

The Hague Conference Questionnaire on the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters

REPLIES BY THE NETHERLANDS DELEGATION

- 1, 2 The Netherlands are a contracting state since 1976
- 3.1 Public Prosecutor in The Hague .
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- 3.2 Dutch, English, German and French
- 3.3 In 2000: 2,904 requests; in 2001: 1,885; in 2002: 791. Our current registration system is not designed to provide statistical information, such as the number of requests per requesting State.
- 4.1 See appendix. There could be objections to including judgments of the lower courts in the Handbook. The unclear status of these rulings may cause confusion amongst practitioners applying the Convention.
- 4.2 See appendix
- 5.1 Practitioners need information via the Internet. This site should provide as much relevant information as possible including the contact information that was contained in the old Handbook, supplemented by telephone and fax numbers, e-mail addresses and information on who is/are authorised to submit a request (Art. 3, Paragraph 1 of the Convention).
- 5.2 The Handbook is a cross between a real Handbook which can be used by practitioners and a more scientific explanation of the Convention. It is of utmost importance that the Handbook remains accessible for use in practice.
- 5.3 The restrictions and statements of the various Contracting States are of great importance in practice. A subject index would also make the Handbook easier to use.
- 5.4 Each party is responsible for keeping the Hague Conference informed about changes with regard to the information that appears on the site. It is then up to the Hague Conference to update the information on the site as promptly as possible. The other information in the Handbook should also be regularly updated.
- 5.5 The Royal Dutch Organisation of Court Bailiffs web site (www.kbvg.nl).
- 6.1 No, no change, but there is more clarity. For example, refer to the Netherlands Supreme Court ruling of 3 October 1997 (NJ 1998, 887 nt PV), set out in the Handbook, regarding writs of summons from foreign states.
- 6.2 See point 6.1.
- 6.3 No. The Handbook provides a good description of Dutch law with regard to this point (page 10 of the English version). Although the procedures regarding civil action have been changed, the Netherlands Supreme Court ruling in the Mabanft case retains its significance. (The service of the documents at the office of the attorney or lawyer in the previous instance pertaining to the objection, appeal and appeal in cassation, relevant to that ruling, has now been included in Article 63 of the Code of Civil Procedure)

- 6.4 It is pointed out with respect to the formal area of application of the Convention, that in relation to a number of countries, Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters has taken the place of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters. With respect to the parties' possibilities of ruling out the application of the Convention, reference is made to the possibility of choice of domicile in Article 15, Book 1 of the Dutch Civil Code.
- 6.5. There have been no changes to the Dutch law that have resulted in interpretation problems.
- 7.1 With regard to the Kingdom in Europe, these are the Public Prosecutors and the Supreme Court Procurator General in cases heard or to be heard by the Supreme Court (Art. 8 of the Implementation Act for the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters in conjunction with Art. 55 of the Dutch Code of Civil Procedure). With regard to Aruba, this is the Procurator General in Oranjestad, Aruba.
- 7.2 This should remain subject to special circumstances, particularly if there is doubt concerning the authority of a concrete requester. Adding a list of concrete requesters to the Handbook/web site (see point 5.1) may provide more clarity on this point.
- 8.1 Formal Service: if the documents are to be serviced in the Court District of The Hague, the Central Authority sends them to a randomly selected bailiff, with the request to serve the documents on the person concerned. If documents are to be served in another Court District, the Central Authority sends them to the designated Public Prosecutor's Office/International Legal Assistance Centre (IRC) and asks for them to be served by a bailiff.
Informal delivery: this works in the same way as for formal service in terms of the authority (sent on to another Public Prosecutor's Office/IRC or not). The explanatory memorandum to the Implementation Act states that, as a rule, a local police officer in the Court District concerned should be deployed by the Public Prosecutor for an issue in the Dutch language. However in practice, there is no real uniformity. Depending on where the documents are to be served, they are sometimes served via postal channels, by the police or by a member of the "documents service brigade". It should also be said that there is a loophole in the legislation with regard to servicing civil documents in this way regarding what should be done in cases where documents are unable to be served, even though the person concerned is registered at that address.
Special request: a special request has never been received.
- 8.2 No translation required. However, translation of a summary is desirable. There are no agreements with other countries.
- 8.3 The standard period is 8 weeks. After this period has elapsed, a reminder is sent, with differing results.
- 8.4 Charges are only incurred if documents are serviced by a bailiff. The charges vary according to the request and the bailiff concerned. When implementation documents are sent to the requesting state, the bill for the bailiff's charges is also sent. We are not aware of any complaints regarding non-payment.
There are complaints amongst the bailiffs regarding the American flat-rate. The Convention should prescribe that every Contracting State uses one recognisable system.

- 9.1 It makes it more expensive (translation costs), but also easier for both the receiving Central Authority and the bailiff carrying out the servicing.
The form is the most important factor. The fact that the form is not always duly and exhaustively completed sometimes constitutes a problem.
- 9.2 No, not even for those Contracting States with reservations regarding language requirements. It would be a good idea for the Special Commission to pay extra attention to the issue of language requirements. These requirements should not be tightened up, particularly not during the procedure in the first instance.
- 9.3 No.
- 9.4 It would be useful to look into the language requirements in more detail. A full translation only becomes necessary if the whole system regarding language requirements is altered.
- 9.5 No.
- 10.1 Incoming requests, in other words requests made to the Dutch Central Authority: performed within an average of 2 to 3 months; the time taken for outgoing requests varies greatly (from 2 months to more than a year). Unfortunately, no statistical overview is available.
- 10.2 See 10.1.
- 10.3 First, it would be useful if the form included the telephone number, fax number and e mail address of the sender. Secondly, we would recommend that a Central Authority receiving an unclear or only partly completed form should contact the sender in order to obtain more detailed information, rather than immediately returning the document (which is current practice).
- 11.1 Incoming, on occasion, outgoing, only for fiscal cases and when the requested State is not party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters.
- 11.2 In its ruling of 31 May 1996 (NJ 1997, 29), the Dutch Supreme Court ruled that in accordance with Article 4 under 8 of the Dutch Code of Civil Procedure (also Article 55, paragraph 1 of the Dutch Code of Civil Procedure), a letter sent by registered post can be regarded as having satisfied the conditions of the Convention in as far as it is deemed to have been sent directly via postal channels within the meaning of Article 10, opening lines and under a, if the letter sent by registered post is actually received by the addressee living abroad.
- 11.3
- a) Not known, transmitted via the Central Authority.
 - b) i) the countries party to Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters
 - ii) Refer to Council Regulation (EC) No 1348/2000
 - c) Refer to Council Regulation (EC) No 1348/2000
 - d) The Royal Dutch Organisation of Court Bailiffs.
 - e) No.
- 11.4 We do not know.
- 12.1 Yes, judicial exploits producing direct procedural effects and exploits that do not, in other words exploits that have no procedural effects. However, the Convention is applied in the same way in both events.
- 12.2 No.

- 13.1 The Netherlands does not have dual-dating problems with the Convention in connection with the fictitious service system. In terms of designated periods, only the service date in the Netherlands is relevant. The notification date abroad is only important in terms of the requirements regarding time specified in Article 15 of the Convention.
- 13.2 Irrelevant; see answer to 13.1
- 14.1 In order to answer this question, we must determine whether acknowledgement takes place under the terms of a convention on enforcement of judgements or an *exequatur* procedure on the grounds of national law (the procedure of Article 431, Paragraph 2 of the Dutch Code of Civil Procedure). The service forms a ground for refusal to be distinguished from the public order, whereby Article 6 of the European Convention on Human Rights is directional.
- 15.1 No, unless one considers the choice of domicile in Article 1:15 of the Dutch Civil Code as such. Please refer to the answer to question 6.4.
- 16.1 a) Has not yet occurred. With regard to desirability: other means of communication would only be acceptable if they can be guaranteed in terms of origin, conformity and legibility.
b) Not known.
- 16.2 a) Civil Procedure only allows for servicing via postal channels.
b) The meaning of the altered description of 'post' in the Postal Convention for the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters is unclear. The acceptance of new forms of service would depend on the guarantees stated under 16.1 a). We should await European legislation on this point.
c) If the State addressed permits this form, there is no objection. Under Dutch law, this foreign 'service' only serves as notification and is not deemed to be service in the terms of the Code of Civil Procedure.
- 16.3 a) A certificate can be faxed in emergencies. b) See 16.1
- 16.4 Article 33 Dutch Code of Civil Procedure . This provision builds on previous case law.
- 16.5 No, see above.
- 16.6 No.
- 17.1 The model should comprise the contact details of the sender at the very least, including fax number, e-mail address and telephone number. It would also be advisable to exclude hand-written forms, for the sake of legibility. In practice, forms that have not been fully completed would seem to be a problem.
- 17.2 This information is of particular importance to the addressee and not to the Central Authority. Therefore it does not need to be included in the standard form. It would be useful if it were included in the summary. Completing the summary correctly and in full is a point for improvement.
- 17.3 Yes ... see remarks under 17.1
- 17.4 Yes. Amendment by means of Recommendation would appear to be the appropriate path, also when taking new developments with regard to transmission into account.
- 17.5 Yes. However, the requirements with regard to authenticity should be satisfied.
- 18.1 No objections, requests are accepted.

- 18.2 No objections, requests are accepted.
- 19.1 Convention Relating to Civil Procedure 1905, Convention Relating to Civil Procedure 1954, Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters
- 19.2 Not applicable.
- 19.3 The Council Regulation takes precedence over the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters. The Central Authority granted the Parties concerned a "grace period" during which documents were sent to The Royal Dutch Organisation of Court Bailiffs. Documents were also returned with a reference to the Convention.





