

Questionnaire to assess the practical difficulties in accessing the content of foreign law and the need for the development of a global instrument in this area

Identification

Name of the Member State: Estonia

For follow-up purposes

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Part I – General Questions

Please answer the following general questions with regard to the *European Convention of 7 June 1968 on Information on Foreign Law* (the “London Convention”), the *Inter-American Convention of 8 May 1979 on Proof of and Information on Foreign Law* (the “Montevideo Convention”), the *Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters* (the “Minsk Convention”) and any bilateral treaty on proof of and / or information on foreign law (“bilateral treaty”).

In this Questionnaire, the term “foreign law” encompasses both foreign internal (substantive) law and foreign private international law.

- 1) Is your State Party to:
- | | | | |
|----|---------------------------|---|---|
| a) | The London Convention | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| b) | The Montevideo Convention | <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |
| c) | The Minsk Convention | <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |
| d) | Any bilateral treaty | <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO (Please indicate the number of bilateral treaties concluded: there exist bilateral treaties between Estonia and 5 other countries) |
- 2) If not, does your State intend to become in the near future a Party to:
- | | | | |
|----|----------------------------------|------------------------------|--|
| a) | The London Convention | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| b) | The Montevideo Convention | <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |
| c) | The Minsk Convention | <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |
| d) | or conclude any bilateral treaty | <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |

3) Please indicate (if applicable) the number of requests received in 2006 and the average number of weeks taken to respond to the requests under:

a) The London Convention	No of requests:	No of weeks:
b) The Montevideo Convention	No of requests:	No of weeks:
c) The Minsk Convention	No of requests:	No of weeks:
d) Any bilateral treaty	No of requests: 15	No of weeks: 4

Most of the cases the inquiries from abroad regarding Estonian law and legal system will be sent unofficially via e-mail. The answers will be provided also via e-mail in relatively short notice. These requests are sent by foreign state authorities and privates either directly or through Estonian representations abroad. The frequency of that kind of requests in the Estonian Ministry of Justice varies, but the average could be estimated approximately at least 2 per week.

4) Please indicate (if applicable) the number of requests that emanated from the judicial authorities in your State in 2006 and the average number of weeks taken to respond to these requests under:

a) The London Convention	No of requests: 10	No of weeks: 2-8
b) The Montevideo Convention	No of requests:	No of weeks:
c) The Minsk Convention	No of requests:	No of weeks:
d) Any bilateral treaty	No of requests: 15	No of weeks: 8

As mentioned above, the correspondence regarding content of foreign law and legal system will mostly take place directly between various state authorities from different countries via e-mail.

- 5) Do you foresee an increase in the number of requests referred to in:
- a) Question No 3 (incoming requests) [] YES [x] NO
 - b) Question No 4 (outgoing requests)? [] YES [x] NO

Lots of information (e.g. legal texts) is already available electronically via internet. As far as our experience shows application of foreign law in court is rather rare case in Estonia as well as abroad. On the other hand more general information regarding different legal systems is needed because of the increasing cross-border communication. More people have connections to Estonia one or another way: they own or inherit property here; they have married Estonian residents etc and *vice versa*.

- 6) If so, in which areas of the law? Please specify for each of the sub-questions:
- a)
 - b)

7) Please indicate, if applicable, in bullet form to what extent you are satisfied with the instruments referred to in Question No 1:

The instruments are satisfying in case official inquiry is required. Depending on the country having answers can be rather timeconsuming.

- 8) Please indicate, if applicable, in bullet form any shortcomings of these instruments:

The instruments are satisfying in case official inquiry is required. Depending on the country having answers can be rather timeconsuming.

Part II – Free public access to information on the content of the law

- 9) Does your State and / or Regional Economic Integration Organisation ("REIO") provide online access to its legislation through an official (governmental) website?

[x] YES. Please specify whether this information is also provided in a non-official language and,

if so, in which language(s):

Most of the Estonian legal texts are also available online in English, however the translations are not official and it is not guaranteed, that all the recent updates are included.

NO. Does another, non-governmental body or organisation provide this information online (please specify which organisation or body)?

10) Does your State and / or REIO respond to written or oral requests for information on the content and / or application of its law? 7

YES. The information regarding legal texts and content of law can be delivered to the persons accordingly to the Public information act and Response to Memoranda and Requests for Explanations Act.

The public authorities are obliged at the request of the person to present or in case the law requires so publish materials concerning performing their duties (e.g sending the requested legal text or case law). Governmental authorities, rural municipality district and city district governments, and rural municipality and city agencies shall provide explanations, free of charge, concerning legislation and drafts prepared by such agencies and bodies, legislation which is the basis for operation thereof, and their competence. Obligation to give that kind of information does not involve providing legal aid on terms of particular case (e.g. giving legal evaluation of the situation).

Please specify for which areas of the law: family law, civil procedural law, property relations.

NO. Does another, non-governmental body or organisation provide this service (please specify which organisation or body)?

11) Are the services in Question No 10 available to people in other States?

YES. Is this service offered in any non-official language and, if so, in which?

NO

There are no restrictions connected with origination of applicants. In case the request for information is not in Estonian, it is possible to request a translation. In practice answers are also delivered in English.

12) If yes, do people in other States have access to this service at the same costs as residents?

YES

NO

13) Do you foresee the proportion of people in other States using these services increase in the future?

YES

NO

Please specify:

Part III – Access to information on the content of foreign law at the litigation stage

14) Please indicate, where possible, a rough estimate of the percentage of civil and commercial law cases heard by the judicial authorities of your State in 2006 which required the application of foreign law and whether this percentage is likely to increase. If no estimate can be obtained for 2006, please refer to another year. Percentage: ____% (year: ____).

Likely to increase: YES NO

There is no statistical data of this kind available.

15) Please indicate, if possible, the most common areas of foreign law applied by or invoked before the judicial authorities of your State.

Marriage and nullity of marriage

Divorce and legal separations

- Parental responsibility
- Parent-child relationship
- International child protection including child abduction and child adoption
- Protection of adults
- Maintenance (child support and other forms of family support)
- Traffic accidents
- Products liability
- Other types of tort
- Consumer protection
- Commercial contracts
- Sale of goods
- Securities transactions
- Property
- Inheritance
- Bankruptcy
- Choice of court agreements
- Other, please specify:

There is no statistical data of this kind available.

16) Please identify, if possible, the States whose laws are most frequently applied by or invoked before judicial authorities in your State:

There is no statistical data of this kind available.

17) In your State, a judicial authority ascertains foreign law (check more than one box if applicable):

- a) *ex officio* without the assistance of an expert (e.g. law firm, specialised institute, university, government (i.e. specialised department or embassy), etc.)
- b) *ex officio* with the assistance of an expert
- c) by submitting, *ex officio*, a request for information under a bilateral or multilateral treaty (where applicable)
- d) as the result of an (express) agreement of all parties, without the assistance of an expert
- e) as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- f) as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by all parties
- g) by submitting, as the result of an (express) agreement of all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- h) at the request of a party (without the objection of the other or another party) or all parties, without the assistance of an expert
- i) at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- j) at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by one or all parties
- k) by submitting, at the request of a party (without the objection of the other or another party) or all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- l) by any other method (please specify): the court may use all possible sources of information to clarify and ascertain the content and application of foreign law.

If according to an act, international agreement or transaction a foreign law is to be applied, the court shall apply such law regardless of whether or not application of the law is requested. The content of a foreign law to be applied shall be ascertained by the court conducting the proceeding. It is general principle that the court conducting the proceeding is not bound by the opinions and requests of the

parties regarding application of foreign law. The court is free to choose the methods of clarifying and verifying the content of foreign law. The court has the right to request the assistance of the parties. The parties have the right to submit documents to the court for ascertainment of the content of a foreign law. The court is not required to act pursuant to the documents submitted by the parties. Courts have the right to request assistance from the Ministry of Justice or the Ministry of Foreign Affairs of the Republic of Estonia. In order to ascertain the foreign law, the court may ask the opinion of an expert in legal matters. The court may do so at the request of a participant in the proceeding or at its own initiative. The court considers the opinions of the parties in the appointment of an expert. If the parties agree on an expert, the court appoints such person as expert if he or she may act in the capacity of an expert pursuant to law. The court may appoint additional experts or substitute appointed experts. The court may also use other sources of information and perform other acts to ascertain the law. The court is bound by the opinion provided by a qualified person appointed by agreement of the parties, only if the dispute is related to an agreement entered into in the course of the economic or professional activity of both parties, and no circumstances exist for removing the qualified person acting as an expert from the proceeding, and the qualified person was appointed according to an agreement without giving any preference to either of the parties, and the opinion of the qualified person is obviously not incorrect.

18) Please rank in order of priority (1 being the highest) the sources consulted by judicial authorities in your State to ascertain the content of foreign law under any of the methods described in a), d) and h) of Question No 17:

- Internet (official legislation, case-law and legal publications websites)
- Internet (legislation, case-law and legal publications from private databases (as opposed to official databases)
- Local or personal library (local electronic databases)
- Local or personal library (printed legislation, case-law and legal publications)
- Other:

There is no data of this kind available to us.

19) Please explain whether and, if so, how the judicial authorities in your State verify the reliability and / or authenticity of these sources and the information provided therein:

It lies on the discretion of the court and there are no guidelines regarding this question. The court may require (additional) documents to ascertain the content of foreign law, but the court is not required to act pursuant to the documents submitted by the parties. The court may require (additional) information as described in Question No 17).

20) Where these sources and the information provided therein are not available in a language understood by the judicial authority, please describe the mechanisms used to address this difficulty.

Description: the court may require assistance from the parties e.g additional documents regarding foreign law and/or the translation of documents. The court may arrange the necessary translation.

21) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of your State? In the case of a specialised institute, does it need to meet certain requirements?

- YES
- NO

There are no explicit rules governing this matter. According to the Code of Civil Procedure an expert assessment can be carried out by (in addition to the forensic expert or other qualified person employed by a state forensic institution or officially certified expert¹) another person with specific expertise appointed by the court. It is up to the court to decide whether a person has knowledge and experience necessary to provide an opinion.

¹ In Estonia there are no certified experts in this area and no specialised institutions.

22) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of the State whose laws are being ascertained? In the case of a specialised institute, does it need to meet certain requirements?

- YES
 NO

There are no explicit rules governing this matter. According to the Code of Civil Procedure an expert assessment can be carried out by (in addition to the forensic expert or other qualified person employed by a state forensic institution or officially certified expert) another person with specific expertise appointed by the court. It is up to the court to decide whether a person has knowledge and experience necessary to provide an opinion.

23) Please specify which individuals and / or institutions may provide expertise under any of the methods described in b), e) and i) of Question No 17:

- a) Local private expert (e.g. law professor, lawyer and / or jurist in private practice)
 YES NO
- b) Foreign private expert (e.g. law professor, lawyer and / or jurist in private practice)
 YES NO
- c) Local specialised institute
 YES NO
- d) Foreign specialised institute
 YES NO
- e) Local government (including embassies abroad)
 YES NO
- f) Foreign government (including embassy in your State)
 YES NO
- g) Member of the local judicial authority
 YES NO
- h) Member of a foreign judicial authority
 YES NO
- i) Other(s):
- j) Which of the above is most often used?

24) Please indicate who bears the costs of the expertise provided under any of the methods described in b), e) and i) of Question No 17:

- The requesting judicial authority
 The party that raised the application of foreign law
 The party(ies) against whom costs will be awarded
 All parties
 Other:

25) Would your answers to Questions Nos 21-24 be the same for the expert referred to under f) and j) of Question No 17?

- YES
 NO, please explain:

26) Please describe, if possible, the common characteristics of requests for information on foreign law submitted under any of the methods described in c), g) and k) of Question No 17: The type of question asked; who most frequently asks questions (e.g., parties with too little or no resources to afford an expert); the reasons why questions are asked (e.g., no material available in a language understood by the judicial authority seized of the matter); etc. Description:

There is no data of this kind available to us.

27) Please indicate whether judicial authorities in your State can transmit the request for information

directly to a receiving agency in the State addressed under any of the methods described in c), g) and k) of Question No 17?

YES

NO, please explain:

It is not forbidden. Preferably it should be done through the Ministry of Justice or through the Ministry of Foreign Affairs.

28) If so, can the request be transmitted by regular non-secured e-mail?

YES

NO, please explain: