

Conseil sur les affaires générales et la politique de la Conférence - mars 2019

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| Document | Document préliminaire <input type="checkbox"/> Document d'information <input checked="" type="checkbox"/> | No 3 de février 2019 |
| Titre | Commentaires de l'Union internationale des huissiers de justice et officiers judiciaires (UIHJ) concernant le Doc. pré. No 8 de décembre 2018, « Projet de guide de bonnes pratiques concernant l'utilisation de la liaison vidéo dans le cadre de la Convention Preuves », et le Doc. pré. No 9, « Utilisation des technologies de l'information pour la transmission des demandes en vertu des Conventions Notification et Preuves » – <i>document disponible en anglais uniquement</i> | |
| Auteur | Union internationale des huissiers de justice et officiers judiciaires (UIHJ) | |
| Point de l'ordre du jour | s.o. | |
| Mandat | s.o. | |
| Objectif | Fournir au Conseil les commentaires de l'UIHJ concernant l'application des technologies modernes dans le cadre des Conventions Notification et Preuves | |
| Mesure à prendre | Pour approbation <input type="checkbox"/> Pour décision <input type="checkbox"/> Pour information <input checked="" type="checkbox"/> | |
| Annexe(s) | s.o. | |
| Document(s) connexe(s) | s.o. | |



UNION INTERNATIONALE
DES HUISSIERS DE JUSTICE
ET OFFICIERS JUDICIAIRES
INTERNATIONAL ASSOCIATION
OF JUDICIAL OFFICERS

SIÈGE - HEAD OFFICE

6 PLACE DU COLONEL-FABIEN

F-75019 PARIS

TÉL. : +33 (0)1 42 40 89 48

FAX : +33 (0)1 42 40 95 16

UIHJ@UIHJ.COM

WWW.UIHJ.COM

*Membre consultatif du Conseil économique
et social de l'O.N.U.*

*Consultative Member of the Economic Council
of the United Nations Organisation*

*Membre observateur de la CNUDCI
Observer Member of UNCITRAL*

*Partenaire du Forum mondial sur le droit,
la justice et le développement
Partner of the Global Forum on Law,
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Technical Partner of the OHADA*

*Membre observateur auprès de l'UEMOA
Observer Member at the UEMOA*

Proposal of the delegation of UIHJ

I. Introduction

1. The International Union of Judicial Officers (UIHJ) welcomes the progress and proposals made in the context of the preliminary document written by the Permanent Bureau.
2. The reform of the Service and Evidence Conventions is necessary for the light of current technological developments.
3. However, the expected changes cannot affect the rights of the parties that it is necessary to guarantee regularly, whether plaintiffs or defendants in a legal proceeding.
4. This is the reason why the UIHJ wishes to make the following observations to the proposals of the Permanent Bureau.

II. Use of IT within the scope of the Service Convention

5. The UIHJ acknowledges the use of IT within the Service Convention and promotes the use of IT. However, it is known that not all of the member states have implemented the use of digital transmission of documents within their system.

The reference of the Document (point 19) to the directory of European enforcement agents is premature. Presently a proposal for a financial funding by the European Commission, has been to establish such directory done by UIHJ, in cooperation with the Foundation of the European Chamber.

6. The proposal speaks of the use of a fully electronic system for the transmission of the documents via the central or transmitting authority. The UIHJ welcomes this amendment in the sense that it also allows direct transmission between judicial officers, as it is the case in Article 10b of the Hague Convention of 15 November 1965 on the international service documents.

However, it seems appropriate to transmit the document through the means of an e-Codex type centralized platform, to ensure maximum security of the documents sent between judicial officers and to provide a unique process familiar to all the professionals concerned.



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The HCCH document rightfully remarks (under 7) that any future system facilitating the transmission and management of requests under the two Conventions can only reach its full potential if judicial and extrajudicial documents can be kept in electronic form from initial issuance to final execution. In this respect, as an alternative solution, the use of *blockchain-technology*, rather than e-Codex might be considered as an exchange platform for judicial and extra-judicial documents between authorities.

III. Challenges

7. In addition to the use of digital transmission of documents between the central authorities, the proposal considers as a potential challenge (point 20) the possibility of direct electronic service of documents by the Central Authority.

In its proposal, the Permanent Bureau presents its preferability that when the Central authority receives the documents to be served digitally that such service of documents is also done electronically by or through the Central Authority.

UIHJ underlines that, though an increasing number of States are amending their laws to enable electronic *service*, in a substantial number of States such electronic service still is not effected. A recent UIHJ project (financed by the European Commission) learned that from 8 EU States that participated in the project,¹ electronic service is still not implemented.

Besides the observations in the HCCH document, such e-service of documents depends on the existence of e-signature and the consent of the addressee for such kind of service. Within the countries participating in the project this is the case with slight variations in Estonia, Latvia, Greece and Lithuania) where e-service is possible. In the remaining project member states however (Belgium, Netherlands, Portugal, Bulgaria) there are some steps towards e-service but with little progress overall. In that respect the UIHJ project concluded that the central problem with to render e-service fully operation is that it is dependent on the prior consent of the addressee to this effect. This might be faced only under a “holistic” approach whereby all residents in a MS shall have one “official e-address” for service, as of the day that their habitual residence in a MS is established.

¹ See: <https://access2just.eu/>



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However this is not feasible at the moment and presumably this shall continue to be the case in the coming years. On this basis, one cannot expect that e-service shall be used extensively and most probably it will remain the least developed e-justice element for the coming years.

Several other remarks also can be made regarding the e-service.

8. When receiving a document (through e-service), the addressee should be in the position to understand the content of the document and how to contact a recognized trusted professional who presents all the necessary guarantees of independence.

9. As drafted, the proposal, however, intends to dematerialize the procedure without recourse to a qualified professional in the context of an inherently complex cross-border dispute.

Even if the project provides for two non-cumulative conditions (compliance with the eIDAS Regulation or the sole consent of the addressee after the start of the judicial proceedings), the legal certainty that must be ensured to all citizens cannot be satisfied with the use of such direct notices to the recipient's email address.

The following potential challenges may occur:

- Problem of the validity of the e-mail address in time (also taking into consideration legal time limits);
- Problem of the certainty of the identity of the issuer;
- Problem of spams and filters;
- Problem of changing the content of the document (piracy);
- Failure of the computer after consent.

10. It is likely that the use of such a procedure, in practice, and under the present circumstances, brings more problems than solutions.

UIHJ is of opinion that a system of e-service can only be successful in case such system is combined with the “old-fashioned” system of service of documents.



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The service, either traditionally or through electronic means takes place under the responsibility of an independent person, the enforcement agent. Focus in a combined system of electronic and traditional service remains on the interests of the addressee. The shortcomings of a service through electronic means are acknowledged since prior conditions need to be fulfilled: a “guaranteed” electronic address or prior consent of the addressee.

For the e-service a special e-notification platform is to be introduced. This e-Notification platform is a communication system through which the requests for service are handed over to the territorially competent and available enforcement agent. This platform acts as the authentic source for all records of notification and service: all notifications are recorded within the platform, including all necessary additional information. The platform is also the application that effects electronic notifications.

In case no confirmation of receipt is (electronically) received from the addressee, service will be effected traditionally.

11. The idea of direct transmission of documents on a platform appears suitable. When the judicial officer uploads the document on a platform where the addressee can download it, the uniqueness of the document can then be certified.

Thanks to modern technologies, electronic service procedures implemented by some countries (Belgium, France, The Netherlands, for example) guarantee:

- The identity of the issuer (judicial officer, neutral and independent body in the procedure);
- The identity of the addressee (who connects by providing proof of identity);
- The consent for each electronic service;
- The quality and content of the document downloaded on a secure platform by the recipient;
- The service of document in a traditional way when electronic service has not been possible.

In a procedural framework, a specific, secure procedure, provided by a neutral body, seems essential to ensure minimum standard and legal certainty, for both litigants and judges responsible for rendering justice.

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IV. Conclusion

12. The UIHJ wishes to express her gratitude to the proposal as submitted to the council and expressing her support in conducting further work on the use of technology to support and improve the operation of the Service and Evidence Conventions.

13. Also, the UIHJ wishes to express its availability to share knowledge and expertise on this matter and stands ready to cooperate with the Council at any of the future works regarding this proposal.

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