

HCCH Event on the HCCH Service Convention in the Era of Electronic and Information Technology and a few thoughts

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The Permanent Bureau of the Hague Conference on Private International Law (HCCH) is organising an event entitled *HCCH a / Bridged: Innovation in Cross-Border Litigation and Civil Procedure*, which will be held on 11 December 2019 in The Hague, the Netherlands. This year's edition will be on the HCCH Service Convention.

The agenda and the registration form are available [here](#). The deadline for registrations is Monday 11 November 2019. The HCCH news item is available [here](#).

A bit of background with regard to the HCCH Service Convention and IT: As you may be aware, the Permanent Bureau published in 2016 a *Practical Handbook on the Operation of the Service Convention* (available for purchase [here](#)), which contains a detailed Annex on the developments on electronic service of documents (and not only with regard to the Service Convention). In that Annex, developments on the service of documents by e-mail, Facebook, Twitter, etc. and its interrelationship with the Service Convention were analysed. Not surprisingly, cases where electronic service of process was used were rare under the Service Convention (usually, the physical address of the defendant is not known, thus the Service Convention does not apply and the courts resort to substituted service).

A more important issue, though, appears to be the electronic transmission of requests under the Service Convention. According to a recent conclusion of the HCCH governance council, it was mandated that:

Electronic transmission of requests

“40. Council mandated the Permanent Bureau to conduct work with respect to the

development of an electronic system to support and improve the operation of both the Service and Evidence Conventions. The Permanent Bureau was requested to provide an update at Council's 2020 meeting. The update should address the following issues: whether and how information technology would support and improve the operation of the Conventions; current practices on the electronic transmission of requests under the Conventions; legal and technological barriers to such transmission and how best to address these; and how a possible international system for electronic transmission would be financed. "

In contrast, the European Union seems to be at the forefront in encouraging electronic service of documents as such, see for example the new proposal for Regulation on the service of judicial and extrajudicial documents in civil or commercial matters, [click here](#) (EU Parliament, first reading).

Article 15a reads as follows:

"Electronic service

1. Service of judicial documents may be effected directly on persons domiciled in another Member State through electronic means to electronic addresses accessible to the addressee, provided that **both** of the following conditions are fulfilled: [Am. 45]

(a) the documents are sent and received using qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014 of the European Parliament and of the Council, and [Am. 46]

(b) after the commencement of legal proceedings, the addressee gave express consent to the court or authority seized with the proceedings to use that particular electronic address for purposes of serving documents in course of the legal proceedings. [Am. 47]."

By adding the word "both" the European Parliament seems to restrict electronic service to documents **after** service of process has been made (see previous European Commission's proposal). This, in my view, is correct and gives the necessary protection to the defendant. In the future and with new IT developments, this might change and IT might be more widely used by all citizens (think of a government account for each citizen for the purpose of receiving government services and service of process -although service of process comes as

a result of private litigation so this might be sensitive-), and thus this might provide more safeguards. In my view, the key issue in electronic service is to obtain the consent of the defendant (except for cases of substituted service).