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INTERNATIONAL LAW

CONFERENCE DE LA
HAYE DEDROIT
INTERNATIONAL PRIVE

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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 A LA SIGNIFICATION ET A LA NOTIFICATION A
L'ETRANGER DES ACTES JUDICIAIRES ET EXTRA JUDICIAIRES
EN MATIERE CIVILE OU COMMERCIALE**

envoyé aux Etats membres de la Conférence de
La Haye, aux Etats parties à la Convention et aux
Observateurs

établi par le Bureau Permanent

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**QUESTIONNAIRE ACCOMPANING 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**

sent to the Member States of the Hague
Conference, States Parties to the Convention
and Observers

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

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 and lt@hcch.nl.

I - QUESTIONS ADRESSED 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/stat!4e.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.

The following correction is to be made in the existing information for Central Authority in the telephone numbers for contact: 00359 (2) 980 64 62;

00359 (2) 980 92 22;

00359 (2) 9237 514;

00359 (2) 9237 515.

The following correction is to be made in the existing information for Central Authority in the fax number: 00359 (2) 980 92 22.

- 3.2 An indication of the languages used by those authorities' staff would also be very helpful.

The languages that you can use to establish a contact with the staff in the Central Authority are French, English and Spanish.

- 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?

We have statistical data at our disposal about the period 2000 – 2003, which we provide to you in Annex No 1.

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.

The Convention has become effective for the Republic of Bulgaria since 31 July 2000 and for that period there have not been any special cases of service of documents. In principle the service is done by written statement and the Court does not give a ruling on the act of service.

- 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.

There is not such information at our disposal.

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?

We consider that the structure is satisfactory.

5.3 Would you wish to see in the Handbook other items that are not contained in the provisional version? If so, which?

No.

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?

It is sufficient the Handbook to be updated before a session of the Special Commission as statements on a preliminary draft prepared by experts on the application of the Convention should be required.

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?

The Convention has been applied in Bulgaria since 2000 and there have not been Internet sites containing information on its application yet.

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?

We have not noted a change since 2000, since when we have been applying the Convention.

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?

Such difficulties have not occurred.

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))?

No, we have not. In our legislation the assessment about whether a document should be served abroad has always been the exclusive power of the Court.

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

No, we have not.

- 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?

No, it does not.

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?

The Central Authority in the person of the Ministry of Justice and particularly "International Legal Aid" Department forwards the request for service to the foreign Central Authority.

- 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(l)(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(l)(b) (e.g., postal service by the Central Authority)?

In the Republic of Bulgaria the service is formal within the meaning of Article 5 of the Convention – it is done by the Court during a sitting of the Court.

- 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).

The documents that are subject to service are to be accompanied by a translation into the Bulgarian language. The Republic of Bulgaria has not entered into any bilateral agreements within the meaning of Article 20 of the Convention.

- 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?

When a letter of request for service has been sent from abroad to the respective Bulgarian Court, the Central Authority does not set a term of performance. The Bulgarian competent authorities are guided by the dates of the sittings of the foreign Courts set. However, the setting of a term has certain effectiveness, as it stimulates the faster performance within the set term.

- 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.

No charges are incurred for service.

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?

It delays the forwarding of the documents for service a little, but it facilitates the performance in the foreign country, as the persons whom the documents are served are aware of their content.

- 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?

Yes, this could be done – for instance – when the requesting State notes explicitly that the person understands the language in which the documents for service have been written. This would reduce the period for forwarding the documents for service, as the necessity of translation would be dropped out in this case and this would make it possible for the claimants to save money for costs.

- 9.3 Could you state your suggestions regarding implementation of such a recommendation in connection with mutual assistance between authorities?

A column in the request for service could be provided, in which the Central Authority to note explicitly that the person understands the language in which the documents for service have been drawn up.

- 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?

This depends to a great extent on the nature of the document itself. In some of the cases if a summary only is made in the translation of the document, this could result in violation of rights, missing preclusive terms, etc., which might lead to significant legal consequences for the addressee. When the person whom such kind of documents will be served does not understand the language, in which the documents have been written, it is more appropriate for them to be accompanied by a translation into the language of the requested State.

- 9.5 Do such translations need to be legalized or to bear an apostate?

It is not necessary for the documents to be legalized or to bear an apostille as long as they have been forwarded by the Central Authority of the respective country – i.e. this is a guarantee for the genuineness of the documents.

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

10.1 What is the average time required for performance of requests for service?

The average time required for performance of requests in the Republic of Bulgaria is 4 months.

10.2 Are there substantial differences between States addressed?

Yes, there are, depending on their specific character.

10.3 How could the procedures for mutual assistance be improved?

The procedures for mutual assistance could be improved in respect of promptness, mainly by adopting the direct contacts between the competent authorities.

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?

We use these channels when serving documents abroad to Bulgarian citizens.

11.2 Postal channels [Article 10(a)] (cf. II, 2, C)

Have the interpretation and application of this provision given rise to difficulties?

According to our domestic law it is possible for the summoning to be done by post as well – by registered letter with advice of delivery. The interpretation and application of the cited provision do not give 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.

The Republic of Bulgaria has made a declaration by which it has opposed to the use of the methods of service indicated in Article 10 of the Convention. The receiving and forwarding of the requests for service is always done through our Central Authority.

b) If your State uses transmission between huissiers, can you specify?

i) with which States this procedure is used?

ii) how this system operates?

Our State does not use such transmission.

c) Information relating to the costs of forwarding and reimbursement of the costs would also be useful.

The costs are fully paid by the State, i.e. the proceedings are free of charge.

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.

See b.

e) Are your country's lawyers or solicitors authorized to perform service from abroad?

No, they are not authorized.

11.4 Interested persons (Article 10(c))

Have the interpretation and application of this provision given rise to difficulties?

The Republic of Bulgaria has made a declaration concerning Article 10.

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?

The Convention of 1965 is applied in the service of all documents coming out of the Court, both those producing procedural effects and others.

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?

We do not have precise statistics at our disposal, but these are not more than 10 cases a year.

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

13.1 What is your view of the dual-dating system?

The dual-dating system is largely applicable in our judicial system and the Ministry of Justice, as Central Authority under the Convention, has a very positive attitude to it, as it leads to procedural economy.

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)?

We do not determine a date; we just set the dead line, until which the forwarded document is to be served.

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?

We do not have such precedents, but still the Court makes an assessment for each particular case when exequatur of judgement is available, whether a real opportunity has been given to the State to take part in the respective legal proceedings under the case before rendering the judgment.

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?

No such rulings have been issued.

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?

Requests for performance forwarded in the mentioned forms are not accepted. Such forms have not been regulated in the Bulgarian civil procedural legislation yet.

- b) Are e-mail and fax used in your country, as requesting State, to forward requests for service?

These are not used. These forms of forwarding requests have not been regulated in the Bulgarian civil procedural legislation yet.

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?

Service from abroad may not be performed in these forms by e-mail or by fax. These forms of service have not been regulated in the Bulgarian civil procedural legislation yet.

- 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?

For the time being legislative regulation of the use of e-mail for service from abroad is not expected.

- c) As requesting State, does your domestic law accept service performed by e-mail or fax in the State addressed?

There does not exist legal regulation of the acceptance of service in the mentioned forms.

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?

This form of sending the certificate of due performance of service is not used.

- b) As requesting State, would you accept receipt by e-mail or fax of a certificate of service abroad? If so, in what circumstances?

This form of receipt of the certificate of service abroad is not used.

- 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?

There are no such rulings.

- 16.5 Is the use of e-mail or fax in service procedures subject to specific security requirements?

There is not legal regulation. See 16.1-16.4.

- 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?

There is not legal regulation.

17 Model forms

- 17.1 Do you consider that the model forms ought to be revised? If so, how?

A column in the request for service could be provided, in which the Central Authority to note explicitly that the person understands the language in which the documents for service have been drawn up.

- 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?

We consider that this is not necessary.

- 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?

No, this would complicate and delay the work of the forwarding authority even more.

- 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?

We are absolutely in favour of the drawing up of Recommendation.

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

We consider that at a certain moment in the future it will be necessary for all the countries under the Convention, but for the time being it will be useful for the countries that receive forwarding and service by e-mail.

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?

We have not had any cases of applying the principle of reciprocity by the mentioned 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?

We have not had any cases of applying the principle of reciprocity by and against the

mentioned States.

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?

The Republic of Bulgaria has entered into agreements for legal aid on civil matters, including also provisions concerning the service of documents with the following States: Austria, Azerbaijan, Armenia, Algeria, Belgium, Vietnam, Georgia, Greece, Italy, Spain, Yemen, Cyprus, China, Korea, Kuwait, Cuba, Libya, Macedonia, Mongolia, Poland, Romania, Syria, Russia, Serbia and Montenegro, Turkey, Tunisia, Hungary, France, the Czech Republic, etc.

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)?

Annex No 1
To Question 3.3

REQUESTS FORWARDED TO THE MINISTRY OF JUSTICE OF THE REPUBLIC OF BULGARIA UNDER THE HAGUE CONVENTION OF 15 NOVEMBER 1965 FOR SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN COMMERCIAL AND CIVIL MATTERS

REQUESTS FORWARDED FROM ABROAD IN THE PERIOD FROM 2000 – 2003

1. GERMANY-	89
2. TURKEY-	78
3. POLAND-	35
4. BELGIUM-	5
5. NORWAY-	2
6. ITALY-	15
7. SPAIN-	6
8. CZECH REPUBLIC-	10
9. BELARUS-	3
10. SWITZERLAND-	16
11. FINLAND-	4
12. USA-	8
13. SLOVENIA-	10
14. RUSSIA-	11
15. SWEDEN-	3
16. UK GREAT BRITAIN-	4
TOTAL:	299

REQUESTS FORWARDED TO ABROAD IN THE PERIOD FROM 2000 – 2003

1. BELGIUM	2
2. GREECE	10
3. GERMANY - BAVARIA	5
- BADEN-VURTEMBERG	4
- SAARLAND	1
- SACKSEN-ANHALT	1
- NIDERSACKSEN	2
- NORDREIN-WESTFALLIA	2
- REINLAND-PFALZ	2
- SENATE GOVERNMENT	3
- TURINGIA	1
- HESEN	7
4. ISRAEL	8
5. IRELAND	1
6. SPAIN	1

7. ITALY	1
8. CANADA	3
9. CYPRUS	2
10. LATVIA	1
11. LITHUANIA	1
12. LUXEMBURG	1
13. MEXICO	1
14. NORWAY	1
15. UK. GREAT BRITAIN	9
16. ONTARIO	1
17. POLAND	2
18. RUSSIA	7
19. USA	17
20. THE SEYCHELLES	1
21. SLOVAKIA	1
22. SERBIA	1
23. TURKEY	16
24. UKRAINE	1
25. FRANCE	10
26. HOLLAND	7
27. THE CZECH REPUBLIC	1
28. SWITZERLAND	3
29. SWEDEN	1
30. JAPAN	1
TOTAL:	140