

ESTONIA

LEGAL BASIS

1. **Has your State signed and/or ratified the European Convention on State Immunity (1972) and/or the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)? Do the authorities of your State consider the provisions on these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?**

On 30 March 2006 Estonia signed the United Nations Convention on Jurisdictional Immunity of States and Their Property (2004), but has not yet ratified it (but intends to do so).

Estonia has not signed the 1972 European Convention on State Immunity.

In principle, Estonia considers the provisions of the aforementioned treaties as a codification of customary International law.

Besides bilateral treaties, Estonia is a party to the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

In relation to EU member states, Estonia applies:

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Service of Documents);

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters;

Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 Establishing a European Small Claims Procedure.

2. **Please provide information on:**

- a. **National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).**

In Estonia, service of procedural documents is regulated by Chapter 33 of the Code of Civil Procedure (available via <https://www.riigiteataja.ee/en/eli/506022018001/consolide>). However, the Code does not include any special sections explicitly on the service of official documents on foreign States or international organizations enjoying privileges and immunities under international law.

- b. **Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.**

The lawfulness of the service of process is reviewed by Estonian courts on the basis of relevant rules on civil procedure. Estonia does not have any case-law or relevant practice of the courts concerning service of process on foreign States.

PROCEDURE

3. **Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed**

to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.

Estonia is of the view that the service of legal documents is a governmental act performed in the exercise of sovereign authority. As a consequence, in the absence of applicable international agreements and rules deriving from such agreements or unilateral Estonian acts authorizing such service, Estonia regards the direct service of foreign legal documents in its territory by foreign authorities or by private individuals without the assistance or explicit or implicit consent of the competent Estonian authorities as an infringement of its sovereignty. Therefore, service of foreign legal documents in Estonia has to be effected through diplomatic channels, i.e. via Ministry of Foreign Affairs.

In accordance with Article 22 of the United Nations Convention on Jurisdictional Immunity of States and Their Property, in the absence of international agreements or special arrangements, a service of notices must be transmitted through diplomatic channels to the Ministry of Foreign Affairs of the State concerned. Estonia recognizes that Article 22 does not preclude other arrangements that may be acceptable to the defendant State (e.g when the diplomatic mission of the defendant State agrees to accept the relevant documentation from the process server).

Accordingly, service of documents is deemed to have been effected by their receipt by the Ministry of Foreign Affairs.

Specific procedural rules are provided for in the Code of Civil Procedure. According to Articles 32 and 33 of the Code of Civil Procedure, an Estonian translation of foreign documents that are served to Estonia, is required. Service that is not effected in accordance with the above legal rules and procedures is to be considered contrary to and therefore not effective under Estonian law. The consequences of the unlawfulness of the service of process will be determined by the court according to the procedural laws applicable in a particular case.

The documents to be served are transmitted through the Estonian embassy in the defendant State to that State's Ministry of Foreign Affairs (through diplomatic channels). The documents will be accompanied by a translation and will be handed over along with a verbal note requesting a written confirmation once process has been served to the competent authority. Where this confirmation is given by the defendant State's Ministry of Foreign Affairs or where it is the defendant State's practice to deem service to be effected upon receipt by its Ministry of Foreign Affairs, the Estonian embassy will issue a certificate of service for presentation to the court (in accordance with art 316 of the Code of Civil Procedure). Where service of process is expressly refused, the embassy will, instead, issue a certificate confirming that service has failed. Where the defendant State does not respond, the embassy will repeat its request for service. As a last resort, the embassy will inform the defendant State that service may be effected by publication in accordance with the national laws of Estonia (in accordance with art 317 of the Code of Civil Procedure).

- a. How are the terms "diplomatic channels" (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.**

"Diplomatic channels" are interpreted as communication between Ministries of Foreign Affairs and diplomatic missions. Service through diplomatic channels is understood to have been realized in any case by the receipt of documents by the defendant State's Ministry of Foreign Affairs. A notification to the embassy of the defendant state in the state of the forum is not foreseen.

b. How are the terms “if necessary” (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?

There is currently no case law or practice relating to the interpretation of the Articles referred to. However, the Estonian authorities understand the terms “if necessary” as referring to the official language of the state of the forum. In Estonia, it is therefore necessary to provide an Estonian language translation if the original documents have not already been drafted in the Estonian language.

4. Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.

Estonia does not have such case-law, however, in principle due to Article 22 of the 1961 Vienna Convention on Diplomatic Relations and the inviolability of the premises of missions, Estonia does not accept the service to its embassy in the State of forum. The service of process is deemed to be effective after the Ministry of Foreign Affairs has acknowledged receipt of it. However, it cannot be excluded that different arrangements may apply, depending on the situation.