

Briefing on International Service of Process

The 15 November 1965 Hague Convention on Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters sets several options for service of process. So does EC Regulation 1393/2007. These options include, inter-Alia:

1. Service through Central Authority; A Public Service
2. Service by Consular representations
3. Service by Mail, Fax or e-mail
 - Private or Public carrier
 - Direct service through local private process server
 - Service by a Qualified Professional

1. Service through Central Authority. The Hague Convention's public channel is processed through the Government's Administration or a Subcontractor. It is a free service and No option for expedited service exists. The Public Service channel is free of charge and has no taxes, but you must arrange for your paperwork to be properly translated in the language, pay a Court bailiff's fees in advance, in some countries and any other disbursements in a foreign currency. It is full of disadvantages: "Foreign Red tape".

The contents of your documents will be inspected by the local State's representative for legality and conformity to internal laws before service is considered and transferred to a local Bailiff and therefore your paperwork is not kept strictly confidential, the process is time consuming and often denied or refused by defendant.

If using the centralized channel, one must bear in mind that all documents are, in principle, to be translated by a Certified Court translator. Pursuant to article 5 of the Convention, if the documents being served are not translated, service can be denied. In addition, it is common for the Defendant to be given the option of refusing service due to lack of translation and, in that instance, documents would not be served. The "Bailiff" can only serve under voluntary acceptance of defendant, documents must be accepted voluntarily by the defendant or your efforts will be lost. Foreign bailiffs have no economical stimulus and are pay at later date!

On the other hand, the address of defendant must be exact, since the Central Authority does not offer a "Locate" or "Skip trace" service and because of this, often, service is not completed and you will have waist moneis and time.

2. Service by Consular representative: Prohibited by federal laws.

3. a. Service by mail, courier and other messengers, as per Art. 10 a they are accepted by the Hague Convention but many Jurisdictions do not accept this method since is not exact. The returned receipt is not an "Affidavit of Service" and the contents of documents sent in the package, is not mention or "specified as a guarantee". Jurisprudence consider that this return receipt is evidence of an address. Indeed, service by mail, courier or messengers is often rejected by courts because a simple "motion to quash"! or at a later stage, the Court order can't be enforced!

3.b. Service by instructing a local process sever directly, Article 10 b, such a solution is fraught with potential communication, legal, payment, and timing issues and depending on the country you need to be an Attorney to be able to instruct a local "Judicial Officer" to serve. Besides, most continental European Process servers never provide any Affidavit of Service in English and even less authenticated the affidavit of service at the Consulate's Notary Public. Local Process Servers can Authenticate their Affidavit at a Notary Public but they will rather use a local one increasing your cost again because you will need to translate the documents.

3.c. Service by qualified professionals, Article 10 c which has been misinterpreted and often use to fraud international law. This method is preferable, because it is faster, usually less expensive (it does not requires expensive translation), documents will not be submitted to inspection by the Judicial authorities and will be kept confidential, everything is in English language and subject to professional responsibility.

The misunderstanding comes with the difference between who can serve under a "Common law" and "Roman Napoleonic". The qualified professionals must be those "qualified to serve" under the "Lex Celebrationis" or the Jurisdiction where service is completed and not "Qualified" under the laws of the Jurisdiction serving. Indeed, It is essential to bear in mind that private agent service by a non-qualified legal professional may be quashed in the originating Court and any judgment obtained on the basis of service by a non-qualified person may be unenforceable: *No Court can accept in their procedures an Illegal act performed in a foreign jurisdiction, or against the "lex celebrationis"* (in this case by a Non qualified professional as per Art. 10 c note that this is the best argument for a motion to "quash").

Inside “Common law Jurisdictions” a Private detective, Private Investigator and many lay persons can serve documents, but in mainland Europe, in “Roman Napoleonic Civil law systems”, this function is the monopoly of legal professionals which must be “Authorized” to do so. The qualifications of the server are necessarily under the “Lex Celebrationis” of service. On the other hand, many international process service providers are not back up by a serious professional association, such as a “Law Society” or a “Bar Association”. In mainland Europe to practice law you must be a member in good standing of these associations because they impose to their members and ethical code and are submitted to Criminal and Civil Liability.

Often if you are not “abused” loosing your monies when sending monies to unknown and funny “process servers” abroad who do not offer “Official Professional Association Guarantees”, your service “might be completed”. In general, those that promote service all over the world use subcontractors and some will even issue a false affidavit of service signed with a false name. Indeed, the result is that many will not backup their service in front of a “Motion to Quash” and even less “Personally” engage their personal responsibility, reason why many are under the form of a limited liability offshore company.

In North America, Article 10 suffers of “Negative lobby” and “bad reputation”, the origin of these can be found in “Process Servers Professional Associations” who's founders or directors have as main income a “Translation Service” and thereto foment the use of the central Authority is more profitable. Also, many “International Process Servers Associations” do not have “International Process Servers” amongst their members.

Finally, there is a big difference between “Process Forwarding” companies and “International Private Personal Process Servers”. The first, will receive your documents and subcontract the service, the second will do the work themselves.

Using Article 10 offers many advantages: Your documents come directly to a selected local licensed Attorneys acting as process servers, or to an authorized “Judicial Officer”, thus saving time and costs, No translations, Apostilles Nor waiting.

Please, do not hesitate to contact me if you have any questions, my mobile telephone number is (34) 687 704 940 and my email delacuetaraj@yahoo.es or delacuetara@yahoo.fr.



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<http://europeanprocessservers.com>
<http://process-servers.eu/>
<http://servefast.eu/>

Credentials to Serve International Process as per Art. 10 a,b and c: Legal Courier, Judicial Officer and Attorney at Law;

For Spain: <https://www.redabogacia.org/censoss/PrintLogonCenso.do> input “Malaga” and “6113”

For France: <http://www.barreaudenic.com/annuaire.php> Input “CUETARA” or “429”

Judicial Officer: <http://www.uhj.com/rubrique.php?ID=1007495&lg=ang> and <http://www.mjusticia.es/DetalleInicio.html>

For All E.E.C.: <http://www.europa.eu> and www.obets.ua.es/pioneur/bajaarchivo_public.php?iden=40

Briefing on International Service of Process quash

Our professionalism is on both sides of the “Token” we can “Serve” properly or we can “quash”, on either side, we guarantee results. As experts we propose to do a “legal Audit” of the service of process completed in Eastern or Western Europe. Our “legal opinion” which takes material form in paper is back up personally during the motion. Please visit <http://www.europeanprocessservers.com/Quash.html> or contact us for more information.

Briefing on International Service of Process on Non Hague Signatories

Federal Laws; <http://www.law.cornell.edu/rules/frcp/Rule4.htm> authorizes service of Process in Non Hague Convention signatory jurisdictions under certain conditions, basically following the local code of Civil Procedure or “Lex Celebrationis”. Visit: <http://law.du.edu/images/uploads/library/25ServiceofProcessAbroad.pdf> for more information.

“Ius gentium est quod naturalis ratio inter omnes homines constituit”