

II. Questions for Contracting States

A. "Service Section" of the HCCH website

- 4) On the "Service Section" of the HCCH website, the Permanent Bureau currently provides practical information for each Contracting State that was mainly obtained from the responses to the 2003 Questionnaire accompanying the provisional version of the new edition of the Practical Handbook on the operation of the Service Convention (2003 Service Questionnaire). This practical information, which is presented in form of a chart, consists of the following:
- 1) Contact details of each of the Central Authorities (Arts 2 and 18)
 - 2) Forwarding authorities (Art. 3(1))
 - 3) Methods of service (Art. 5(1) and (2))
 - 4) Translation requirements (Art. 5(3))
 - 5) Costs relating to the execution of the request for service (Art. 12)
 - 6) Time for the execution of a request
 - 7) Judicial officers, officials and other competent persons (Art. 10 *b*) and *c*)
 - 8) Oppositions and declarations (Art. 21(2), in particular with respect to Arts 8(2), 10 *a*), *b*) and *c*), 15(2) and 16(3))
 - 9) Derogatory channels (bilateral or multilateral agreements or domestic law permitting other transmission channels (Arts 11, 19, 24 and 25)
 - 10) Useful links

The Permanent Bureau invites your State to peruse the "Service Section" and to verify if all the information contained in the practical information chart for your State is (still) correct or if it needs to be updated, amended or supplemented. **The States that currently do not have a chart of practical information on the "Service Section" are kindly invited to submit this information to the Permanent Bureau.**

The information on the Federal Republic of Germany in the "Service Section" is still correct. However, the reference to Council regulation (EC) No 1348/2000 on the service of documents should be replaced for all European Community Member States by reference to Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13. November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ("service of documents") and repealing Council Regulation (EC) No 1348/2000 of the Council (Official Journal of the European Union L 324, p. 79).

- 5) Would your State consider that the information provided on the "Service Section" of the HCCH website is:
- [] Very useful
- [] Useful – would you have any suggestions for improvement?
- [] Not useful – would you have any suggestions for improvement?

B. Contact details for designated Authorities

- 6) Please check the contact information as contained on the HCCH website with regards to the **Central Authority(ies)** designated by your State (Arts 2 and 18(3)). If one of the following categories of information is missing then please provide it below (please provide both a postal address and a street address, if these are not identical):

Name of Authority:
 Address:
 Telephone:
 Fax:
 E-mail:
 Website:
 Language(s) of communication:
 Name of contact person:

If your State is a federal State that has designated several Central Authorities under Article 18(3) and one of the above categories is missing for more than one Central Authority designated, please provide separate details for each of those Central Authorities (copy and paste if necessary – also, please provide both a postal address and a street address, if these are not identical):

The following list provides the data requested:

Länder	Contact details
Baden-Württemberg	Präsident des Amtsgerichts Freiburg Holzmarkt 2 79098 FREIBURG tel.: +49 (761) 205-0 fax: +49 (761) 205-1804 e-mail: poststelle@agfreiburg.justiz.bwl.de www.amtsgericht-freiburg.de www.agfreiburg.de deutsch, englisch Herr Roger Butzer
Bayern	Präsidentin des Oberlandesgerichts München Prielmayerstrasse 5 80097 München tel.: +49 (89) 5597-02 fax: +49 (89) 5597-3575 e-mail: poststelle@olg-m.bayern.de www.justiz.bayern.de www.justiz.bayern.de/olgm/ deutsch
Berlin	Senatsverwaltung für Justiz von Berlin Salzburger Strasse 21-25 10825 Berlin tel.: +49 (30) 9013-0 fax: +49 (30) 9013-2000 e-mail: poststelle@senjust.berlin.de www.berlin.de/senjust Herr Dr. Peter Schwarzburg
Brandenburg	Ministerium der Justiz des Landes Brandenburg Heinrich-Mann-Allee 107 14460 Potsdam tel.: +49 (331) 866-0 fax: +49 (331) 866-3080 / 3081 e-mail: poststelle@mdje.brandenburg.de www.mdj.brandenburg.de deutsch Herr Röthemeier

Bremen	Der Präsident des Landgerichts Domsheide 16 28195 Bremen tel.: +49 (421) 361-4204 fax: +49 (421) 361-6713 e-mail: poststelle@landgericht.bremen.de office@landgericht.bremen.de www2.bremen.de/justizsenator/landgericht
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Hamburg	<p>Präsident des Amtsgerichts Hamburg Sievekingplatz 1 20355 Hamburg tel.: +49 (40) 42843-0 fax: +49 (40) 42843-2383 e-mail: VerwaltungAmtsgerichtHamburg@ag.justiz.hamburg.de www.amtsgericht.hamburg.de deutsch, englisch</p>
Hessen	<p>Der Präsident des Oberlandesgerichts Frankfurt am Main Zeil 42 Postfach 10 01 01 60313 Frankfurt am Main tel.: +49 (69) 1367 01 fax: +49 (69) 1367 2976 e-mail: verwaltung@olg.justiz.hessen.de http://www.olg-frankfurt.justiz.hessen.de</p>
Mecklenburg-Vorpommern	<p>Justizministerium Mecklenburg- Vorpommern 19048 Schwerin Puschkinstrasse 19-21 19055 Schwerin tel.: +49 (385) 588-0 fax: +49 (385) 588-3453 e-mail: poststelle@jm.mv-regierung.de www.jm.mv-regierung.de/cms2/Regierungsportal_prod/Regierungsportal/de/jm/index.jsp</p>
Niedersachsen	<p>Niedersächsisches Justizministerium Am Waterlooplatz 1 30169 Hannover tel.: +49 (511) 120-0 fax: +49 (511) 120-5170 / 5181 e-mail: poststelle@mj.niedersachsen.de www.mj.niedersachsen.de/master/C694_L20_DO.html deutsch Herr Henning Baum</p>
Nordrhein-Westfalen	<p>Die Präsidentin des Oberlandesgerichts Düsseldorf Cecilienallee 3 40474 Düsseldorf tel.: +49 (211) 4971-0 fax: +49 (211) 4971-548 e-mail: poststelle@olg-duesseldorf.nrw.de www.olg-duesseldorf.nrw.de deutsch</p>
Rheinland-Pfalz	<p>Ministerium der Justiz des Landes Rheinland-Pfalz Ernst-Ludwig-Strasse 3 55116 Mainz tel.: +49 (6131) 16-0 fax: +49 (6131) 16-4887 e-mail: poststelle@min.jm.rlp.de www.jm.justiz.rlp.de deutsch Frau Petra Schönbrunn Herr Manfred Müller</p>

Saarland	Ministerium der Justiz, Arbeit, Gesundheit und Soziales des Saarlandes Franz-Josef-Röder-Straße 23 66119 Saarbrücken tel.: +49 (681) 501-00 fax: +49 (681) 501-3098 e-mail: poststelle@justiz-soziales.saarland.de www.justiz-soziales.saarland.de deutsch
Sachsen	Präsident des Oberlandesgerichts Dresden Schlossplatz 1 01067 Dresden tel.: +49 (351) 446-0 fax: +49 (351) 446-1299 e-mail: verwaltung-olg@olg.justiz.sachsen.de www.oberlandesgericht-dresden.de
Sachsen-Anhalt	Ministerium der Justiz Hegelstr. 40-42 39104 Magdeburg tel.: +49 (391) 567-01 fax: +49 (391) 567-6180 e-mail: poststelle@mj.lsa-net.de http://www.mj.sachsen-anhalt.de
Schleswig-Holstein	Ministerium für Justiz, Arbeit und Europa des Landes Schleswig-Holstein Lorentzendamm 35 24103 Kiel tel.: +49 (431) 988-0 fax: +49 (431) 988-3870 e-mail: poststelle@jumi.landsh.de www.mjae.schleswig-holstein.de deutsch Herr Manfred Schäfer
Thüringen	Thüringer Justizministerium Werner-Seelenbinder-Strasse 5 99096 Erfurt tel.: +49 (361) 37-95000 fax: +49 (361) 37-95888 e-mail: poststelle@tjm.thueringen.de www.thueringen.de/de/justiz deutsch

7) Please also verify the contact information as contained on the HCCH website with regards to the following authorities in your State, *if applicable*. If one of the following categories of information is missing then please provide it below (please provide both a postal address and a street address, if these are not identical):

a. **Other Authorities** that may have been designated in addition to the Central Authority (Art. 18(1)):

Name of Authority:
 Address:
 Telephone:
 Fax:
 E-mail:
 Website:
 Language(s) of communication:
 Name of contact person:

b. An **Authority** that may have been designated instead of the Central Authority to complete the Certificate in the form of the model annexed to the Service Convention (Art. 6(1)):

Name of Authority:
 Address:
 Telephone:
 Fax:
 E-mail:
 Website:
 Language(s) of communication:
 Name of contact person:

c. The **Competent Authority** that receives documents transmitted by indirect diplomatic or consular channels (Art. 9(1)):

The Central Authority of the Federal State in which the documents are to be served (see reply to question 6 above); also the President of the Regional Court on behalf of the Regional Court or Local Court in the government region of which the documents are to be served; also the President of the Local Court on behalf of the Local Court in the government region of which the documents are to be served if it is subject to his supervision. (Section 1 of the Law to implement the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and to implement the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, Federal Law Gazette 1977 I p. 3105).

8) In Conclusion and Recommendation No 48, the 2003 Special Commission invited all States to provide information on the forwarding authorities (the authority or judicial officer competent under the law of the requesting State to forward to the Central Authority of the requested State the request for service) and their competences for this information to be posted on the HCCH website. If your State has not yet done so, please provide comprehensive information to this effect below (obviously, the Permanent Bureau is not asking for a comprehensive list of individuals who may be forwarding authorities, but rather for a reference to all the categories of authorities, officials or professionals that may be forwarding authorities, for example "the courts", "bailiffs", "(professional) process servers", etc.):

In Germany, outgoing requests for judicial assistance are formulated and prepared by the courts and then regularly checked administratively by the examining

agencies. The examining agency for requests by the Local Courts and the Regional Courts is the President of the competent Regional Court; for a request by the Local Court it is only the President of the Local Court if this court is subject to his supervision. The President of the competent Higher Regional Court acts on behalf of the Higher Regional Courts. More detailed provisions are made in Section 9 of the Regulation on Judicial Assistance in Civil Matters (Rechtshilfeordnung für Zivilsachen – ZRHO), situation as of 2007. The examining agencies then forward the requests for service directly to the foreign receiving agency on behalf of the requesting courts (Section 29 of the Regulation on Judicial Assistance in Civil Matters - ZRHO).

C. Statistics

Main Channel of Transmission (Art. 3)

Requests for Service – Incoming

- 9) The following questions relate to the number of requests for service *addressed to your State* under the Service Convention.

No official statistics are kept in Germany on incoming requests for service. The figures below are based on voluntary information from the Central Authorities of the Federal States in which documents were served in accordance with the Hague Service Convention. The service of documents in accordance with the EC Service Regulation is not included in the list. The special situation concerning Denmark (Denmark does not participate in judicial cooperation in civil matters) was taken into account until 2006, however (thereafter an agreement with the EC extended the regulation to Denmark). Priority was not given to bilateral supplementary agreements to the Hague Convention of 1954 on Civil Procedure or to the Hague Service Convention of 1965.

- a. Please complete the following table to indicate how many *incoming* requests for service the Central Authority(ies) of your State received in each of the past five years under the main channel of transmission. Please also note, if possible for each year, the country(ies) from which your State received the most requests for service.

2003	2004	2005	2006	2007
Number: 8730	Number: 7063	Number: 6797	Number: 7334	Number: 7385
State(s):	State(s):	State(s):	State(s):	State(s):
Poland (2004 Accession to the EC):	Switzerland:	Turkey:	Turkey:	Turkey:
7308	1590	3396	4087	4272
Turkey:	Turkey:	Switzerland:	Switzerland:	Switzerland:
4739	3927	1468	1684	1558
Switzerland:	USA:	USA:	USA:	USA:
2193	686	534	639	535
Hungary (2004 Accession to	Denmark:	Denmark:	Denmark:	Russian Federation:
	273	218	255	179
	Norway:	Russian	Russian Federation:	Norway:
	180			

2003	2004	2005	2006	2007
the EC): 2034 USA: 777		Federation: 166	214	148

- b. Of the total amount of requests for service received in 2007, please divide these depending on the method of service that was used by your State and complete the following table with respect to the time that lapsed between the Central Authority(ies) of your State receiving a request for service and the relevant authority of your State forwarding the Certificate of service to the applicant in the requesting State.

For example, if your State executed 12 requests for service using personal service and the entire process took less than two months in each case, please write the number "12" in the relevant box. The total amount of incoming requests for service that your State received in the past year should therefore equal the sum of the figures appearing in the sub-totals line below:

Due to the lack of official statistics, no meaningful information can be given on this. Some Central Authorities have provided figures on a voluntary basis, giving the following incomplete picture.

Method of service	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned un-executed (Art. 13)	Cases currently pending
Formal service (Art. 5(1) a))	900	79	3	2		7	
Service by a particular method (Art. 5(1) b)) ⁴	13	4	1				
Informal delivery (Art. 5(2))	23	18	2	1			
Sub-totals:	936	101	6	3		7	

Requests for Service – Outgoing

- 10) The following questions relate to the number of requests for service *sent by the forwarding authorities of your State* under the Service Convention. These questions are likely to require some consultation with the (main) forwarding authorities in your State that (may) have previously forwarded requests for service:

The preliminary remark to question 9 above applies. The Federal States whose courts submitted requests for service provided figures on a voluntary basis.

⁴ See Question 29) b. for an explanation as to the meaning of Art. 5(1) b) – please adopt that meaning to fill in the chart above, independently of your response to Question 29) b. (i).

- a. Please complete the following table to indicate how many *outgoing* requests for service the forwarding authorities of your State have forwarded to Central Authorities of other States Parties in the past five years. If possible, please also note the country(ies) to which your State sent the most requests for service for each year listed below.

2003	2004	2005	2006	2007
Number: 8344	Number: 9272	Number: 9676	Number: 10019	Number: 9791
State(s): Switzerland: 3890	State(s): Switzerland: 4519	State(s): Switzerland: 4766	State(s): Switzerland: 4683	State(s): Switzerland: 4944
USA: 1810	USA: 1849	USA: 1775	Turkey: 2170	Turkey: 1823
Poland (2004 Accession to the EC): 1029	Turkey: 973	Turkey: 1173	USA: 1392	USA: 1084
Turkey: 964	Denmark: 616	Denmark: 526	Russian Federation: 468	Russian Federation: 451
Denmark: 536	Russian Federation: 435	Russian Federation: 494	Denmark: 426	Croatia: 291

- b. Of the total amount of requests for service sent in 2007, please complete the following table with respect to the *time that lapsed* between the forwarding authority of your State sending a request for service and the applicant receiving the Certificate of Service from the requested State. Please also divide these depending on the method of service that was used in the requested State.

For example, if your State is made aware that six requests for service were sent from your State and the entire process took less than two months in each case, please write the number "6" in the relevant box. The total amount of outgoing requests for service that your State is aware were sent in the past year should therefore equal the sum of the figures appearing in the sub-totals line below:

The preliminary remark to question 9 b above applies.

Method of service	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned un-executed (Art. 13)	Cases currently pending
Formal service (Art. 5(1) a))	488	313	95	51	14	39	42
Service by a particular							

method (Art. 5(1) b)) ⁵							
Informal delivery (Art. 5(2))	8	2	2	1		2	
Sub-totals:	496	315	97	52	14	41	42

D. General appreciation of the Service Convention

11) Please indicate below how your State rates the general operation of the Service Convention:

- Excellent
 Good
 Satisfactory
 Unsatisfactory

If your State considers that the general operation of the Service Convention is good, satisfactory or unsatisfactory, please indicate what particular aspects of the Convention your State considers require improvement or where your State has encountered difficulties. For any areas that require improvement, please also indicate whether your State considers that solutions could be developed in specific *Conclusions and Recommendations* to be adopted by the next Special Commission or by specific comments in a new edition of the *Service Handbook* or if a *Protocol* to the Convention is needed.

- obligatory use of forms,
- improvement in the content of forms,
- shortening the processing time,
- strict compliance with the language rules
 - no compulsory translation for delivery in accordance with Article 5(2)
 - no foreign language other than English and French for completing model forms
- Extension of postal delivery

E. Case law and reference work

12) The Permanent Bureau invites States Parties to provide copies of any guides, desk instructions or any other practical information that may have been produced for the assistance of their judicial authorities or other authorities when sending or executing requests for service under the Service Convention.

None.

13) The Permanent Bureau invites States Parties to provide copies of decisions rendered after the publication of the Service Handbook (or from before this time if these have not already been provided to the Permanent Bureau) that apply or

⁵ See Question 29) b. for an explanation as to the meaning of Art. 5(1) b) – please adopt that meaning to fill in the chart above, independently of your response to Question 29) b. (i).

relate to the Service Convention. If the decision is in a language other than English or French, a summary into either of these languages would be appreciated.

The following decisions have been taken from the JURIS GmbH data collection. Due to time constraints, a translation has not been provided, but it can be submitted at a later date.

Gericht:	BVerfG 2. Senat 1. Kammer	Quelle:	
Entscheidungsdatum:	14.06.2007	Normen:	Art 20 Abs 3 GG , Art 2 Abs 1 GG , § 23 GVGEG , § 328 Abs 1 Nr 2 ZPO , Art 13 Abs 1
Aktenzeichen:	2 BvR 2247/06, 2 BvR 2248/06, 2 BvR 2249/06		ZustÜbkHaag
Dokumenttyp:	Nichtannahmebeschluss		

Nichtannahmebeschluss: Keine Verletzung von [Art 2 Abs 1 GG](#) iVm dem Rechtsstaatsprinzip durch Zustellung US-amerikanischer „class-action“-Sammelklagen im Wege der Rechtshilfe

Orientierungssatz

1a. Zu den engen Voraussetzungen, unter denen die Zustellung von US-amerikanischen Sammelklagen verweigert werden kann vgl [BVerfG, 24.01.2007, 2 BvR 1133/04](#). (Rn.18)

1b. Das **Haager Zustellungsübereinkommen** (juris: HaagZustÜbk) dient wichtigen Belangen des Gemeinwohls, die geeignet sind, einen Eingriff in die allgemeine Handlungsfreiheit zu rechtfertigen (vgl [BVerfG, 07.12. 1994, 1 BvR 1279/94, BVerfGE 91, 335 <339 ff>](#)). (Rn.15)

1c. Zu der unter dem Aspekt einer schnellen und effektiven Rechtshilfe von Verfassungen wegen unbedenklichen Beschränkung der Zustellungsverweigerung auf Fälle, in denen gemäß Art 13 HaagZustÜbk die Hoheitsrechte oder die Sicherheit der Bundesrepublik gefährdet sind, vgl [BVerfG, aaO <340>](#)).

1d. Zum Grundsatz, nach dem fremde Rechtsanschauungen und -ordnungen grundsätzlich auch in den Fällen zu achten sind, in denen am Maßstab der deutschen Rechtsordnung überprüfte ausländische Klagen nicht mit den deutschen Auffassungen übereinstimmen würden vgl [BVerfG, 25.07.2003, 2 BvR 1198/03, BVerfGE 108, 238 <247 f>](#). (Rn.19)

2a. Zur offensichtlichen Unvereinbarkeit einer Klagezustellung mit den unverzichtbaren Grundsätzen eines freiheitlichen Rechtsstaates vgl [BVerfG, 07.12.1994, 1 BvR 1279/94, BVerfGE 91, 335 <343>](#).

2b. Im Gegensatz zu der Möglichkeit der Verhängung von Strafschadensersatz (punitive damages) können Schadensersatzforderungen in für einen Beschwerdeführer existenzgefährdender Höhe oder bei Sammelklagen (class action) mit einer unübersehbaren Anzahl von Klägern geeignet sein, eine Vereinbarkeit entsprechender Klageforderung mit den unverzichtbaren Grundsätzen eines freiheitlichen Rechtsstaates zu verneinen.

3. Hier:

3a. Kein evidenter Rechtsmissbrauch durch eine Klageerhebung, bei der die Klageforderung nicht ohne jeden Bezug zur behaupteten Rechtsverletzung und dem behaupteten Schaden steht.

3b. Die Unterwerfung unter eine "pre-trial discovery", ein zwischen Klageerhebung und mündlicher Verhandlung durchgeführtes Beweis- und Beweisermittlungsverfahren (vgl. auch [BGH, 04.06.1992, IX ZR 149/91, BGHZ 118, 312 <323>](#)), stellt keinen offensichtlichen Verstoß gegen unverzichtbare Grundsätze eines freiheitlichen Rechtsstaats dar. Vor einer konkreten gegen die Beschwerdeführerin gerichteten Beweisaufnahme bedarf es weiterer Rechtshilfeentscheidungen deutscher Hoheitsträger, bei denen die Rechte der Beschwerdeführerin - insbesondere zur Vermeidung einer unzulässigen Ausforschung - zu beachten sind. [\(Rn.26\)](#)

3c. Dass die Beschwerdeführerin ihre außergerichtlichen Kosten, dh in erster Linie ihre Anwaltskosten, nicht ersetzt bekommt, selbst wenn die U.S.-amerikanische Klage sich später als unzulässig herausstellt, begründet keinen Verstoß gegen unverzichtbare rechtsstaatliche Grundsätze. Die Risiken gerichtlicher Entscheidungen hat ein Unternehmer, der grenzüberschreitend am Wirtschaftsleben teilnimmt, grundsätzlich zu tragen. [\(Rn.27\)](#)

4a. Eine Verletzung von [Art 12 Abs 1 GG](#) liegt dann nicht vor, wenn einer Klagezustellung - wie vorliegend - keine berufsregelnde Tendenz zukommt. [\(Rn.38\)](#)


4b. Da die Zustellung einer Klage - unabhängig davon, ob es sich um eine inländische oder eine ausländische Klage handelt - den Empfänger lediglich in ein Gerichtsverfahren einbezieht, aber keine Entscheidung über den Ausgang des Verfahrens trifft, scheidet eine Verletzung von Eigentums Garantien mangels einer gegenwärtigen und unmittelbaren Betroffenheit aus (vgl. [BVerfG, 24.01.2007, 2 BvR 1133/04](#))

Fundstellen

WM 2007, 1392-1395 (red. Leitsatz und Gründe)

 WuB VII C § 13 HZÜ 1.07 (red. Leitsatz und Gründe)

 NJW 2007, 3709-3711 (red. Leitsatz und Gründe)


Gericht:	KG Berlin 1. Zivilsenat	Quelle:	
Entscheidungsdatum:	15.05.2007	Normen:	§ 23 Abs 1 GVGEG , Art 5 Abs 1a ZustÜbkHaag
Aktenzeichen:	1 VA 6/07		
Dokumenttyp:	Beschluss		

Leitsatz

Die förmliche Zustellung gerichtlicher Schriftstücke nach Art. 5 Abs. 1 Buchstabe a [Haager](#) Übereinkommen über die Zustellung gerichtlicher und außergerichtlicher Schriftstücke im Ausland in Zivil- oder Handelssachen (HZÜ) ist nur zulässig, wenn das zuzustellende Schriftstück in deutscher Sprache abgefasst oder in diese Sprache übersetzt ist. Eine Beglaubigung der Übersetzung, welche die Übereinstimmung zwischen dem Original und der Übersetzung bestätigt, ist für die Ausführung der Zustellung nicht erforderlich.

☐ Fundstellen

📌 KGR Berlin 2008, 258-260 (Leitsatz und Gründe)

Gericht:	BVerfG 2. Senat 1. Kammer	Quelle:	
Entscheidungsname:	punitive damages	Normen:	Art 2 Abs 1 GG , Art 20 Abs 3 GG , Art 12 Abs 1 GG , Art 14 Abs 1 GG , § 23 GVGG ... mehr
Entscheidungsdatum:	24.01.2007		
Aktenzeichen:	2 BvR 1133/04		
Dokumenttyp:	Nichtannahmebeschluss		

Nichtannahmebeschluss: Keine Verletzung von [Art 2 Abs 1 iVm Art 20 Abs 3 GG](#), [Art 12 Abs 1 GG](#) sowie [Art 12 Abs 1 GG](#) durch Zustellung einer US-amerikanischen Schadensersatzklage an deutsches Tochterunternehmen

Orientierungssatz

1a. Zum umfassenden Gewährleistungsgehalt des [Art 2 Abs 1 GG](#) 80, 137 <152>.

1b. Das **Haager Zustellungsübereinkommens** (JURIS: HaagZustÜbk) dient wichtigen Belangen des Gemeinwohls, die geeignet sind, einen Eingriff in die allgemeine Handlungsfreiheit zu rechtfertigen (vgl [BVerfG, 1994-12-07, 1 BvR 1279/94, BVerfGE 91, 335 <339 ff>](#)).

1c. zu der unter dem Aspekt einer schnellen und effektiven Rechtshilfe von Verfassungen wegen unbedenklichen Beschränkung der Zustellungsverweigerung auf Fälle, in denen gemäß Art 13 ZustÜbkHaag die Hoheitsrechte oder die Sicherheit der Bundesrepublik gefährdet sind, vgl [BVerfG, 1994-12-07, 1 BvR 1279/94, BVerfGE 91, 335 <340>](#)).

1d. Zum Grundsatz, nach dem fremde Rechtsanschauungen und -ordnungen grundsätzlich auch in den Fällen zu achten sind, in denen am Maßstab der deutschen Rechtsordnung überprüfte ausländische Klagen nicht mit den deutschen Auffassungen übereinstimmen würden vgl [BVerfG, 2003-07-25, 2 BvR 1198/03, BVerfGE 108, 238 <247 f>](#).

2a. Zur offensichtlichen Unvereinbarkeit einer Klagezustellung mit den unverzichtbaren Grundsätzen eines freiheitlichen Rechtsstaates vgl [BVerfG, 1994-12-07, 1 BvR 1279/94, BVerfGE 91, 335 <247>](#).

2b. Im Gegensatz zu der Möglichkeit der Verhängung von Strafschadensersatz (*punitive damages*) können Schadensersatzforderungen in für einen Beschwerdeführer existenzgefährdender Höhe oder bei Sammelklagen (*class action*) mit einer unübersehbaren Anzahl von Klägern geeignet sein, eine Vereinbarkeit entsprechender Klageforderung mit den unverzichtbaren Grundsätzen eines freiheitlichen Rechtsstaates zu verneinen.

3. Hier:

3a. Kein evidenter Rechtsmissbrauch durch eine Klageerhebung und, bei der die Klageforderung nicht ohne jeden Bezug zur behaupteten Rechtsverletzung und dem behaupteten Schaden steht.


3b. Die Unterwerfung unter eine " *pre-trial discovery* ", ein zwischen Klageerhebung und mündlicher Verhandlung durchgeführtes Beweis- und Beweisermittlungsverfahren (vgl. auch [BGH, 04.06.1992, IX ZR 149/91](#), [BGHZ 118, 312 <323>](#)), stellt keinen offensichtlichen Verstoß gegen unverzichtbare Grundsätze eines freiheitlichen Rechtsstaats dar. Vor einer konkreten gegen die Beschwerdeführerin gerichteten Beweisaufnahme bedarf es weiterer Rechtshilfeentscheidungen deutscher Hoheitsträger, bei denen die Rechte der Beschwerdeführerin - insbesondere zur Vermeidung einer unzulässigen Ausforschung - zu beachten sind

3c. Dass die Beschwerdeführerin ihre außergerichtlichen Kosten, dh in erster Linie ihre Anwaltskosten, nicht ersetzt bekommt, selbst wenn die U.S.-amerikanische Klage sich später als unzulässig herausstellen, begründet keinen Verstoß gegen unverzichtbare rechtsstaatliche Grundsätze. Die Risiken gerichtlicher Entscheidungen hat ein Unternehmer, der grenzüberschreitend am Wirtschaftsleben teilnimmt, grundsätzlich zu tragen.

4a. Eine Verletzung von [Art 12 Abs 1 GG](#) liegt dann nicht vor, wenn einer Klagezustellung - wie vorliegend - keine berufsregelnde Tendenz zukommt.

4b. Da die Zustellung einer Klage - unabhängig davon, ob es sich um eine inländische oder eine ausländische Klage handelt - den Empfänger lediglich in ein Gerichtsverfahren einbezieht, aber keine Entscheidung über den Ausgang des Verfahrens trifft scheidet eine Verletzung von Eigentums Garantien mangels einer gegenwärtigen und unmittelbaren Betroffenheit aus.

5. Zur vorläufigen Untersagung der Herausgabe des Zustellungszeugnisses vgl Ablehnung des Erlasses einer eA des [BVerfG, 2004-06-11, 2 BvR 473/04](#), [BVerfGK 3, 259](#).

Gericht:	OLG München 9. Zivilsenat	Quelle:	
Entscheidungsdatum:	07.06.2006	Normen:	Art 1 ZustÜbkHaag, Art 2 ZustÜbkHaag, Art 13 ZustÜbkHaag, § 23 GVGE, §§ 23ff GVGE ... mehr
Aktenzeichen:	9 VA 03/04, 9 VA 3/04		
Dokumenttyp:	Beschluss		

Zustellungsfähigkeit einer US-amerikanischen Sammelklage nach dem Haager Zustellungsübereinkommen

Orientierungssatz


1. Der Zustellungsfähigkeit US-amerikanischer Klagen steht nicht entgegen, dass Strafschadensersatz begehrt wird, selbst wenn mit der Anerkennung eines entsprechenden Urteils nach [§ 328 ZPO](#) nicht zu rechnen ist.. Auch die noch unbezifferte Höhe der Schadensbeträge steht der Zustellungsfähigkeit nicht entgegen und auch nicht die im US-Recht nicht vorgesehene Kostenerstattung an den obsiegenden Beklagten nach erfolgreicher Verteidigung. Auch eine "class action" oder eine unschlüssig erscheinende Klage ist zustellungsfähig ([Rn.11](#)) ([Rn.12](#)) ([Rn.13](#)).

2. Nur wenn die Zustellung einer Klage gegen das zu beachtende Rechtsstaatsprinzip verstößt, weil das Verfahren missbräuchlich angestrengt wird

oder rechtsfremden Zwecken dienen soll, ist die Grenze der in Art. 13 HZÜ festgelegten Respektierungspflicht erreicht (Rn.14).

☐ Fundstellen

- 📄 OLGR München 2006, 801-803 (Leitsatz und Gründe)
- 📄 IPRspr 2006, Nr 168, 378-380 (red. Leitsatz und Gründe)

Gericht:	OLG Düsseldorf 3. Zivilsenat	Quelle:	
Entscheidungsdatum:	21.04.2006	Normen:	Art 1 ZustÜbkHaag, Art 13 ZustÜbkHaag
Aktenzeichen:	I-3 VA 12/05, 3 VA 12/05		
Dokumenttyp:	Beschluss		

**Klagezustellung nach dem Haager Zustellungsübereinkommen:
Strafschadensersatzanspruch nach US-Recht als zivilrechtlicher
Anspruch; Verhinderung der Zustellung einer Klage aufgrund der
Vorbehaltsklausel**

Leitsatz

1. Eine Klage nach us-amerikanischem Recht, mit der unbeziffert Strafschadensersatz (punitive damages) gefordert wird, gehört zu den Zivil- oder Handelssachen gemäß Art. 1 HZÜ (Rn.25)(Rn.26).
2. Die Vorbehaltsklausel des Art. 13 HZÜ eröffnet grundsätzlich nicht die Möglichkeit, die Zustellung einer solchen Klage in Deutschland zu verhindern; wegen Verstoßes gegen deutsches Verfassungsrecht kann etwas anderes ausnahmsweise dann gelten, wenn feststeht, dass die im Klageweg geltend gemachte Forderung offenkundig keine substantielle Grundlage hat oder das Verfahren vor staatlichen Gerichten in einer offensichtlich missbräuchlichen Art und Weise genutzt werden soll, um mit publizistischem Druck und dem Risiko einer Verurteilung einen Marktteilnehmer gefügig zu machen (Rn.35)(Rn.36).

☐ Fundstellen

- 📄 RIW 2006, 629-633 (Leitsatz und Gründe)
- 📄 OLGR Düsseldorf 2006, 777-779 (Leitsatz und Gründe)
- 📄 NJW-RR 2007, 640-642 (Leitsatz und Gründe)
- 📄 IPRspr 2006, Nr 167, 372-378 (red. Leitsatz und Gründe)

Gericht:	OLG Frankfurt 20. Zivilsenat	Quelle:	
Entscheidungsdatum:	06.03.2006	Normen:	<u>§ 23 GVGE</u> , Art 1 Abs 1 ZustÜbkHaag, Art 13 Abs 1 ZustÜbkHaag
Aktenzeichen:	20 VA 2/05		
Dokumenttyp:	Beschluss		

**Internationale Rechtshilfe: Geltendmachung der Unwirksamkeit einer
Zustellung nach ihrer Vornahme; Anwendbarkeit des Haager
Zustellungsübereinkommen auf eine kanadische Klage auf
Strafschadensersatz; Gefährdung von Hoheitsrechten durch die
Zustellung einer „class action“-Klage**

Leitsatz

1. Die Unwirksamkeit einer Zustellung im internationalen Rechtshilfeverkehr kann gemäß den [§§ 23 ff. EGGVG](#) auch nach ihrer Vornahme noch geltend gemacht werden ([Rn.20](#)).

2. Zur Anwendbarkeit des Übereinkommens über die Zustellung gerichtlicher und außergerichtlicher Schriftstücke im Ausland in Zivil- oder Handelssachen (HZÜ) vom 15. November 1965 auf eine auf "punitive damages" gerichtete kanadische Klage ([Rn.27](#)).

3. Zu den Voraussetzungen, unter denen Art. 13 Abs. 1 HZÜ der Ausführung der Zustellung einer solchen Klage entgegenstehen kann ([Rn.37](#)).

- 14) The Permanent Bureau invites States Parties to forward a list of references of articles or books in connection with the Service Convention that do not already appear on the bibliography tab of the HCCH website or in the Service Handbook.

The following essays have also been taken from the JURIS GmbH data collection. Due to time constraints, a translation has not been provided, but it can be submitted at a later date.

Autor: Rolf A Schütze

Beitragstyp: Aufsatz

Quelle:





Fundstelle: RIW 2006, 352-356 

Normen: [§ 328 ZPO](#), [§ 722 ZPO](#)

Übersetzung im europäischen und internationalen Zivilprozessrecht - Probleme der Zustellung

Kurzreferat

Der Verfasser setzt sich mit den praktischen Problemen des europäischen Zustellungsrechts auseinander. Insbesondere hinterleuchtet er die Zustellungsproblematik, die sich daraus ergibt, wenn die Beifügung einer Übersetzung in die Sprache des Zustellungsadressaten zum Original ausnahmsweise entfallen kann, sollte der Zustellungsadressat die Sprache, in der das zuzustellende Schriftstück abgefasst ist, beherrschen. Dazu bespricht der Verfasser zwei neuere Entscheidungen zum einen des Europäischen Gerichtshofs vom 08.11.2005 ([C-443/03](#), [RIW 2006, 382](#)) und zum anderen des OLG Nürnberg vom 15.02.2005 ([4 VA 72/05](#), [IPRax 2006, 38](#)), welche beide sich mit der Frage nach der Notwendigkeit und den Anforderungen an eine Übersetzung nach europäischem Zustellungsrecht und dem Haager **Zustellungsübereinkommen** beschäftigen. Entgegen dem OLG Nürnberg ist der Verfasser der Meinung, dass unzureichende Übersetzungen nicht zu Lasten des Zustellungsadressaten gehen dürften, wobei es nicht auf orthographische Fehler, als vielmehr auf sinntestellende oder gar fehlende Übersetzungen ankomme. Mit der in diesem Zusammenhang auftauchenden Frage, ob bezüglich fehlender Übersetzungen eine Heilung des Zustellungsmangels zulässig ist, geht der Verfasser mit der Entscheidung des Europäischen Gerichtshofs konform, welcher eine solche Heilung grundsätzlich bejaht hat. Allerdings bemängelt er die Tatsache, dass innerhalb des europäischen Zustellungsrechts unterschiedliche Heilungszeitpunkte in Betracht kommen können.

Autor:	Harald Koch, Christin Horlach, Diana Thiel	Quelle:	
Beitragstyp:	Aufsatz	Fundstelle:	RIW 2006, 356-363 
		Normen:	Art 20 GG , Art 23 GVGE, Art 29 GVGE, Art 1 ZustÜbkHaag, Art 13 ZustÜbkHaag

US-Sammelklage gegen deutsches Unternehmen?

Napster und die bittere Pille danach

Kurzreferat

Anlässlich des Vorlagebeschlusses des OLG Koblenz vom 27.06.2005 ([12 VA 2/04, IPRax 2006, 25](#)) untersuchen die Verfasser, ob einer US-amerikanischen Sammelklage gegen ein deutsches Pharmaunternehmen (Bertelsmann) die Zustellung in Deutschland verweigert werden kann. In diesem Zusammenhang erläutern sie, wie das Haager **Zustellungsübereinkommen** anzuwenden und auszulegen ist, welches nur Anwendung findet, wenn es sich bei der vorliegenden Rechtsstreitigkeit um eine solche des Zivilrechts oder Handelsrechts einordnen lässt. Entgegen der Ansicht des OLG Koblenz sind die Verfasser jedoch der Ansicht, dass eine Zustellung möglich sei, insbesondere könne sich das OLG nicht auf das Argument des Vorbehalts des Art 13 Abs 1 des Haager **Zustellungsübereinkommens** stützen. Insofern begrüßen sie letztendlich die Vorlage der Frage zum Bundesgerichtshof und regen eine Klarstellung der Zustellungsproblematik unabhängig von den hohen Schadensersatzforderungen an.

- 15) The Permanent Bureau invites States Parties to forward a citation for and / or a copy of the domestic legislation which implemented the Service Convention in their territory(ies), as well as any citations for and / or copies of any domestic laws which provide for the service of documents abroad.
 - a) The Law to implement the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and to implement the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, Federal Law Gazette 1977 I p. 3105).
 - b) The Regulation on Judicial Assistance in Civil Matters (Rechtshilfeordnung für Zivilsachen – ZRHO, situation as of 2007); it may be downloaded from the Internet at http://www.datenbanken.justiz.nrw.de/pls/jmi/ir_start .

- 16) The Permanent Bureau invites States Parties to forward a list of any other bilateral treaties and / or international instruments to which they are a party and that provide rules for the service of documents abroad. In particular, States Parties are invited to identify those treaties that allow for direct judicial communication (see Art. 11 *in fine* of the Service Convention).

The bilateral treaties are already listed in the “practical information” chart from which the information for Germany can be downloaded from the Hague Conference website. Thus, a list has not been made here.

F. Service Handbook

- 17) In 2006 during the Special Commission on General Affairs and Policy of the HCCH (now referred to as the "Council on General Affairs and Policy"), the Permanent Bureau distributed free copies of the Service Handbook to the heads of all delegations in attendance. Subsequently, the Permanent Bureau also sent free copies of the Service Handbook to the National Organs of Member States of the HCCH (in most instances for them to be passed on to the Central Authorities designated by their States), and the Central Authorities of non-Member Contracting States to the Service Convention. Additional copies of the Service Handbook may be ordered via the "Service Section" of the HCCH website (< www.hcch.net >). Do(es) the Central Authority(ies) of your State have copies of the Service Handbook at their / its disposal?

NO – why not?

For the most part, the Central Authorities do not use the Service Handbook. The following reasons were given:

- they have not received the Service Handbook.
- they do not need the Service Handbook and obtain important information by other means.

YES

- a. Do(es) the Central Authority(ies) of your State regularly consult the Service Handbook when confronted with issues regarding the operation of the Service Convention?

YES

NO – why not?

- b. Do(es) the Central Authority(ies) of your State find the Service Handbook to be:

Very useful

Useful

Not useful

Please indicate what particular aspects of the Service Handbook could be improved:

- 18) Do practitioners (attorneys, process servers, etc.) in your State also consult and rely on the Service Handbook?

YES

NO

No information available for possible comment

- 19) Has the Service Handbook been quoted or referred to in judicial proceedings and / or court decisions in your State (please provide precise references and copies of the relevant decisions)? If a decision is in a language other than English or French, a summary into either of these languages would be appreciated.

YES – references / comments:

NO

PART TWO – SUBSTANTIVE ISSUES

I. Non-mandatory but exclusive character of the Service Convention

- 20) In Conclusion and Recommendation No 73, the 2003 Special Commission unanimously confirmed the view that the Service Convention is non-mandatory but exclusive (see also Service Handbook, paras 24-45).

- a. Has the non-mandatory but exclusive character of the Service Convention led to any questions or difficulties in your State since the 2003 Special Commission?

NO

YES – please explain what these questions or difficulties were and how they were addressed and solved:

- b. Have any judicial proceeding and / or court decisions addressed this particular matter of the non-mandatory but exclusive character of the Service Convention?

NO

YES – please explain how the court(s) addressed and / or decided the matter (please provide precise references and copies of the relevant decisions; if a decision is in a language other than English or French, a summary into either of these languages would be appreciated):

II. Scope of the Service Convention

A. Interpretation of the phrase “civil or commercial matters”

- 21) In Conclusions and Recommendations Nos 69 to 72, the 2003 Special Commission urged for a broad and liberal interpretation of the phrase “civil or commercial matters” (Art. 1) and reaffirmed the Conclusions adopted at the 1989 Special Commission regarding the scope of the Service Convention.

- a. Has the interpretation of the phrase "civil or commercial matters" given rise to specific issues in your State (either as a requested or a requesting State) since 2003?

YES

- (i) What were they and how have they been solved?

The main issue was whether statements of claim from the common law area demanding treble damages or punitive damages are to be regarded as civil matters. As a rule, statements of claim have been served (exception: Higher Regional Court Koblenz).

- (ii) Have the authorities of your State followed the Conclusions and Recommendations of the 2003 Special Commission?

YES

NO – why not?

The German courts have determined a wide scope of application in an autonomous interpretation of Article 1 of the Service Convention.

- (iii) Please provide details and / or a copy of any relevant decision(s) (if these decisions are in a language other than English or French, a brief summary into either of these languages would be appreciated):

See reply to question 13 above.

NO

- b. Has (any of) the Central Authority(ies) of your State been in direct contact with an authority of another Contracting State to discuss the interpretation of this phrase (so as to decide whether or not to execute a request for service)?

YES – please briefly explain the circumstances and modalities of any exchange:

NO – please explain why there was no communication on this issue:

A discussion of this has not been required to date.

- 22) Regardless of whether a matter has actually arisen, please indicate (by placing a "YES" or a "NO" in the relevant box) which of the following types of matters the authorities of your State consider as falling within the scope of the phrase "civil or commercial matters":

The subjects indicated are definitely civil or commercial matters.

- Bankruptcy or insolvency in general
 Reorganisation under bankruptcy laws
 Insurance
 Social security
 Employment
 Taxation
 Anti-trust and competition
 Consumer protection

- Regulation and oversight of financial markets and stock exchange (e.g., in matters possibly involving insider trading)
- Proceeds of crime
- Other matters (please specify):

23) *This question is addressed to States that are also States Parties to the Evidence Convention: Does your State interpret the expression “civil or commercial matters” in the same way under both the Service Convention and the Evidence Convention (see also Questions 17) and 18) in the Evidence Questionnaire, Prel. Doc. No 1 of May 2008 for the attention of the Special Commission on the practical operation of the Hague Evidence, Service, Apostille and Access to Justice Conventions)?*

YES

NO – please explain the difference(s):

B. Interpretation of “judicial and extrajudicial documents”

24) The Service Convention applies to both judicial and extrajudicial documents (Art. 1(1) – see paras 65 to 70 of the Service Handbook).

a. Is the concept of extrajudicial documents, which may have to be served on an addressee, known in the domestic law of your State?

NO

YES

(i) What are the most important examples of extrajudicial documents generated in your State and which, under the domestic law of your State, may have to be served (e.g., consents for adoption, notarial documents)?

[Notarial documents](#)

(ii) Please explain in what circumstances these extrajudicial documents may have to be served abroad:

[Service may be a prerequisite for enforcement.](#)

(iii) Who may serve these extrajudicial documents? Please specify in particular whether or not private persons may serve extrajudicial documents (see para. 70 of the Service Handbook).

[Judicial and extrajudicial documents are served regularly by the Local Court in the government region of which the recipient of judicial service has his domicile or place of residence \(Section 66 of the Code of Civil Procedure \[Zivilrechtshilfeordnung - ZRHO\]\). Under German law, private individuals may not lodge a claim under the Hague Service Convention. Bailiffs with whom a request for service is lodged directly only deal with it if the request is based on German enforcement documents.](#)

- (iv) How many extrajudicial documents has your State, as a requesting State, forwarded in 2007 to another State Party for service?

The figure cannot be determined because there are no official statistics.

- 0
 1-10
 11-20
 more than 20

- b. In 2007, how many extrajudicial documents has(have) the Central Authority(ies) or other relevant authorities and officials of your State received under the Service Convention, as the requested State, for service in your State?

- 0
 1-10
 11-20
 more than 20

- (i) Please specify from which States these requests for service of extrajudicial documents emanated:

- (ii) Were all these requests executed?

- YES
 NO – why not?

C. Service on States and State Officials

- 25) Have the forwarding authorities of your State, as a State of origin, used any channel(s) of transmission available under the Service Convention when service has had to be effected upon a foreign State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for a State or a State-owned company (see also Question 39))?

YES – please indicate:

- a. which channel(s) of transmission under the Service Convention has(ve) most commonly been used in this context:
- b. those State(s), or agents representing such State(s), for which / whom such requests for service have been forwarded:
- c. whether service was eventually effected, and if so, by what method:

d. any difficulties that were encountered in any of these cases:

[] NO – if applicable, please indicate the method(s) of transmission that was (were) used, not under the Service Convention, to transmit requests for service upon a foreign State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for a State or a State-owned company, whether or not service was eventually effected, and, if so, by what method:

Diplomatic channels

26) Has(have) the Central Authority(ies) or other authorities and officials in your State, as a State of destination, received requests for service upon your State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for your State or a State-owned company?

No, not in the overwhelming majority of cases. However, the Central Authority in Berlin has received a few requests for service containing claims against the Federal Republic of Germany.

[] YES – please indicate:

a. which channel(s) of transmission under the Service Convention has(ve) most commonly been used in this context?

Requests to the competent Central Authority

b. from which State(s), or which agents representing that State, such requests for service were received:

From various States

c. if service was eventually effected after such requests for service were received, and if so, by what method:

d. any difficulties that were encountered in any of these cases:

Refusal of service under Article 13 (1); not a civil or commercial matter.

[] NO – if applicable, please indicate the method(s) of transmission that was(were) used, not under the Service Convention, by other States to transmit requests for service upon your State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for your State or a State-owned company, whether or not service was eventually effected, and, if so, by what method:

III. The main channel of transmission

A. Forwarding Authority (Art. 3)

27) In Conclusion and Recommendation No 49, the 2003 Special Commission advised that in case of doubt as to the competence of the forwarding authority, rather than rejecting the request for service, the authorities in the requested State should seek to confirm that competence by either consulting the HCCH website or by making informal enquiries, including by way of e-mail.

Has your State, as a requested State, experienced any difficulties in determining whether a specific forwarding authority was in fact a legitimate forwarding authority under the law of the requesting State?

NO

YES – please specify whether or not the authorities of your State followed Conclusion and Recommendation No 49 of the 2003 Special Commission:

YES

NO – why not?

28) The Service Convention does not specify how requests for service should be sent by the forwarding authority of the requesting State to the relevant Central Authority of the requested State.

a. Do the forwarding authorities of your State use the official postal mail service of your State to send most of their requests for service abroad?

YES

NO

b. Do the forwarding authorities of your State also use *private* courier services to send requests for service abroad?

YES – please explain in what circumstances they use private courier services:

NO – please explain why:

No, there has been no need to do so to date.

c. Do(es) the Central Authority(ies) of your State, as a requested State, accept requests for service when they are sent via a private courier service?

YES

NO – why not?

See also Question 33) regarding the use of modern technologies, in particular sub-questions b. and c.

B. Methods of service (Art. 5)

29) Please complete:

a. Formal service (Art. 5(1) a))

(i) Please describe the methods of service prescribed by the domestic law of your State to effect formal service of documents upon persons who are within the territory of your State (Art. 5(1) a)):

The most important methods of service are as follows:

Postal delivery; delivery by the *Gerichtswachtmeister* (court official); delivery by the bailiff; handover at the court office, direct delivery by lawyers, public delivery.

(ii) Please indicate the method(s) generally used by your State when service is requested under Article 5(1) a) and no preference has been indicated as to the manner in which service should be effected (e.g., personal

service, by post, etc. See also below Question 29) c. (ii) and (iii)). Please also indicate your State's reasons behind any such default choice:
[Postal delivery](#).

b. Service by a particular method (Art. 5(1) *b*)

Pursuant to Article 5(1) *b*), service may be effected by a particular method requested by the applicant unless such a method is incompatible with the law of the requested State (requests for the use of a particular method are fairly rare in practice, see para. 132 of the Service Handbook). The purpose of this provision is to enable requests for a particular method of service *contemplated by the law of the requesting State* to be applied in the requested State so that the validity requirements for service in the requesting State are met. However, it appears that some forwarding authorities are systematically requesting that their request for service be executed under Article 5(1) *b*) even in circumstances where they intend to have service effected by a method that is recognised under the laws of the *requested* State (such as personal service). The Permanent Bureau believes that this practice is erroneous and that such a request should instead be made and specified under Article 5(1) *a*).

- (i) Does your State agree with the position of the Permanent Bureau that a request for a method of service that is recognised by the law of the requested State (such as personal service) may be specified and effected under Article 5(1) *a*) and that Article 5(1) *b*) serves a separate purpose?

YES

NO – please explain why:

- (ii) If relevant, please describe the particular methods of service which your forwarding authorities have requested other States to use under Article 5(1) *b*) and whether these particular methods have in fact been used to effect service:

- (iii) If relevant, please describe the particular methods of service by which your State has been requested to effect service under Article 5(1) *b*) and whether these particular methods have in fact been used to effect service:

c. Informal delivery (Art. 5(2))

- (i) Does the law of your State provide for *informal delivery* of documents (understood to be a method of service where the documents to be served are delivered to an addressee who accepts them voluntarily)?

YES – please describe how service of documents via informal delivery is made in your State (Art. 5(2)):

The details are regulated in Sections 68 and 69 of the Regulation on Judicial Assistance in Civil Matters (Zivilrechtshilfeordnung – ZRHO):

- document in German or a foreign language,
- personal delivery to the recipient himself,
- legal instruction to the recipient,
- opportunity for the recipient to view the document,
- decision as to whether to accept the document,
- note on the decision in the accompanying report.

NO

- (ii) As a matter of practice, does your State systematically attempt service of process by informal delivery if and when no particular method of service has been requested under Article 5(1) *a*) or *b*)?

YES

NO

- (iii) As a matter of practice, does your State systematically attempt service of documents via a *formal* method of service when informal delivery has proven to be unsuccessful?

YES – please specify if your State imposes any additional requirements before such formal service will be attempted (*e.g.*, a translation):

NO

C. Translation requirements (Art. 5(3))

- 30) Please indicate if your State, as a requested State, imposes any language or translation requirements for documents to be served in your State under Article 5(1) (see Conclusions and Recommendations Nos 67 and 68 of the 2003 Special Commission):

NO requirements

YES – please indicate what these requirements are, in each of the following set of circumstances:

- a. Formal service (Art. 5(1) *a*):

In circumstances where the / a Central Authority of your State, as a requested State, is in a position to assess the content and nature of the request for service based on the "Summary" section of the Model Form and where there is evidence that the addressee is fluent in the language in which the document to be served is written. Would your State then still insist, under Article 5(1) a), that the document be translated into another language (*i.e.*, one of the official languages of your State)?

YES – please indicate why:

The Central Authority cannot reliably examine the recipient's knowledge of a language in the service procedure.

NO

b. Particular method requested by the applicant (Art. 5(1) b)):

In circumstances where the / a Central Authority of your State, as a requested State, is in a position to assess the content and nature of the request for service based on the "Summary" section of the Model Form and where there is evidence that the addressee is fluent in the language in which the document to be served is written. Would your State then still insist, under Article 5(1) b) that the document be translated into another language (*i.e.*, one of the official languages of your State)?

YES – please indicate why:

See above

NO

c. Informal delivery (Art. 5(2)):

NO translation requirement for informal delivery

31) The Service Convention does not state how any translation of the documents to be served under Article 5(1) should be prepared or who should prepare it. According to your State, which law determines these issues?

The domestic law of the requesting State

The domestic law of the requested State

Both laws

Please specify / comment if needed:

According to an interpretation of the Hague Service Convention that is autonomous from the agreement, it is primarily likely to be the right of the requesting State that prevails. Formal requirements are not made of the translation with regard to Article 3(1).

The translation must be complete and comprehensible, however. If that is not the case, the request may be rejected.

D. Costs (Art. 12)

32) Please indicate the costs incurred (if any) for each of the following methods of service under the law of your State (as a requested State) in accordance with Articles 5 and 12:

The costs have been borne by the German agencies to date, insofar as there is evidence of them. A reimbursement of costs has not been demanded. That does not imply recognition of any legal obligation, however. Explicit reference is made to Article 12.

a. Formal service (Art. 5(1) a)):

(i) Who bears these costs?

Your State (requested State)

The applicant / forwarding authority / requesting State – please explain whether or not service will only be effected in your State, as the requested State, only once any costs have been reimbursed. Also, please explain the modalities of any reimbursement (to whom the costs are reimbursed (relevant Competent Authority of your State, judicial officer, other person, etc.), and how the reimbursement is effected (electronic bank transfers, cheques, etc.))

b. Particular method requested by the applicant (Art. 5(1) b)):

(i) Who bears these costs?

Your State (requested State)

The applicant / forwarding authority / requesting State – please explain whether or not service will only be effected in your State, as the requested State, only once any costs have been reimbursed. Also, please explain the modalities of any reimbursement (to whom the costs are reimbursed (relevant Competent Authority of your State, judicial officer, other person, etc.), and how the reimbursement is effected (electronic bank transfers, cheques, etc.))

c. Informal delivery (Art. 5(2)):

(i) Who bears these costs?

Your State (requested State)

The applicant / forwarding authority / requesting State – please explain whether or not service will only be effected in your State, as the requested State, only once any costs have been reimbursed. Also, please explain the modalities of any reimbursement (to whom the costs are reimbursed (relevant Competent Authority of your State, judicial officer, other person, etc.), and how the reimbursement is effected (electronic bank transfers, cheques, etc.))

E. Modern Technologies

33) In Conclusions and Recommendations Nos 60 to 62, the 2003 Special Commission noted that the Service Convention does not on its terms prevent or prescribe the use of modern technologies to assist in further improving the operation of the Convention and that States Parties should explore all ways in which they can use modern technology. In Conclusion and Recommendation No 63, a variety of steps were identified for the exploration and use of modern technologies: in communications between a requesting party and a forwarding authority, in

communications between a forwarding authority and a Central Authority of a requested State, and in the retransmission of the certificate of execution by the Central Authority or the designated authority (Art. 6). In light of these Conclusions, and in the context of the main channel of transmission, please comment on the following (see also below Part Three, Section II. C.):

- a. Does the law of your State, as a requesting State, allow for documents to be forwarded *from a requesting party to a forwarding authority* by fax, e-mail or a similar technology?
- YES – please specify what technologies are used in practice (e.g., (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (e.g., obtaining the consent of all / some of the authorities or parties involved, etc.):
- NO – please explain / specify:
The request for service must be signed and/or sealed. The technical requirements for transmission with a reliable examination of the origin and authenticity have yet to be fulfilled in this area.
- b. Does the law of your State, as a requesting State, allow for documents to be forwarded *from a forwarding authority to a Central Authority of a requested State* by fax, e-mail or a similar technology?
- YES – please specify what technologies are used in practice (e.g., (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (e.g., obtaining the consent of all / some of the authorities or parties involved, confirming any requirements and / or capabilities of the Central Authority of the requested State in this regard, etc.):
- NO – please explain / specify:
Cross-border technical standards are not adequate in order to give legally secure evidence to the requesting party and the forwarding authority that the authentic request has been received and is being processed.
- c. Does the law of your State, as a requested State, allow for documents to be *received by your (one of your) Central Authority(ies) from a forwarding authority abroad* by fax, e-mail or a similar technology?
- YES – please specify what technologies are used in practice (e.g., (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (e.g., obtaining the consent of all / some of the authorities or parties involved, etc., before being able to accept such documents for service).
Fax transmission is accepted by some Central Authorities.
- NO – please explain / specify:
- d. Does the law of your State, as a requested State, allow for *the certificate of execution to be transmitted* from the relevant Central Authority of your State or the authority designated under Article 6 to the applicant by fax, e-mail or a similar technology?
- YES – please specify what technologies are used in practice (e.g., (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (e.g., obtaining the consent of

all / some of the authorities or parties involved, etc., before being able to transmit the certificate of execution):

NO – please explain / specify:

It should be definitely ascertainable that execution has taken place since evidence to this effect is required for the judicial proceeding and every risk of liability should be ruled out.

e. Does the law of your State, as a requesting State, allow for the certificate of execution to be received from the requested State by fax, e-mail or a similar technology?

YES – please specify what modern technologies are used in practice (e.g., (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (e.g., obtaining the consent of all / some of the authorities or parties involved, etc., before being able to receive the certificate of execution):

NO – please explain / specify:

See reply to question d above.

IV. Alternative Channels of Transmission (Arts 8, 9, 10)

A. Translation requirements

Germany has lodged an objection under Article 10 of the Hague Service Convention. The service of documents under Article 8 of that Convention is only permissible if the recipient is a citizen of the requesting State.

34) In Conclusion and Recommendation No 65, the 2003 Special Commission recognised that whilst no translation is required under the Service Convention for documents transmitted under the alternative channels of transmission, in isolated cases, translations are sometimes required in these circumstances by the domestic law of States. Does the domestic law of your State impose translation requirements on documents that are transmitted for service through an alternative channel of transmission?

NO

YES – please provide to the Permanent Bureau all relevant information pertaining to these internal legal requirements and to which alternative channel they relate. If this information is not in either French or English then a translation into one of these languages would be appreciated:

B. Model Form

35) The Fourteenth Session of the HCCH (held in 1980) recommended that the part of the Model Form that contains the "Summary", accompanied by the "Warning", not only be used under the main channel of transmission but also under the alternative channels of transmission of the Service Convention (the Recommendation and the accompanying Report established by Gustaf Möller are available on the "Service Section" of the HCCH website (< www.hcch.net >). Please indicate whether the forwarding authorities in your State systematically send the "Summary" accompanied by the "Warning" when requests for service are sent abroad using an alternative channel of transmission.

YES

NO – why not?

The courts use a German model form (ZRH 1) as determined by the Regulation on Judicial Assistance in Civil Matters (Zivilrechtshilfeordnung – ZRHO).

36) The Permanent Bureau approves and encourages the practice of certain States to return the Certificate to the applicant even if transmission of the request for service occurred via an alternative channel of transmission provided for in Article 10 *b*) and *c*) (see para. 119 of the Service Handbook). This practice may even be extended to Article 10 *a*), depending on the postal mail service used in the State of destination. Is it a practice within your State, as a State of destination, to use the "Certificate" part of the Model Form and to transmit this to the applicant in the State of origin when the transmission of the request for service occurred under one of the alternative channels of transmission contained within Article 10 *a*), *b*) and *c*)?

YES, the Certificate is transmitted to the applicant when the transmission of the request for service occurred under Article 10 *a*) – please provide further details:

YES, the Certificate is transmitted to the applicant when the transmission of the request for service occurred under Article 10 *b*) and / or *c*) – please provide further details, *i.e.*, what category of or which judicial officers, officials or competent persons exercise this practice:

NO

C. Diplomatic and Consular Channels

Article 8 – Direct Channels

37) Have the diplomatic and consular agents of your State been used to directly effect service of judicial documents upon persons abroad in accordance with Article 8(1) in the past five years?

NO – why not?

Yes – please specify:

a. on how many occasions your diplomatic and consular agents abroad have been used to effect service in accordance with Article 8(1):

According to information provided by the Federal States, the channel referred to in Article 8 (1) has only been used for outgoing requests for service in a few cases. The number is likely to fall further because the German missions abroad can only process such requests in exceptional cases.

b. in which States these diplomatic and consular agents were based:

USA, Canada, Turkey, Russian Federation, Ukraine, Croatia, Pakistan.

c. the average time taken between the transmission of the documents for service and the execution of service:

No reliable information is available.

- d. whether your State considers this channel to be efficient and effective:
 YES
 NO – why not?
- e. whether there have been situations whereby the diplomatic and consular agents of your State have attempted to directly effect service of judicial documents upon persons abroad but were unable to as a result of the addressee not voluntarily accepting delivery of the document:
 YES – please indicate how this matter was dealt with:

 NO
- f. whether the transmission of judicial documents to the diplomatic agents or consular officers of your State posted abroad, or the actual service of these judicial documents upon an addressee, have been executed by using electronic means (*e.g.*, by fax or e-mail):
 YES
 NO – why not?
 Such transmission is not provided for under German law.

Article 9 – Indirect Channels

- 38) In the past five years, has your State used consular channels to forward documents, for the purpose of service, to those authorities of another Contracting State which were designated by the latter for this purpose in accordance with Article 9(1)?

According to the Federal States from which the requests for service came, these channels have only been used in a few cases.

NO – why not?

YES – please specify:

- a. on how many occasions this channel has been used in the past five years:
 No reliable information is available.
- b. in which States these diplomatic and consular agents were based:
 USA, Canada, Turkey, Russian Federation, China, Romania.
- c. the average time taken between the first transmission of the documents to be served and the execution of service:
 No reliable information is available.
- d. whether your State considers this channel to be efficient and effective?
 YES
 The channel is efficient for the progress of the judicial procedure because it enables evidence to be provided that the documents have been served. However, according to reports by the Federal States, the period taken to serve the documents was often too long.
 NO – why not?

- 39) In the past, have there been “exceptional circumstances” in accordance with Article 9(2) that required your State to use diplomatic channels to forward documents to another State Party for the purpose of service?

NO

YES – please describe what these exceptional circumstances were that warranted the use of diplomatic channels to forward documents for the purpose of service in another State Party. In particular, did any exceptional circumstances relate to the service of a claim on a foreign State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for a State or a State-owned company (see para. 193 of the Service Handbook):

- 40) Has the transmissions of documents to either diplomatic agents or consular officers of your State located abroad for the purpose of service in the State in which they are based, or the actual service on these documents upon the addressee, occurred via electronic means (*e.g.*, by fax or e-mail)?

YES

NO – why not?

There does not appear to be sufficient reliable evidence of the service of documents by this means. In addition, there has been no need for it to date.

D. Article 10 a) – Postal Channel

- 41) If your State has opposed “the freedom to send judicial documents, by postal channels, directly to persons abroad” (Art. 10 a)), please indicate:

a. the reason(s) that motivated this opposition:

It must be certain that the recipient of the documents in Germany really receives the document to be served in the prescribed language version.

b. whether your State uses this channel of transmission to send judicial documents abroad for service by mail despite having filed an opposition under Article 10 a) (see paras 206-210 of the Service Handbook):

NO

YES – please explain:

The postal channel is sometimes used if service by mail is permitted.

Please go to Question 45).

- 42) Has the interpretation and application of Article 10 a) given rise to any difficulties in your State?

YES – please specify / comment:

NO

- 43) If possible, please comment upon how frequently judicial documents are sent for service upon persons abroad, by parties in your State, via postal channels:

- 44) In Conclusion and Recommendation No 56, the 2003 Special Commission concluded that for the purposes of Article 10 a), the use of a private courier was the equivalent of using the postal channel under the Service Convention.
- a. Does the law of your State, as a State of origin, allow for private courier services to be used under Article 10 a), *i.e.*, are judicial documents sent from your State for service abroad via private courier services:
- YES
- NO – why not?
- b. Does the law of your State, as a State of destination, allow for private courier services to be used under Article 10 a), *i.e.*, are judicial documents received from abroad and served within your State by private courier services:
- YES
- NO – why not?

E. Article 10 b) – Judicial Officers, Officials or Other Competent Persons

- 45) If your State has opposed “the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination” (Art. 10 b)), please indicate the reason(s) that motivated this opposition:

[German service law is not familiar with this form of service e.g. for the writ and the notice to appear in court. Control by German agencies is also intended to ensure that the recipient receives the document in a German translation, for example.](#)

If your State does hold an opposition, please go to Question 47).

- 46) Provided the application of Article 10 b) has not been objected to by your State and that the law of your State presumably allows for service to be effected by “judicial officers, officials or other competent persons”, please answer the following:
- a. Which of the following would be considered to be “judicial officers, officials or other competent persons” under the law of your State (please tick all relevant boxes)? Please also note whether these categories differ depending on whether your State is a State of origin or a State of destination:
- Attorneys or solicitors
- Bailiffs
- Huissiers*
- Process servers
- Court officials
- Notaries
- Officials of the executive branch
- Other – please specify
- b. How does this channel of transmission operate in practice – in particular, do (any of) the judicial officers, officials or other competent persons mentioned above send (or receive) the judicial documents *directly* to (or from) their counterparts abroad, or do they have to use some other channel? Please also indicate whether these channels differ depending on whether your State is a State of origin or a State of destination.

- c. Are there any costs associated with the use of this alternative channel of transmission in your State, either in terms of sending or receiving judicial documents?
- d. How frequently is this channel of transmission used in your State (either as a State of origin or as a State of destination)?
- e. May any transmission between the judicial officers, officials or other competent persons be done via electronic means (*e.g.*, by fax or e-mail)?
 - YES
 - NO – why not?

F. Article 10 c) – Interested Persons

- 47) If your State has opposed “the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through judicial officers, officials or other competent persons of the State of destination” (Art. 10 c)), please indicate the reason(s) that motivated this opposition:

German service law does not permit the service of documents in a judicial proceeding in this way. It does not conform to the civil proceedings led by a judge in Germany.

If your State does hold an opposition, please go to Question 49).

- 48) Provided the application of Article 10 c) has not been objected to by your State, please answer the following:
- a. Which of the following would be considered to be “any person interested in a judicial proceeding” under the law of your State (please tick all relevant boxes):
 - Attorneys or solicitors
 - Bailiffs
 - Huissiers*
 - Process servers
 - Court officials
 - Notaries
 - Officials of the executive branch
 - Other – please specify
 - b. How does this channel of transmission operate in practice – in particular is any person interested in a judicial proceedings able to send the judicial documents *directly* to the judicial officers, officials or other competent persons of the State of destination or does another channel have to be used?
 - c. Are there any costs associated with the use of this channel of transmission in your State, either in terms of sending or receiving judicial documents?
 - d. How frequently is this channel of transmission used in your State (either as a State of origin or as a State of destination)?

- e. May any transmission between a person interested in a judicial proceeding and the judicial officer, official or other competent person be done via electronic means (*e.g.*, by fax or e-mail):
- YES
- NO – why not?

V. Final refusal to execute the request (Art. 13)

49) According to Article 13 of the Service Convention a requested State may refuse to execute a request for service when this would infringe the “sovereignty or security” of the requested State.

- a. In the past five years, has your State, as a requested State, rejected the execution of any request for service under Article 13?

YES – please specify the grounds upon which your State rejected the execution. Please specify whether there is case law in your State that relates to this issue:

Violation of the principle of State immunity, for example in the case of claims against the Federal Republic of Germany.

NO

- b. In the past five years, is your State aware of whether a(ny) request(s) for service forwarded by your State has(have) been refused by a requested State under Article 13?

YES – please specify the precise grounds upon which the(se) request(s) for service were rejected:

Claims against the requested State; as a rule, no grounds were given.

NO

VI. Protection of the interests of the Plaintiff and Defendant (Arts 15 and 16)

50) When a writ of summons or an equivalent document has been transmitted abroad for the purpose of service under the Service Convention, and the defendant has not appeared, Article 15(1) requires States not to give judgment unless certain requirements have been met. Nonetheless, and subject to States’ declarations on this matter, a judge may give judgment if the conditions specified in Article 15(2) are fulfilled. One of these conditions is Article 15(2) c) which states that “no certificate *of any kind* has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed” [emphasis added]. Please comment on the interpretation in your State of the expression “no certificate *of any kind*”. In particular, would your State, as a requesting State, consider that the receipt of a certificate that stated that *no service* has occurred could nevertheless trigger the application of Article 15(2)?

YES, the receipt of a certificate that states that no service has occurred may trigger the application of Article 15(2) (if all the other conditions are fulfilled).

NO, the receipt of a certificate that states that no service has occurred may not trigger the application of Article 15(2) – please explain why:

As soon as evidence of the unsuccessful attempt to serve documents is provided, neglect is not imputed to the requested State. The German court that made the request decides upon further proceedings according to German law (e.g. order that documents be served publicly; legal fiction of service when acceptance has been refused).

- 51) If a requesting State has made a declaration in accordance with Article 15(2) and considers that all conditions of Article 15(2) have been fulfilled and accordingly enters a default judgment, would your State, as a requested State, recognise and enforce the resulting judgment in these circumstances (assuming that all other conditions for the recognition and enforcement of the judgment are fulfilled)?

There is no German ruling on this. A general prediction as to how a German court would decide cannot be made because the circumstances of the individual case are decisive. Also, it depends on which legal basis is to be used for recognition and for the writ of execution. In recognition proceedings, a regular check is carried out at all events in the case of default judgments to determine whether the document instituting proceedings has been properly and punctually served on the defendant (Section 328 (1)(2) of the Code of Civil Procedure [Zivilprozessordnung - ZPO]).

YES

NO – please indicate the grounds upon which your State would refuse to enforce a judgment in these circumstances:

- 52) If your State has not made a declaration under Article 15(2), please explain:
- a. why your State has not made such a declaration:
 - b. whether or not your State is assessing the possibility of making such a declaration:
- 53) If your State has *not* made a declaration under Article 15(2), what actions would a judge in your State take (as a requesting State) if your State has not received a certificate of service and the defendant has not appeared? For example, would the law of your State enable a judge to enter a default judgment, despite the absence of a declaration under Article 15(2)? Upon what grounds would such a judgment be made? If there were some evidence that service had actually been effected, would this change the options that may be available to a judge?

Not applicable (my State made a declaration under Art. 15(2))

- 54) If your State has not made a declaration under Article 16(3), please explain:
- a. why your State has not made a declaration:
 - b. whether or not your State is assessing the possibility of making a declaration:

VII. Date of service

- 55) The Service Convention does not include a provision that determines the date of service (*i.e.*, the precise moment when the documents have actually been or are

deemed to have been served). As a result, it is for the domestic law of the State(s) involved to determine the date of service.

- a. How is the date of service of documents determined in your State:
- (i) in relation with the execution of a request for service forwarded under the main channel of transmission (please also specify whether your State relies on the date mentioned under point 1 of the Certificate to determine the actual date of service)?
- What is decisive is the date of service in the acknowledgement of service.
- (ii) when one of the alternative channels of transmission has been used?
- The authoritative reference is the provable date of delivery.
- b. When the law of your State requires that documents be served within a specific period, does the law of your State also provide effective means to protect the interests of the applicant when the documents have to be served abroad and are thus subject to the effective operation of authorities or professionals abroad (*e.g.*, does the law of your State provide for extended periods of service or for fictitious dates of service based on the date when the documents are sent or ready to be sent abroad, etc.; see Conclusion and Recommendation No 75 of the 2003 Special Commission)?
- YES – please specify:
- There are no special rules here. In general, Section 167 of the Code of Civil Procedure (Zivilprozessordnung - ZPO) applies. The deadline for the service of documents is deemed to have been observed already upon receipt of the request by the court if service takes place shortly afterwards. The usual times required for transmission and processing abroad are also to be taken into account here.
- NO
- c. Has the absence of an explicit rule on the date of service in the Convention caused any practical difficulties in your State?
- YES – please specify:
- NO

PART THREE – OTHER OPERATIONAL ISSUES

I. Model Form annexed to the Service Convention

A. Fillable PDF versions of the Model Form

- 56) The Permanent Bureau has made the Model Form annexed to the Convention available as a fillable PDF document on the HCCH website. This fillable version of the Model Form is currently available in English, French and in two trilingual versions (English / French / Ukrainian and English / French / Russian). These fillable forms have proven to be very useful. The Permanent Bureau would be pleased to make available other trilingual Model Forms in the same format (English / French / one of the official languages of a State Party). States that are interested in producing a Model Form with (one of) their official language(s)

available as fillable PDF documents are invited to send to the Permanent Bureau a document in MS-Word with the text of the Model Form in the relevant official language. The Permanent Bureau will then create the fillable version and upload it onto the HCCH website.

Please feel free to comment further on the above:

[In Germany, forms in three languages are required \(German, English and either French, Spanish or Russian\).](#)

B. Request Form (Art. 3)

- 57) The first box on the Model Form asks for the “[i]dentity and address of the *applicant*” [emphasis added]. The Permanent Bureau’s interpretation of the word “applicant” is that it refers to the *forwarding authority* referred to in Article 3(1) (see Service Handbook, paras 112-114). Does your State agree with this interpretation?

YES

NO – what then is the interpretation of this word in your State?

The plaintiff in the proceedings

Counsel representing the plaintiff (if different from the forwarding authority)

The court where the proceeding is taking place in the requesting State

Other – please specify:

- 58) In Conclusion and Recommendation No 48, the 2003 Special Commission unanimously approved the suggestion that the information regarding the forwarding authorities and their competences be included in the Model Form. Does your State systematically follow this Conclusion and Recommendation when sending a request for service?

YES

[In the case of a minority of requests, this information is not included, however. The Federal States from which these requests for service come give the following reasons for this:](#)

[- The conclusions of 2003 are not known.](#)

[- Additional information other than details concerning the requesting party is not compulsory.](#)

NO – why not?

C. Certificate (Art. 6)

- 59) Article 6(4) indicates that the Certificate shall be “forwarded directly to the *applicant*” [emphasis added]. The Permanent Bureau’s interpretation of the word “applicant” is again that it refers to the *forwarding authority* referred to in Article 3(1). Does your State agree with this interpretation?

- YES
- NO – to whom then do(es) the Central Authority(ies) of your State or the authority designated for this purpose forward the Certificate:
- The plaintiff in the proceedings
 - Counsel representing the plaintiff (if different from the forwarding authority)
 - The court where the proceedings are taking place in the requesting State
 - The nearest Embassy representing the requesting State
 - Other – please specify:

II. E-service

A. In strictly domestic situations

60) Does the law of your State, in strictly domestic situations, allow for documents to be served by fax, e-mail, SMS, the posting of a message on a website, or by a similar modern technology?

NO – are there plans to introduce service by using such technologies?

YES – please specify:

- a. the legal framework and practical circumstances in which such technologies may be used (please describe for each if necessary):

Provision is made for the possibilities of serving an electronic document in Section 174 of the ZPO. Reference is made to the electronic document in Section 130(a) and (b) of the ZPO (judicial electronic document):

§ 174 Zustellung gegen Empfangsbekanntnis

(1) Ein Schriftstück kann an einen Anwalt, einen Notar, einen Gerichtsvollzieher, einen Steuerberater oder an eine sonstige Person, bei der auf Grund ihres Berufes von einer erhöhten Zuverlässigkeit ausgegangen werden kann, eine Behörde, eine Körperschaft oder eine Anstalt des öffentlichen Rechts gegen Empfangsbekanntnis zugestellt werden.

(2) An die in Absatz 1 Genannten kann das Schriftstück auch durch Telekopie zugestellt werden. 2Die Übermittlung soll mit dem Hinweis "Zustellung gegen Empfangsbekanntnis" eingeleitet werden und die absendende Stelle, den Namen und die Anschrift des Zustellungsadressaten sowie den Namen des Justizbediensteten erkennen lassen, der das Dokument zur Übermittlung aufgegeben hat.

(3) An die in Absatz 1 Genannten kann auch ein elektronisches Dokument zugestellt werden. 2Gleiches gilt für andere Verfahrensbeteiligte, wenn sie der Übermittlung elektronischer Dokumente ausdrücklich zugestimmt haben. 3Für die Übermittlung ist das Dokument mit einer elektronischen Signatur zu versehen und gegen unbefugte Kenntnisnahme Dritter zu schützen.

(4) Zum Nachweis der Zustellung genügt das mit Datum und Unterschrift des Adressaten versehene Empfangsbekanntnis, das an das Gericht zurückzusenden ist. 2Das Empfangsbekanntnis kann schriftlich, durch Telekopie oder als elektronisches Dokument (§ 130a) zurückgesandt werden. 3Wird es als elektronisches Dokument erteilt, soll es mit einer

qualifizierten elektronischen Signatur nach dem Signaturgesetz versehen werden.

§ 130a Elektronisches Dokument

(1) Soweit für vorbereitende Schriftsätze und deren Anlagen, für Anträge und Erklärungen der Parteien sowie für Auskünfte, Aussagen, Gutachten und Erklärungen Dritter die Schriftform vorgesehen ist, genügt dieser Form die Aufzeichnung als elektronisches Dokument, wenn dieses für die Bearbeitung durch das Gericht geeignet ist. 2Die verantwortende Person soll das Dokument mit einer qualifizierten elektronischen Signatur nach dem Signaturgesetz versehen. 3Ist ein übermitteltes elektronisches Dokument für das Gericht zur Bearbeitung nicht geeignet, ist dies dem Absender unter Angabe der geltenden technischen Rahmenbedingungen unverzüglich mitzuteilen.

(2) Die Bundesregierung und die Landesregierungen bestimmen für ihren Bereich durch Rechtsverordnung den Zeitpunkt, von dem an elektronische Dokumente bei den Gerichten eingereicht werden können, sowie die für die Bearbeitung der Dokumente geeignete Form. 2Die Landesregierungen können die Ermächtigung durch Rechtsverordnung auf die Landesjustizverwaltungen übertragen. 3Die Zulassung der elektronischen Form kann auf einzelne Gerichte oder Verfahren beschränkt werden.

(3) Ein elektronisches Dokument ist eingereicht, sobald die für den Empfang bestimmte Einrichtung des Gerichts es aufgezeichnet hat.

§ 130b Gerichtliches elektronisches Dokument

Soweit dieses Gesetz dem Richter, dem Rechtspfleger, dem Urkundsbeamten der Geschäftsstelle oder dem Gerichtsvollzieher die handschriftliche Unterzeichnung vorschreibt, genügt dieser Form die Aufzeichnung als elektronisches Dokument, wenn die verantwortenden Personen am Ende des Dokuments ihren Namen hinzufügen und das Dokument mit einer qualifizierten elektronischen Signatur versehen.

- b. whether a secured transmission has to be used for any / each of these technologies, and if so, which kind of secured transmission is used in practice:
Compatible special software and a (qualified) digital signature.
- c. if and how service upon the addressee is acknowledged or proven in such circumstances:
By means of a qualified acknowledgement of receipt bearing the date and the signature of the addressee.

B. In cross-border situations outside of the Service Convention

- 61) Have the relevant authorities of your State served documents by fax, e-mail, SMS, the posting of a message on a website or by a similar modern technology in cross-border situations that did not fall within the scope of the Service Convention?

[] YES – please specify:

- a. the legal framework and practical circumstances in which this occurred – in particular, whether the terms of a regional or bilateral instrument provided for or otherwise allowed this (please describe for each if necessary):
- b. whether a secured transmission has to be used for any / each of these technologies, and if so, which kind of secured transmission is used in practice:
- c. if and how service upon the addressee was acknowledged or proven in such circumstances:

NO

C. E-service and the main channel of transmission under the Service Convention

62) Has the / a Central Authority of your State received requests for service that expressly asked for documents to be served by fax, e-mail, SMS, the posting of a message on a website or by a similar modern technology?

NO – please indicate how the Central Authority would respond if it were to receive such requests:

YES

- a. From which State(s) did these requests emanate?
- b. Did the requests for service provide any particular circumstances or explanations as to why the execution of using such technologies was requested?
 - YES – what were these circumstances or explanations? (please tick all relevant boxes)
 - Urgency
 - Failure of previous attempts to serve process by traditional means
 - Use of such technologies approved by judicial authority of the forum or the domestic law of the forum
 - All parties involved gave their (prior or subsequent) consent
 - Other – please specify:

NO

c. Did your State in fact execute any of these requests for service by using any of these modern technologies?

NO – why not?

YES – please specify:

- (i) the legal basis upon which these requests for service were executed:

- (ii) whether a secured transmission was used or required or requested to be used, and if so, which kind:
- (iii) if and how service upon the addressee was acknowledged or proven in such circumstances:
- 63) Has your State, as a requesting State under the Service Convention, sent requests for service abroad that expressly asked for documents to be served by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology?
- NO
- YES
- a. To which State(s) were these requests sent?
- b. Did the requests for service provide any particular circumstances or otherwise provide explanations as to why the execution of service using such technologies was requested?
- YES – what were these circumstances or explanations? (please tick all relevant boxes)
- Urgency
- Failure of previous attempts to serve process by traditional means
- Use of such technologies approved by the relevant judicial authority or the domestic law of your State
- All parties involved gave their (prior or subsequent) consent
- Others – please specify:
- NO
- c. Were these requests for service in fact executed by using any of these modern technologies?
- YES
- NO – please provide any information you may have as to why these requests were not executed:
- 64) How likely is it that your State would recognise and execute a foreign judgment if the related writ of summons was served abroad by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology (all other conditions for recognition being of course fulfilled)?

No statement can be made on that because the German courts decide upon individual cases in judicial independence. There have not yet been any court decisions.

- Very likely
- Likely
- Very unlikely
- It depends on the technology used – please indicate which modern technology method of service your State would accept:

The service of documents by SMS or by posting a message on a website would be likely to lead to greater difficulties in recognition than service by e-

mail because German law makes no provision at all for those means of service.

- 65) How likely is it that your State would recognise and enforce an agreement made by parties to a contract to the effect that they agree in advance to serve documents by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology?

Very likely

Likely

Very unlikely

Please explain / comment:

There is far-reaching freedom of contract in the area of the law of contract. The parties can determine how documents should be forwarded to them. However, the parties may not determine what means of delivery are used in judicial proceedings. This is subject to public procedural law, of which unrestricted use may not be made.

D. E-service and the alternative channels of transmission under the Service Convention

- 66) Does your State interpret the expression "postal channels" in Article 10 a) as including transmissions by:

a. Fax

YES

NO

Comments:

b. E-mail

YES

NO

Comments:

c. SMS

YES

NO

Comments:

d. The posting of a message on a website

YES

NO

Comments:

E. Miscellaneous

- 67) Have there been any other recent developments in your State in relation to the service of documents by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology (including in situations involving one of the alternative channels of transmission under the Service Convention where

applicable)? Please describe below and provide the citations for and / or a copy of any relevant decision or article in this regard (if this information is not in English or French, a summary into one of these languages would be appreciated):

The entry into force of the Regulation on European orders for payment paves the way for a cross-border electronic order for payment procedure. The Local Court in Wedding (Berlin) has central competence for this in Germany.

68) In Conclusions and Recommendations Nos 60 to 62, the 2003 Special Commission noted, amongst other matters, that the Service Convention does not on its terms prevent or prescribe the use of modern technologies to assist in further improving its operation and that States Parties to the Service Convention should explore all ways in which they could use modern technology. Does your State think that the use of modern technologies under the Service Convention should be further encouraged by the adoption of:

a. Specific Conclusions and Recommendations to that effect by the 2009 Special Commission

YES

NO

Comments:

Recommendations are always useful. However, the question is whether they are sufficient in order to enforce the increased use of modern technology in the cross-border serving of documents.

b. A Protocol to the Service Convention:

The Federal Republic of Germany is still undecided concerning its response to this question. Adopting a Protocol would require the participation of as many States as possible for the financial and organisational efforts for the use of modern means of communication to be worthwhile. Therefore it must be ensured not only legally, but also practically, that a real improvement in the cross-border service of documents is achieved by modern technology. Above all, that means that the necessary technical aids be provided and used by expert staff in all States Party.

YES

NO

Comments:

Thank you!

* * *