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)

- **Member State**
- **Admitted State**
  - Applied for membership, admitted by affirmative vote, must still accept Statute
- **Candidate State**
  - Applied for membership (six-month voting period)

NB: Boundaries on this map are based upon those used by the UN Cartographic Section. The number of States reflects the Parties as recorded by the Depositary (NL MFA). Neither should be taken to imply official endorsement or acceptance.
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

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... and many others considering joining ( )
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

*Subject to domestic law*
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)
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.
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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