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**QUESTIONNAIRE ACCOMPAGNANT LA VERSION PROVISoire DU NOUVEAU MANUEL  
PRATIQUE SUR LE FONCTIONNEMENT DE LA CONVENTION DE LA HAYE DU  
15 NOVEMBRE 1965 RELATIVE À LA SIGNIFICATION ET LA NOTIFICATION À L'ÉTRANGER  
DES ACTES JUDICIAIRES ET EXTRAJUDICIAIRES EN MATIÈRE CIVILE OU COMMERCIALE**

établi par le Bureau Permanent

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**QUESTIONNAIRE ACCOMPANYING THE PROVISIONAL VERSION OF THE NEW PRACTICAL  
HANDBOOK ON OPERATION OF THE HAGUE CONVENTION OF 15 NOVEMBER 1965 ON THE  
SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS  
IN CIVIL OR COMMERCIAL MATTERS**

drawn up by the Permanent Bureau

*Document préliminaire No 2 de juillet 2003  
à l'intention de la Commission spéciale d'octobre / novembre 2003*

*Preliminary Document No 2 of July 2003  
for the attention of the Special Commission of October / November 2003*

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This *Questionnaire* accompanies a draft update of *the practical Handbook relating to operation of the Hague Convention of 1965 on the Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters*.

As the latest version of the Handbook is dated 1992, it had become essential to update it in order to describe the evolutions and possible difficulties encountered in practice in this matter during the past decade. The Permanent Bureau has sought to fill this gap having regard to its current knowledge and to the information that the States have been pleased to provide to it with respect to their own experiences in the Convention's implementation. The Permanent Bureau stresses that this new version of the Handbook is merely provisional. A final version of the new Handbook will be published after the Special Commission meeting that will be held from 28 October to 4 November, 2003 and take account of the work performed and comments made there. In order to report in the best possible manner the current situation of practice and case-law, **States and Observers are invited to inform the Permanent Bureau of their comments concerning the provisional version of the Handbook and to specify any other items that they would wish to see in the final version.**

The *Questionnaire* below has been designed in order, first, to collect information of a technical nature allowing an effective updating of the Handbook, and second, to determine the strategic issues deserving consideration during the next meeting of the Special Commission.

The questions are therefore very diverse. Some relate to administrative information and updates (such as contact information for the Central Authority), others to information concerning application of the Convention in the Contracting States (such as the method for delivery of the document). The use of new communication technology in connection with the procedure for service (domestic and international) is also broached.

We emphasize the importance of your replies as regards in particular matters of a strategic nature for preparation of the Special Commission's next meeting. This is why we request that you provide them to us, if possible **before 15 September 2003**, by electronic mail at the following addresses: [cb@hcch.nl](mailto:cb@hcch.nl) and [lt@hcch.nl](mailto:lt@hcch.nl).

## I – QUESTIONS ADDRESSED TO NON-PARTY STATES

- 1 Are there any particular reasons why your State has not ratified the 1965 Convention?
- 2 Do you envisage becoming a Party to the 1965 Convention? If yes, why?

## II - ADMINISTRATIVE INFORMATION AND UPDATES

The Permanent Bureau draws the States' and Observers' attention to the importance of regular updates of this information in order to secure effective implementation of the Convention.

### 3 Central Authority

- 3.1 The administrative information relating to the Central Authority is, and shall remain, accessible on the Conference's website. Updating this information is essential. For such purpose, could you check whether the contact information for the Central Authority or Authorities in your State as it appears on the site at <http://www.hcch.net/e/status/stat14e.html> is accurate, and if necessary, provide us with your corrections and supplementary information? This contact information includes the postal address, telephone number, fax number, and if possible, the Central Authority's e-mail address.
- 3.2 An indication of the languages used by those authorities' staff would also be very helpful.
- 3.3 Do you have at your disposal statistical information relating to the number and source of requests directed at your State's Central Authority? If so, could you provide it to us?

### 4 Case-law and reference works

The Permanent Bureau warmly thanks the States which have provided it with their case-law and reference works on the subject since 1992. This information considerably enriches the Permanent Bureau's knowledge of the Convention's actual operation, and has been integrated into the provisional version of the Handbook.

- 4.1 The Permanent Bureau invites the States and Observers to provide it with copies of significant Court rulings issued pursuant to the 1965 Convention since 1992 and not cited in the provisional version of the Handbook. Insofar as the text of the ruling is drafted in a language other than English or French, a summary in the English or French language of the facts and grounds for the ruling would be very helpful.
- 4.2 Likewise, the Permanent Bureau invites the Contracting States to forward to it a list of bibliographical references of works and articles published in those States since 1992 in connection with the 1965 Convention.

## 5 Handbook

- 5.1 In connection with redesign of the Hague Conference's website, the Permanent Bureau is considering the desirability and feasibility of providing access on its site to the information contained in the second and third parts of the former Handbook relating to forwarding Authorities, the principal and alternative transmission channels and the methods for execution of requests for service, for each State party to the Convention. The provisional version of the new Handbook provides information and useful explanations relating to the Convention's operation; more specific information by country, however, would require regular updates, which the Handbook, even if revised, cannot in practice provide adequately. It being specified that a decision in favor of the Conference's website would have implications in terms of resources, would you be in favor of such a proposal? If so, could you specify the information that you would consider useful to have appear on the site?
- 5.2 Does the structure (headings, sub-headings) of the Handbook's provisional version seem satisfactory to you? Do you have any suggestions?
- 5.3 Would you wish to see in the Handbook other items that are not contained in the provisional version? If so, which?
- 5.4 The Handbook seems to be a very useful tool for practitioners in applying the Convention. Regular and continuous updating would be desirable, therefore. How would you contemplate such an updating of the Handbook, both in terms of frequency and in terms of resources?
- 5.5 Could you provide a list of useful links to Internet sites containing information concerning application of the Convention in your State, or more generally regarding service in your State?

## III - INFORMATION RELATING TO APPLICATION OF THE CONVENTION

The Permanent Bureau urges States to answer the following questions and to inform it of any suggestion or criticism that could contribute to enhancing the Handbook's practical value and to effective preparation of the Special Commission's meeting.

### 6 Scope of the Convention (Article 1) (*cf.* I, 5 of the Handbook)

- 6.1 Have you noted a change since 1992 in interpretation of the Convention's scope?
- 6.2 More particularly, has the scope of the phrase "in civil or commercial matters" given rise to difficulties (*cf.* I, 5, D)? Have the Courts interpreted it autonomously?
- 6.3 Have you noticed a change since 1992 regarding the interpretation that the 1965 Convention is not mandatory in that it is up to the *lex fori* to determine whether a document should be transmitted abroad (*cf.* I, 5, B., c))?

6.4 Have you noted a change since 1992 regarding the Convention's exclusive character (*cf.* I, 5, B. c))?

6.5 Does the terminology used in the Convention (e.g. "*acte introductif d'instance*" or "writ of summons") give rise to interpretation difficulties in connection with changes in your domestic law?

## **7 Forwarding authority (*cf.* II, 1, B. (a))**

7.1 Which are in your country the Authorities or persons competent to forward a request for service to the foreign Central Authority under Article 3?

7.2 Do you consider that cooperation between Central Authorities to determine the competence of the forwarding authority should remain subject to "special circumstances", or on the contrary, that it should be encouraged in broader circumstances?

## **8 Methods for service used by the Central Authority (*cf.* II, 1, E)**

8.1 In the former version of the Handbook, Part III described the methods for service used in each Contracting State. It seems important to us to bring this information up to date. For this purpose, could you summarize the methods that are or may be used by the Central Authority in your country for:

- formal service of the documents within the meaning of Article 5(1)(a) (e.g., service through a huissier or official)?
- informal delivery within the meaning of Article 5(2) (e.g., use of the police service or officials)?
- a special request by the applicant, within the meaning of Article 5(1)(b) (e.g., postal service by the Central Authority)?

8.2 In connection with these descriptions, please specify the extent and scope of requirements for translation, if any (translation of the document to be served, translation of the document's summary, translation of evidence to be served, etc.) Please specify whether your State has entered into particular agreements with other Contracting States in this respect, within the meaning of Article 20(b).

8.3 Have administrative or other forms of action, such as the setting of periods to process applications or the use of outsourcing to perform the Central Authority's duties, been taken in order to expedite the service procedures? If so, which, and have they proved effective?

8.4 Please specify also whether charge are incurred for one method for service or another and if applicable, the nature of such costs (flat-rate or proportional costs), and the method for their reimbursement.

## 9 Translation requirement (Article 5(3)) (cf. II, 1, E, (b))

- 9.1 The issue arises whether a general declaration by a State that its authorities will perform formal service only if the document to be served is drafted in or translated into its official language or languages, thereby depriving in advance its Central Authorities of the discretion conferred by the Convention, is consistent with the spirit of Article 5(3). Does such a declaration make judicial assistance substantially more cumbersome in practice?
- 9.2 Do you consider that it might be appropriate to adopt a Recommendation that the Central Authority of the State addressed should not call for a translation if it has reasons to believe that a document drafted in a language of the requesting State is understandable to the addressee?
- 9.3 Could you state your suggestions regarding implementation of such a recommendation in connection with mutual assistance between authorities?
- 9.4 Do you believe that the requirement of full translation of the document to be served is always appropriate, and could it not be restricted to the document's summary?
- 9.5 Do such translations need to be legalized or to bear an *apostille*?

## 10 Timing (cf. II, 1, E, d))

- 10.1 What is the average time required for performance of requests for service?
- 10.2 Are there substantial differences between States addressed?
- 10.3 How could the procedures for mutual assistance be improved?

## 11 Alternative transmission channels (cf. II, 2)

- 11.1 Consular and diplomatic channels (Articles 8 and 9) (cf. II, 2, B.)  
Are these forwarding channels frequently used in practice?
- 11.2 Postal channels (Article 10(a)) (cf. II, 2, C)  
Have the interpretation and application of this provision given rise to difficulties?
- 11.3 Judicial officers, officials or other competent persons (Article 10(b)) (cf. II, 2, D)
- a) States are invited to specify whether the transmission method described under Article 10(b) is used frequently.
  - b) If your State uses transmission between huissiers, can you specify:
    - i) with which States this procedure is used?
    - ii) how this system operates?
  - c) Information relating to the costs of forwarding and reimbursement of the costs would also be useful.
  - d) Contracting States are invited to provide to the Permanent Bureau the contact information for the national bodies governing huissiers de justice. This contact information includes the postal address, telephone number, fax number and if possible, the national organization's e-mail address.
  - e) Are your country's lawyers or solicitors authorized to perform service from abroad?

- 11.4 Interested persons (Article 10(c))  
Have the interpretation and application of this provision given rise to difficulties?

## **12 Judicial and extrajudicial documents (cf. I, 5, E)**

- 12.1 Does your country's legislation make a distinction between judicial documents producing procedural effects and those that do not? If so, do the authorities in your country apply the Convention to these two classes of judicial documents or only to those judicial documents producing procedural effects?
- 12.2 Could you provide us with the statistics at your disposal, if any, relating to the volume of extrajudicial documents forwarded abroad under the Convention?

## **13 Date of service - double date (cf. II, 1, E, f)**

- 13.1 What is your view of the dual-dating system?
- 13.2 Does your country's domestic law provide for a system to determine, in the event of transmission abroad, the date of service for the applicant (as in Belgium, when the applicant has carried out the formalities required by Belgian law)?

## **14 Exequatur**

- 14.1 In your country, would it be possible to deny enforcement of a foreign judgment on grounds of breach of public policy based on the service procedure applied, even though that service has been performed by the methods provided for under the Convention? If so, in what circumstances?

We are thinking, for instance, of the following situation: the addressee's (contracting) State has not objected to postal channels. The requesting State sends the service to the addressee without performing a translation (which is not required by the Convention in this particular instance). After receipt of the certificate of service, a judgment is entered. In your view, may the addressee's State refuse enforcement of the foreign judgment on the grounds that the service has not been translated?

## **15 Exclusion of application of the Convention between the parties (cf. I, 5, B., 5)**

- 15.1 Have rulings been issued in your country permitting the parties to exclude application of the Convention between themselves by agreement or contract?

## **16 Fax and electronic mail (cf. II, 3)**

- 16.1 Form of the request
- a) Would the Central Authority of your country, as State addressed, be willing to accept requests forwarded to it by fax or e-mail? If so, subject to what requirements?
  - b) Are e-mail and fax used in your country, as requesting State, to forward requests for service?



- 16.2 Form of service
- a) In your State, may service from abroad be performed by e-mail or fax? If so, subject to what requirements?
  - b) If your State allows postal channels for service from abroad, might the use of e-mail instead of postal channels be contemplated? If so, subject to what requirements?
  - c) As requesting State, does your domestic law accept service performed by e-mail or fax in the State addressed?
- 16.3 Form of the certificate
- a) Does the Central Authority or any other competent authority in your country use or seek to use e-mail or fax for the sending of the certificate of due performance of service? If so, in what circumstances?
  - b) As requesting State, would you accept receipt by e-mail or fax of a certificate of service abroad? If so, in what circumstances?
- 16.4 Could you provide us with the statutes or case-law in your country, if any, permitting or ruling out the use of e-mail or fax in service procedures, whether domestic or international?
- 16.5 Is the use of e-mail or fax in service procedures subject to specific security requirements?
- 16.6 Is the clause for service whereby parties to a contract agree in advance to receipt of service of any document by electronic channels used in practice (*cf.* II, 3, B., 2)? Does your domestic law recognize it as being valid?

## 17 Model forms

- 17.1 Do you consider that the model forms ought to be revised? If so, how?
- 17.2 In particular, do you consider that information for the addressee, such as the amount due, the place and period for payment, the manner in which a defense may be exercised and the consequences for the defendant of failure to enter a defense, ought to be added to them?
- 17.3 Amendment of the Request Form, to provide for a specific box for a description and declaration of the capacity and competence of the forwarding authority, might be contemplated. Such a solution would allow ascertainment that the request has indeed been forwarded by an authority or officer competent under the requesting State's law. Would you be in favor of such a change?

17.4 As the form is technically a part of the Convention, any proposed amendment requires in principle a formal revision of the Convention, and probably the drafting of a Protocol to which a State would subsequently have to decide to become a party for the new Request Form to become effective in that State. As such a procedure seems very formalistic and fairly cumbersome, adoption of a new Form by way of Recommendation, as in 1980, might be contemplated. Does this solution indeed seem more appropriate to you?

17.5 Would an electronic version of the model forms be useful?

## **18 Reservations and reciprocity**

18.1 Do Contracting States not opposing direct service through postal channels in accordance with Article 10 assert reciprocity against Contracting States having stated their opposition to this transmission method, or do they accept direct service through postal channels from such States?

18.2 Do Contracting States not opposing transmission through consular channels within the meaning of Article 8 assert reciprocity against Contracting States having stated their opposition to this transmission method?

## **19 Article 25: Bilateral and multilateral agreements (cf. IV)**

19.1 Could you provide us with a list of the bilateral or multilateral agreements binding your country and other Contracting States with respect to international service?

19.2 For States Parties to the 1965 Convention and to the Interamerican Convention (Interamerican Convention on Letters Rogatory): how does the use in practice of such two instruments operate (cf. IV, 1)? More specifically, what is the relationship between them?

19.3 For States Parties to the 1965 Convention and bound by EU Regulation No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters: how does the use of such two instruments operate in practice? Under its Article 20(1), the Regulation prevails over the Convention. How is the relationship between the two instruments managed in practice (cf. IV, 3)?

19.4 For States Parties to the 1965 Convention and members of the AALCO (African Asian Legal Consultative Organisation): what has been the impact of the AALCO model during bilateral negotiations conducted by your State (cf. IV, 2)?