

**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**

Response of Finland

I – QUESTIONS ADDRESSED TO NON-PARTY STATES

II - ADMINISTRATIVE INFORMATION AND UPDATES

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.

The contact information of the central authority of Finland is:

Ministry of Justice

Postal address:

PO Box 25

FIN-00023 Government

Finland

Street address:

Eteläesplanadi 10

FIN-00130 Helsinki

Finland

Tel. (358-9) 16 06 76 28

Fax (358-9) 16 06 75 24

E-mail central.authority@om.fi

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

Languages of communication: Finnish, Swedish and English.

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?

See annexe below.

4 Case-law and reference works

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.

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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.

Könkkölä Mikko, Kansainvälinen siviilioikeusapu, Encyclopedia Iuridica Fennica (VI), 1998, p. 389

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 favour of the Conference's website would have implications in terms of resources, would you be in favour of such a proposal? If so, could you specify the information that you would consider useful to have appear on the site?

Yes, we support the proposal. It is important that the specific information by country is available on the Hague Conference website "Full Status Report". The essential information is the information contained in the second part of the former Handbook i.e. the central authority, the translation requirements and the costs. The information concerning declarations under Articles 8 and 10 are useful as well (third part of the former handbook). The updating of the information should be the responsibility of each State Party who should forward the relevant changes to the Permanent Bureau for inclusion in the website.

5.2 Does the structure (headings, sub-headings) of the Handbook's provisional version seem satisfactory to you? Do you have any suggestions?

Yes, it is very comprehensive.

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

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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?

We suggest that the handbook be updated at least in connection with each Special Commission on the practical operation of the 1965 Convention.

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 website of the Finnish Ministry of Justice on International Legal Assistance has information on international service of documents at www.om.fi/20723.htm. A website about the service of documents in Finland in general is found at www.oikeus.fi/17307.htm.

III - INFORMATION RELATING TO APPLICATION OF THE CONVENTION

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?
No.

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?
No.

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.

6.4 Have you noted a change since 1992 regarding the Convention's exclusive character (cf. I, 5, B. c))?
No.

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.

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?

It is the national central authority, i.e. the Ministry of Justice.

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?

We consider that it can be restricted to "special 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)?

The central authority sends the documents to the competent district court in order to effect formal service through a process server.

- informal delivery within the meaning of Article 5(2) (e.g., use of the police service or officials)?

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- a special request by the applicant, within the meaning of Article 5(1)b) (e.g., postal service by the Central Authority)?

Finland has not had such requests.

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).

Article 5 (1)(a): A translation is not required; however, if the addressee does not accept a document made out in a foreign language, service can only be effected if the document is translated into one of the official languages of Finland, i.e. Finnish or Swedish, or if the addressee must be deemed to understand the foreign language. Accordingly, f.ex. companies with international business relations must be deemed to understand English, German or French.

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?

In Finland the service procedure normally takes one or two weeks at most. Therefore, no additional measures have been taken.

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.

The formal service is free of charge for foreign authorities.

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?

Yes.

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, it would be appropriate since unnecessary translation costs are not in the interest of any party to the procedure.

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

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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?

We find it better to require a full translation in cases where a translation has to be supplied. However, if the recipient fully understands the language of the document to be served, the translation of the documents' summary could be enough.

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

With reference to the translations in general, we find it unnecessary to require legalisation or equivalent formalities. In any case, the translations should be made by a qualified person.

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

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

A request from abroad to Finland is normally served to the addressee in two-weeks time after the central authority has received it.

It is difficult to state the average time for performance of a request from Finland to abroad since it varies between 1 month and 1 year depending on the State addressed.

10.2 Are there substantial differences between States addressed?

See question above.

10.3 How could the procedures for mutual assistance be improved?

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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?

These channels are seldom used. The consular channel is sometimes used in case of extrajudicial documents such as wills. The diplomatic channel is used only when the State addressed is party to the Convention but, unfortunately, has not designated a central authority.

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

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

No.

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.

Under the Finnish legislation the only competent persons to effect service of a document are the process servers. They seldom receive requests from abroad under Article 10 (b). Finnish authorities are not obliged to assist in serving documents transmitted by using any of the methods referred to in sub-paragraphs (b) and (c) of Article 10 of the Convention.

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

i) with which States this procedure is used?

ii) how this system operates?

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

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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.

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

Not under Finnish legislation.

11.4 Interested persons (Article 10(c))

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

No.

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?

There is no legal distinction between these two categories. The Convention is applied to both classes.

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?

Unfortunately we do not have separate statistics about the volume of extrajudicial documents. However, the general view of the central authority is that this category mainly covers wills and is not exhaustive. Requests for service of a will are most often addressed from Finland to Canada.

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

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

We do not find it useful.

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)?

In our legal system the date of service is the actual date when the service has been performed. There is no special domestic provision concerning the date of service for the applicant in the event of transmission abroad. However, in our domestic legal system e.g. *lis pendence* effect is not solely connected to the date of service.

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?

Yes, it might be possible in some cases depending on whether the addressee understood the language of the document or not.

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.

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?

Yes, we would accept requests forwarded by fax or e-mail provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it is easily legible.

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

E-mail is not used in practice. Telefax is used only in urgent cases.

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?

No.

b) If your State allows postal channels for service from abroad, might the use of email instead of postal channels be contemplated? If so, subject to what requirements?

Yes, we could contemplate it but the requirements would have to be considered carefully.

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

It is allowed as far as it is valid 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?

E-mail is not used in these cases in practice. Fax is used only in urgent cases and then the original certificate of service is also forwarded by post.

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

Yes, we could accept it provided that we are assured of its reliability.

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?

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

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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?

No, it is not used in practice nor valid under Finnish law.

17 Model forms

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

We find that the forms work well in their current version.

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 find that the forms should be easy to use and should not contain more information than necessary. The information referred to in this question can be included in the document to be served. What is important to the addressee is that the "Request" form contains the up-dated

contact data of the requesting authority so that he/she can ask for more information if 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 favour of such a change?'

We do not consider it necessary.

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 could accept this kind of procedure for necessary amendments.

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

Yes.

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?

Finland does not oppose service through postal channels nor assert reciprocity against other Contracting 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?

Finland does not oppose transmission through consular channels nor assert reciprocity against other Contracting 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?

- Agreement between Finland, Denmark, Iceland, Norway and Sweden on Mutual Legal Assistance in Service and Taking of Evidence, 1974.
- Bilateral Agreement between Finland and Hungary on Legal Protection and Legal Assistance in Civil, Family and Criminal Matters, 1981.
- Bilateral Agreement between Finland and Russian Federation on Legal Protection and Legal Assistance in Civil, Family and Criminal Matters, 1980
- Bilateral Agreement between Finland and the United Kingdom, 1933

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?

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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)?

There have not been any special problems between these two instruments.

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)?

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ANNEX (see question 3.3.)

NUMBER OF INCOMING AND OUTGOING REQUESTS UNDER THE 1965 CONVENTION IN FINLAND

	2001	2002	2003 (by 15/9/03)
Argentina		1	1
Bahamas		2	
Belarus		1	
Bulgaria	2	1	1
Canada	20	21	17
China	5		1
Czech Republic		1	1
Cyprus	1	1	2
Egypt	4	10	3
Estonia	63	78	48
Hong Kong	1		
Israel	2	4	1
Latvia		2	5
Lithuania	2	2	1
Mexico	1		
Poland	10	9	5
Russian Federation	57	69	39
Switzerland	12	18	11
Turkey	28	21	20
United States	53	38	61

Total	261	279	217
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