, that the Assembly had ratified the Convention but the instrument of accession had not yet been deposited, but was expected shortly.<sup>19</sup> Malaysia indicated that it was currently studying the Service Convention. Montenegro indicated that it had faced no difficulties which would justify acceding to the Convention. New Zealand advised that it had focused on accession to the Hague Evidence Convention, and that it was not aware of any problems arising from the Service of documents. Serbia advised it is currently examining the question in detail and that a decision can be expected shortly.

#### **B. Other Instruments or Treaties (Q. 2)**

46. Non-Contracting States were asked whether they are party to other bilateral or regional instruments or treaties which provide rules for the transmission of documents to be served abroad, for proof of service, and for the protection of interests of plaintiffs and defendants. Eleven States<sup>20</sup> indicated that they were. The treaties are listed in the individual responses provided by the States available on the HCCH website but are not analysed or summarised in this document.

#### **C. Consideration of joining the Convention (Q. 3)**

47. Non-Contracting States were asked whether they were considering joining the Convention (Q. 3). Twelve States responded.<sup>21</sup> Two States<sup>22</sup> indicated that they were not

<sup>15</sup> Australia, Brazil, Georgia, Iceland, Malaysia, Moldova, Montenegro, New Zealand, Paraguay, Serbia, South Africa, The former Yugoslav Republic of Macedonia.

<sup>16</sup> Georgia, Moldova, Paraguay.

<sup>17</sup> Montenegro, New Zealand.

<sup>18</sup> Iceland subsequently did deposit its instrument of accession on 10 November 2008.

<sup>19</sup> On 20 January 2009, the Permanent Bureau was informed that The former Yugoslav Republic of Macedonia had deposited its instrument of accession on 23 December 2008.

<sup>20</sup> Australia, Brazil, Georgia, Malaysia, Moldova, Montenegro, New Zealand, Paraguay, Serbia, South Africa, The former Yugoslav Republic of Macedonia.

<sup>21</sup> Australia, Brazil, Georgia, Iceland, Malaysia, Moldova, Montenegro, New Zealand, Paraguay, Serbia, South Africa, The former Yugoslav Republic of Macedonia.

<sup>22</sup> Moldova, Paraguay.

considered joining the Convention. However, 10 States<sup>23</sup> responded that they were currently considering joining the Convention. Australia indicated it is currently taking the final steps before accession, having completed a number of earlier steps such as agreement between the Commonwealth (Federal), State and Territory governments, development of model court rules, developments of guidelines and agreement about reservations and declarations to be made under the Convention. Brazil indicated that Convention was sent to parliament for consideration on 5 May 2008.

48. Iceland advised that it intended to join the Convention, and the Permanent Bureau notes that Iceland's instrument of accession has since been deposited. The former Yugoslav Republic of Macedonia advised that a list of prioritised Conventions indicates the Service Convention is fourth in line for accession.<sup>24</sup> Malaysia advised that it is currently studying the Convention. Montenegro outlined its international legal priorities and indicated that accession to the Service Convention will soon be considered. New Zealand advised that once accession to the Hague Evidence Convention is completed officials hope to examine the possibility of acceding to the Service Convention, noting its participation at observer status on the Australian Working Group considering the Service Convention. South Africa indicated that the South African Law Reform Commission has recommended accession to the Convention, although it has not been referred to parliament for consideration.

#### **In sum**

- there is a variety of reasons why non-Contracting States have not yet joined the Convention, however the majority of the responding non-Contracting States are either actively studying becoming a party to the Convention or are taking active steps to become a State Party.

## **II. Questions for Contracting States (Q. 4-19)**

### **A. "Service Section" of the HCCH website (Q. 4-5)**

#### **1. Current practical information for each Contracting State (Q. 4)**

49. A number of Contracting States took the opportunity to update the practical information relating to them that appears on the Service Section of the HCCH website. Those changes will be made to the website, and are not analysed in this document.

#### **2. How useful is the Service Section on the HCCH website? (Q. 5)**

50. A vast majority of responding States find the Service Section to be very useful. Of the 25 responding States<sup>25</sup>, 22 States<sup>26</sup> indicated that they find that section of the website "very useful." Three States<sup>27</sup> advised the website was "useful".

51. The USA made two suggestions: the addition of (i) links to the parts of a requested State's law which describes methods of service pursuant to Article 10 *b*) and *c*) of the Convention, and (ii) links to search engines for a registrar of companies in the requested State, so that a forwarding authority can verify the registered name and address of a defendant company.

#### **In sum**

- the majority of States find the "Service Section" of the HCCH website very useful, and few suggestions were made for improvement.

<sup>23</sup> Australia, Brazil, Georgia, Iceland, Malaysia, Montenegro, New Zealand, Serbia, South Africa, The former Yugoslav Republic of Macedonia.

<sup>24</sup> On 20 January 2009, the Permanent Bureau was informed that The former Yugoslav Republic of Macedonia had deposited its instrument of accession on 23 December 2008.

<sup>25</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom, USA.

<sup>26</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, Germany, Japan, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom.

<sup>27</sup> France, Latvia, USA.

### 3. Contact details for designated Authorities (Q. 6-8)

52. A number of Contracting States took the opportunity to update the contact details that appear on the HCCH website for their Authorities designated under the Convention. Those changes will be made to the website, and are not discussed in this document.

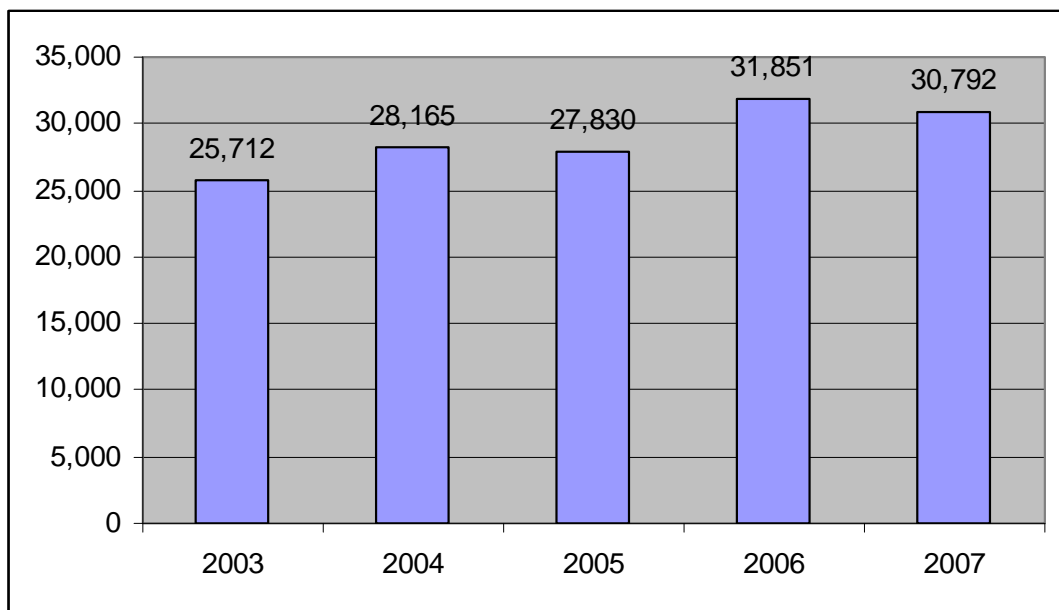
### 4. Statistics (Q. 9-10) – Number and breakdown of incoming requests for Service (Q. 9)

53. The total number of requests is set out in graphical form in Figure 1: Number of Requests for Service 2003 – 2007 and in tabular format in the Annex.

54. Three States<sup>28</sup> indicated they did not keep statistics. Five States<sup>29</sup> advised that they keep no official statistics on this issue but could provide a general overview.

55. Two States<sup>30</sup> qualified the statistics they provided by indicating that they represent averages and estimations based on the best information available, as opposed to a complete statistical picture.

**Figure 1: Number of Requests for Service 2003 – 2007**



56. States were asked how many requests for Service they received in each of the complete calendar years since the last Special Commission (Q. 9(a)). Twenty States<sup>31</sup> responded with quantitative data.

<sup>28</sup> Croatia, Japan, Latvia.

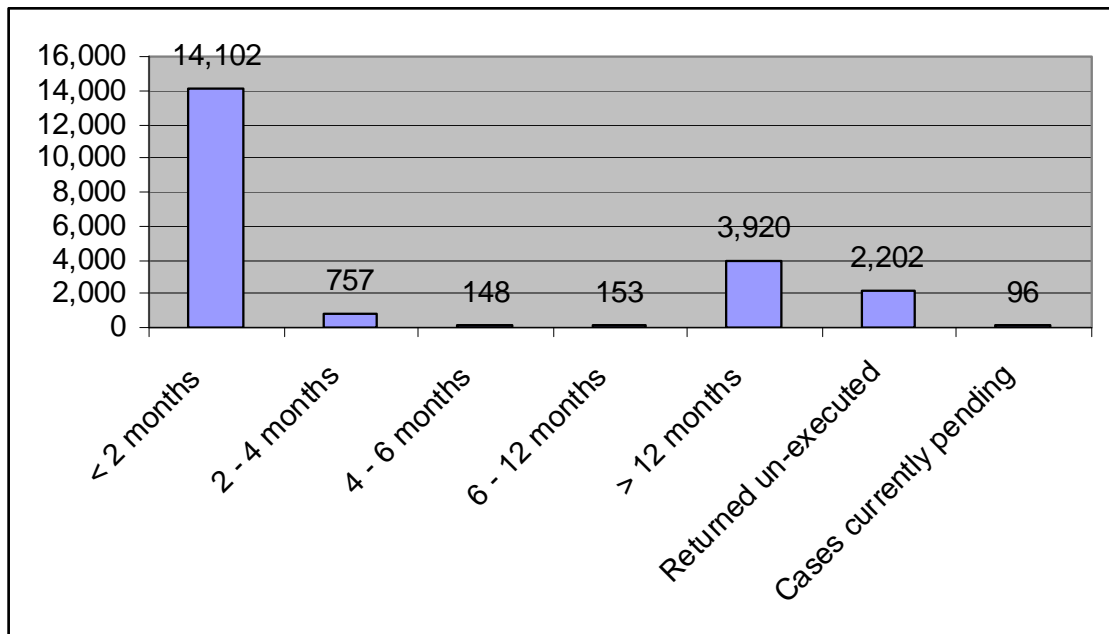
<sup>29</sup> Czech Republic, France, Norway, Spain, Turkey.

<sup>30</sup> Germany, Switzerland.

<sup>31</sup> Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Poland, Romania, Spain, Sweden, Switzerland, Turkey, United Kingdom, USA.



**Figure 2: Time lapse between receipt of request and sending of certificate of Service**



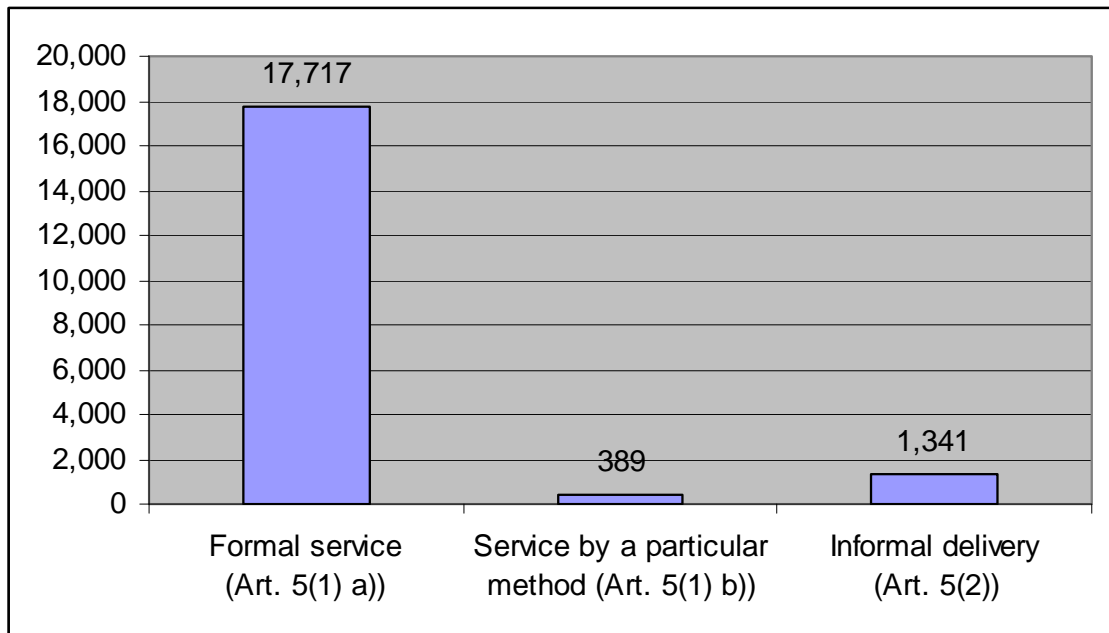
57. States were also asked to categorise requests received in 2007 into the method of Service used under Article 5 (formal service, service by a particular method and informal delivery); and the time that lapsed between receipt of the request and the forwarding of the Certificate of Service (Q. 9(b)). Thirteen States<sup>32</sup> responded to this question and advised that they had received a total of 21,378 requests, 66% of which were issued with a certificate of Service within less than two months. This figure is very encouraging, and suggests that the Service Convention generally operates effectively and efficiently.

58. Of greater concern are the 18.3% of requests which took 12 months or more to be issued with a certificate, which justifies the comments of States as regards delays. Significant delays undermine the effectiveness of the Convention, and the Permanent Bureau considers that solutions to prevent delays of this length should be considered as part of the discussion at the Special Commission.

59. Finally, 10.3% were of requests were returned unexecuted, the vast majority of these coming from the United States of America. The United States of America advised that of the 5,224 requests in which a certificate was returned within two months, 4,136 were successfully served and 1,088 could not be served because the person to be served could not be located.

60. Canada (Quebec) noted that excessive processing times were due to incomplete requests. The United States of America indicated that they do not collect data in relation to Service by a particular method (Art. 5(1) *b*) and informal delivery (Art. 5(2)).

<sup>32</sup> Bahamas, Canada, China (Hong Kong SAR), Finland, France, Germany, Mexico, Monaco, Poland, Romania, Switzerland, United Kingdom, USA.

**Figure 3: Breakdown of Methods of Service**

61. States were also asked to breakdown the methods of Service used by them complete the requests (Q. 9(b)). Thirteen States<sup>33</sup> responded to this question. The responses indicate that formal service under Article 5(1) a) of the Convention is overwhelmingly the most requested method of service, followed by informal delivery under Article 5(2).

#### **5. Number and breakdown of outgoing requests for Service (Q. 10)**

62. Statistics relating to outgoing requests for Service were less complete. These statistics are set out here in graphical form and in tabular format in the Annex.

63. Two States<sup>34</sup> indicated that the statistics they provided are not complete statistics, but rather form a partial overview. Some States provided overview information without detailed statistics.<sup>35</sup>

64. States were asked to provide the total number of outgoing requests they sent in the years since the last Special Commission (Q. 10(a)). Fifteen States<sup>36</sup> responded with quantitative data. Amongst these States the number of outgoing requests has steadily increased in the period since 2003. In 2007, 37,177 requests were sent by 15 States alone. This indicates a high rate of usage.

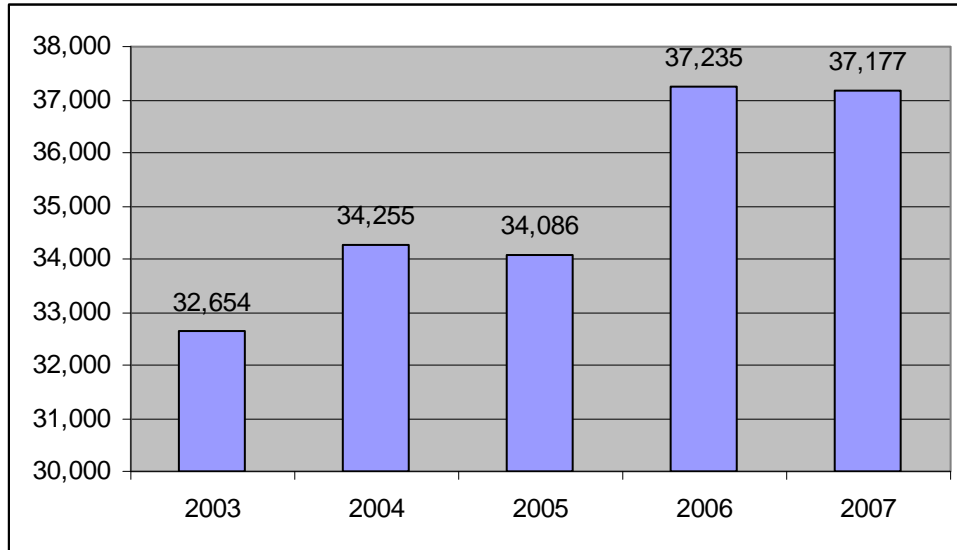
<sup>33</sup> Bahamas, Canada, China (Hong Kong SAR), Finland, France, Germany, Mexico, Monaco, Poland, Romania, Switzerland, United Kingdom, USA.

<sup>34</sup> Germany, Switzerland.

<sup>35</sup> Japan, Bulgaria, Spain, Czech Republic.

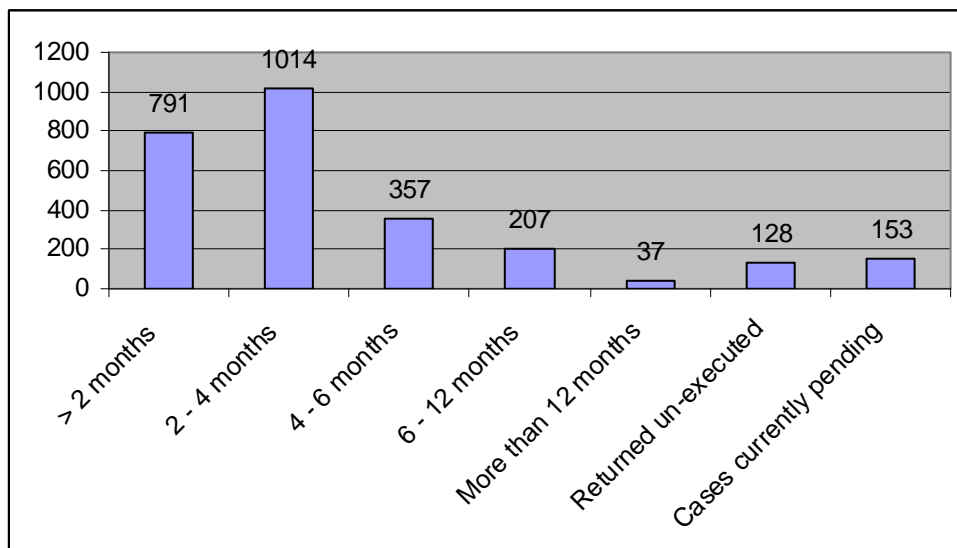
<sup>36</sup> Bahamas, Bulgaria, China (Hong Kong SAR), Finland, Germany, Japan, Latvia, Mexico, Monaco, Poland, Romania, Spain, Switzerland, Turkey, United Kingdom.

**Figure 4: Number of outgoing requests sent by States**

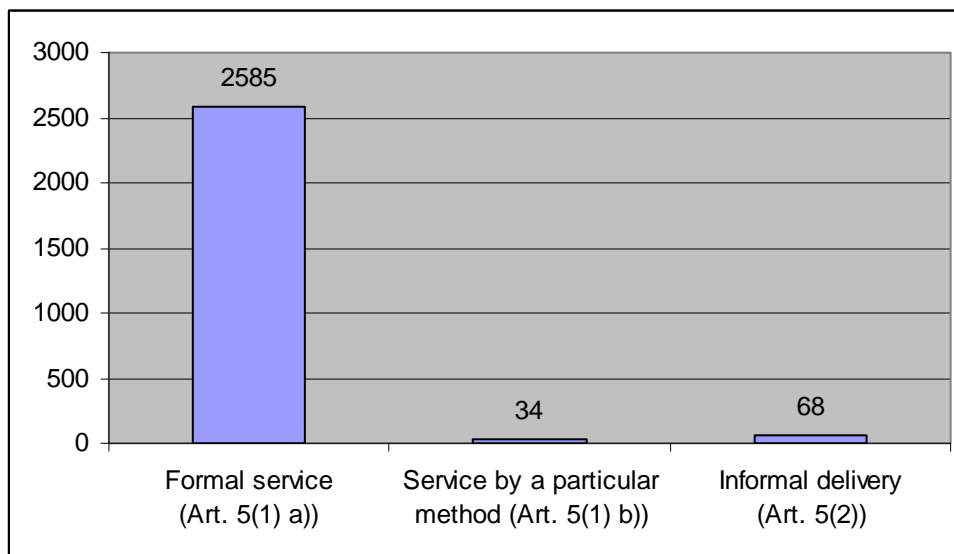


65. States were asked to divide their 2007 Statistics in two ways: to categorise the number of outgoing requests between the methods of service used under Article 5; and the time lapse between a request being sent and a certificate of service being received (Q. 10(b)). Eight States<sup>37</sup> responded to this question with quantitative data. The results indicate that 67% of requests were processed in less than four months. Whilst this is longer than that of outgoing requests it is worth noting that the incoming statistics include the lapse between receipt of request and sending of certificate, whilst the outgoing statistics includes the travel time from the sending of the request and receipt of the certificate, and so it might be expected to be a longer period of time. Only 1% of reported requests took longer than 12 months to have a certificate issued.

**Figure 5: Time lapse between request being sent and receipt of certificate of Service**



<sup>37</sup> China (Hong Kong SAR), Germany, Japan, Mexico, Monaco, Poland, Romania, United Kingdom.

**Figure 6: Breakdown of method of Service**

66. States were also asked in Question 10(b) to break down their outgoing requests into the method of service used. Eight States<sup>38</sup> responded and indicated that formal service under Article 5(1) a) was overwhelmingly the preferred method for execution of outgoing requests.

#### **In sum**

- the rate of incoming and outgoing requests by the responding States indicates that the rate of use of the Service Convention has grown since the last Special Commission and is likely to continue to grow;
- the vast majority of both incoming and outgoing requests were processed in four months or less, although a significant number of incoming requests were not executed after 12 months, which is a cause of significant concern and should be addressed by the Special Commission;
- the vast majority of both incoming and outgoing requests were effected using formal service under Article 5(1) a), rather than by other methods.

#### **B. General appreciation of the Service Convention (Q. 11)**

67. A clear majority of responding States consider that the general operation of the Service Convention is either "excellent" or "good". Of the 22 responding States<sup>39</sup> and the EC, six States<sup>40</sup> considered the general operation of the Service Convention to be "excellent", and 13 States<sup>41</sup> and the EC indicated they considered the general operation of the Service Convention to be "good". The United Kingdom alone considered the general operation of the Service Convention to be "satisfactory" due to difficulties find the defendant in order to affect personal service and recommends that an English solicitor agent is more likely to succeed.

68. Many responding States also noted difficulties that often arise with the operation of the Convention. Argentina and Mexico noted that problems arise when the certification or essential information is not correctly completed. Poland noted similar problems and

<sup>38</sup> China (Hong Kong SAR), Germany, Japan, Mexico, Monaco, Poland, Romania, United Kingdom.

<sup>39</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Spain, Switzerland, Sweden, Turkey, United Kingdom, USA.

<sup>40</sup> Argentina, Canada (Alberta, British Columbia, Manitoba, Prince Edward Island), Croatia, Luxembourg, Mexico, Poland.

<sup>41</sup> Bahamas, Bulgaria, Canada (Ontario, Quebec), China (Hong Kong SAR), Finland, Germany, Japan, Monaco, Norway, Spain, Switzerland, Sweden, Turkey, USA.

recommended establishing a time limit for providing an answer on a request and obliging States to advise requesting States whenever obstacles arise in executing a request. Canada (Quebec) noted problems using the Model Form and translations of documents accompanying the requests which might jeopardise comprehension.

69. The EC noted that the Convention works well in general and that it cannot yet identify fundamental difficulties, and suggested that after the Special Commission the EC would be willing to countenance a new edition of the Handbook and adoption of conclusions and recommendations. The EC does not see the need for a protocol. Six States<sup>42</sup> concurred with the comments of the EC. Finland noted problems with long delays in some cases and recommended the adoption of a Conclusion and Recommendation which re-emphasises the aim of expedited Service. Germany made a number of recommendations: making use of the model forms and completion of the forms in English or French obligatory, improving the content of the forms, shortening the processing time, demanding strict compliance with the language requirements, removing the required of compulsory translation for delivery under Article 5(2) and the extension of postal delivery.

70. Japan noted considerable delays, but did not consider that formal steps needed to be taken to address this. Monaco noted that problems had arisen with the model forms, payment requirements not being made clear from the outset and duplication requirements preventing service.

71. Switzerland noted problems on a canton-by-canton basis including: delays, late receipt and forms being incorrectly filled out, linguistic problems both with the forms and translations, problems interpreting the convention in relation to "Civil and Commercial matters". Switzerland recommended informing requesting States when procedures last for longer than three or four months along the lines of the European Regulation No 1393/2007.

72. Norway noted the continued used of diplomatic channels even though the Service Convention allows for direct transmission to Central Authority. Norway further noted linguistic difficulties arising both from translations and the forms; it also noted that the model forms are not always used and the certificate of Service is not always included.

73. The United States of America suggested modification of the Certificate to include two fields, one for the identity of the defendant served and the other for the identity of the person accepting service on their behalf. They also noted a number of problems that have arisen: rejection of service request e-filed in US so no original signature or seal, demanding legalization of the document or the translation, demanding that requests originate from clerks of court.

74. Turkey noted they have difficulties serving documents which originate from countries with other legal traditions, generally in the case where the intended defendant is not at the exact address on the form. Turkey recommends the harmonization of internal laws to comply with the requirement under Article 5(1) a) to exhaust all legal remedies to execute the request including accepting service as valid if the address is the last formal address. They recommend resolution of this through the development of specific comments in a new edition of the Service Handbook.

### **In sum**

- the general operation of the Service Convention is generally highly considered by States Parties, however specific problems have arisen, even for those States that consider the general operation to be excellent;
- the most common areas for problems to arise are:

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<sup>42</sup> Czech Republic, France, Latvia, Romania, Slovakia, Sweden.

- delays in service and delays in information;
- problems arising from the Model Forms: incorrectly completed, lacking information, completed in a foreign language other than English, French or the language of the requesting State;
- difficulties in finding the defendant; and
- problems with translation of the underlying document;
- a number of suggestions were made by States which merit discussion at the Special Commission, including:
  - establishing a maximum time limit for responding to requests;
  - requiring requested States to inform requesting States when there are problems with Service and advising of delays;
  - use of the Model Forms should be made mandatory;
  - the Model Forms should be amended;
  - translation quality of documents should be raised;
  - linguistic requirements should be more stringently enforced;
- however, no State asked that the suggestions take the form of a Conclusion and Recommendation, even though the EC did indicate it would be willing to accept such an outcome.

### **C. Case law and reference work (Q. 12-16)**

#### **1. Copies of guides, desk instructions or other practical information (Q. 12)**

75. States were asked whether they had produced desk instructions, guides or other practical information to assist with the application of the Service Convention. Eleven States<sup>43</sup> indicated they had produced such guides to the Service Convention. Croatia advised it had written internal directions for municipal and commercial courts. Three States<sup>44</sup> advised they had not done so. Further information relating to these guides may be found in the individual State responses on the HCCH website.

#### **2. Copies of decisions rendered after the publication of the Service Handbook in 2006 (Q. 13)**

76. States were asked for references of decisions rendered in their courts since publication of the Service Handbook in 2006. Nine States<sup>45</sup> indicated that such decisions had been rendered. Argentina indicated that one decision<sup>46</sup> had been handed down by the Commercial Court of Appeal. Canada advised that 11 such decisions had been handed down.<sup>47</sup> Two States<sup>48</sup> advised that no such decisions had been rendered. France advised that 11 decisions had been rendered. Germany provided a list of decisions taken from the JURIS GmbH data collection which are available from their response on the HCCH website (no translation available). Latvia advised that a number of decisions have been handed down but do not interpret provisions of the Convention rather they establish that Service has been effected. Two Swiss Cantons reported decisions had been handed

<sup>43</sup> Bulgaria, Czech Republic, Finland, France, Latvia, Norway, Slovakia, Spain, Switzerland, Turkey, USA.

<sup>44</sup> Canada, Germany, Japan.

<sup>45</sup> Argentina, Canada, Croatia, France, Germany, Latvia, Switzerland, United Kingdom, USA.

<sup>46</sup> *Banco Supervielle S.A. v. Société Bancaire Privée S.A* (24 April 2007) LA LEY, 2 August 2007, 5 - LA LEY 2007-D, 596

<sup>47</sup> Central Authority British Columbia: *S.A.G v. N.J.G.*, 2003 BCSC 649, *Tamlin International Homes v. Ikoma, et al.* 2001 BCSC 1039, *Mathers v. Bruce*, 2002 BCSC 210, *Wall, Redekop and Wall Financial Corp. v. Toyota Motor Co*, 1993, *Traxler v. Metzeler Reofem GMBH*, 2000 BCSC 808, *Drove v. Mansvelt et al.*, 2000 BCSC 1806. Central Authority of Ontario: *Wilson v. Servier Canada Inc.* 2002 CanLII 49426 (Ontario Superior Court of Justice), *Samina North America Inc. v. H3 Environmental II LLC*, [2004] O.J. No. 6229 169 A.C.W.S. (3d) 30 (Ontario Superior Court of Justice), *Smith v. National Money Mart Co.* [2006] O.J. No. 3649 151 A.C.W.S. (3d) 199 (Ontario Superior Court of Justice), *Zhang et al. v. Jiang* 2006 CanLII 24131 (Ontario Superior Court of Justice).

<sup>48</sup> Bulgaria, Japan.

down.<sup>49</sup> The United Kingdom<sup>50</sup> reported five decisions had been handed down. The United States of America provided a very comprehensive response available as Appendix A to their individual response on the HCCH website.

### **3. Lists of references of articles or books in connection with the Service Convention not yet published in the relevant HCCH resource (Q. 14)**

77. States were asked to provide references to resources (Q. 14). Eight States<sup>51</sup> provided references to articles or books not yet published either on the bibliography tab in the Service Section of the HCCH website or in the bibliography of the Service Handbook. These references will be added to the bibliography section of the website and the Permanent Bureau is grateful to these States for helping to maintain this useful resource.

### **4. Citations of domestic legislation implementing the Service Convention (Q. 15)**

78. States were invited to forward a copy and / or a citation of their domestic legislation implementing the Service Convention. Twenty-two States<sup>52</sup> provided such information. For the details of the citations please see the individual responses available on the HCCH website. For a list of the titles of implementing legislation please see the Synopsis of responses to the Service Convention (Prel. Doc. No 7 of January 2009<sup>53</sup>).

### **5. List of bilateral and regional instruments or treaties which provide rules for the service of documents abroad (Q. 16)**

79. States were invited to forward a list of bilateral and regional instruments or treaties which provide rules for the service of documents abroad, and identify those in particular which allow for direct judicial communication. Twenty-one States<sup>54</sup> provided detailed lists of treaties to which they are party. This information is not fully analysed in this document, however the main regional instruments and States which are parties to those agreements are (the titles appearing in italicized text are those instruments which allow for direct judicial communication):

- Council Regulation (EC) No 1348/2000;<sup>55</sup>
- Council Regulation (EC) No 1393/2007 on the Service of Judicial and Extra-Judicial Documents;<sup>56</sup>

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<sup>49</sup> *Décision de la première Chambre civile du Tribunal d'appel (Tribunal cantonal tessinois) du 4 août 2006 (dossier No 11.2005.147), Décision de la Chambre des poursuites et faillites du Tribunal d'appel (Tribunal cantonal tessinois) du 7 novembre 2007 (dossier No 15.2007.57), Kreisgericht St. Gallen: Plusieurs décisions en application de l'art. 13, al. 1.*

<sup>50</sup> *Olafsson v. Gissurarson* (No 2) [2008] EWCA Civ 152, *Phillips v. Symes* (A Bankrupt) [2008] UKHL 1 (Also known as *Nussberger v. Phillips*), *Almatrans SA v. Steamship Mutual Underwriting Association* (Bermuda) Ltd (the *Tutova*) [2006] EWCA 2223 (Comm), *Shiblaq v. Sadikoglu* [2004] EWHC 1890, *Knauf UK GmbH v. British Gypsum Ltd and Anor* [2001] EWCA Civ 1570.

<sup>51</sup> Argentina, Canada, Germany, Mexico, Poland, Slovakia, Switzerland, USA.

<sup>52</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Romania, Slovakia, Spain, Switzerland, Turkey, USA.

<sup>53</sup> "Synopsis of responses to the questionnaire of July 2008 relating to the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial documents in Civil or Commercial Matters* (Service Convention)", Prel. Doc. No 7 of January 2009 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.

<sup>54</sup> Argentina, Bahamas, Canada (Alberta, Ontario, Quebec), Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Turkey, USA.

<sup>55</sup> Czech Republic, France, Latvia, Luxembourg, Romania, Slovakia,

<sup>56</sup> Czech Republic, Finland, France, Germany, Latvia, Luxembourg, Romania, Slovakia.

- Hague Convention of 1 March 1954 on Civil Procedure;<sup>57</sup>
- Inter-American Convention on Letters Rogatory (Panama City, 13 January 1975);<sup>58</sup>
- Additional Protocol to the Inter-American Convention on Letters Rogatory (Montevideo, 8 May 1979);<sup>59</sup>
- Nordic Agreement on Mutual Assistance of 26 April 1974.<sup>60</sup>

### In sum

- States provided helpful information about reference materials drawn up and / or published in their State relating to the Service Convention;
- States provided helpful lists of cases referring to the Service Convention not yet available, which will facilitate the updating of the bibliography tab on the Service Section of the HCCH website;
- States provided lists of bilateral and regional instruments and treaties.

## D. Service Handbook (Q. 17-19)

### 1. Availability of Service Handbook to Central Authority (Q. 17)

80. The Service Handbook was available to the Central Authorities of a majority of responding States, following its distribution at the “Council on General Affairs and Policy” and through mailings to the relevant national organs. Of the 25<sup>61</sup> responding States, 18 States<sup>62</sup> advised that their Central Authorities have access to the Service Handbook. Eight States<sup>63</sup> indicated that their Central Authorities do not have access to a Handbook. Three States<sup>64</sup> advised they had not received copies, despite such copies being sent by the Permanent Bureau; there has been subsequent correspondence on this issue. Luxembourg and Switzerland indicated the reasons were not known, Switzerland also noted some Cantons consult the Federal Office of Justice or the HCCH website. China (Hong Kong SAR) and Germany indicated they did not need the Service Handbook.

81. Of the 18 States whose Central Authorities have access to the Service Handbook, 15 States<sup>65</sup> advised that their Central Authorities regularly consult their Handbooks. Five States<sup>66</sup> replied they did not regularly consult the Handbook (although two of these States previously indicated that their Central Authorities did not have copies).<sup>67</sup> Poland indicated that they consult the Handbook when problematic issues arise. Of the Swiss Cantons that have a copy, one noted the Handbook is excellent, but rarely consulted. The United States of America noted that websites are consulted in addition to the Handbook.

82. All 18 responding States indicated the Service Handbook is either very useful or useful (Q. 17(b)). Eleven States<sup>68</sup> advised the State was very useful; and seven States<sup>69</sup> considered it useful. However the Czech Republic noted they prefer to consult the information on the HCCH website. No States indicated that the Handbook was not useful.

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<sup>57</sup> Germany, France, Norway, Slovakia, Switzerland, Turkey.

<sup>58</sup> Argentina, Mexico.

<sup>59</sup> Argentina, Mexico.

<sup>60</sup> Finland, Norway.

<sup>61</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom, USA.

<sup>62</sup> Argentina, Bulgaria, Canada, China (Hong Kong SAR), Czech Republic, Finland, France, Japan, Latvia, Monaco, Norway, Poland, Romania, Slovakia, Spain, Sweden, Switzerland (the response varies depending on the canton), USA.

<sup>63</sup> Bahamas, Croatia, Germany, Luxembourg, Mexico, Switzerland (the response varies depending on the canton), Turkey, United Kingdom.

<sup>64</sup> Bahamas, Turkey, United Kingdom.

<sup>65</sup> Argentina, Bulgaria, Canada, Finland, France, Japan, Latvia, Monaco, Norway, Poland, Slovakia, Spain, Switzerland, Sweden, USA.

<sup>66</sup> China (Hong Kong SAR), Croatia, Czech Republic, Romania, Bahamas.

<sup>67</sup> China (Hong Kong SAR), Bahamas.

<sup>68</sup> Argentina, Bulgaria, Canada, Finland, Japan, Monaco, Norway, Romania, Switzerland, Sweden, USA.

<sup>69</sup> China (Hong Kong SAR), Czech Republic, France, Latvia, Poland, Slovakia, Spain.



## **2. Consultation of Handbook by Practitioners (Q. 18)**

83. States were asked whether Practitioners in their state use the Handbook. Of the 24 responding States the majority of States,<sup>70</sup> 20 in total, indicated they had no information on this question. Two States<sup>71</sup> indicated practitioners do use the Handbook, and three States indicate that practitioners do not use the Handbook.<sup>72</sup>

## **3. Reference or quotation of Service Handbook in judicial proceedings / court decisions (Q. 19)**

84. States were asked whether the Service Handbook had been referred to or quoted in judicial proceedings or court decisions since its publication in 2006 (Q. 19). Of the 21 responding States, two States<sup>73</sup> indicated decisions had referred to the Service Handbook. Switzerland indicated two cantons had such decisions. The USA provided a list of such decisions at Annex C of its response available on the HCCH website.

### **In sum**

- responding States consider the Service Handbook to be a (very) useful resource to Central Authorities;
- there were distribution problems in relation to the Service Handbook, which the Permanent Bureau has worked to remedy and rectify in the future;
- there remains an emphasis on consulting websites and it was recommended that the Handbook be made available online.

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<sup>70</sup> Argentina, Bahamas, Bulgaria, Canada (Ontario), China (Hong Kong SAR), Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Poland, Romania, Slovakia, Spain, Switzerland, Sweden, Turkey, United Kingdom.

<sup>71</sup> Canada (British Columbia), USA.

<sup>72</sup> Mexico, Monaco, Norway.

<sup>73</sup> Switzerland, USA.

## **PART TWO – SUBSTANTIVE ISSUES (Q. 20-56)**

### **I. Non-mandatory but exclusive character of the Service Convention (Q. 20)**

85. In Conclusion and Recommendation No 73, the 2003 Special Commission unanimously confirmed the view that the Service Convention is non-mandatory but exclusive (see also Service Handbook, paras 24-25), States were asked whether this had caused any difficulties (Q. 20(a)).

86. Nineteen States<sup>74</sup> and the EC reported that they had not experienced any difficulties with the non-mandatory but exclusive character of the Service Convention. The Permanent Bureau notes that this is a particularly positive development, given all the confusion this question had caused in the past.

87. The EC (and some of the Member States of the EC) recalled Council Regulation No 1348/2000 (and No 1393/2007 of November 2007, which repealed Regulation No 1348/2000). Among EC Member States the EC Service Regulation prevails over the Hague Service Convention.<sup>75</sup> Nineteen responding States<sup>76</sup> reported that no reference to the non-mandatory but exclusive character of the Service Convention had been made in any judicial proceedings in their State (Q. 20(b)).

88. The United States of America noted that the non-mandatory character of the Convention had received judicial attention (*i.e.*, circumstances in which service could be made on persons or entities within the USA under specific local law so that there was no occasion to transmit a document for service abroad).

#### **In sum**

- the Permanent Bureau is very pleased to note that the 2003 Conclusion and Recommendation No 73, stating that the Service Convention is non-mandatory but exclusive, has not caused any problems amongst responding States.

### **II. Scope of the Service Convention (Q. 21-26)**

#### **A. Interpretation of the phrase “civil or commercial matters” (Q. 21-23)**

##### **1. Issues arising from interpretation (Q. 21)**

89. In Conclusions and Recommendations Nos 69 to 72, the 2003 Special Commission urged States Parties to adopt a broad and liberal interpretation of the phrase “civil or commercial matters” (Art. 1) and reaffirmed the Conclusions adopted at the 1989 Special Commission regarding the scope of the Service Convention.

90. Twenty States<sup>77</sup> reported that they had not experienced any difficulty with the interpretation of the phrase “civil or commercial matters” (Q. 21(a)). The United States of America noted that, in general, it will consider any non-criminal request that emanates from a Tribunal or other authority that has judicial or adjudicatory powers as “civil or commercial” for the purpose of service under the Service Convention.

<sup>74</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Finland, Germany, Japan, Luxembourg, Mexico, Monaco, Norway, Poland, Spain, Switzerland, Sweden, Turkey, United Kingdom, USA.

<sup>75</sup> Referred to by the EC, Czech Republic, Poland, Slovakia, Sweden, France, Latvia, Romania.

<sup>76</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Czech Republic, Finland, Germany, Japan, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Switzerland, Sweden, Turkey, United Kingdom.

<sup>77</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Switzerland (most cantons), Sweden, Turkey, United Kingdom, USA.

91. Six States<sup>78</sup> reported that the interpretation of the phrase “civil or commercial matters” had given rise to problems in their State since 2003.
92. France noted that a difficulty related to the service of documents relating to labour law. France had attempted to resolve this matter through diplomatic channels but resolution has not yet been reached.
93. Japan noted that it had been requested to service a notice to refer a dispute to arbitral proceedings and this was rejected on the basis of Japan’s interpretation of the phrase “civil or commercial matters”. Japan noted that the matter had not yet been resolved.
94. Two States<sup>79</sup> advised that they had been asked on several occasions to serve documents that they considered to be of an administrative nature. These matters have been resolved.
95. Germany observed that it had encountered difficulties related to the service of actions that claimed treble or punitive damages. It noted however that these Statements of Claim have been served.
96. Switzerland noted that some of its cantons had refused to execute service of documents which possessed an administrative character and invited the States which had requested service to proceed through diplomatic channels. Switzerland also specifically referred to developments in other cantons which would now serve documents of an administrative character if those documents had a direct impact on the rights of the recipient, *i.e.*, in cases of expropriation. Even if issued as part of a civil action, Switzerland noted that requests for the service of documents that relate to the obligations of the recipient as a matter of public law, *i.e.*, for the payment of taxes, would not be executed.
97. Three States<sup>80</sup> advised that they had followed the Conclusions and Recommendations from the 2003 Special Commission to give a broad and liberal interpretation to the expression “civil or commercial” to resolve these difficulties (Q. 21(a)(ii)). Germany expressly noted that it had not followed the Conclusions and Recommendations from the 2003 Special Commission and had instead determined “a wide scope of application in an autonomous interpretation of Article 1 of the Service Convention”.
98. States were asked whether they were aware of any relevant decisions on this issue (Q. 21(a)(iii)). Germany referred to the case references that it provided in response to Question 13. Switzerland noted that its decisions with regards to the interpretation of the phrase “civil or commercial matters” are usually short and noted on the request for service or certificate directly when it is returned to the Requesting State.
99. Four States<sup>81</sup> reported that their Central Authority(ies) had been in contact with an authority of another Contracting State to discuss the interpretation of the phrase “civil or commercial matters” (Q. 21(b)). France noted that no response was received from its efforts to communicate. Switzerland noted that occasionally contact is made directly with the applicant or representative of the plaintiff by telephone.
100. Twenty-two States<sup>82</sup> reported that their Central Authority(ies) had not made contact with an authority of another Contracting State to discuss the interpretation of the phrase “civil or commercial matters”. Most States noted that it had not been necessary to contact an authority of another Contracting State on this issue either because the

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<sup>78</sup> France, Germany, Japan, Slovakia, Spain, Switzerland (some cantons).

<sup>79</sup> Slovakia, Spain.

<sup>80</sup> France, Spain, Switzerland.

<sup>81</sup> Bulgaria, France, Spain, Switzerland.

<sup>82</sup> Argentina, Bahamas, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Switzerland, Sweden, Turkey, United Kingdom, USA.

interpretation of the phrase had not caused any problems or because attempts are made to interpret the phrase as widely as possible. Turkey advised that it does not use direct contact as a general rule.

## 2. Types of matters falling within the scope of “civil or commercial matters” (Q. 22)

101. Responding States provided information relating to whether particular categories of matters fall within the scope of the expression “civil or commercial”. Responding States provided the following responses:

- **Bankruptcy or insolvency matters.** Twenty-one States<sup>83</sup> advised that they consider that bankruptcy or insolvency matters fell within the scope of the phrase “civil or commercial matters”; only one State<sup>84</sup> did not.
- **Reorganisation under bankruptcy laws.** Nineteen States<sup>85</sup> considered that matters relating to reorganisation under bankruptcy laws fell within the scope of the phrase “civil or commercial matters”; and two States<sup>86</sup> did not.
- **Insurance.** Twenty-one responding States<sup>87</sup> considered that insurance matters fell within the scope of the phrase “civil or commercial matters”; only one State did not.<sup>88</sup>
- **Social security.** Nine States<sup>89</sup> considered that social security matters fell within the scope of the phrase “civil or commercial matters”; and 12 States<sup>90</sup> did not.
- **Employment.** Twenty-two States<sup>91</sup> considered that employment matters fell within the scope of the phrase “civil or commercial matters”; one State<sup>92</sup> did not.
- **Taxation.** Five States<sup>93</sup> considered that taxation matters fell within the scope of the phrase “civil or commercial matters”; 15 States<sup>94</sup> did not.
- **Anti-trust and competition.** Seventeen States<sup>95</sup> considered that anti-trust and competition matters fell within the scope of the phrase “civil or commercial matters”; seven States<sup>96</sup> did not.

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<sup>83</sup> Argentina, Bahamas, Bulgaria, Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island, Quebec), China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Spain, Switzerland, Turkey, United Kingdom.

<sup>84</sup> Slovakia.

<sup>85</sup> Bahamas, Bulgaria, Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island, Quebec), China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Spain, Switzerland, United Kingdom.

<sup>86</sup> Argentina, Slovakia.

<sup>87</sup> Argentina, Bahamas, Bulgaria, Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island, Quebec), China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Latvia, Luxembourg, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Turkey, United Kingdom.

<sup>88</sup> Mexico.

<sup>89</sup> Argentina, Bulgaria, Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island, Quebec, France, Monaco, Norway, Spain, Switzerland, United Kingdom).

<sup>90</sup> Canada (Ontario), China (Hong Kong SAR), Croatia, Czech Republic, Finland, Germany, Latvia, Mexico, Poland, Romania, Slovakia, Switzerland.

<sup>91</sup> Argentina, Bahamas, Bulgaria, Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island, Quebec), China (Hong Kong SAR), Croatia, Czech Republic (only regarding individual contracts of employment and any arising relations), Finland, France, Germany, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Turkey, United Kingdom.

<sup>92</sup> Czech Republic.

<sup>93</sup> Argentina, Canada (Alberta, Prince Edward Island), China (Hong Kong SAR), Spain, United Kingdom.

<sup>94</sup> Bulgaria, Canada (British Columbia, Manitoba, Ontario, Quebec), Croatia, Czech Republic, Finland France, Germany, Latvia, Luxembourg, Mexico, Norway, Poland, Romania, Slovakia, Switzerland.

<sup>95</sup> Bahamas, Bulgaria, Canada (Alberta, Ontario, Prince Edward Island), China (Hong Kong SAR), Czech Republic, Finland, France, Germany, Latvia, Luxembourg, Monaco, Norway, Poland, Spain, Switzerland, Turkey, United Kingdom.

<sup>96</sup> Argentina, Canada (British Columbia, Manitoba, Quebec), Croatia, Mexico, Monaco, Romania, Slovakia.

- **Consumer protection.** Twenty-one States<sup>97</sup> considered that consumer protection matters fell within the scope of the phrase “civil or commercial matters”; two States<sup>98</sup> did not.
- **Regulation and oversight of financial markets and stock exchange (e.g., in matters possible involving insider trading).** Seven States<sup>99</sup> considered that such matters fell within the scope of the phrase “civil or commercial matters”; 15 States<sup>100</sup> did not. Norway specified that it considers matters of insider trading as a criminal offence and therefore not within the scope of the Service Convention.
- **Proceeds of Crime.** Four States<sup>101</sup> considered that proceeds of crime matters could fall within the scope of the phrase “civil or commercial matters”; 18 States<sup>102</sup> did not.

102. Some States provided further information on categories of matters that they consider fall within the scope of the Convention.

103. Argentina advised that matters involving the collection of money, damages, financial questions related to family matters (except child support payments) fall within the scope of “civil or commercial matters”.

104. Canada (Alberta and Prince Edward Island) advised that family law matters including divorce and child custody / maintenance and matters relating to gambling debts, inheritance, property (land) disputes and motor vehicle accidents fall within the scope of “civil or commercial matters”. Canada (Ontario) noted that the practice of their Central Authority would be to enable service of documents and to let the served party dispute the effect in the appropriate forum.

105. One canton in Switzerland also noted that the expropriation and enforcement of certain individual private law claims may fall within the scope of “civil or commercial matters”.

### 3. Consistent in interpretation of “civil or commercial matters” between the Service and Taking of Evidence Conventions (Q. 23)

106. Twenty-one States<sup>103</sup> reported that they interpreted the phrase “civil or commercial matters” in the same way as they interpreted the phrase in the context of the Hague Evidence Convention. No States reported any interpretation contrary to this.

#### In sum

- the majority of States have not experienced any difficulty with the interpretation of the phrase “civil or commercial matters”;
- some States have experienced difficulties with this phrase, although most of these were resolved;
- almost all responding States have followed the 2003 Conclusions and Recommendations to resolve these difficulties, by adopting a liberal interpretation of the expression “civil or commercial matters”;

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<sup>97</sup> Argentina, Bahamas, Bulgaria, Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island, Quebec), China (Hong Kong SAR), Czech Republic, Finland, France, Germany, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Turkey, United Kingdom.

<sup>98</sup> Argentina, Croatia.

<sup>99</sup> Canada (Ontario), Finland, Latvia, Norway, Switzerland, Turkey, United Kingdom.

<sup>100</sup> Argentina, Bulgaria, Canada (Alberta, British Columbia, Manitoba, Prince Edward Island, Quebec), China (Hong Kong SAR), Croatia, France, Germany, Luxembourg, Mexico, Poland, Romania, Slovakia, Spain, Switzerland, Bahamas.

<sup>101</sup> Bahamas, Bulgaria, Poland, United Kingdom.

<sup>102</sup> Argentina, Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island, Quebec), China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Latvia, Luxembourg, Mexico, Monaco, Norway, Romania, Slovakia, Spain, Switzerland, Bahamas.

<sup>103</sup> Argentina, Bulgaria, China (Hong Kong SAR), Czech Republic, Finland, France, Germany, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Sweden, Turkey, United Kingdom, USA.

- few responding States advised that they engage in direct contact with other Central Authorities to discuss the interpretation of the expression “civil or commercial matters”;
- the vast majority of States consider the following matters to be within the scope of the expression “civil or commercial matters”:
  - bankruptcy or insolvency;
  - reorganisation under bankruptcy laws;
  - insurance;
  - employment;
  - consumer protection;
- there is no consensus on the question whether the following matters fall within the scope of the expression “civil or commercial matters”:
  - social security;
  - taxation;
  - anti-trust and competition;
  - regulation and oversight of financial markets and stock exchange;
- there is a strong consensus that matters relating to the Proceeds of Crime do not fall within the scope of the Convention;
- States which are also party to the Hague Evidence Convention interpret “civil and commercial matters” consistently between the two Conventions.

### **B. Interpretation of “judicial and extrajudicial documents” (Q. 24)**

107. Most States advised that the category of “extrajudicial document” was known to their law (Q. 24(a)). Sixteen States<sup>104</sup> reported that the concept was known to the law of their State, and Nine States<sup>105</sup> reported that it was not.

108. Several States noted that their domestic law did not distinguish between public and private documents when determining whether a document was or was not “extrajudicial”.<sup>106</sup> Slovakia advised that it generally considers extrajudicial documents to be those which a Court has to serve in the context of judicial proceedings but which were not produced by the Court itself, although some doubts remain as to the precise content of the definition.

109. Several responding States provided examples of documents that would be considered as falling within the definition of “extrajudicial documents”. Examples included:

- notice of dates of mediation hearings,<sup>107</sup>
- notarial documents,<sup>108</sup>
- notices served by creditors upon debtors,<sup>109</sup>
- testamentary documents,<sup>110</sup> orders and summonses,<sup>111</sup>
- decisions concerning child support payments and decisions concerning the granting of separation and divorce orders,<sup>112</sup>
- consents to adoption,<sup>113</sup>
- deeds,<sup>114</sup>
- notifications to beneficiaries of a deceased estate.<sup>115</sup>

<sup>104</sup> Argentina, Bulgaria, Canada (Quebec), Croatia, Finland, France, Germany, Japan, Luxembourg, Monaco, Norway, Poland, Romania, Spain, Switzerland (half of the cantons), Turkey.

<sup>105</sup> Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island), China (Hong Kong SAR), Czech Republic, Latvia, Mexico, Slovakia, Switzerland (half of the cantons), Sweden, USA.

<sup>106</sup> Croatia, Czech Republic, Sweden.

<sup>107</sup> Argentina.

<sup>108</sup> Bulgaria, Canada (Quebec), Croatia, Germany, Japan, Luxembourg, Norway, Poland, Romania, Spain, Switzerland.

<sup>109</sup> Canada (Quebec), Switzerland.

<sup>110</sup> Finland.

<sup>111</sup> France, Monaco, Poland.

<sup>112</sup> Norway.

<sup>113</sup> Switzerland.

<sup>114</sup> Switzerland.

<sup>115</sup> Switzerland.

110. Of those States<sup>116</sup> that recognised the concept of extrajudicial documents, several States noted that extrajudicial documents had to be served abroad when the addressee resides abroad (Q. 24(a)(ii)). Germany advised that service abroad of extrajudicial documents may be necessary where enforcement will be required. Canada (Quebec) noted that Quebec law does not specifically provide for the service abroad of extrajudicial documents but an obligation may be inferred from legislative texts.

111. France reported that the only costs charged are those associated with professional costs, *i.e.*, translators' fees and charges payable to bailiffs. States provided a number of responses relating to which persons may serve "extrajudicial documents". Responses received included individuals,<sup>117</sup> persons or bodies with jurisdictional functions,<sup>118</sup> the courts,<sup>119</sup> process servers,<sup>120</sup> *huissiers de justice*,<sup>121</sup> clerks of the court,<sup>122</sup> Consular Agents<sup>123</sup> and notary publics acting as the officer in charge of public power in, *e.g.*, inheritance matters.<sup>124</sup> Japan and Switzerland noted that they do not consider that private persons can serve extrajudicial documents.

112. Responses suggest that requests for service of extrajudicial documents are relatively rare (Q. 24(a)(iv)). Three States<sup>125</sup> reported that no instances arose in 2007. Two States<sup>126</sup> reported that between one and 10 instances arose in 2007 where extrajudicial documents were forwarded by their State for service abroad. Two States<sup>127</sup> reported that more than 20 instances arose in 2007 where extrajudicial documents were forwarded by their State for service abroad. Six States<sup>128</sup> reported that they had no data available on this question.

113. Six States<sup>129</sup> reported that in 2007 they received no requests for service of extrajudicial documents (Q. 24(b)). Five States<sup>130</sup> reported that in 2007 they received between one and 10 requests for service of extrajudicial documents. Two States<sup>131</sup> reported that in 2007 they received more than 20 requests for service of extrajudicial documents. Four States<sup>132</sup> reported that they had no data available on this question.

114. States from which such requests emanated included: Italy,<sup>133</sup> France,<sup>134</sup> Switzerland,<sup>135</sup> United Kingdom,<sup>136</sup> United States of America,<sup>137</sup> Turkey,<sup>138</sup> Norway,<sup>139</sup> Germany,<sup>140</sup> Spain,<sup>141</sup> Hungary,<sup>142</sup> and Finland.<sup>143</sup>

115. All of these requests were executed, save for one.

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<sup>116</sup> Croatia, Finland, France, Japan, Monaco, Norway.

<sup>117</sup> Argentina, Spain.

<sup>118</sup> Argentina.

<sup>119</sup> Canada, Germany, Poland.

<sup>120</sup> Finland.

<sup>121</sup> France, Luxembourg, Monaco.

<sup>122</sup> France, Romania.

<sup>123</sup> Turkey

<sup>124</sup> Switzerland.

<sup>125</sup> Bulgaria, Canada (Ontario), Bahamas.

<sup>126</sup> Argentina, Monaco.

<sup>127</sup> Finland, Romania.

<sup>128</sup> Canada (Quebec), Croatia, France, Germany, Japan, Turkey.

<sup>129</sup> Bulgaria, Poland, Sweden, Finland, Monaco, Spain.

<sup>130</sup> Argentina, China (Hong Kong SAR), Japan, Mexico, Romania.

<sup>131</sup> Canada (Quebec), USA.

<sup>132</sup> Croatia, Latvia, France, Turkey.

<sup>133</sup> As reported by Argentina, China (Hong Kong SAR), Switzerland, USA.

<sup>134</sup> As reported by Canada, China (Hong Kong SAR).

<sup>135</sup> As reported by China (Hong Kong SAR), Romania.

<sup>136</sup> As reported by China (Hong Kong SAR).

<sup>137</sup> As reported by Mexico.

<sup>138</sup> As reported by Romania.

<sup>139</sup> As reported by Romania.

<sup>140</sup> As reported by Switzerland.

<sup>141</sup> As reported by Switzerland.

<sup>142</sup> As reported by Switzerland.

<sup>143</sup> As reported by the USA.

## In sum

- the category of “extrajudicial documents” is a concept known to the majority of responding States, although it remains unknown in a number of States. A vast array of documents is considered by responding States to be “extrajudicial” and a vast array of persons may serve such documents;
- requests for service of extrajudicial documents were rare in 2007 but were received from a variety of States, and were almost always executed.

### C. Service on States and State Officials (Q. 25-26)

#### 1. Use of Service Convention to serve upon States and State Officials (Q. 25)

116. A number of responding States reported that they have used the Convention to forward requests for service upon States or State officials. Ten States<sup>144</sup> reported that they had used the Convention for this purpose, while eight States<sup>145</sup> reported that they had not. Argentina and Germany noted that service upon a foreign State or State official was usually effected through diplomatic channels. Argentina referred to Articles 41.1 and 41.2 of the Vienna Convention on Diplomatic Channels.

117. States which reported that they had used the Service Convention to serve documents upon foreign States or State officials were asked which channel they use (Q. 25(a)). Two States<sup>146</sup> referred to Article 9(2) of the Service Convention and the use of the diplomatic channel, and seven States<sup>147</sup> referred to diplomatic and consular channels generally. Three States<sup>148</sup> also referred to the sending of requests directly to the Central Authority of the foreign State.

118. The States to which requests for service upon the State or State officials had been sent included: Russian Federation,<sup>149</sup> Argentina,<sup>150</sup> Pakistan,<sup>151</sup> Germany,<sup>152</sup> Belgium,<sup>153</sup> Bulgaria,<sup>154</sup> China,<sup>155</sup> France,<sup>156</sup> The Netherlands,<sup>157</sup> United States of America<sup>158</sup> and Venezuela.<sup>159</sup>

119. Responses differed as to the success of such service (Q. 25(c)). Four States<sup>160</sup> advised that the documents were not served. Three States<sup>161</sup> advised that documents were served using the diplomatic channel. Two States<sup>162</sup> advised that the requested State had not provided any further information as to the execution of the request.

120. A number of difficulties were reported in the case where service was sought on a State or State official (Q. 25(d)), including:

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<sup>144</sup> Bulgaria, Finland, France, Japan, Latvia, Poland, Spain, Switzerland, United Kingdom, USA.

<sup>145</sup> Argentina, Bahamas, China (Hong Kong SAR), Czech Republic, Germany, Mexico, Monaco, Romania, Turkey.

<sup>146</sup> Bulgaria, Japan.

<sup>147</sup> Finland, France, Latvia, Poland, Switzerland, Turkey, United Kingdom.

<sup>148</sup> Finland, France, Switzerland.

<sup>149</sup> As reported by Finland, Latvia.

<sup>150</sup> As reported by France, Switzerland.

<sup>151</sup> As reported by Japan.

<sup>152</sup> As reported by Poland, Switzerland.

<sup>153</sup> As reported by Switzerland.

<sup>154</sup> As reported by Switzerland.

<sup>155</sup> As reported by Switzerland, United Kingdom.

<sup>156</sup> As reported by Switzerland.

<sup>157</sup> As reported by Switzerland.

<sup>158</sup> As reported by Switzerland.

<sup>159</sup> As reported by Switzerland.

<sup>160</sup> France, Latvia, Switzerland, United Kingdom.

<sup>161</sup> Bulgaria, Japan, Turkey.

<sup>162</sup> Finland, Switzerland.



- in some instances more time was needed for the service of documents upon States or State officials;<sup>163</sup>
- State sovereignty and/or immunity;<sup>164</sup>
- some requested States require the request to be forwarded through diplomatic channels and not to the Central Authority of the requested State;<sup>165</sup>
- no certificate of service is returned.<sup>166</sup>

121. Switzerland also raised several questions for further clarification in relation to the forwarding of documents for service upon States or State officials including the relationship between the Service Convention and the 1972 European Convention on State Immunity (No 074), as well as translation requirements and whether the request for service should be made using the Model Form.

## 2. Requests received for service upon State or State officials (Q. 26)

122. Nine States<sup>167</sup> reported that they had received a request for service upon their State or State officials, while 13 States<sup>168</sup> reported that they had received no such request.

123. Different methods were used to forward these requests (Q. 26(a)). Five States<sup>169</sup> indicated these had been received through their Central Authority, *i.e.*, the main channel of transmission, and four States<sup>170</sup> indicated that these requests had been received through diplomatic or consular channels. Spain advised that it had received some requests as a result of EC Regulation 1348/00 of the Council of the European Union although they considered that these should have been processed through the foreign Ministry for Foreign Affairs to the Spanish Ministry for Foreign Affairs.

124. The United States of America noted that, occasionally, service of such requests has been attempted by means of Article 3 of the Service Convention. The United States of America considers that such service would be ineffective unless it otherwise complies with the applicable principles of customary international law for service upon foreign States, including the requirement that at least 60 days be provided within which to make an initial response. The United States of America further noted with respect to service of documents in accordance with Article 3, service will not be executed if attempted upon a US governmental entity that, in accordance with US governmental organising law, has no legal personality that would permit it to be sued independently from the United States of America. The United States of America reported that no fee is charged by the Department of Justice's contractor for service to be made upon the United States of America or its departments, agencies or instrumentalities.

125. Requests for service upon a State or State official were received from a large number of States (Q. 26(b)), including France,<sup>171</sup> United Kingdom,<sup>172</sup> United States of America,<sup>173</sup> Italy,<sup>174</sup> Switzerland,<sup>175</sup> Germany,<sup>176</sup> Netherlands,<sup>177</sup> Turkey<sup>178</sup> and Mexico.<sup>179</sup>

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<sup>163</sup> As reported by Bulgaria.

<sup>164</sup> As reported by Poland, Switzerland, United Kingdom.

<sup>165</sup> As reported by Switzerland.

<sup>166</sup> As reported by Switzerland.

<sup>167</sup> Argentina, Bulgaria, France, Germany, Japan, Mexico, Spain, Switzerland, United Kingdom.

<sup>168</sup> Bahamas, Canada, China (Hong Kong SAR), Czech Republic, Finland, Germany, Latvia, Luxembourg, Monaco, Poland, Romania, Sweden, Turkey.

<sup>169</sup> Argentina, Germany, Japan, Mexico, United Kingdom

<sup>170</sup> Bulgaria, Switzerland, Argentina, USA.

<sup>171</sup> As reported by Argentina.

<sup>172</sup> As reported by Argentina.

<sup>173</sup> As reported by Argentina, Switzerland.

<sup>174</sup> As reported by Argentina, USA.

<sup>175</sup> As reported by Argentina, Bulgaria.

<sup>176</sup> As reported by Bulgaria, USA.

<sup>177</sup> As reported by Spain, Switzerland, USA.

<sup>178</sup> As reported by the USA.

<sup>179</sup> As reported by the USA.

The United States of America also noted that additional States may have attempted service of documents of this nature through Article 3 of the Convention.

126. Different methods were used to effect service of this character (Q. 26(c)). Two States<sup>180</sup> advised that documents were served in accordance with local procedural laws. Bulgaria advised that the main channel of transmission under the Convention was used. Spain noted that the documents were forwarded to the Spanish Ministry for Foreign Affairs for consideration for service. The United Kingdom advised that it forwarded these requests for service to the Treasury Solicitor. The United States of America reported that, as long as the requests for service complied with customary international law with respect to service upon foreign States and were not addressed to a US governmental entity that had no juridical existence in the forum State, then they would be forwarded to the appropriate office within the US Department of Justice that represents the United States of America and all constituent governmental entities in litigation, and certificates of service would be returned to the appropriate forwarding authority.

127. Several States advised of difficulties that had been experienced in the receipt of requests for service of documents upon States or State officials (Q. 26(d)). Argentina reported that sometimes that request for service is not addressed to the Head of State or the Argentine State, but rather to the official directly. Germany referred to a refusal of service in accordance with Article 13(1) and that the documents to be served may not be related to a civil or commercial matter.

### **In sum**

- a significant number of responding States have used the Service Convention to serve documents upon States or State officials;
- a number of States referred to the use of diplomatic channels;
- a number of difficulties have arisen in relation to requests for service upon States or State officials.

## **III. The main channel of transmission (Q. 27-33)**

### **A. Forwarding Authority (Art. 3) (Q. 27)**

128. A majority of responding States have not encountered difficulties in determining the competence of a forwarding authority (Q. 27). While seven States<sup>181</sup> advised that they had encountered such difficulties, 19 States<sup>182</sup> reported that they had not.

129. In Conclusion and Recommendation No 49, the 2003 Special Commission advised that in case of doubt as to the competence of the forwarding authority, rather than rejecting the request for service, the authorities in the requested State should seek to confirm that competence by either consulting the HCCH website or by making informal enquiries, including by way of e-mail. Seven States noted that the Conclusions and Recommendation No 49 of the 2003 Special Commission had been followed.<sup>183</sup>

### **B. Methods of sending requests for Service (Q. 28)**

130. Requests for service are usually forwarded by post (Q. 28). Twenty-three States<sup>184</sup> reported that the forwarding authorities of their State mainly used the postal method for

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<sup>180</sup> Argentina, Mexico.

<sup>181</sup> Argentina, Czech Republic, Japan, Monaco, Norway, Spain, Switzerland (some cantons).

<sup>182</sup> Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Germany, Finland, France, Latvia, Luxembourg, Mexico, Poland, Romania, Slovakia, Sweden, Switzerland (majority of cantons), Turkey, United Kingdom, USA.

<sup>183</sup> Argentina, Czech Republic, Japan, Monaco, Norway, Spain, Switzerland.

<sup>184</sup> Argentina, Bulgaria, Canada (British Columbia), China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Sweden, Turkey, USA.

forwarding requests for service abroad. Two States<sup>185</sup> advised that they did not.

131. Many States advised that their forwarding authorities also use courier services to forward requests for service. Twelve States<sup>186</sup> advised that courier services are used, while 12 States<sup>187</sup> advised that they did not. Turkey noted that under internal law only official postal services could be used.

132. A clear majority of responding States accept requests for service that have been forwarded by courier. Twenty-four<sup>188</sup> States reported that the Central Authority of their State had accepted requests for service received by courier (Q. 28(c)).

### In sum

- the majority of responding States have experienced no difficulties in determining the competence and legitimacy of forwarding authorities. Where such difficulties have arisen, the responding States advised that they have been solved by consulting the HCCH website or by making informal enquiries, including by way of e-mail;
- most responding States mainly use the postal method for forwarding requests for service abroad, although half advised that they also use courier services;
- all responding States accept requests for service that have been forwarded by courier.

### C. Methods of service (Art. 5) (Q. 29)

133. A large number of methods are used to serve documents that have been received from abroad (Q. 29(a)(i)). The full diversity of responses is best appreciated in the Synopsis of Responses to the Service Convention Questionnaire that outlines in full the responses of each State. Responses varied and most States made reference to the domestic laws of their State. It appears that the most common methods of service were through either the postal method or personal service, often, at first instance, via the judicial system.

134. Where service is requested under Article 5(1) a), the majority of States reported that personal service was the default method of service for service on individuals or corporations.<sup>189</sup> Other States responded that postal services were the default method of service.<sup>190</sup> Three States<sup>191</sup> advised that addressees would be summonsed to Court for the handing over of documents. The Czech Republic further specified that, in default thereof, the postal service would be used. Poland provided extensive details regarding the default

<sup>185</sup> Canada (Alberta, Ontario, Prince Edward Island), Bahamas.

<sup>186</sup> Argentina, Bulgaria, Croatia, Czech Republic, France, Latvia, Mexico, Norway, Romania, Spain, Sweden, USA.

<sup>187</sup> Bahamas, Canada (Alberta, British Columbia, Prince Edward Island), China (Hong Kong SAR), Finland, Germany, Japan, Monaco, Poland, Slovakia, Switzerland, Turkey, United Kingdom.

<sup>188</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Romania, Slovakia, Spain, Switzerland, Sweden, Turkey, United Kingdom, USA.

<sup>189</sup> Bahamas, Canada (Alberta), Canada (British Columbia)- documents are served by a sheriff or a deputy sheriff, Canada (Manitoba), Canada (Ontario)- documents are served by a public officer, Canada (Prince Edward Island)- documents are served by a sheriff or a deputy sheriff, Canada (Quebec)- documents are served by a bailiff, China (Hong Kong SAR), Finland, France- by bailiff, Mexico, Monaco- documents are served by a bailiff/agent of the Public Security Department, Norway- documents are served by a process server, Romania- documents are served by procedural agents (civil clerks), Slovakia (at the Court), United Kingdom (on individuals, failing that, first class post), USA.

<sup>190</sup> Canada (Quebec), Czech Republic, Japan, Germany, Norway (only if certain conditions are met, see Prel. Doc. No 7, *op. cit.* note 53), Spain, Switzerland (also see the Synopsis of Responses for information provided by Switzerland in this context in relation to translations), Turkey, United Kingdom (on corporations), USA (if applicable / required – see Prel. Doc. No 7).

<sup>191</sup> Argentina, Czech Republic, Latvia.

method of service depending on the nature of the matter and the circumstances involved.

135. Twenty-three States<sup>192</sup> advised that they agree with the view of the Permanent Bureau that Article 5(1) *a*) allows for the specification of a method of service that is recognised by the law of the requested State (Q. 29(b)(i)). Latvia, however, advised that it does not agree with this view on the basis that the authority of the requesting State will not always be aware of the methods of service recognised by the law of the requested State. Therefore, in order to guarantee that the required method of service of documents will be used in the requested State, Latvia considers that the authority of the requesting State may ask for its request to be executed under Article 5(1) *b*) even if this method is recognised by the law of the requested State.

136. States described a number of methods of service requested under Article 5(1) *b*) (Q. 29(b)(ii),(iii)). Several States<sup>193</sup> advised that personal service (*i.e.*, no other person but the addressee may receive the document) has been so requested. Switzerland reported that its forwarding authorities have requested that service in matters relating to demands for payment or bankruptcy be made personally by a Registrar of the Court or an employee of the Registry, or, by post, and that those who carry out the service declare details on copies of the documents that were served and return these to the forwarding authority. Some States noted that they had been requested to serve documents by post in accordance with Article 5(1) *b*).<sup>194</sup>

137. Argentina noted that service by facsimile has been requested in accordance with Article 5(1) *b*) but was not executed since the Argentine Republic only allows service through the Courts. Canada (Alberta) noted that in one instance they were requested to tape the documents to the door of a residence, take a picture and include the picture with the completed Certificate. Canada (Manitoba) reported that it had been requested to effect service on the lawyer on record for a corporation, rather than upon the corporation's directors or officers as they could not be located; it was noted that this was done after consultation with the requesting authority.

138. Switzerland reported that in one of its cantons, it was requested to serve documents personally into the hands of the recipient and for the server of the documents to verify the identity of the recipient with a photo provided by the requesting authority. Switzerland also noted that in another canton, a request for a similar method of service was executed by the police.

139. Informal delivery is provided for by the law of many responding States. Fourteen States<sup>195</sup> reported that the law of their State makes such provision; while 13 States<sup>196</sup> advised that no such concept existed under their domestic law. A variety of ways and methods for informal delivery were detailed. Methods of effecting informal service include: postal service, personal service in Court in response to a Summons to attend for service, voluntary acceptance of documents pursuant to a request to attend (a Court for example) for service, service by procedural agents and service through members of diplomatic or consular missions (these can be viewed in the Synopsis of Responses<sup>197</sup> to the Service Convention Questionnaire).

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<sup>192</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Japan, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Sweden, Turkey, United Kingdom.

<sup>193</sup> Canada (British Columbia), Norway, Slovakia, Sweden, USA.

<sup>194</sup> China (Hong Kong SAR), Spain.

<sup>195</sup> Canada (British Columbia, Ontario), Czech Republic, France, Germany, Japan, Latvia, Monaco, Poland, Romania, Slovakia, Sweden, Switzerland (some cantons), Turkey, USA.

<sup>196</sup> Argentina, Bahamas, Bulgaria, Canada (Alberta, Manitoba, Prince Edward Island, Quebec), China (Hong Kong SAR), Croatia, Finland, Luxembourg, Mexico, Norway, Spain, Switzerland (some cantons), United Kingdom.

<sup>197</sup> Prel. Doc. No 7 of January 2009, *op. cit.* note 53.

140. Only five responding States<sup>198</sup> reported that they systematically attempt informal delivery of documents prior to any other methods of service (Q. 29(c)(ii)); 19 States<sup>199</sup> reported that they did not systematically first attempt informal delivery.

141. Ten States<sup>200</sup> reported that they attempt formal service of documents in their State in the event that the informal delivery of documents has failed (Q. 29(c)(iii)). The majority of States noted that in the event that formal service was then to be attempted, translation requirements would need to be considered. The documents therefore often need to be returned to the forwarding authority for further consideration.

142. Thirteen States<sup>201</sup> reported that their State did not attempt formal service of documents in the event that the informal delivery of documents failed.

### **In sum**

- the most common methods of service appear to be the postal method or personal service;
- the majority of States reported that personal service is used when requested under Article 5(1) *a*);
- almost all States agree with the view of the Permanent Bureau that Article 5(1) *a*) allows for the specification of a method of service;
- States provided descriptions of the methods they had been requested to use, and had used to effect service requests;
- States are almost equally divided in whether or not their internal law allows for informal service;
- there is little consistency of practice in relation to whether formal service is attempted when informal service fails and vice versa.

## **D. Translation requirements (Art. 5(3))**

### **1. Language or translation requirements for documents to be served (Q. 30)**

143. A clear majority of responding States impose translation requirements upon documents forwarded for service in accordance with Article 5(1) (Q. 30). Only five States<sup>202</sup> advised that they did not impose any such requirements upon documents served in their State in accordance with Article 5(1). Latvia and France both advised, however, that the addressee would always be able to refuse to accept service of documents received from abroad if they were in a language that he or she did not understand.

144. By contrast, 19 States<sup>203</sup> reported that they imposed translation requirements upon documents served in their State in accordance with Article 5(1). Some States reported that they required a translation of the documents attached to the form into the language of their State.<sup>204</sup> Some States also referred to the reservation they have made in relation to Article 5.<sup>205</sup>

145. Responses differed on the question whether a translation is required in the case where the addressee is fluent in the language in which the documents to be served are

<sup>198</sup> Monaco, Romania, Switzerland, Sweden, Turkey.

<sup>199</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Norway, Poland, Slovakia, Spain, United Kingdom, USA.

<sup>200</sup> Canada (Alberta), Czech Republic, Latvia, Mexico, Norway, Poland, Romania, Switzerland, Sweden, USA.

<sup>201</sup> Argentina, Bahamas, Bulgaria, Canada (British Columbia, Manitoba, Ontario, Prince Edward Island, Quebec), China (Hong Kong SAR), Finland, France, Germany, Japan Spain, Monaco, Slovakia, Turkey.

<sup>202</sup> France, Latvia, Monaco, Romania, United Kingdom.

<sup>203</sup> Argentina, Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, Germany, Japan, Luxembourg, Mexico, Norway, Poland, Spain, Switzerland, Sweden, Turkey, USA.

<sup>204</sup> Argentina, Croatia, Mexico, Spain.

<sup>205</sup> Bulgaria, Croatia, Switzerland.

written and service is requested pursuant to Article 5(1) *a*), Nine States<sup>206</sup> advised a translation would still be required; and nine States<sup>207</sup> advised that they would not.

146. Where service is requested pursuant to a special method under Article 5(1) *b*), nine States<sup>208</sup> reported that documents would not need to be translated, while seven States stated advised that they would still require on a translation of the documents.<sup>209</sup>

147. Twelve States advised that their State imposed no translation requirements on documents served via informal delivery.<sup>210</sup> No State advised that translation would be required in this case. Switzerland further specified that if documents received from abroad are not in the language (or accompanied by a translation) of the requested canton then the recipient is entitled to refuse to accept service and require a translation. The United States of America noted that informal service of untranslated documents in the United States of America may not provide the recipient with sufficient notice of the nature of the proceeding, and may not be enforceable as a matter of due process.

## **2. Law which determines preparation of translations (Q. 31)**

148. Responding States expressed different views on the question of which law should govern the translation requirements. Eleven States<sup>211</sup> considered that the domestic law of the requesting State should govern these issues, eight States<sup>212</sup> considered that the domestic law of the requested State should be applied, and seven States<sup>213</sup> considered that both the domestic law of the requesting State and the domestic law of the requested State should apply.

### **In sum**

- most States impose a translation required upon documents served in their State under Article 5;
- practice is divided on the question whether documents forwarded for service must be translated in the case where the addressee is fluent in the language in which the documents are written;
- there is no clear consensus regarding which law determines issues relating to the translation of documents;
- given the problems States have already mentioned with translation, this issue clearly merits discussion at the Special Commission.

## **E. Costs of formal service (Art. 12) (Q. 32)**

149. A clear majority of responding States consider that the costs of formal service under Article 5(1) *a*) should be borne by the requested State (Q. 32). Nineteen States<sup>214</sup> took this view, while only five States<sup>215</sup> considered that the cost should be borne by one of the applicant, forwarding authority, or requesting State.

<sup>206</sup> Argentina, Canada (Alberta, British Columbia, Prince Edward Island, Quebec), Germany, Japan, Mexico, Poland, Slovakia, Switzerland (some cantons), USA.

<sup>207</sup> Canada (Manitoba), China (Hong Kong SAR), Czech Republic, Finland, Luxembourg, Norway, Spain, Sweden, Switzerland (some cantons), United Kingdom.

<sup>208</sup> Bulgaria, Canada (Alberta, British Columbia, Prince Edward Island, Quebec), Croatia, Germany, Norway, Poland, Sweden, Switzerland, USA.

<sup>209</sup> Argentina, Japan, Mexico, Poland, Slovakia, Switzerland (some cantons), USA.

<sup>210</sup> Bulgaria, Canada, China (Hong Kong SAR), Finland, Germany, Japan, Norway, Poland, Slovakia, Switzerland, United Kingdom, USA.

<sup>211</sup> Argentina, Bulgaria, Canada (British Columbia, Ontario), Croatia, Finland, Germany, Japan, Luxembourg, Norway, Romania, USA.

<sup>212</sup> Bahamas, Canada (Alberta, Prince Edward Island), Latvia, Mexico, Monaco, Spain, Sweden, United Kingdom.

<sup>213</sup> Canada (Quebec), Czech Republic, France, Poland, Slovakia, Switzerland, Turkey.

<sup>214</sup> Argentina, Bulgaria, China (Hong Kong SAR), Croatia, Czech Republic, Finland, Germany, Japan, Latvia, Luxembourg, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Sweden, United Kingdom.

<sup>215</sup> Bahamas, Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island, Quebec), France, Mexico, USA.

150. A smaller majority of responding States considered that the requested States should bear the cost of service pursuant to a special method requested under Article 5(1) *b*). Thirteen States<sup>216</sup> consider that the requested State should bear any costs of service. China (Hong Kong SAR) specified that this would only be in the event that service was requested by post. Three States<sup>217</sup> also specified that if a particularly expensive method of service was requested then the Court might ask for reimbursement of costs or contact the requesting party in advance to give an estimate of costs. By contrast, 11 States<sup>218</sup> considered that such costs should be borne by one of the applicant, forwarding authority, or the requesting State.

151. In the case of informal delivers pursuant to Article 5(2), a majority of responding States considered that the requested State must bear the cost of service. Sixteen States<sup>219</sup> took this view. By contrast, three States<sup>220</sup> considered that such costs should be borne by one of the applicant, forwarding authority, or the requesting State.

### **In sum**

- a clear majority of States consider that the requested State is to bear the costs of service where it is requested under Article 5(1) *a*) or Article 5(2);
- a narrower majority of responding States consider that the requested State must bear the costs associated with service pursuant to a special method requested under Article 5(1) *b*).

### **F. Modern Technologies (Q. 33)**

152. In Conclusions and Recommendations Nos 60 to 62, the 2003 Special Commission noted that the Service Convention does not by its terms prevent or prescribe the use of modern technologies to assist in further improving the operation of the Convention, and that States Parties should explore all ways in which they can use modern technology for these purposes. In Conclusion and Recommendation No 63, a variety of steps were identified for the exploration and use of modern technologies: communications between a requesting party and a forwarding authority; communications between a forwarding Authority and a Central Authority of a requested State; and the retransmission of the certificate of execution by the Central Authority or the designated Authority (Art. 6).

153. A majority of responding States advised that, as a requesting State, they would not permit documents to be forwarded by a requesting party to a forwarding authority by fax, e-mail or a similar technology (Q. 33(a)). Only seven States<sup>221</sup> indicated that they would permit the use of such technology in such circumstances, while 19 States<sup>222</sup> reported that their State, as a requesting State, would not allow for the use of modern technologies in the forwarding of documents from a requesting party to a forwarding authority. Some of these latter States noted that there are either no provisions on this issue in their internal law or that the question had not yet arisen as a matter of practice.

154. Similarly, a majority of responding States advised that, as requesting States, their law would not permit a forwarding authority to forward documents to a Central Authority

<sup>216</sup> China (Hong Kong SAR), Croatia, Czech Republic, Finland, Germany, Luxembourg, Monaco, Norway, Romania, Slovakia, Spain, Sweden, Turkey.

<sup>217</sup> The Czech Republic, Norway, Romania.

<sup>218</sup> Argentina, Bahamas, Bulgaria, Canada (Alberta, British Columbia, Manitoba), France, Japan, Latvia, Mexico, Poland, United Kingdom, USA.

<sup>219</sup> Bulgaria, China (Hong Kong SAR), Croatia, Czech Republic, Finland, Germany, Japan, Latvia, Monaco, Norway, Poland, Romania, Slovakia, Switzerland, Sweden, Turkey.

<sup>220</sup> Bahamas, Canada (Alberta, British Columbia, Manitoba, Prince Edward Island), USA.

<sup>221</sup> Bulgaria, Canada, (British Columbia, Quebec) Finland, Latvia, Spain, Sweden, USA.

<sup>222</sup> Argentina, Bahamas, Canada (Alberta, Manitoba, Prince Albert Island) China (Hong Kong SAR), Croatia, Czech Republic, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Poland, Romania, Slovakia, Switzerland, Turkey, United Kingdom.

of a requested State by fax, e-mail, or other similar technology. Only eight States<sup>223</sup> advised that they would allow for the use of such technologies, while 18 States<sup>224</sup> reported that they would not.

155. A majority of responding States advised that, as requested State, they would not permit a forwarding authority of a requesting State to forward a request for service by fax, e-mail, or other similar technology. Only seven States<sup>225</sup> advised that they would allow for the use of such technologies, while 16 States<sup>226</sup> advised that they would not.

156. A majority of responding States advised that, as requested State, their law would not permit the transmission of the certificate of execution from the relevant Authority to the applicant by fax, e-mail or a similar technology. Seven States<sup>227</sup> indicated that they would permit the use of such technology. Canada (Ontario) reported that it would in part depend on the law of the requesting State and whether it would allow the applicant to use such a certificate. France noted that it would depend upon whether the applicant expressly requested to receive the certificate by fax. Two cantons in Switzerland reported that it would be allowed if it was requested by the applicant and if the original followed in the post. The majority of cantons indicated that an advance delivery of the certificate by fax or post would be possible if the original followed in the post.

157. By contrast, 16 States<sup>228</sup> advised that their State, as requested State, would not allow for the use of modern technologies in the transmission of the certificate of execution from the relevant Authority to the applicant.

158. Similarly, a majority of responding States, as requesting States, would not permit the receipt of a certificate of execution from the relevant Authority of the requested State by fax, e-mail, or other similar technology. Only nine States<sup>229</sup> indicated that they would allow for the use of such technologies. Two States<sup>230</sup> specified that it would be necessary for the original to follow by post.

159. By contrast, 16 States<sup>231</sup> reported that their State, as a requesting State, would not allow the use of such technologies for this purpose. However two States<sup>232</sup> noted that if a case is urgent, they would consider receipt of certificates by fax as long as the original documents are later transmitted by post.

### **In sum**

- most States do not yet allow for the use of technology in the service of documents, despite Conclusions and Recommendations Nos 60-62 of the 2003 Special Commission;
- those States which do allow such technology often do so only in limited circumstances.

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<sup>223</sup> Bulgaria, Canada (British Columbia, Quebec), Finland, France, Latvia, Spain, Sweden, USA.

<sup>224</sup> Argentina, Bahamas, Canada (Alberta, Prince Edward Island), China (Hong Kong SAR), Croatia, Czech Republic, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Poland, Romania, Slovakia, Switzerland, Turkey, United Kingdom.

<sup>225</sup> Bulgaria, Finland, France, Germany, Latvia, Spain, Sweden.

<sup>226</sup> Argentina, Bahamas, China (Hong Kong SAR), Croatia, Czech Republic, Japan, Luxembourg, Mexico, Monaco, Poland, Romania, Slovakia, Switzerland, Turkey, United Kingdom, USA.

<sup>227</sup> Bulgaria, Canada (British Columbia, Ontario, Quebec), Finland, Latvia, Spain, Sweden, Switzerland.

<sup>228</sup> Argentina, Bahamas, Canada (Alberta, Manitoba, Prince Edward Island), China (Hong Kong SAR), Croatia, Czech Republic, Germany, Japan, Luxembourg, Mexico, Monaco, Poland, Romania, Slovakia, United Kingdom, USA.

<sup>229</sup> Bulgaria, Canada (British Columbia, Quebec), Finland, France, Latvia, Norway, Spain, Sweden, Switzerland.

<sup>230</sup> Latvia, Switzerland.

<sup>231</sup> Argentina, Bahamas, Canada (Alberta, Manitoba), China (Hong Kong SAR), Croatia, Czech Republic, Germany, Japan, Luxembourg, Mexico, Monaco, Poland, Romania, Slovakia, Turkey, United Kingdom.

<sup>232</sup> Monaco, Norway.



## **IV. Alternative Channels of Transmission (Arts 8, 9, 10) (Q. 34-48)**

### **A. Translation requirements (Q. 34)**

160. In Conclusion and Recommendation No 65, the 2003 Special Commission recognised that whilst no translation is required under the Service Convention for documents transmitted under the alternative channels of transmission, in isolated cases, translations are sometimes required in these circumstances by the domestic law of States.

161. A majority of responding States advised that they did not impose translation requirements on documents served through an alternative channel of transmission. Only seven States<sup>233</sup> reported that the domestic law of their State imposed translation requirements on documents that are transmitted for service through an alternative channel of transmission. By contrast, 17 States<sup>234</sup> reported that the domestic law of their State imposed no such requirement.

162. The United States of America specified that for incoming and outgoing requests for service that have been transmitted through alternative channels of transmission, the necessity and degree of translation is ultimately determined by a due process standard.

#### **In sum**

- most States do not impose translation requirements for documents transmitted through alternative channels of transmission.

### **B. Model Form (Q. 35)**

#### **1. Sending the "Summary" accompanied by the "Warning" when using alternate channels of transmission (Q. 35)**

163. The Fourteenth Session of the HCCH (held in 1980) recommended that the part of the Model Form that contains the "Summary", accompanied by the "Warning", not only be used under the main channel of transmission but also under the alternative channels of transmission of the Service Convention.

164. However only a minority of responding States advised that the authorities in their State systematically sent the "Summary" accompanied by the "Warning" when requests for service were sent abroad using an alternative channel of transmission. Only five States<sup>235</sup> reported such a practice, while 14 States<sup>236</sup> reported that no such systematic practice existed.

#### **In sum**

- most States do not systematically send the "Summary" followed by the "Warning" when using alternative channels of transmission;
- the recommendations of the Fourteenth Session should perhaps be reviewed as a result.

#### **2. Issuance of Certificate even when alternate channels used (Q. 36)**

165. The Permanent Bureau approves and encourages the practice of certain States to return a Certificate of Execution to the applicant even if transmission of the request for service occurred via an alternative channel of transmission provided for in Article 10 *b)* and *c)*.<sup>237</sup> This practice may even be extended to Article 10 *a)*, depending on the postal mail service used in the State of destination.

<sup>233</sup> Bahamas, Canada (Ontario, Quebec), China (Hong Kong SAR), Romania, Spain, Switzerland, United Kingdom.

<sup>234</sup> Argentina, Bulgaria, Canada (Alberta, British Columbia, Manitoba, Prince Edward Island), Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Poland, Slovakia, Sweden, Turkey.

<sup>235</sup> Bulgaria, Canada (British Columbia, Price Edward Island), Spain, Switzerland, USA.

<sup>236</sup> Argentina, Bahamas, China (Hong Kong SAR), Croatia, Finland, France, Germany, Latvia, Japan, Mexico, Monaco, Romania, Turkey, United Kingdom.

<sup>237</sup> Hague Conference, *Practical Handbook on the Operation of the Hague Service Convention*, 3<sup>rd</sup> Ed., Brussels, Belgium, Bruylant, 2006, para. 119.

166. However only three States<sup>238</sup> reported that this was their practice, while 12 States<sup>239</sup> reported that it was not their practice. Many of the latter States, however, noted that their answer followed from their declarations made against the operation of part or all of Article 10.

### **In sum**

- most States do not issue certificates of service when alternate channels are used, often as a result of declarations against Article 10 rather than an objection to the practice.

## **C. Diplomatic and Consular Channels (Q. 37-40)**

### **Article 8 - Direct Channels (Q. 37)**

167. Many States advised that they had not used the diplomatic or consular agents of their State to directly effect service under Article 8(1). Eleven States<sup>240</sup> advised that their diplomatic and consular agents had not been used in the past five years for this purpose. Romania stated that this channel of transmission is not used because service through Central Authorities was much quicker than service through diplomatic or consular agents. The United States of America reported that the service of process and legal papers is not normally a US Foreign Service function and that except when directed by the US Department of State, officers of the US Foreign Service are prohibited from serving process or legal papers or appointing others to do so. By contrast, nine States<sup>241</sup> advised that the diplomatic and consular agents of their State had been used for this purpose in the past five years.

168. Amongst those States where diplomatic and consular officials have been used to directly effect service of judicial documents upon persons abroad in accordance with Article 8(1), service by this method appears to occur very rarely.<sup>242</sup> Japan, however reported that in 2007 service of this character had been used on 393 occasions.

169. Responding States also provided information relating to the States in which diplomatic and consular agents had been used to effect direct service pursuant to Article 8(1). Argentina reported that they were based in the United States of America, Spain, Italy, France, Brazil, Chile, Peru, Mexico and Uruguay (amongst others). The Czech Republic reported that their diplomatic and consular agents were based in Japan, Switzerland, Liechtenstein and Israel. Germany reported that their diplomatic and consular agents had been based in the United States of America, Canada, Turkey, the Russian Federation, Ukraine, Croatia and Pakistan. Switzerland reported that this channel of transmission was the primary channel utilized when requesting service in Canada, India, Ireland and the United States of America.

170. States provided information on the average time taken between the transmission of the documents for service and the execution of service in relation to documents transmitted in accordance with Article 8(1) (Q. 37(c)). Bulgaria noted that the execution time was very fast, depending on the frequency of the diplomatic post. The Czech Republic noted that their experience was that execution times varied between one and three months. Japan reported execution times of approximately two months, and Spain reported execution times of one and a half to two months. Turkey advised that the process generally took nearly six months.

<sup>238</sup> Bahamas, Spain, United Kingdom.

<sup>239</sup> Bulgaria, Canada (Alberta, British Columbia, Prince Edward Island), China (Hong Kong SAR), Finland, France, Germany, Japan, Latvia, Mexico, Poland, Romania, Turkey.

<sup>240</sup> Canada (Ontario, Prince Edward Island), China (Hong Kong SAR), Finland, France, Latvia, Mexico, Monaco, Romania, Sweden, United Kingdom, USA.

<sup>241</sup> Argentina, Bulgaria, Croatia, Czech Republic, Germany, Japan, Poland, Spain, Switzerland.

<sup>242</sup> Argentina, Bulgaria, Czech Republic, Germany.

171. Of those 10 States<sup>243</sup> that reported that the diplomatic and consular agents of their State had been used to directly effect service of judicial documents upon persons abroad in accordance with Article 8(1) in the past five years, all reported that they considered the channel was efficient and effective (Q. 37(d)).

172. Four States<sup>244</sup> reported that there were no occasions where their diplomatic and consular agents were not able to directly effect service of judicial documents upon persons abroad as a result of the addressee not voluntarily accepting delivery of the document (Q. 37(e)). Four States reported that there were occasions where their diplomatic and consular agents were not able to directly effect service of judicial documents upon persons abroad as a result of the addressee not voluntarily accepting delivery of the document.<sup>245</sup>

173. Seven States<sup>246</sup> reported that the transmission of documents through diplomatic and consular agents posted abroad or the actual service of these documents in the State of destination had never occurred electronically (Q. 37(f)).

### **In sum**

- a number of responding States have in the past five years used diplomatic or consular agents to effect service under Article 8(1), although the practice appears to be relatively rare;
- States that have used this channel of transmission have generally found it to be fast and effective, although difficulties may arise if the addressee refuses to accept service.

## **Article 9 - Indirect Channels (Q. 38-40)**

### **1. Use of indirect channels in the past five years (Q. 38)**

174. A majority of responding States have not used consular channels to forward documents for the purpose of service to those authorities of another Contracting State which were designated by the latter for this purpose in accordance with Article 9(1) in the past five years (Q. 38). Eleven States<sup>247</sup> advised that they have not used consular channels for this purpose, while seven States<sup>248</sup> advised that they had.

175. Use of consular channels appears to be relatively rare.<sup>249</sup> States were asked in which States the diplomatic and consular agents who had been used for this purpose had been based (Q. 38(b)). The Czech Republic reported that they were based in Japan, Switzerland, Egypt, Mexico and Guatemala.<sup>250</sup> Germany reported that their diplomatic and consular agents had been based in the United States of America, Canada, Turkey, the Russian Federation, China and Romania. Latvia reported that their diplomatic and consular agents had been based in the Russian Federation. Spain reported that their diplomatic and consular agents had been based in Portugal and some South American countries.

176. States were asked the average time taken between the first transmission of the documents to be served and the execution of the service in accordance with Article 9 (Q. 38(c)). Bulgaria noted that the execution time was very fast, depending on the frequency of the diplomatic post. The Czech Republic noted that their experience was that execution times varied between one and four months. Spain reported execution times of around two months and Latvia reported that this channel of transmission had been a time consuming process usually taking six to 12 months. Turkey reported nearly six months.

<sup>243</sup> Argentina, Bulgaria, Croatia, Czech Republic, Germany, Japan, Poland, Spain, Switzerland, Turkey.

<sup>244</sup> Argentina, Czech Republic, Germany, Spain.

<sup>245</sup> Bulgaria, Croatia, Japan, Switzerland.

<sup>246</sup> Argentina, Bulgaria, Czech Republic, Germany, Japan, Switzerland, Turkey.

<sup>247</sup> Argentina, China (Hong Kong SAR), Finland, France, Japan, Mexico, Monaco, Romania, Sweden, United Kingdom, USA.

<sup>248</sup> Bulgaria, Czech Republic, Germany, Latvia, Spain, Switzerland, Turkey.

<sup>249</sup> Bulgaria, Latvia.

<sup>250</sup> The Czech Republic reported that this channel had been used on 262 occasions in the past 5 years (of these, 250 were forwarded to Switzerland).

177. Most responding States considered that this channel of transmission was considered efficient and effective (Q. 38(d)). Six States took this view.<sup>251</sup> The Czech Republic stated specifically that it considered the channel of transmission was effective with regards to requests for service forwarded to Switzerland, Mexico and Guatemala. Germany considered that this channel of transmission is generally efficient for the progress of judicial procedure because it enables evidence to be provided that the documents have been served.

178. Two States<sup>252</sup> did not consider this channel of transmission to be efficient and effective. Latvia reported that that the use of consular channels required the involvement of several authorities which decreased the efficiency of the process.

#### **In sum**

- a minority of responding States uses the indirect consular channel, and its use appears to be rare;
- most States that have used this channel, however, consider it to be efficient and effective.

### **2. Exceptional circumstances requiring use of diplomatic channels (Q. 39)**

179. A majority of responding States advised that no “exceptional circumstances” had arisen in the past five years requiring the use of diplomatic channels for the forwarding of documents under Article 9(2) (Q. 39). Sixteen States<sup>253</sup> reported that there have been no such “exceptional circumstances”.

180. By contrast, five States<sup>254</sup> reported that such “exceptional circumstances” had arisen. Bulgaria referred to a claim on a foreign sovereign State as well as situations where some States have made declarations relating to the service of documents which makes it difficult to effect service.

181. Two States<sup>255</sup> considered that the service of a claim on a foreign State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for a State or a State-owned company may generally be regarded as “exceptional circumstances”.

182. Sweden reported that a request for service on the Government of the Russian Federation was transmitted through diplomatic channels.

183. The Czech Republic advised that all requests for service in Egypt are sent via diplomatic channels to the Ministry of Foreign Affairs in Egypt for further submission to the relevant organ designated for service and that was in fact a standard procedure required by that State.

#### **In sum**

- a large majority of responding States advised that no “exceptional circumstances” had arisen in the past five years requiring the use of diplomatic channels to forward documents for service;
- some responding States consider that service upon a foreign State constitutes “exceptional circumstances” for this purpose.

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<sup>251</sup> Bulgaria, Czech Republic, Germany, Spain, Switzerland, Turkey.

<sup>252</sup> Czech Republic, Latvia.

<sup>253</sup> Argentina, Canada (Ontario, Prince Edward Island) China (Hong Kong SAR), Finland, France, Germany, Latvia, Mexico, Monaco, Norway, Poland, Romania, Spain, Turkey, United Kingdom, USA.

<sup>254</sup> Bulgaria, Czech Republic, Japan, Switzerland, Sweden.

<sup>255</sup> Japan, Switzerland.

### 3. Transmission to diplomatic agents or consular officers by electronic means (Q. 40)

184. Electronic means are very rarely used to transmit documents to diplomatic agents or consular officials (Q. 40). Seventeen States<sup>256</sup> reported that such methods had not been used. The United States of America, however, reported that this had occurred in the context of the service of subpoenas upon US citizens located abroad in accordance with 28 US Code 1783 and where scanned or faxed copies of subpoenas and court orders have been transmitted to US embassies for service.

#### D. Article 10 a) – Postal Channel (Q. 41-44)

##### 1. Opposition to Article 10 a)

185. Those States that have opposed “the freedom to send judicial documents, by postal channels, directly to persons abroad” (Art. 10 a)) were asked to provide reasons for this opposition (Q. 41(a)). Thirteen States<sup>257</sup> provided such information. These reasons were varied and included beliefs that other methods of service were sufficient and effective and considerations of protection of the addressee as there is no guarantee that the documents would be in a language that they understand.

186. Six States<sup>258</sup> reported that, despite having made an objection, they nevertheless use the postal channel in accordance with Article 10 a) to send judicial documents abroad for service (Q. 41(b)). The Czech Republic stated that this channel of transmission is used only if another method of delivery has not been effective. Germany stated that the postal channel is sometimes used if service by mail is permitted. Monaco reported that it sends a copy of a writ that is issued by a bailiff by mail to the recipient. Before shipment, it is verified that the State of destination has not opposed the use of this route of transmission. The original of the document is then sent through the main channel of transmission.

187. Slovakia reported that it had contacted all those Contracting States who had not made an objection to this channel of transmission to ascertain whether that State applied reciprocity (*i.e.*, and were opposed to our use of the postal channel) and that Slovakian judicial authorities have been advised of the possibility to use this channel for the States where no objection was provided.

188. Five States, all of whom oppose the use of the postal channel in accordance with Article 10 a), reported that they did not use this channel of transmission to send judicial documents abroad for service by mail.<sup>259</sup>

##### 2. Difficulties arising from application and interpretation of Article 10 a) (Q. 42)

189. All responding States reported that they had encountered no difficulties with the interpretation and application of Article 10 a) (Q. 42).<sup>260</sup>

<sup>256</sup> Argentina, Bulgaria, China (Hong Kong SAR), Czech Republic, Finland, France, Germany, Japan, Latvia, Mexico, Monaco, Poland, Romania, Switzerland, Sweden, Turkey, United Kingdom.

<sup>257</sup> Argentina, Bulgaria, Canada (Alberta, Prince Edward Island), Croatia, Czech Republic, Germany, Mexico, Monaco, Norway, Poland, Slovakia, Switzerland, Turkey.

<sup>258</sup> Czech Republic, Germany, Monaco, Norway, Slovakia, Switzerland.

<sup>259</sup> Argentina, Bulgaria, Canada (Alberta, Ontario, Prince Edward Island), Turkey, United Kingdom.

<sup>260</sup> Canada, China (Hong Kong SAR), Finland, France, Japan, Latvia, Luxembourg, Mexico, Romania, Slovakia, Spain, Sweden, Turkey, USA.

### **3. Frequency with which judicial documents are sent for service via postal channels (Q. 43)**

190. Finland alone provided information relating to the frequency with which judicial documents are sent via postal channels (Q. 43), and advised that it is the primary channel of transmission used.

### **4. Use of private couriers (Q. 44)**

191. In Conclusion and Recommendation No 56, the 2003 Special Commission concluded that for the purposes of Article 10 *a*), the use of a private courier was the equivalent of using the postal channel under the Service Convention. A majority of responding States advised that their law conformed to this Conclusion and Recommendation.

192. As State of origin, eight States<sup>261</sup> reported that the law of their State allowed for private courier services to be used under Article 10 *a*), while five States<sup>262</sup> reported that the law of their State did not. Latvia reported that the court's couriers can only be used within the territory of Latvia and the use of private couriers for the service of documents abroad is not provided under Latvian legislation.

193. As State of destination, nine States<sup>263</sup> advised that the law of their State allowed for private courier services to be used under Article 10 *a*), and three States<sup>264</sup> reported that the law of their State did not. Latvia further noted that according to draft amendments to its Civil Procedure Law, the service of documents under Article 10 *a*) would only be effected using registered post with an acknowledgement of receipt and if a Latvian translation of the document is provided.

#### **In sum**

- some States that have objected to the use of the postal channel use it for service in other States;
- no responding States have had any difficulty with the interpretation and application of Article 10 *a*);
- information regarding the frequency of requests being sent via postal channels is too limited to draw any conclusions;
- a majority of responding States regard private couriers as the equivalent of the postal channel under the Service Convention, consistent with Conclusion and Recommendation No 56 of the 2003 Special Commission.

### **E. Article 10 *b*) – Judicial Officers, Officials or Other Competent Persons (Q. 45-46)**

#### **1. Reasons for opposition to Article 10 *b*) (Q. 45)**

194. Of those States that oppose "the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination" (Art. 10 *b*)), 12 States gave reasons for this opposition.<sup>265</sup>

<sup>261</sup> Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island), Finland, Luxembourg, Romania, Slovakia, Spain, Sweden, USA.

<sup>262</sup> France, Japan, Latvia, Mexico, Turkey.

<sup>263</sup> Canada (Alberta, British Columbia, Manitoba, Prince Edward Island, Quebec), Finland, France, Luxembourg, Romania, Slovakia, Spain, Sweden, USA.

<sup>264</sup> Latvia, Mexico, Turkey.

<sup>265</sup> Argentina, Bulgaria, Czech Republic, Germany, Japan, Latvia, Mexico, Poland, Slovakia, Switzerland, Sweden, USA.

195. Reasons for opposition varied for each State and included opinions that direct communication between judges must take place via the means of letters rogatory only, that other channels and methods for service of documents were considered to be sufficient and effective and as a result of the concern that judicial documents transmitted in this way may not comply with translation requirements or be in a language that the addressee can understand. Please refer to the Synopsis of Responses in relation to the Service Convention Questionnaire for the various State responses to this question.

## **2. Judicial officers, officials or other competent persons under Article 10 b) (Q. 46)**

196. States were asked which types of officials they consider to be competent persons under Article 10 b). Responses included the following categories of persons:

- attorneys or Solicitors;<sup>266</sup>
- bailiffs;<sup>267</sup>
- *huissiers*;<sup>268</sup>
- process servers;<sup>269</sup>
- court officials;<sup>270</sup>
- notaries;<sup>271</sup>
- officials of the executive branch;<sup>272</sup>
- sheriffs.<sup>273</sup>

197. Responding States provided further practical information on the operation of this channel of transmission. Three States<sup>274</sup> advised that they considered that this channel of transmission operates in a similar manner to the main channel of transmission under the Convention. Canada (Quebec) indicated that that they considered that a Quebec bailiff (*huissier*) may address a bailiff (*huissier*) of the requested State and vice versa.<sup>275</sup> Canada (Alberta and Prince Edward Island) noted that all requests through this channel of transmission were still made through the Central Authority and documents were not received directly from abroad, at least in the context of being a State of destination.

198. Some States impose costs associated with the use of this channel of transmission (Q. 46(c)). Canada (Alberta and Prince Edward Island) reported that there would be CDN\$ 50.00 service fee applicable. Canada (Quebec) reported that when there is a transmission of judicial documents from bailiff to bailiff fees would be applied by bailiffs in Quebec. France also referred to bailiff fees.

199. Finland reported that when a request is sent directly to a Finnish process server, there would be a fee of 27 Euros. Luxembourg reported that there was a fixed fee of 138 Euros.

200. The United Kingdom and the United States of America reported that any costs of service would be contracted privately, *i.e.*, through the representatives of the parties.

201. Three States<sup>276</sup> noted that there would be no costs.

202. This channel of transmission appears to be rarely used. Canada (Alberta) reported that as a State of destination, there are approximately nine requests per month. Canada (Prince Edward Island) reported, that as a State of destination, there are approximately two per year. Finland and Romania stated that this channel of transmission was rarely

<sup>266</sup> Canada (British Columbia, Prince Edward Island), Spain, United Kingdom, USA.

<sup>267</sup> Canada (Alberta, British Columbia, Manitoba, Prince Edward Island), USA.

<sup>268</sup> Canada (Quebec), France, Luxembourg, Monaco, Romania, USA.

<sup>269</sup> Canada (Alberta, British Columbia, Manitoba, Prince Edward Island), Finland, Spain, USA.

<sup>270</sup> Canada (British Columbia, Manitoba, Prince Edward Island), France, Luxembourg, Romania, Spain, USA.

<sup>271</sup> Canada (British Columbia, Prince Edward Island), Romania, Spain.

<sup>272</sup> Canada (Alberta).

<sup>273</sup> Canada (Prince Edward Island).

<sup>274</sup> China (Hong Kong SAR), Romania, Monaco.

<sup>275</sup> This is an interesting development in light of the history of the Convention's implementation in Québec (see para. 20 of the Practical Handbook on the Service Convention).

<sup>276</sup> China (Hong Kong SAR), Romania, Spain.

used. The United Kingdom, however, reported that this channel of transmission was frequently used where they were the State of destination.

203. Five States<sup>277</sup> reported that the transmission of judicial documents between the “judicial officers, officials or other competent persons” and their counterparts may be done via electronic means in accordance with Article 10 *b*) (Q. 46(e)), but four States advised electronic means could not be used.<sup>278</sup>

### In sum

- a wide variety of individuals are considered by States to be competent persons under Article 10 *b*) and the practicalities of this method of service greatly vary between States;
- use of this channel of transmission seems to be surprisingly rare.

## F. Article 10 *c*) – Interested Persons (Q. 47-48)

### 1. Opposition to Article 10 *c*) (Q. 47)

204. Ten States<sup>279</sup> provided reason(s) for their opposition to “the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through judicial officers, officials or other competent persons of the State of destination” (Art. 10 *c*). Such reasons included the view that direct communication between judges must take place via the means of Letters Rogatory only, that other channels and methods for service of documents were considered to be sufficient and effective, and concern that judicial documents transmitted in this way may not comply with translation requirements or be in a language that the addressee can understand.

### 2. Service under Article 10 *c*) (Q. 48)

205. States were asked which official are authorised to effect service under Article 10 *c*) (Q. 48(a)). Responses included the following categories of person:

- attorneys or Solicitors;<sup>280</sup>
- bailiffs;<sup>281</sup>
- *huissiers*;<sup>282</sup>
- process servers;<sup>283</sup>
- court officials;<sup>284</sup>
- notaries;<sup>285</sup>
- officials of the executive branch;<sup>286</sup>
- parties to the proceedings.<sup>287</sup>

206. Responding States provided further practical details concerning the operation of this channel of transmission (Q. 48(b)). Canada (Alberta and Prince Edward Island) reported that Law Society members (lawyers) may send requests for service directly in accordance with Article 10 *c*) but that all others would have to go through the Central Authority.

207. Three States<sup>288</sup> reported that they considered that this channel of transmission operates in a similar manner to the main channel of transmission under the Convention.

<sup>277</sup> Canada (Alberta, Prince Edward Island, Quebec), Finland, Spain, France, Romania.

<sup>278</sup> Canada (Alberta, Prince Edward Island, Quebec) China (HONG KONG SAR), Luxembourg, United Kingdom.

<sup>279</sup> Bulgaria, Czech Republic, Germany, Japan, Latvia, Mexico, Poland, Slovakia, Switzerland, Sweden.

<sup>280</sup> Canada (Alberta, British Columbia, Prince Edward Island, Quebec), Finland, France, Luxembourg, Monaco, Spain, United Kingdom.

<sup>281</sup> Canada (Alberta, Manitoba, Prince Edward Island), France.

<sup>282</sup> Canada (Quebec), France, Monaco, Romania.

<sup>283</sup> Canada (Alberta, British Columbia, Manitoba, Prince Edward Island), France, Spain.

<sup>284</sup> Canada (Alberta, Manitoba, Prince Edward Island), France, Romania, Spain.

<sup>285</sup> Canada (Quebec), France, Romania, Spain.

<sup>286</sup> Canada (Alberta, Prince Edward Island), France.

<sup>287</sup> Finland, Luxembourg.

<sup>288</sup> China (Hong Kong SAR), Romania, Monaco.



208. Finland stated that any person may send a request for service of documents to the court at first instance. The service of the documents will then be executed by a process server.

209. Some States advised that they impose costs associated with the use of this alternative channel of transmission (Q. 48(c)). Canada (Alberta and Prince Edward Island) reported that there would be CDN\$ 50.00 service fee applicable when receiving a request for service in accordance with Article 10 c) and that the law of the State of destination would be followed in the sending of a request for service in accordance with Article 10 c).

210. Finland reported that the fee for service of judicial documents in Finland when the request was received from someone other than a judicial officer is 27 Euros. Luxembourg reported that there was a fixed fee of 139 Euros although costs may vary depending on any distance travelled to effect service, registration fees, fees for any research into the address of the recipient, etc.

211. France reported that there would be no particular fees, only those associated with professional costs, *i.e.*, translators' fees, although there may also be charges payable to bailiffs. The United Kingdom reported that any costs of service would be contracted privately, *i.e.*, through the representatives of the parties. China (Hong Kong SAR) and Spain noted that there would be no costs. Romania noted that costs may be involved in the translation of documents into Romanian.

212. Most responding States advised that this channel of transmission is used infrequently (Q. 48(d)). Canada (Alberta) reported that, as a State of destination, there are approximately nine uses per month. Canada (Prince Edward Island) reported that as a State of destination, there are approximately two uses per year. Finland and Romania stated that this channel of transmission was rarely used. The United Kingdom, however, reported that this channel of transmission was frequently used where they were the State of destination.

213. Views differ on the question whether electronic means of transmission may be used for this channel (Q. 48(e)). Five States<sup>289</sup> reported that the transmission of judicial documents between a "person interested in a judicial proceeding" and the judicial officer, official or other competent person in the State of destination in accordance with Article 10 c) may be done via electronic means, while four States<sup>290</sup> advised that such means could not be used.

### In sum

- a variety of persons are considered by different responding States to fall within the category of "interested persons";
- this channel of transmission appears to be rarely used;
- some responding States impose fees for this channel of transmission;
- State Practice is too diverse to identify clear trends in the practical operation of this channel.

### V. Final refusal to execute the request (Art. 13) (Q. 49)

214. The vast majority of responding States have not, in the past five years, refused to execute a request for service on the basis that the request infringes their sovereignty or security pursuant to Article 13. Twenty-one States advised that they had not, as a requested State, rejected the execution of any request for service for this reason.<sup>291</sup> Only three States<sup>292</sup> reported that they had made such a refusal. China stated that this rejection was as a result of an inappropriate description of the status of the Hong Kong Special Administrative Region which is part of the People's Republic of China. Germany stated that this rejection was as a result of a violation of the principle of State immunity, for example, in the case of claims against the Federal Republic of Germany. Switzerland

<sup>289</sup> Canada (British Columbia, Prince Edward Island, Quebec), Finland, Monaco, France, Romania.

<sup>290</sup> Canada (Alberta) China (Hong Kong SAR), Luxembourg, United Kingdom.

<sup>291</sup> Argentina, Bahamas, Bulgaria, Canada, Czech Republic, Finland, France, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Sweden, Turkey, United Kingdom, USA.

<sup>292</sup> China (Hong Kong SAR), Germany, Switzerland.

referred to attempted enforcement measures concerning taxation matters and seizure as being matters which violated the sovereignty of Switzerland.

215. Similarly, very few responding States, as requesting States, have had requests for service rejected on the basis of the sovereignty or security of the requested State. Nineteen States advised that they had not had any requests so refused.<sup>293</sup> Four States,<sup>294</sup> however, reported that in the past five years, requests have been refused in accordance with Article 13. Germany indicated that it had forwarded requests for service against the requested State which were returned with no grounds for refusal being given. The United Kingdom reported that it sent eight requests for service to China, all of which were returned for the following reason: "The execution of the request would infringe the sovereignty or security of the People's Republic of China". The United States of America reported that sovereignty and public policy were also cited in cases involving requests for service forwarded to a foreign State under the Foreign Sovereign Immunities Act.

### **In sum**

- the majority of responding States have neither rejected the execution of any incoming request nor had an outgoing request for service rejected in accordance with Article 13.

## **VI. Protection of the interests of the Plaintiff and Defendant (Arts 15 and 16) (Q. 50-54)**

### **1. Triggering the application of Article 15(2) (Q. 50)**

216. In relation to the meaning of "no certificate of any kind" in the context of Article 15(2) c), 10 States<sup>295</sup> considered that the receipt of a certificate that stated that no service had occurred may trigger the application of Article 15(2) (if all the other conditions in Art. 15(2) have been fulfilled), whereas nine States considered that such receipt could not trigger the application of Article 15(2). Many States noted that this question had not arisen. This point should be clarified during the upcoming Special Commission meeting.

### **2. Recognition and enforcement of resulting default judgment (Q. 51)**

217. In the event that a requesting State has made a declaration in accordance with Article 15(2) and considers that all conditions of Article 15(2) have been fulfilled and accordingly enters a default judgment, 12 States<sup>296</sup> reported that they would recognise and enforce the resulting judgment in these circumstances (assuming that all other conditions for the recognition and enforcement of the judgment were fulfilled). Switzerland specified that this would occur unless a party was able to establish that their right to be heard had been violated.

218. However six States advised that, in the event that a requesting State has made a declaration in accordance with Article 15(2) and considered that all conditions of Article 15(2) had been fulfilled and default judgment is entered, they would not recognise and enforce the resulting judgment even if all other conditions for the recognition and enforcement of the judgment were fulfilled.<sup>297</sup>

### **3. Declaration under Article 15(2) (Q. 52)**

219. States were asked why they had not made a declaration under Article 15(2) (Q. 52(a)). Four States<sup>298</sup> provided reasons relating to procedural fairness, due process and the equal treatment of parties.

<sup>293</sup> Argentina, Bulgaria, Canada, China (Hong Kong SAR), Czech Republic, Finland, France, Japan, Latvia, Luxembourg, Mexico, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Sweden, Bahamas.

<sup>294</sup> Germany, Monaco, United Kingdom, USA.

<sup>295</sup> Bulgaria, Canada (Alberta, Prince Edward Island, Quebec), Croatia, Japan, Monaco, Norway, Spain, Switzerland, Turkey, USA.

<sup>296</sup> Argentina, Bahamas, Bulgaria, Canada (British Columbia, Ontario, Prince Edward Island), France, Monaco, Slovakia, Spain, Switzerland, Turkey, United Kingdom, USA.

<sup>297</sup> Croatia, Finland, Latvia, Mexico, Norway, Slovakia.

<sup>298</sup> Finland, Poland, Sweden, Turkey.

220. States were also asked whether they were assessing the possibility of making such a declaration (Q. 52(b)). Two States<sup>299</sup> advised that they were considering the possibility, and Finland advised that it was not.

#### **4. Judicial actions taken in case of non-issuance of certificate and non-appearance (Q. 53)**

221. States that have not made a declaration under Article 15(2) were asked what actions a judge would take (in a requesting State), if no certificate of service has been received and if the defendant has not appeared. Two States<sup>300</sup> advised that the judge could not give default judgment. Poland reported that the judge would repeat an attempt of service. Two States<sup>301</sup> advised that the possibility existed of serving the document upon the addressee by public notice.

222. Switzerland referred to principles of reciprocity and stated that in these circumstances, it would be possible to make for a Swiss judge to enter a default judgment. Before making such a ruling, the court may order substituted service, a publication in the Gazette.

223. Nine States<sup>302</sup> indicated this question was not applicable as they had a declaration under Article 15(2).

#### **5. Declaration under Article 16(3) (Q. 54)**

224. States were asked why they had not made declarations under Article 16(3). Five States<sup>303</sup> provided such reasons, including the prospect of the unequal treatment of parties and inconsistencies between Article 16(3) and the domestic law of States in terms of time for appeal after notice of a default judgment.

225. States were further asked if they were considering the possibility of making such a declaration (Q. 54(b)). Five States<sup>304</sup> advised that they were not assessing such a possibility. Switzerland reported that the issue was being discussed within the context of Switzerland's draft Code of Civil Procedure.

#### **In sum**

- opinion is almost evenly divided as to whether or not receipt of a certificate indicating that there has been no service would trigger Article 15(2);
- most responding States would recognise and enforce a default judgement entered in the situation where all the conditions of Article 15(2) had been satisfied;
- the judicial actions that would be taken in the case of non-issuance of the certificate of service and non-appearance vary from State to State, but in some States service by public notice would be attempted.

#### **VII. Date of service (Q. 55)**

226. States were asked how they determined the date of service of a request that has been forwarded under the main channel of transmission (Q. 55). Twenty-three States<sup>305</sup> gave responses to the question of how the date of service of documents was determined in their State and whether their State relied on the date mentioned under point 1 of the Certificate of service to determine the actual date of service. Some States relied upon the date mentioned under point 1 of the Certificate of service but responses varied. Please refer to the Synopsis of Responses in relation to the Service Convention Questionnaire for full responses received from each of the 22 States.

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<sup>299</sup> Latvia, Switzerland.

<sup>300</sup> Poland, Sweden.

<sup>301</sup> Romania, Finland.

<sup>302</sup> Bulgaria, Canada, France, Japan, Latvia, Mexico, Monaco, United Kingdom, USA.

<sup>303</sup> Finland, Japan, Latvia, Poland, Sweden.

<sup>304</sup> Finland, Japan, Latvia, Poland, Sweden.

<sup>305</sup> Argentina, Bulgaria, Canada (Ontario), China (Hong Kong SAR), Croatia, Czech Republic, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Sweden, Turkey, United Kingdom, USA.

227. The determination of the date of service in relation to execution of a request for service that has been forwarded under an alternative channel of transmission varies. Twenty-two States<sup>306</sup> gave responses to the question of how the date of service of documents was determined in their State. State responses to this question varied. Please refer to the Synopsis of Responses in relation to the Service Convention Questionnaire for full responses received from each of the 21 States.

228. A majority of responding States advised that their laws do not provide effective means to protect the interests of the applicant when documents had to be served abroad and are therefore subject to the effective operation of authorities and professionals abroad. While 11 States<sup>307</sup> advised that the law of their State did provide safeguards of this character, 13 States<sup>308</sup> advised that no such safeguards existed.

229. The absence of an explicit rule on the date of service has not given rise to difficulties in practice (Q. 55). Twenty-three States<sup>309</sup> reported they had experienced no such difficulties. Argentina advised that the absence of an explicit rule as to the date of service of documents executed under the Convention had caused practical difficulties in their State due to the delays that it involves. Some cantons in Switzerland also reported that practical difficulties were experienced.

### **In sum**

- a variety of means are used to determine the date of service in regards to both channels of transmission, including having reference to Point 1 on the Certificate of Service. The internal law of a narrow majority of responding States is sufficient to protect the interests of the applicant where documents had to be served abroad and time-limits are imposed;
- the absence of an explicit rule as to the date of service of documents has not caused practical difficulties in the majority of cases.

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<sup>306</sup> Argentina, Bulgaria, Canada (Manitoba, Ontario, Prince Edward Island, Quebec), China (Hong Kong SAR), Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Norway, Poland, Romania, Slovakia, Switzerland, Sweden, The Bahamas, Turkey, United Kingdom, USA.

<sup>307</sup> Bulgaria, Canada (British Columbia, Manitoba, Ontario, Prince Edward Island), France, Japan, Luxembourg, Mexico, Poland, Slovakia, Spain, Switzerland, United Kingdom.

<sup>308</sup> Argentina, Bahamas, Canada (Alberta, Quebec), China (Hong Kong SAR), Croatia, Czech Republic, Finland, Latvia, Norway, Romania, Switzerland, Sweden, Turkey.

<sup>309</sup> Bahamas, Bulgaria, Canada, China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Sweden, Switzerland (majority of cantons), Turkey, United Kingdom, USA.

## **PART THREE – OTHER OPERATIONAL ISSUES (Q. 56-68)**

### **I. Model Form annexed to the Service Convention (Q. 56-59)**

#### **A. Fillable PDF versions of the Model Form (Q. 56)**

230. Nine States<sup>310</sup> replied to the request of the Permanent Bureau to assist in the creation of trilingual (English / French / Language of Requested State) PDF versions of the model form which could be modified (filled in) online (Q. 56), although some responses were only to indicate support for the idea. Those States<sup>311</sup> which have provided translations of the model form should see their version available on the HCCH website shortly.

#### **In sum**

- trilingual versions of the Model Form will be prepared and made available on the HCCH website.

#### **B. Request Form (Art. 3) (Q. 57-58)**

##### **1. Interpretation of applicant as forwarding Authority under the Model Form (Q. 57)**

231. Twenty-three States<sup>312</sup> agreed that the first box on the Model request Form refers to the forwarding Authority (Q. 57). Some Canadian Provinces<sup>313</sup> had different interpretations. The comments of several States<sup>314</sup> also suggested that the entry in this box could also refer to the court where the proceeding is taking place.

##### **2. Inclusion of information regarding forwarding Authorities and their competences (Q. 58)**

232. Fourteen States<sup>315</sup> advised that they include information about the competence of the forwarding Authority on the Model Form, in conformity with Conclusion and Recommendation No 48 of the 2003 Special Commission. Germany noted that in a minority of cases this information is not included due to ignorance of the relevant conclusion, or because it is not compulsory. Seven States<sup>316</sup> advised they did not include such information; however three States<sup>317</sup> noted information was available on the HCCH website.

#### **In sum**

- most States consider the applicant to be the forwarding authority on the Model Form (Art. 3(1)) and most States include information regarding the forwarding authorities on their Model Forms, although not always information regarding their competences;
- non-inclusion of information regarding the competences of forwarding Authorities may create problems and reasons for rejection;
- some States consider the inclusion of such information on the HCCH website sufficient and therefore do not include it in their request for service.

<sup>310</sup> Argentina, Czech Republic, Germany, Japan, Mexico, Slovakia, Switzerland, Turkey, United Kingdom.

<sup>311</sup> Czech Republic, Slovakia, Switzerland, Turkey.

<sup>312</sup> Argentina, Bulgaria, Canada (Alberta, Ontario Prince Edward Island, Quebec), Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Sweden, Turkey, United Kingdom, USA.

<sup>313</sup> Canada (British Columbia, Ontario) – where Counsel representing the Plaintiff is different from the forwarding authority it may refer to Counsel.

<sup>314</sup> Bulgaria, Canada (British Columbia), China (Hong Kong SAR), Czech Republic.

<sup>315</sup> Argentina, Bulgaria, Canada (Alberta, British Columbia, Prince Edward Island) Czech Republic, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Romania, Slovakia, Sweden, Turkey.

<sup>316</sup> China (Hong Kong SAR), Finland, France, Norway, Poland, Spain, United Kingdom.

<sup>317</sup> France, Norway, Switzerland.

### C. Certificate (Art. 6) – Interpretation of applicant as forwarding Authority under Article 6(4) (Q. 59)

233. Twenty-two States<sup>318</sup> agreed that the word applicant in Article 6(4) refers to the forwarding Authority also referred to in Article 3(1). Canadian provinces had varying opinions<sup>319</sup> and Bulgaria noted its practice is to send the Certificate directly to the applicant via the Central Authority.

#### In sum

- most States interpret the word “applicant” in Article 6(4) to refer to the forwarding Authority, consistent with the above results in relation to the Model Forms, *i.e.*, the interpretation under Article 3(1).

## II. E-service (Q. 60-68)

### A. In strictly domestic situations (Q. 60)

234. A slight majority of responding States advised that they do not permit e-service in domestic situations. While 16 States<sup>320</sup> advised e-service is permitted, 18 States<sup>321</sup> advised their internal law does not permit such service. Switzerland advised practice varied between individual cantons.

235. Of the States that do not presently permit e-service, three States advised that they were considering introducing such measures. However, 11 such States<sup>322</sup> advised that there were no plans to introduce such measures.

236. States that do allow electronic service provided outlines of the legal framework in which such service is permitted.<sup>323</sup> These outlines are available in the Synopsis document.<sup>324</sup> Seven States<sup>325</sup> advised that a secure transmission was required, and four States<sup>326</sup> advised that they do not require secure transmission. Thirteen States<sup>327</sup> also provided a range of information regarding the manner in which service can be acknowledged, and their responses can be viewed in full in the Synopsis document.<sup>328</sup>

#### In sum

- a slight majority of responding States do not permit e-service in exclusively domestic situations;
- the majority of responding States who do not allow such service do not plan to amend their internal law to allow such e-service, although some States advised that they were considering such a change;
- States outlined the procedural laws which allow for e-service, the majority of which require secure transmission. States also outlined how service is proven when it is effected electronically.

<sup>318</sup> Argentina, Canada (Alberta, Manitoba, Prince Edward Island, Quebec), China (Hong Kong SAR), Czech Republic, Germany, Finland, France, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Spain, Switzerland, Sweden, Turkey, United Kingdom, USA.

<sup>319</sup> British Columbia noted it may refer to Counsel representing the plaintiff or the court where the proceeding is taking place in the requested State. Ontario and Quebec noted they have no information in this regard.

<sup>320</sup> Brazil, Bulgaria, Canada (British Columbia, Manitoba, Ontario, Quebec) Czech Republic, Finland, France, Georgia, Germany, Montenegro, Romania, South Africa, Spain, Sweden, The former Yugoslav Republic of Macedonia, United Kingdom, USA.

<sup>321</sup> Argentina, Australia, Bahamas, Canada (Alberta, Prince Edward Island), China (Hong Kong SAR), Japan, Latvia, Luxembourg, Malaysia, Mexico, Monaco, Norway, Paraguay, Poland, Serbia, Slovakia, South Africa, Turkey.

<sup>322</sup> Australia, Canada (Alberta, Prince Edward Island), Japan, Latvia, Malaysia, Mexico, Norway, Poland, Slovakia, South Africa, Turkey.

<sup>323</sup> Brazil, Bulgaria, Czech Republic, Finland, France, Georgia, the former Yugoslav Republic of Macedonia, Montenegro, Romania, Spain, Switzerland, Sweden, United Kingdom.

<sup>324</sup> Prel. Doc. No 7 of January 2009, *op. cit.* note 53.

<sup>325</sup> Czech Republic, Finland, Macedonia, Montenegro, Spain, Sweden, United Kingdom.

<sup>326</sup> Canada (Manitoba, Ontario), Czech Republic, Sweden, United Kingdom.

<sup>327</sup> Brazil, Bulgaria, Czech Republic, Finland, France, Georgia, Montenegro, Romania, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, United Kingdom.

<sup>328</sup> Prel. Doc. No 7 of January 2009, *op. cit.* note 53.

## **B. In cross-border situations outside of the Service Convention (Q. 61)**

237. A clear majority of responding States do not permit e-service in cross-border situations (Q. 61). Of the 33 responding States, only four States<sup>329</sup> indicated they did allow such service, often in very limited circumstances. Twenty-nine States<sup>330</sup> advised they did not allow such service.

### **In sum**

- very few States allow for e-service in cross border situations and even those that allow it strictly limit the circumstances in which it can be performed.

## **C. E-service and the main channel of transmission under the Service Convention (Q. 62-65)**

238. Very few responding States advised that they had received requests for service to be effected electronically (Q. 62). Only two States<sup>331</sup> indicated that they had received such requests. Twenty-one States<sup>332</sup> indicated they had not received such requests.

239. Responding States provided a diversity of responses as to how they would respond to such a request. Some States indicated they would return the request.<sup>333</sup> Some States<sup>334</sup> indicated that so long as such service complied with their internal law it could be satisfactorily executed. Poland would execute the request so long as the documents to be served were authentic. Some States<sup>335</sup> advised that they would execute the request in a traditional manner. Other States<sup>336</sup> would require a new request with a method that could be effected. Both Slovakia and Norway would require originals and Norway would only use e-service in a case where urgency was required.

240. At present, requests seeking electronic service have been reported to have originated in Italy<sup>337</sup> and France.<sup>338</sup> None of these requests were executed.

### **1. Express outgoing requests for e-service (Q. 63)**

241. States were asked if they had sent requests which specified e-service (Q. 63). No States indicated they had made such requests. Twenty-one States<sup>339</sup> indicated they had not made such requests, and three States<sup>340</sup> made further comments indicating they had no information on this matter.

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<sup>329</sup> Canada (Quebec), Montenegro, South Africa, USA.

<sup>330</sup> Argentina, Australia, Bahamas, Bulgaria, Brazil, Canada (Alberta, British Columbia, Prince Edward Island), Croatia, Czech Republic, Finland, France, Georgia, Germany, Japan, Latvia, Luxembourg, Malaysia, Mexico, Monaco, Norway, Paraguay, Poland, Romania, Serbia, Slovakia, Switzerland, Sweden, The former Yugoslav Republic of Macedonia, Turkey, United Kingdom.

<sup>331</sup> Argentina, Turkey.

<sup>332</sup> Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island, Quebec), China (Hong Kong SAR), Bulgaria, Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Switzerland, Sweden, Turkey, United Kingdom.

<sup>333</sup> China (Hong Kong SAR), Latvia, Mexico.

<sup>334</sup> Canada (Quebec), Czech Republic, Romania.

<sup>335</sup> Finland.

<sup>336</sup> France, Japan, Switzerland.

<sup>337</sup> Argentina, Turkey.

<sup>338</sup> Turkey.

<sup>339</sup> Argentina, Bulgaria, Canada (Alberta, British Columbia, Prince Edward Island), China (Hong Kong SAR), Croatia, Czech Republic, Finland, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovakia, Switzerland, Sweden, Turkey, United Kingdom.

<sup>340</sup> Canada (Ontario), France, USA.

## 2. Execution and recognition of judgment where e-service utilized (Q. 64)

242. Responses were mixed on the question of the likelihood that a judgment would be recognised and enforced where service had been effected using electronic methods. Of the 21 responding States, five States<sup>341</sup> indicated it was “very likely” they would recognise such judgments. Six States<sup>342</sup> indicated it was “likely” they would recognise such judgments. Five States<sup>343</sup> indicated it was very unlikely. Argentina indicated it would not recognize such a judgment. Five States<sup>344</sup> noted execution and recognition would depend on the technology utilized. Five States noted that the matter had not yet arisen<sup>345</sup> and that it would depend on the individual circumstances of the case.<sup>346</sup>

## 3. Execution and recognition of contractual agreement allowing for e-service (Q. 65)

243. Responses varied on the question of whether a contractual agreement between the parties that in the case of a dispute service would be effected through electronic means would be recognised and enforced. Three States<sup>347</sup> indicated it was very likely they would enforce such agreements. Five States<sup>348</sup> indicated it was likely they would do so. Eight States indicated it was very unlikely.<sup>349</sup>

### In sum

- very few States have received requests for service that specifically e-service be used to effect service;
- no requests for e-service have yet been successfully executed in the context of the Service Convention;
- responses differed on the questions whether to enforce a judgment where e-service was utilized and whether to enforce a contractual agreement that e-service be used;
- however, given that there appears to be an increasing prevalence for e-service outside the scope of the Convention, it appears that the use of technology to effect service should be considered by the Special Commission.

## D. E-service and the alternative channels of transmission under the Service Convention (Q. 66)

244. All 22 responding States<sup>350</sup> advised that they did not consider fax, e-mail, SMS or the posting of a message on a website to fall within the scope of the Postal Channel (Art. 10 a)).

245. Three States<sup>351</sup> advised that they consider that the postal channel is limited to direct mailing to the interested party. The Canadian Provinces of Ontario and Quebec noted they do not limit the options of the parties in regard to the medium used for service. Switzerland noted that a new draft of its procedural law may change the situation in relation to e-mail. The United States of America advised that it generally

<sup>341</sup> Canada (Quebec), Norway, Romania, Sweden, The former Yugoslav Republic of Macedonia.

<sup>342</sup> Canada (Ontario), France, Mexico, Monaco, Slovakia, USA.

<sup>343</sup> Canada (Alberta, British Columbia, Prince Edward Island), Czech Republic, Luxembourg, Poland, Turkey.

<sup>344</sup> Bulgaria, Finland, Latvia, Spain, United Kingdom.

<sup>345</sup> Canada (Manitoba), Germany.

<sup>346</sup> Japan, Switzerland, The former Yugoslav Republic of Macedonia.

<sup>347</sup> Canada (British Columbia), Norway, United Kingdom.

<sup>348</sup> Bulgaria, France, Latvia, Slovakia, USA.

<sup>349</sup> Canada (Alberta, Prince Edward Island, Ontario, Quebec), Czech Republic, Finland, Germany, Mexico, Poland, Romania, Switzerland.

<sup>350</sup> Argentina, Bahamas, Canada (Alberta, British Columbia, Manitoba, Ontario, Prince Edward Island), China (Hong Kong SAR), Croatia, Czech Republic, Finland, France, Germany, Japan, Latvia, Luxembourg, Mexico, Monaco, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, United Kingdom, USA.

<sup>351</sup> Argentina, Poland, Mexico.



would not interpret postal channels to include the above options, however noted that one decision<sup>352</sup> does draw the analogy between fax or e-mail and postal channels, although the request for service was denied and the decision does not appear to have been followed.

### **In sum**

- postal channels has not been interpreted to include modern forms of communication.

## **E. Miscellaneous (Q. 67-68)**

### **1. Recent developments regarding e-service (Q. 67)**

246. Thirteen States<sup>353</sup> gave overviews of the recent developments in their State. Most of these referred to new procedural laws<sup>354</sup> however the majority of States<sup>355</sup> referred to no new developments.

### **2. Best manner to encourage use of modern technologies under the Service Convention (Q. 68)**

247. States were asked whether the use of modern technologies should be encouraged with specific Conclusions and Recommendations (Q. 68(a)) or by a Protocol to the Convention (Q. 69(b)). State Opinions were relatively divided on this point, and discussion will be required on this point at the Special Commission.

248. Ten States<sup>356</sup> supported the adoption of specific Conclusions and Recommendations with a number of supporting States making further comments, regarding the helpfulness, suitability and guidance of Conclusions and Recommendations. Three States<sup>357</sup> were against the adoption of Conclusions and Recommendations. The EC advised that it supports the promotion of technology in relation to service both at the Community level and through the Convention, its preference being for Conclusions and Recommendations. Five States<sup>358</sup> supported this view. Japan supports increased use of technology but does not consider either option necessary.

249. Seven States<sup>359</sup> supported the adoption of an additional Protocol to the Convention, while three States<sup>360</sup> did not. Two of these latter States<sup>361</sup> supported adopting Conclusions and Recommendations.

250. Argentina advised that it opposes both options as it does not have the infrastructure. Germany is undecided and noted the difficulties involved in adopting a Protocol. The United States of America supports discussion of the subject, noting the significant developments made in communications technologies but also noting the practical problems that may arise.

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<sup>352</sup> *Agha v. Jacobs*, Slip Copy, 2008 WL 2051061 (N.D.Cal., 2008).

<sup>353</sup> Australia, Brazil, Bulgaria, Canada (Ontario, Quebec), Germany, Japan, Latvia, Montenegro, Slovakia, South Africa, Switzerland, Turkey, USA.

<sup>354</sup> Brazil, Canada (Quebec), Montenegro, Switzerland, Turkey.

<sup>355</sup> Australia, Canada (Ontario), Japan, Latvia, South Africa.

<sup>356</sup> Bulgaria, Finland, Germany, Luxembourg, Poland, Spain, Switzerland, Turkey, United Kingdom, USA.

<sup>357</sup> Argentina, Mexico, Slovakia.

<sup>358</sup> Czech Republic, France, Latvia, Romania, Sweden.

<sup>359</sup> Bulgaria, Mexico, Slovakia, Switzerland, Turkey, United Kingdom, USA.

<sup>360</sup> Argentina, Finland, Poland.

<sup>361</sup> Finland, Poland.

**In sum**

- very few States have had recent developments in relation to e-service, and those who have had developments generally relate to the expansion of existing Procedural Laws to cover e-service;
- there is broader support for the development of Conclusions and Recommendations specifically in relation to e-service than for the development of a Protocol, but some States remain wary in light of practical obstructions to implementation;
- the matter clearly merits discussion at the Special Commission.

**ANNEXE / ANNEX**

## ANNEX: STATISTICAL DATA

### Question 9(a) How many incoming Requests did your State receive?

	State	2003	2004	2005	2006	2007
1	Bulgaria	133	184	148	190	126
2	Canada	1,835	2,182	2,236	1,961	1,162
3	China (Hong Kong SAR)	261	238	328	338	362
4	Finland	126	97	72	63	145
5	France	366	807	842	979	789
6	Germany	8,730	7,063	6,797	7,334	7,385
7	Japan		1,469	1,548	1,543	1,720
8	Latvia		46	18	8	8
9	Luxembourg	12	26	32	31	54
10	Mexico	13	22	36	42	66
11	Monaco					14
12	Poland				78	59
13	Romania		126	427	361	82
14	Spain	575	330	207	335	309
15	Sweden	172	220	212	177	197
16	Switzerland	3,835	5,035	4,540	6,605	6,736
17	Bahamas	52	83	82	103	83
18	Turkey	1,997	2,267	2,888	3,602	3,644
19	United Kingdom	1,942	1,563	1,431	1,521	1,539
20	USA <sup>362</sup>	5,663	6,407	5,986	6,580	6,312
	TOTAL	25,712	28,165	27,830	31,851	30,792

### Question 9(b) Breakdown of time taken to issue certificate of service.

	State	< 2 months	2 - 4 months	4 - 6 months	6 - 12 months	> 12 months	Returned un-executed	Cases currently pending
1	Canada	1,456	198	51	87	2	65	0
2	China (Hong Kong SAR)	231	110	2	0	0	19	0
3	Finland	139	3	1			2	
4	France	58	72	22	15		30	68
5	Germany	936	101	6	3	0	0	7
6	Mexico	3	32	16	16			
7	Monaco	13	1					
8	Poland	38	18	2				
9	Romania	43	30	2	2			5
10	Switzerland	4,916	192	46	30	3,918	223	16
11	Bahamas	79					4	
12	United Kingdom	946					771	
13	USA	5,244 <sup>363</sup>					1,088 <sup>364</sup>	
	TOTAL	14,102	757	148	153	3,920	2,202	96

<sup>362</sup> Of the 5,224 requests in which a certificate was returned within 2 months, 4,136 were successfully served and 1088 could not be served because the addressee could not be located.

<sup>363</sup> Of the 5,224 requests in which a certificate was returned within 2 months, 4,136 were successfully served and 1088 could not be served because the addressee could not be located.

<sup>364</sup> Rejected upon receipt as non-compliant with treaty or missing required fee. All but 16 of these requests were rejected and returned in 7 days or less.

**Question 9(b) Breakdown of method of service.**

	State	Formal service (Art. 5(1) a))	Service by a particular method (Art. 5(1) b))	Informal delivery (Art. 5(2))
1	Canada	1,995		
2	China (Hong Kong SAR)	311	30	21
3	Finland	145		
4	France			265
5	Germany	991	18	44
6	Mexico	67		
7	Monaco		14	
8	Poland	48	2	8
9	Romania	82		
10	Switzerland	8,270	16	1,003
11	Bahamas		83	
12	United Kingdom	1,491	226	
13	USA	6,312		
	TOTAL	17,717	389	1,341

**Question 10(a) How many Requests did your State send out?**

	State	2003	2004	2005	2006	2007
1	Bulgaria	171	232	323	350	204
2	China (Hong Kong SAR)	21	30	30	58	31
3	Finland	186	106	126	108	158
4	Germany	8,344	9,272	9,676	10,019	9,791
5	Japan	254	289	313	311	282
6	Latvia		151	112	109	204
7	Mexico	3	8	29	23	21
8	Monaco					17
9	Poland	1,469	988	513	574	645
10	Romania		325	1,014	799	152
11	Spain	181	139	94	158	170
12	Switzerland	1,246	1,394	1,253	1,334	1,316
13	Bahamas	0	0	0	0	0
14	Turkey	20,545	21,101	20,387	23,185	23,999
15	United Kingdom	234	220	216	207	187
	TOTAL	32,654	34,255	34,086	37,235	37,177

**Question 10(b) Time taken to issue certificate of Service.**

		> 2 months	2 - 4 months	4 - 6 months	6 - 12 months	> 12 months	Returned un-executed
1	China (Hong Kong SAR)	12	9	7	2		
2	Germany	496	315	97	52	14	41
3	Japan	29	154	44	29	0	0
4	Mexico		4	3	11	1	
5	Monaco	7	9	1			
6	Poland	170	329	201	106	22	36
7	Romania	77	40	4	7		
8	United Kingdom		154				51
	TOTAL	791	1014	357	207	37	128

**Question 10(b) Breakdown of method used to execute requests sent.**

	<b>State</b>	<b>Formal service (Art. 5(1) a))</b>	<b>Service by a particular method (Art. 5(1) b))</b>	<b>Informal delivery (Art. 5(2))</b>
1	China (Hong Kong SAR)	30	1	
2	Germany	1042	15	
3	Japan	282		
4	Mexico	21		
5	Monaco	17		
6	Poland	803	18	68
7	Romania	152		
8	United Kingdom	238		
	<b>TOTAL</b>	<b>2585</b>	<b>34</b>	<b>68</b>