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Explanatory Report to the European Convention on the Service Abroad of Documents relating to Administrative Matters

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I. The European Convention on the Service Abroad of Documents relating to Administrative Matters, drawn up within the Council of Europe by a committee of governmental experts under the authority of the European Committee on Legal Co-operation (CCJ), was opened to signature by the member States of the Council of Europe on 24 Nov

II. The text of the explanatory report prepared by the committee of experts and submitted to the Committee of Ministers of the Council of Europe, as amended and completed by the CCJ, does not constitute an instrument providing an authoritative interpretation of the text of the Convention, although it might be of such nature as to facilitate the understanding of the provisions contained therein.

Introduction

1. Owing to the large number of people who are living in foreign countries and the length of their stay in those countries, it is often necessary for the authorities of one State to assist those of another State in carrying out its tasks with regard to those persons.

Save for some international conventions, each of which binds only a more or less restricted number of the member States of the Council of Europe, mutual assistance between administrative authorities of different States is based mainly on informal or *ad hoc* arrangements which have been prompted by practical necessity as well as by neighbourliness. Mutual assistance in administrative matters is less developed than mutual assistance in civil, commercial or criminal matters; it has seldom been systematised except in some narrowly defined fields.

2. For this reason, in 1963 the Committee of Ministers of the Council of Europe included the problem of mutual assistance in administrative matters in its Resolution (63) 29 concerning the legal programme of the Council of Europe.

The matter was taken up in 1969 in the framework of the activities of the sub-committee to review the legal programme of the European Committee on Legal Co-operation (CCJ). The next step was its examination by the 2nd Colloquy on European Law which was organised in 1971 at Aarhus (Denmark) following a decision of the Committee of Ministers. The work of the colloquy was based on the replies by governments to a questionnaire on international mutual assistance in administrative matters as well as on papers presented by MM. M. Fromont, J. Gersing and E. Loebenstein.

3. In 1975, the Committee of Ministers decided, on the proposal of the CCJ, to set up a Committee of Experts on Mutual Assistance in Administrative Matters to study the possibility of drawing up appropriate legal instruments dealing with:

a. the service abroad of administrative documents emanating from one State and intended for persons residing in another State; as well as

b. improvement of means whereby the authorities of one State may obtain information from the authorities of another State;

and to determine the administrative fields to which these new instruments should apply.

4. The committee of experts held four meetings in 1975 and 1976 under the chairmanship of Professor J. Oyame (Switzerland); the Vice Chairman was Mr L. Chatin (France). It set up a working group presided by Mr L. Chatin and composed of Mr K. Berchtold (Austria), Mrs B. Lynaes (Denmark), Mr St. Cantono Di Ceva (Italy) and Mr J. S. Dixon (United Kingdom), which held two meetings in the summer of 1975.

The committee of experts began its work with a general discussion on the basic principles by which its activities should be guided. It carefully examined the various aspects of the problem, including the question of how many and what kind of legal instruments were to be elaborated; it took into account the fact that the CCJ had already ruled out the idea of a single international instrument which would cover the entire field of mutual assistance in administrative matters. The committee of experts decided to proceed by elaborating two draft conventions, the first one dealing with the service abroad of documents relating to administrative matters and the second one with the obtaining abroad of information and evidence in administrative matters.

5. Although the former has a direct bearing on relations between administrative authorities and the individual, whereas the latter deals mainly with the means of co-operation between administrative authorities *inter se*, the committee was of the opinion that the two conventions are closely linked, particularly in view of the similarity of the solutions adopted. For this reason, it devoted particular attention to problems of consistency between the two texts and with other multilateral international conventions on mutual assistance in civil and commercial matters on the one hand and criminal matters on the other.

6. The main preoccupation of the committee of experts was to fill in the gaps between other existing international conventions and at the same time to avoid overlapping with them, so as to establish a coherent conventional framework on which international mutual assistance between the member States could be based.

7. With regard to the European Convention on the Service Abroad of Documents relating to Administrative Matters, the committee took account particularly of the Hague Convention on Civil Procedure of 1 March 1954 and the Hague Convention on the Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters of 15 November 1965, for example with regard to the transmission procedures to be followed; it also had regard to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, in particular in connection with defining the scope of the Convention.

8. The committee of experts benefited from the attendance at its meetings of an observer from the Permanent Bureau of the Hague Conference on Private International Law.

Commentary on the provisions of the Convention

Chapter I – General provisions

Article 1

9. *Paragraph 1*, which contains the formal undertaking for the Contracting States to afford each other mutual assistance with regard to service of documents relating to administrative matters, covers the whole of the Convention.

The expression "documents relating to administrative matters" has been used instead of "administrative acts" because of its wider meaning: it covers not only administrative acts and decisions but also any other act emanating from an administrative body which would not normally be considered an administrative act in the legal system of certain States.

10. No attempt has been made to include in the text of the Convention a positive definition of administrative matters. The absence of such a definition is explained by the fact that the notion of "administrative matters", which may have a very imprecise connotation even within one legal system, varies even more between one State and another. It is however understood that the definition of this field for purposes of applying the Convention will be determined by the requesting State in accordance with its domestic law, with the proviso that the requested State may refuse to comply under the terms of Article 14.

It was therefore felt preferable to leave to the Contracting States the decision whether to expand or restrict the scope of the Convention by making use of the options provided in paragraphs 2 and 3 of this article.

11. *Paragraph 2* provides for the exclusion from the scope of the Convention of fiscal and criminal matters.

Although fiscal matters can in most cases be considered to form part of the administrative field, their exclusion from the scope of the Convention is due in particular to the very special character of this field, which is already covered by a network of fairly detailed and sophisticated conventions, especially bilateral ones.

Criminal matters have however been excluded expressly in order to remove any doubt that might arise as to the application of the Convention to the service of documents concerning certain offences under the law, the prosecution of which is not within the competence of judicial authorities.

12. The second part of paragraph 2 allows any Contracting State to extend the scope of the Convention to "fiscal matters" or "proceedings in respect of offences the punishment of which does not fall within the jurisdiction of its judicial authorities at the time of the request for assistance" or both. The latter expression denotes the area existing between administrative and criminal matters, which in certain States is known under the name of "administrative criminal law" such as, for example, the *Ordnungswidrigkeit in* German law. The expression just cited, which was borrowed *mutatis mutandis* from the European Convention on Mutual Assistance in Criminal Matters, was chosen in order to avoid a risk of creating gaps and also in order to ensure full compatibility between the two Conventions. It refers not only to proceedings which include, after an administrative phase, a judicial phase, but also to proceedings concerning punishable offences which take place exclusively before administrative authorities.

It should be emphasised that the possibility of broadening the Convention's scope so as to include the matters mentioned above has a purely passive meaning in that States which do so, undertake to give effect to requests for service in these fields addressed to them by other Contracting States. Nevertheless, States may make their undertaking conditional on reciprocity and may refuse to give effect to requests emanating from States which do not accept the same extension of the scope of the Convention.

States which want to make use of the option given to them in paragraph 2 may address a declaration to that effect to the Secretary General of the Council of Europe at the time of signature, or at the time when they deposit their instrument of ratification, acceptance, approval or accession or indeed at any later date.

13. *Paragraph 3* has the function of enabling States which so desire for reasons connected with their legal system or practice to exclude certain administrative matters from the scope of the Convention, such as, for example, electoral or military affairs etc. Such a restriction of the scope is obtained by means of a declaration which the State in question may address to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any time within five years following the Convention's entry into force in respect of itself.

The possibility of making such a declaration has been restricted to five years in order not to prolong the uncertainty which a longer, or an indefinite, period would entail, particularly with regard to the reciprocal commitments accepted by the Contracting States.

14. The possibility of exercising these options was introduced in order to make the instrument more flexible so as to respond to practical needs and to the difficulties which might arise from the operation of the Convention. It was recognised in this connection that the administrative field is extremely large and that the Convention introduces important innovations into this field. It was therefore considered expedient to leave to each Contracting State some control over the scale and timing of its application.

15. *Paragraph 4* determines the moment at which the declarations referred to in this article will take effect and also the procedure to be followed for their withdrawal.

Article 2

16. This article deals with the machinery to be established in order to give effect to the Convention.

Since it is the aim of the Convention to establish a legal basis for the service abroad of documents relating to administrative matters, which, save for some bilateral agreements, has hitherto been based on international courtesy, it was felt indispensable to set up a system of transmission of requests via a central authority.

Such a system offers to the requesting authority the advantage that it is relieved of the task of finding out which authority in the requested State is competent to serve the document. Moreover, the setting up of the central authority will ensure that there is compliance with the law of the requested State by permitting an examination of the regularity of requests coming from abroad.

17. In accordance with *paragraph 1*, every Contracting State is obliged to designate a central authority. The internal organisation of the central authority is left to the State which has instituted it, i.e. the requested State.

The functions of the central authority are:

a. to receive requests for service coming from other Contracting States;

b. to give effect to these requests.

18. With regard to the receipt of requests, which may be formulated by public officials, authorities or tribunals of the requesting State, it should be noted that although this is mainly the function of the central authority, its competence in this matter is not exclusive. In fact, the Convention leaves open, in addition to this primary channel of transmission, other subsidiary channels, viz., in order: the direct consular channel (Article 10), the postal channel (Article 11), the diplomatic channel (Article 12, paragraph 1), as well as any other channel of transmission (Article 12, paragraph 2), such as direct communication between authorities.

19. The action which a central authority is called upon to take consists not only of the service of the document which, if necessary, may be effectuated at its request by another competent authority, but also and above all in checking whether the request has been properly formulated (Article 5) and whether the service by a particular method which is asked for is compatible (Article 6, paragraph 2) with its domestic law, in drawing up a certificate that it has itself effected service (Article 8, paragraph 1) and, as the case may be, in countersigning certificates (Article 8, paragraph 3) and in examining any possible grounds for refusal to comply with the request (Article 14).

The last sentence of paragraph 1 makes it possible for federal States to have a central authority for each member State of the federation.

20. Although there is in principle only one central authority, *paragraph 2* opens the possibility for Contracting States to designate, in addition to the central authority which must in any case be established, other subsidiary authorities on a purely territorial basis. This provision meets the current trend in many European States to decentralise the administration of government. Such arrangements do not in any case prevent an authority of the requesting State from addressing itself to the central authority and cannot form a ground for considering a request addressed to the central authority inadmissible or for a refusal to carry it out. The term "central authority" which is used in the Convention covers also the subsidiary authorities which some Contracting States may institute.

21. *Paragraph 3* provides for the designation, on an optional basis, by the Contracting States of a forwarding authority under the same terms and with the same characteristics as the central authority charged with receiving requests. It was recognised that the existence of a forwarding body in the Contracting States might greatly facilitate the implementation of the provisions of the Convention particularly in that it would attest to the authenticity of requests coming from authorities of the requesting State and it would exercise initial control in order to establish the conformity of requests with the Convention.

22. This paragraph provides, on the lines of paragraph 1, the option for federal States to designate more than one forwarding authority. No provision has been made, however, parallel to that of paragraph 2 permitting the designation of subsidiary forwarding authorities.

23. Under the terms of *paragraph 4*, the central authority and the forwarding authority, whether newly created or already in existence, must each be either a government department or another official body. This requirement provides the security which is one of the basic elements of the system of mutual assistance. The task of these authorities is not limited to receiving or forwarding requests but may also include checking their consistency with public policy (Article 14) or checking the authenticity of the reply (Article 8). It was felt necessary that this element of control should be exercised by an official authority. It is understood, therefore, that these authorities should be at a sufficiently high level.

24. With regard to *paragraph 5*, it is understood that each Contracting State should communicate to the Secretary General of the Council of Europe, at the time of deposit of its instrument of ratification, acceptance, approval or accession, the name and address of the authorities designated in conformity with the provisions of this article, so as to enable effect to be given to the Convention. Any subsequent change in the name or address of these authorities should of course also be communicated.

Article 3

25. This article provides that the request is to be sent by the requesting authority, tribunal, public official or by the forwarding authority, as the case may be, to the central authority of the requested State; normally this will be done by post but other ways of forwarding are not excluded.

The request must be in conformity with the form prescribed in the annex to the Convention and must be accompanied by the document to be served, whether it be the original or a copy.

It is also stipulated that the request and accompanying documents should be transmitted by the requesting authority in two copies. This requirement aims at facilitating the task of the requested central authority, which can immediately serve the document or have it served on its addressee whilst keeping the duplicate in its files.

However, the requirement of a duplicate is subject to the last sentence of this article which prevents the requested authority from refusing to comply with the request on the ground that this formality has not been observed.

Article 4

26. This article exempts the documents forwarded in pursuance of the Convention from legalisation, or any other equivalent formality such as certificate (apostille), issued by the competent authority of the State from which the document emanates, as provided in the Hague Convention Abolishing the Requirement of Legalisation of Foreign Public Documents.

This article is a step forward since it embodies one of the most important objectives of the Convention, namely simplification and expediency.

Article 5

27. This article deals with one of the functions of the central authority: to check whether the request is in order at the stage of its admissibility.

This provision does not so much concern defects of substance which might be a ground for refusing execution but rather formal defects.

Examples of such defects which might be the reason why the request does not conform with the provisions of this article are: the total absence of the address of the addressee of the document or other indications prescribed by the request form, as well as omission of documents.

Where the central authority requested is of the opinion that the request does not conform with the provisions of the Convention, it must immediately inform the requesting authority so that the latter can, without delay, complete its request or give further details as the case may be.

Moreover, the central authority must specify its objections to the request; this will permit the requesting authority to remedy more easily the mistake made. This obligation is intended to prevent an arbitrary refusal by the requested authority; it will not be permitted to raise objections to service of the document without giving reasons.

Article 6

28. Paragraph 1 of this article sets out the way in which the central authority should effect service, or have service effected, of the document transmitted to it.

Sub-paragraph a provides that service is to be effected in accordance with the methods prescribed by the law (statutory acts, regulations or customs) of the requested State. It was acknowledged that the safeguards offered by the various States with regard to the service of documents drawn up in their territory and destined for persons residing therein should be sufficient In practice, the requested authority will effect service of the document through the post, with or without acknowledgement of receipt, through a government official or through any other competent official.

29. The question has arisen whether the Convention applies to service effected on board ships flying the flag of one of the Contracting States. It was felt that a positive reply could be given to this question, in the light of the experience acquired with mutual assistance in other fields, particularly as concerns the application of certain Hague conventions.

In practice, having regard to the particular problems that may arise in connection with service of documents on board ships, it was left to each Contracting State to choose, in keeping with the spirit of the Convention, the manner of service most likely in the given case to ensure compliance with the request.

Under *sub-paragraph b* it is acknowledged that service may be effected by a particular method requested by the requesting authority, provided that this method is not incompatible with the law of the requested State. A requested State may not refuse service, however, for the sole reason that it does not know a particular method of service it is asked to apply. That method must be incompatible with its law. It was felt desirable that requested States should comply as much as possible with the wishes of the requesting authorities concerning the methods of service.

30. *Paragraph 2* provides that service may be effected by simple delivery to an addressee who accepts voluntarily. By the term "simple delivery" is meant a method of service, at the option of the requested authority, which involves no compulsion and is devoid of formality.

31. Under *paragraph 3* the requested authority is given the possibility to refuse a request if the time-limit set by the requesting authority for service of the document cannot be complied with (for example in view of the time it normally takes to have a document served in the place where the addressee lives).

Article 7

32. This article concerns the language in which the document to be served is to be drawn up or translated.

The basic principle underlying *paragraph 1*, which has also been recognised by other conventions on international mutual assistance, is the presumption that the addressee of the document knows the language of the requesting authority. Consequently, the central authority has no reason to ask for a translation, especially since, at least so far as it is concerned, it should be able to know the tenor of the contents of the document with the aid of the request form, which provides for a summary of the essential points of the document in its language or in one of the official languages of the Council of Europe (Article 9, paragraph 2). However, an exception in favour of the addressee of the document is provided for in *paragraph 2*, according to which he may refuse service of the document if he does not understand the language. It is understood that the requested State should see to it that the addressee is informed about his rights and particularly the possibility to refuse the document because he does not understand the language. In case of refusal the central authority should normally have the document translated at its cost into the language or one of the official languages of the requested State. It may also ask for such a translation from the requesting authority.

33. *Paragraph 3* deals with service according to a particular method as provided for by Article 6, paragraph 1, sub-paragraph b. In those cases the requesting authority has to translate into the language or one of the languages of the requested State the document to be served. This is not an automatic obligation but is subject to the decision of the requested authority, which may at its own discretion (apart from the cases where the addressee refuses service of a document as foreseen by paragraph 2) decide whether or not to ask the requesting authority for a translation of the document.

Article 8

34. The certificate of service provided for in this article is equivalent in the philosophy of the convention to an official report on the delivery. This system has been largely inspired by the Hague Conventions of 1954 and 1965.

Paragraph 1 imposes a duty on the central authority or other competent authority which has served the document, to draw up a certificate recording the service of the document or, as the case may be, the facts which have prevented its service. This certificate is to be drawn up in accordance with the model form annexed to the Convention; this is designed to simplify the procedure whereby the requesting authority is informed of the main details of service such as date, place (provided the addressee does not object to communication of his address), method etc.

35. For the sake of simplicity and in order to avoid unnecessary delay, the certificate is to be sent, under *paragraph 2*, directly by the authority which has drawn it up to the requesting authority, whose address is given at the top of the model form. During the preparatory work, there was considerable discussion as to whether the central authority alone should be able to draw up the certificate and despatch it. Good arguments were presented in favour of this. Attention was drawn to difficulties which might arise from direct despatch of the certificate to the requesting authority by the authority which had effected service and particularly to the difficulty of checking the authenticity of the certificate. However, the requirement of simplicity and expediency prevailed and it was decided that any other authority which has effected service may draw up and despatch the certificate.

Nevertheless, the possibility of checking the authenticity of the certificate has been maintained by paragraph 3 which allows the requesting authority the option to ask the central authority of the requested State to endorse any certificate whose authenticity is contested.

Article 9

36. In order to facilitate the implementation of the system of service of documents provided for by the Convention, this article deals with the languages in which the request forms and certificates should be drawn up.

Paragraph 1 requires that the printed terms of the model form should, at the option of the requesting State, be in one of the official languages of the Council of Europe, i.e. in English or French. Moreover, that State may add as an additional language its own or one of its own official languages. In order to make the reading of the model form easier it was decided to number the different printed headings and to arrange them in a well established and fixed order so that the requested authority, even if it does not know any of the languages used in the form by the requesting authority, will understand the meaning of the term with the aid of its number.

37. Under *paragraph 2*, the blanks opposite the printed terms must be completed either in the language or one of the official languages of the requested State or in one of the official languages - English or French - of the Council of Europe. It will be observed that the arrangement gives preference to the language of the requested State. Nevertheless the Convention leaves it open to requesting States to decide which language is to be used in filling out the blanks.

Article 10

38. Although a principal channel for the transmission and service of documents in other Contracting States has thus been established, it was not considered advisable to give that channel an exclusive character. Other very simple means of transmission and service are already in use between certain States on a bilateral level, and to prohibit the use of such channels would have amounted to a retrograde step for those States. While the classical

consular channel, which had previously been one of the most commonly used in practice, is replaced as the principal channel by the system of central authorities, it was not considered feasible to eliminate it completely and it has therefore been retained in this article as a subsidiary channel. Moreover, it should be noted that this channel may in certain circumstances be preferred to others, particularly when the requesting State, in the absence of precise details about the person who is the addressee of the document, believes that its consular officials in the State where service must take place will be better able, on the basis of information in their possession (birth and marriage registers etc.), to trace the addressee and serve the document on him.

39. Under *paragraph 1*, consular officials of the requesting State may, without reference to the competent authorities of the requested State, but with due regard to the pertinent provisions of the Convention and particularly those concerning its scope, effect service directly in the State of residence. In effecting service consular officials may not use any form of compulsion against the addressee; should the latter refuse to accept the document the attempt to serve it would not amount to service in the sense of the Convention. In the absence of consular posts in the State where service is to take place, the requesting State may, by way of exception, ask its diplomatic agents to effect service in the same way as that provided for service by consular officials.

40. There should be no objection to the use by every State of the direct consular channel so long as the document in question is to be served on a national of the requesting State and the addressee of the document accepts it voluntarily, given the connection of a legal nature which exists between States and their nationals. However, it is a different matter when a State wants to use its consular officials to serve documents on nationals of the requested State or of a third State, whether a Contracting Party or not, or on Stateless persons. In this case the requested State may want to protect the authority of its own administration by prohibiting consular officials of foreign States from effecting service within its territory. For this reason, *paragraph 2* establishes that Contracting States may object to the use in their territory by other States of their consular officials or diplomatic agents for the purpose of service of documents except where such a document is served on a national of the requesting State.

41. The problem of plural nationality of the addressee has not been expressly examined and it does not seem to pose any special difficulties because the State wanting to object may do so whenever, according to its own law, the addressee has its own nationality.

42. Objections to the use of the direct consular channel for effecting service on nationals of the requested State or of a third State or on Stateless persons can be made by means of a declaration addressed to the Secretary General of the Council of Europe in his capacity as depositary of the Convention. Such declaration may be made by the interested State at the time of signature of the Convention or when depositing its instrument of ratification, acceptance, approval or accession, and it will take effect, according to *paragraph 3*, at the time of the entry into force of the Convention with regard to the State concerned.

Article 11

43. This article allows the use of postal channels for service of documents on addressees abroad. The introduction of this subsidiary method of transmission constitutes an important advance which is in line with the desire for simplicity which underlies the Convention.

Since *paragraph 1* does not provide otherwise, the possibility which it offers to use postal channels for direct service on a person in the territory of another Contracting State applies regardless of the nationality of that person, whether he be a national of the requesting State, the requested State, another Contracting State, or a third State.

It should be underlined that, while permitting the use of the postal channel, this provision does not pronounce itself on the validity of such a method of transmission under domestic law; but in order that the postal channel can be used at all it must be permitted by law in the first place. It should be used with due regard to the relevant provisions of the Convention, particularly concerning its scope.

The expression "service through the post" includes service by ordinary or registered letter, with or without acknowledgement of receipt, as well as by telegram.

44. The objection to the postal channel is different from that to the consular channel in that the former may be either general or partial. When the State formulates a partial objection to the use in its territory of the post, it may limit its objection either to certain categories of addressee, in view of their nationality, or to certain categories of document.

Objection to the use of the postal channel may be made, according to *paragraph 2*, by means of a declaration addressed to the Secretary General of the Council of Europe in his capacity as depositary of the Convention. Such a declaration may be made by a State at the time of signature of the Convention or when depositing its instrument of ratification, acceptance, approval or accession, or at any time within the five years following the entry into force of the Convention in respect of itself.

In giving States the possibility of making, within the above mentioned time-limits, a declaration whereby they object to use of the postal channel, it was intended to establish a flexible arrangement which allows States to adapt the application of the Convention to the requirements and needs that may arise during the first five years of the Convention's application and, on the other hand, to reduce the uncertainty which might arise concerning the reciprocal commitments of the Contracting States which a longer or indefinite period might involve.

45. *Paragraph 3* determines the moment when the declaration provided for in the previous paragraph takes effect, as well as the method to be followed in case of withdrawal or modification.

Article 12

46. *Paragraph 1* deals with the "indirect diplomatic or consular channel". This means that the diplomatic or consular official of the requesting State delivers the document not directly to its addressee – a case provided for by Article 9 – but to an authority of the requested State for purposes of service.

The diplomatic channel referred to in this paragraph is the classical diplomatic channel which consists in the request for service being handed over by the diplomatic representative to the Ministry of Foreign Affairs of the requested State. It is a cumbersome means of transmission, likely to be time-consuming and to involve many different channels. The use of this transmission procedure was also provided for by the 1965 Hague Convention but only by way exception, particularly in view of its disadvantages.

Nevertheless it was not felt advisable in the present Convention to preclude the use of the diplomatic channel which is an *ultima ratio* that should always remain open to States.

47. Besides the diplomatic channel, this paragraph also mentions the consular channel, which is a simpler and less indirect way of transmission than the diplomatic one because consular officials may hand over the request for service to the competent authority in the State of residence without having to go through the intermediary of the Ministry of Foreign Affairs. The competent authority in the receiving State may, if appropriate, be the central authority.

48. It should be noted that whereas the requesting State may use the indirect diplomatic or consular channel to transmit its documents abroad, the requested State can certainly not require that documents to be served on its territory should be transmitted through this channel.

49. *Paragraph 2* enables States to make arrangements for the direct communication of documents between their various authorities.

The simple transmission from one authority to another may, however, give rise to difficulties. One only has to think of the great diversity of administrative structures in the member States of the Council of Europe and of the confusion which might be caused by the arrival of requests from abroad drawn up by authorities whose competence will be unknown to the requested body. All this would be aggravated by the difficulty arising from the diversity of languages.

It is for this reason that this paragraph has been formulated in a negative fashion: "the present Convention shall not prevent...", and that it neither excludes nor recommends direct communication between authorities. One could, however, imagine that two or more Contracting States which have a similar administrative structure, and perhaps a common language or closely related languages, could obtain important practical advantages from the use of this method.

Article 13

50. It seemed both logical and fair to provide, in paragraph 1, that service is to be free of cost when it is effected by the central authority in conformity with Article 6, paragraphs 1, sub-paragraph a, and 2, by any method prescribed by the law of the requested State or by simple delivery.

Paragraph 2 contains an exception to this principle of free assistance where service is effected under Article 6, paragraph 1, subparagraph b, by a particular method requested by the requesting State. It was considered reasonable to require the requesting authority to pay for the cost occasioned by a procedure which may be complex and which will have been initiated by that authority and carried out in order to meet its own requirements.

51. This paragraph gives no indication about the manner of payment or reimbursement by the requesting authority of the costs which it has to bear, which will be mentioned in an invoice appended to the certificate of service. This matter has been left to the practice which will follow the application of the Convention.

Article 14

52. *Paragraph 1* creates certain exceptions to the obligation to effect service in accordance with requests formulated through the system of transmission by the central authority. The exceptions may also be invoked where a request for service is made under Article 12.

Sub-paragraph a allows the requested authority to refuse to comply with a request for service if it is of the opinion that the document to be served does not relate to an administrative matter in the sense of Article 1 (see explanatory notes concerning Article 1).

It was felt desirable to introduce such a provision in order to better regulate this possibility of refusal to comply on the part of the requested authority. However, a State should not reject a request only on the ground that it involves a matter which in its territory would be brought before a civil authority. Obligations arising out of the Convention ought not to be dependent on the names given to the authorities in the requested State (as advocated by the 4th Hague Conference on Private International Law in connection with the Convention on Civil

Procedure). Accordingly, the requested State should, in such cases, effect the service of documents in accordance with the relevant legal provisions applicable in its territory.

53. A second ground of refusal is set out in *sub-paragraph b*, according to which a request may be refused if it would tend to interfere with the sovereignty or security of the State (for example because execution of service would adversely affect the relationship of nationality existing between States and their nationals) or with public policy or other essential interests of the requested State. The expression "essential interests" refers to the interests of the State, not of individuals. This notion may include economic interests.

54. The rights of the individual are protected by the clause on public policy. This clause implies for a State an obligation to observe certain minimum basic principles of the rule of law, because otherwise it would run the risk of meeting a refusal to effect service on the part of other States.

55. A last ground of refusal which is less general in nature than the previous ones is contained in *sub-paragraph c*. It relieves the requested authority of the obligation to effect service if the addressee cannot be found at the address indicated in the request and his address cannot be easily established. However, exemption from the obligation to effect service is limited to the extent that this paragraph requires the requested authority to make at least some effort to find out the exact address of the addressee. This ground of refusal is different in nature from one based on non-conformity of the request (Article 5) because it can only arise after the central authority has confirmed that the request is in order; it is only at the moment when steps are taken to serve the document that the address is found to be wrong or incomplete and it is also found that the requesting authority cannot provide further details.

56. *Paragraph 2* contains an important limitation on the discretionary powers of the requested authority which wishes to invoke one of the exceptions provided for in this article, for it imposes on that State the obligation to notify the requesting authority as soon as possible, stating the reasons for refusal to comply.

Article 15

57. This article has been introduced in order to establish an equilibrium between the facilities for service of documents abroad which are given to administrative authorities of Contracting States on the basis of the Convention and the protection of the rights, freedoms and interests of individuals. It is concerned only with the relationship between the addressee of the document and the requesting authority.

Even though one of the principal aims of the Convention is to ensure a speedy procedure of service abroad it becomes inevitable that such a procedure will normally be longer than would be the case when a document is served within the State from which it has emanated. Consequently, the time-limits provided by domestic law for notification may be found too short if the addressee of the document is abroad, and prevent him from exercising his rights. In order to ensure that the late service of documents does not seriously prejudice the persons concerned, this article provides that the addressee should have a reasonable time, from the moment he receives the document, to exercise his rights. This provision does not impose on States whose time-limits are based on the date of issue of the document or its despatch by post an obligation to replace it by a system based on the date of receipt by the addressee. States which do not use the latter system should fix a time-limit which enables the requested authority to serve a document on its addressee in good time and to allow the latter sufficient time, from the moment the document was despatched, to prepare his case and if necessary travel to the place where the proceedings are taking place. According to this article, the appreciation of the reasonable character of the time-limit rests with the requesting authority, which may be seized by the addressee of the document in accordance with the remedies available in domestic law.

Article 16

58. This article is intended to safeguard the provisions of other existing or future international, bilateral or multilateral instruments, which contain regulations in certain fields concerning matters covered by the present Convention.

This clause also covers practices which have been established or may be established in future, between the administrations of Contracting States, and which have not been formally spelt out in international agreements, as well as unilateral practices with regard to assistance.

It was felt useful to provide in the Convention that Contracting States may derogate from it, for example by setting up special language arrangements, or establishing direct communication between local authorities etc.

Chapter II – Final clauses

59. The final clauses, contained in Articles 17 to 23 (Part II), follow the model final clauses for conventions and agreements elaborated within the Council of Europe, save for Article 18 which deals with revision of the Convention.

60. In view of the important innovations which this Convention introduces into the field of mutual assistance in administrative matters, it was considered appropriate to include a revision clause in order to allow Contracting States, in the course of a consultation organised at the Council of Europe, to assess its application on the basis of the practical experience acquired in the meantime. On this occasion, particular attention should be given to the advisability of consolidating certain provisions – especially those relating to the scope – which have in the present text been worded in a flexible manner, and to adding any further improvements which may be necessary.