



**HCCH**

HAGUE CONFERENCE ON  
PRIVATE INTERNATIONAL LAW  
CONFÉRENCE DE LA HAYE  
DE DROIT INTERNATIONAL PRIVÉ

# *Hague Judicial and Administrative Co-operation Conventions*

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# Outline

## The Hague Judicial and Administrative Co-operation Conventions: **Apostille, Service, Evidence and Access to Justice Conventions**

1. The Hague Conference (HCCH)
2. The HCCH and the ELI/Unidroit draft rules of civil Procedure
3. The Hague Judicial and Administrative Co-operation Conventions
  - ❖ Apostille Convention
  - ❖ Service Convention

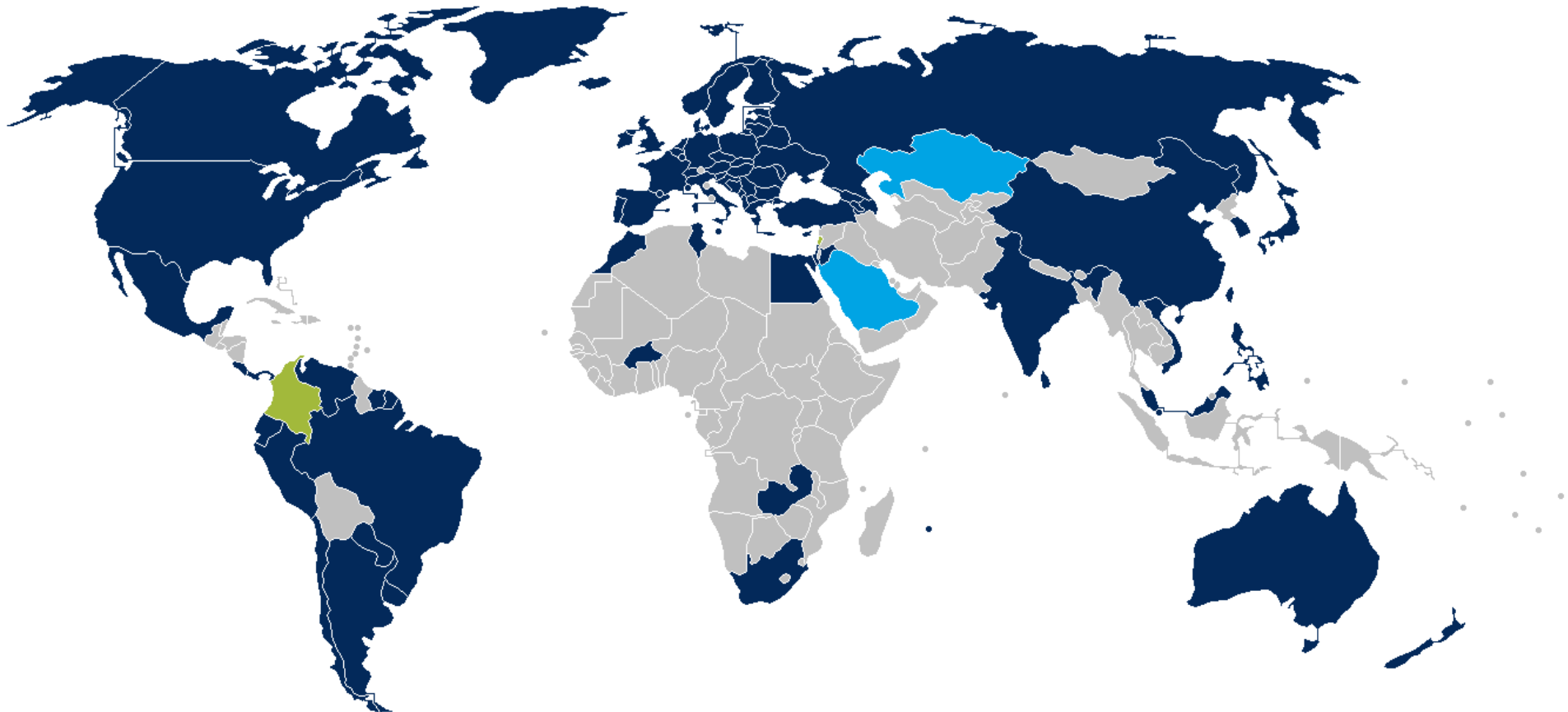
# What is the HCCH?



- Hague Conference on Private International Law
- World organisation for cross-border co-operation in civil and commercial matters
- There are currently **38 Conventions** and Protocols, as well as **1 soft law** instrument
- It currently has 81 Members

# 81 Members of HCCH

80 States + 1 Regional Economic Integration Organisation (EU)



■ Candidate State  
*Applied for membership  
(six-month voting period)*

■ Admitted State  
*Applied for membership,  
admitted by affirmative vote,  
must still accept Statute*

■ Member State

# **The HCCH and the ELI/Unidroit draft rules of civil procedure**

# The HCCH and the ELI/Unidroit draft rules of civil procedure

- HCCH is an observer
- Hague Conventions have been explicitly mentioned in the Rules, especially the Service Convention
- **Unidroit** is a sister organisation and thus the HCCH coordinates to avoid duplication of work in our area, together with **Uncitral**

# Difference between the Hague Judicial Co-operation Convs and the ELI/Unidroit rules

- Hague Judicial Co-operation Conventions **do not contain actual rules** on service of documents, taking of evidence or access to justice
- Channels of transmission / means of co-operation to make judicial co-operation possible between Contracting States
- Establish **bridges** between civil and common law traditions by contemplating mechanisms used under both legal systems
- ELI/Unidroit draft rules provide for *actual* rules of civil procedure to serve as model rules

# The Hague Judicial and Administrative Co-operation Conventions

**All EU Member States are a party to the Apostille Convention and soon to the Service Convention (2 missing)**

**Evidence Convention: 3 EU Member States are not yet a party**

**Access to Justice Convention: 10 EU Member States are not yet a party**

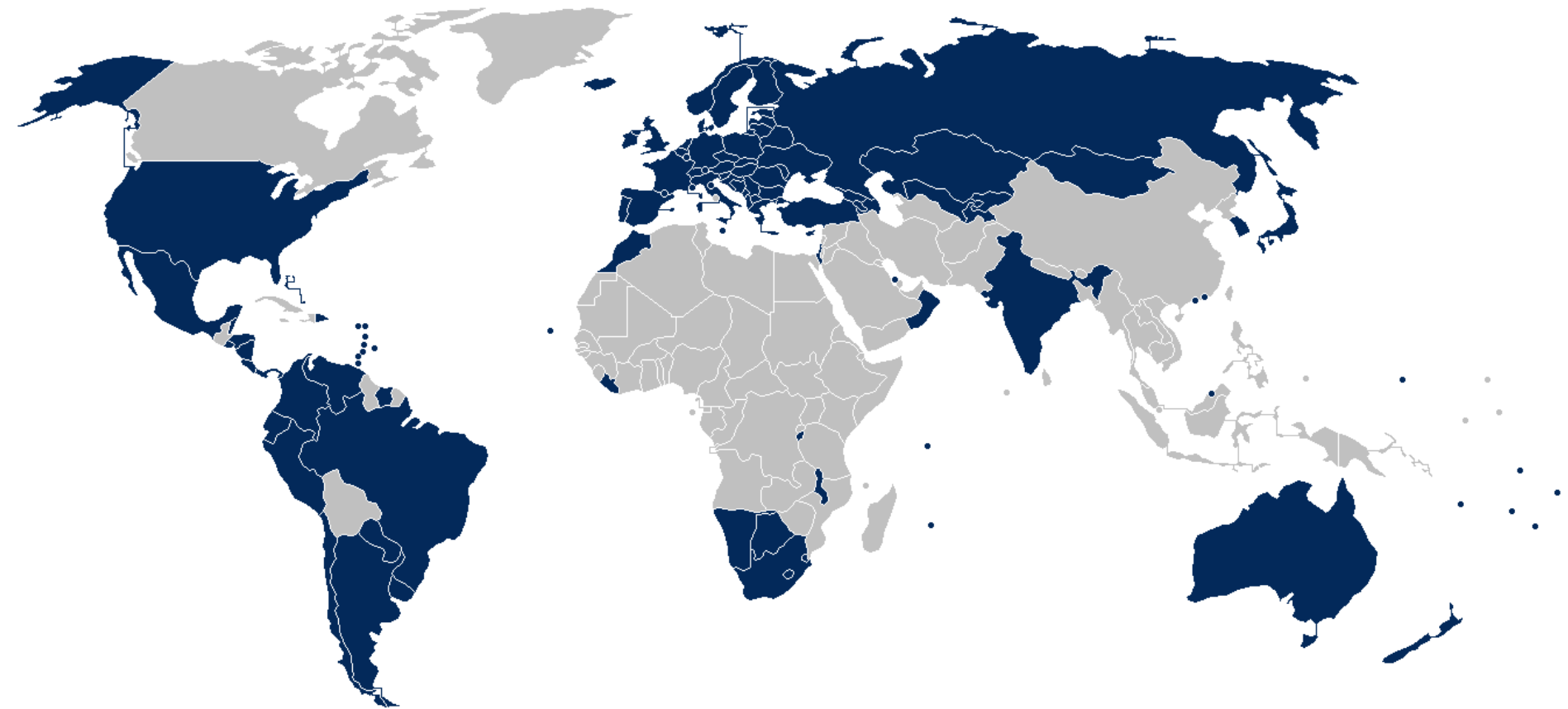


# **Apostille Convention**

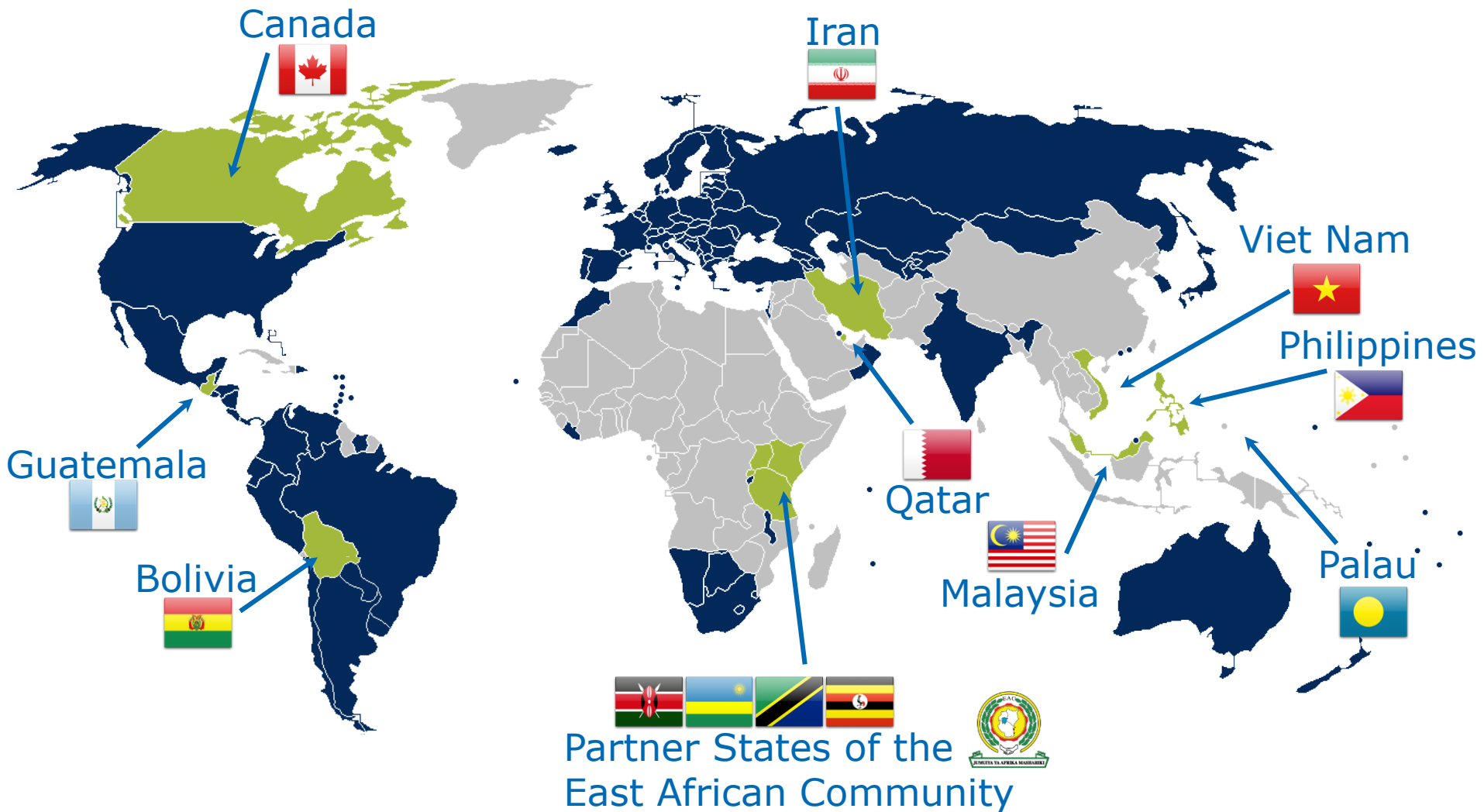
**Facilitates the circulation of public documents**

# Apostille Convention: 112 Contracting States

*The **most widely ratified/acceded to** and the **most widely applied**  
of all Hague Conventions*



# ... and many others considering joining (■)



# The relevance of the Apostille Convention in the work of the European Parliament

- On 9 June 2016 the European Parliament approved the Council position at first reading
- Imminent signature and publication of *Regulation of the European Parliament and of the Council on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union*
- Future regulation restricted mainly to **civil status documents**
- Apostille Convention will continue to apply between EU Member States with regard to:
  - education documents, company documents, court documents, notarial acts, real estate, administrative documents, etc.
- Apostille Convention will continue to apply between a EU Member State and a third State

# Two components

## e-Apostilles

Issuance of Apostilles  
in electronic format,  
with a digital  
certificate

## e-Registers

Operation of Apostille  
registers in electronic  
format than can be  
accessed online to  
verify the origin of  
paper and e-Apostilles

**Electronic**  
public document  issued with e-Apostille

e-Apostille  verified with e-Register

**Paper** public  
document  issued with e-Apostille\*

**Paper** Apostille  verified with e-Register

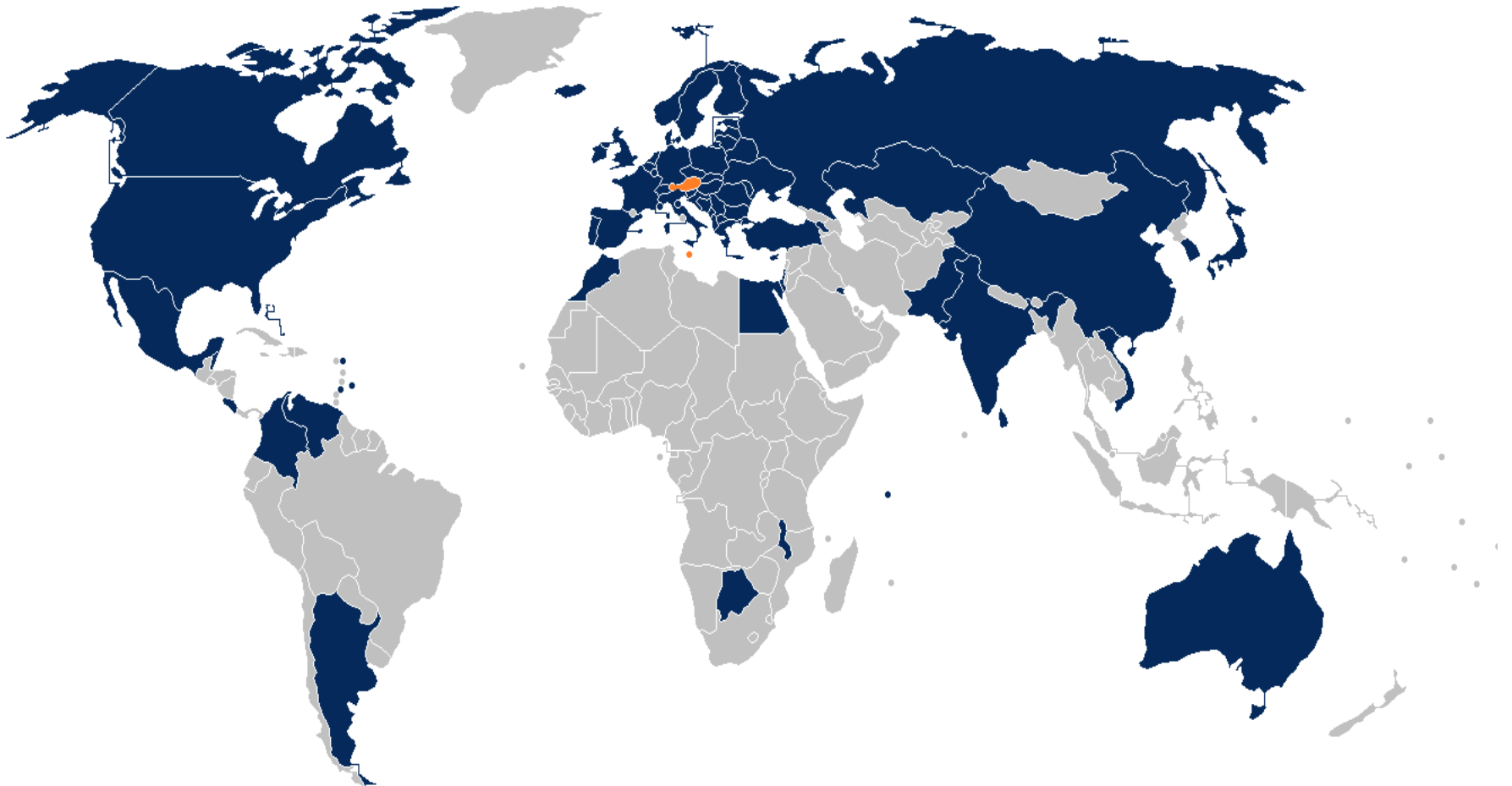
\*Subject to domestic law

# Service Convention

**Provides for the channels of transmission to be used when a judicial or extrajudicial document is to be transmitted from one State Party to another State Party for service in the latter**

# Status of the Service Convention

**71 Contracting States** (next: Austria & to have effect in Malta)



# The relevance of the Service Convention in the work of the European Parliament

- On 26 February 2016 the **European Parliament** authorised Austria to sign and ratify and Malta to accede to the Service Convention
- Declaration of 1 August 2012 of Malta  
Malta declares that its accession to the Convention will only take effect upon the completion of procedures relating to the said accession within the European Union and, in particular, the adoption of a Council Decision authorising Malta to accede to this Convention. Once this adoption takes place, Malta will notify the depositary of the date when the said Convention will become applicable to Malta.



# Articles 15 and 16 of the Service Convention – potential uniform rules of civil procedure?

- Provisions of **substantive** nature
- Protection of the defendant prior and after a judgment by default
- Incorporated in Rule 3 of the ELI/Unidroit draft rules of civil procedure
- Incorporated in Art. 19 of the EU Service Regulation No 1393/2007
- Incorporated in the rules of civil procedure of a EU Member State (France – Art. 688 of the CCP)

# Article 15(1) of the Service Convention

Where a writ of summons or an equivalent document had to be **transmitted abroad** for the purpose of service, under the provisions of the present Convention, and **the defendant has not appeared**, judgment shall not be given until it is established that -

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

# Article 15(2) of the Service Convention

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, **may give judgment even if no certificate of service or delivery has been received**, if all the following conditions are fulfilled -

- a) the document was transmitted by one of the methods provided for in this Convention,
- b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
- c) 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.

# Article 16 of the Service Convention

When a writ of summons or an equivalent document had to be **transmitted abroad** for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, **the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment** if the following conditions are fulfilled -

- a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and
- b) the defendant has disclosed a *prima facie* defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

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