

4.

The following Questionnaire addressed to the Members of the Organisation has been prepared for that purpose. Conscious of the short delay to respond to this Questionnaire, the Permanent Bureau invites Members of the Organisation to bring to the attention of their judicial authorities Questions Nos 15 to 28.

The Permanent Bureau would very much appreciate receiving your answers (in either English or French) **before 11 January 2008** in order to have sufficient time to prepare, before the end of February 2008, a Report summarising the results of this consultation for the attention of the Council of early April 2008. Answers should be sent by e-mail to <[secretariat@hcch.net](mailto:secretariat@hcch.net)> with the following heading and indication in the subject field: "Questionnaire concerning the Treatment of Foreign Law – [name of the Member of the Organisation]". Your cooperation in responding to this Questionnaire is very much appreciated.

**Identification**

**Name of the Member State:** \_\_\_\_\_ **SPAIN**

**For follow-up purposes**

Name of contact person: \_\_\_\_\_

Telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

## 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 <sup>8</sup>     | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO            |
| b) The Montevideo Convention <sup>9</sup> | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO            |
| c) The Minsk Convention <sup>10</sup>     | <input type="checkbox"/> YES            | <input checked="" type="checkbox"/> NO |
| d) Any bilateral treaty                   | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO            |

(Please indicate the number of bilateral treaties concluded: 7)

***Seven of mutual legal assistance, with 2 articles on Information on Foreign Law***

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 <sup>9</sup> | <input type="checkbox"/> YES | <input type="checkbox"/> NO            |
| c) The Minsk Convention <sup>10</sup>     | <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |
| d) or concluded any bilateral treaty      | <input type="checkbox"/> YES | <input 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: <b><u>178</u></b> | No of weeks: <b><u>1 to 3</u></b> |
| b) The Montevideo Convention | No of requests: <b><u>35</u></b>  | No of weeks: <u>      </u>        |
| c) The Minsk Convention      | No of requests: <u>      </u>     | No of weeks: <u>      </u>        |
| d) Any bilateral treaty      | No of requests: <b><u>18</u></b>  | No of weeks: <u>      </u>        |

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: <b><u>53</u></b> | No of weeks: <b><u>3 or 4</u></b> |
| b) The Montevideo Convention | No of requests: <b><u>4</u></b>  | No of weeks: <u>      </u>        |
| c) The Minsk Convention      | No of requests: <u>      </u>    | No of weeks: <u>      </u>        |
| d) Any bilateral treaty      | No of requests: <b><u>2</u></b>  | No of weeks: <u>      </u>        |

<sup>8</sup> This Convention is not restricted to Member States of the Council of Europe (Art. 18). See Prel. Doc. No 21 C, *supra*, note 2, for the text of that Convention.

<sup>9</sup> This Convention is not restricted to Member States of the Organisation of American States (Art. 13). See Prel. Doc. No 21 C, *supra*, note 2, for the text of that Convention.

<sup>10</sup> The Minsk Convention states in Art. 15 that “[t]he central judicial authorities of the Contracting States shall provide one another upon request with information about the internal legislation in effect or which was in effect on their territories and about the practices of its application by the judicial authorities”. This Convention is not restricted to Member States of the Commonwealth of Independent States (Art. 86). The text of the Minsk Convention can be found in Prel. Doc. No 27 of April 2005, “The Relationship between the Judgments Project and certain Regional Instruments in the arena of the Commonwealth of Independent States”, prepared by E. Gerasimchuk for the Permanent Bureau, for the attention of the Twentieth Session of June 2005 on Jurisdiction, Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Ann. II. This document is available at: < www.hcch.net >, under “Conventions”, then “Convention No 37”, and “Preliminary Documents”.

- 5) Do you foresee an increase in the number of requests referred to in:
- a) Question No 3 (incoming requests)
    - YES
    - NO
  - b) Question No 4 (outgoing requests)?
    - YES
    - NO
- 6) If so, in which areas of the law? Please specify for each of the sub-questions:
- a) ***Criminal law, Divorce, Wills***
  - b)
- 7) Please indicate, if applicable, in bullet form to what extent you are satisfied with the instruments referred to in Question No 1:
- 8) Please indicate, if applicable, in bullet form any shortcomings of these instruments:<sup>11</sup>

## **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<sup>12</sup> through an official (governmental) website?
- YES. Please specify whether this information is also provided in a non-official language and, if so, in which language(s):
- European Community***
- 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?<sup>13 14</sup>

***We responde to WRITTEN and oral request for information  
Also the European Judicial NETWORK in civil and commercial matters  
offers information about several themes as parental responsibility,  
maintenance claims, divorce, bankruptcy, compensations to crime  
victims, legal aid, etc.***

<sup>11</sup> A list of Recommendations regarding day-to-day operations of the London Convention can be found in Prel. Doc. No 21 A, *supra*, note 2, Ann. 2, paras 62-63.

<sup>12</sup> In force or which was in force.

<sup>13</sup> In this Part, and questions related thereafter in Part IV, the term “law” encompasses both internal (substantive) law and private international law, including relevant provisions in treaties and Conventions.

<sup>14</sup> The areas could include the following subjects: the legal order in general; organisation of the courts of justice system; organisation of the administrative tribunals system; legal professions; access to justice

YES. Please specify for which areas of the law:  
***Criminal law, Civil Law, Wills, Divorce, etc***

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?  
***Inside the European Community***

NO

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

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:

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

**China, Rumania, Perú, Colombia, Netherlands**

17) In your State, a judicial authority ascertains foreign law (check more than one box if applicable):<sup>15</sup>

- a)  *ex officio* without the assistance of an expert<sup>16</sup> (e.g. law firm, specialised institute,<sup>17</sup> 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):

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:

<sup>15</sup> See Prel. Doc. No 21 A, *supra*, note 2, Ann. 2, paras 4-15, and Prel. Doc. No 21 B, *supra*, note 2, for a description of the status of and mechanisms to access foreign law in a sample of jurisdictions.

<sup>16</sup> In this Questionnaire the term expert is used in its broadest sense; see also Questions Nos 21 to 23 for possible qualifications that may apply.

<sup>17</sup> For example, the Swiss Institute of Comparative Law in Lausanne, the Max Planck Institute in Hamburg, the *Deutsches Notarinstitut* in Germany, the *Internationaal Juridisch Instituut* in The Hague, the CRIDON in France, or any relevant institute / office attached to a University.



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 in Criminal law
- The party that raised the application of foreign law in Civil 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:

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

- YES

**Part IV – Future development of an instrument and / or mechanisms to access information on the content of foreign law**

29) In the light of your answers to this Questionnaire, are you of the view that the Hague Conference should develop a global instrument and / or mechanisms to access information on the content of foreign law?

YES

NO

Please explain: ***Spain considers opportune to initiate the Conference's works on this issue. It would facilitate the proof of foreign law in judicial and extra-judicial procedures***

30) If the Hague Conference were to develop a global instrument to access information on the content of foreign law:

a) Would you be in favour of a flexible instrument in particular with respect to:

i) the availability of several channels through which information on foreign law can be sought and in relation to experts from whom information can be obtained?

YES

NO

Please explain: ***Spain is in favour of a practical instrument for this question in particular***

ii) the use that may be made of each such channel and expert?

YES

NO

Please explain: ***Several circuits of information could exist, such as lawyer reports, specially lawyers at the service of the Administration, or notaries in the field of their respective specialties not excluding other professionals***

iii) the availability of information technologies to ensure a speedy process of the requests and to alleviate language barriers?

YES

NO

Please explain: ***New technologies can assure a quick process of claims and allow lessening linguistic barriers. To do so, legal data bases can be created through official webs, as an element that facilitates the proof***

b) Should the information received provide an objective and general description of the law in the foreign State, including references to relevant case-law (as opposed to a specific answer as to how the foreign law should be applied to the issue(s) at stake)?

YES

NO, please explain: ***In Spain there is a legal system linked to written law in which the case law has a complementary function to sources of Law and implementation of norms. Furthermore the General Council of the Judiciary provides in open webs the search of judgments having the nature of legal doctrine (two judgments of the Supreme Court on the same matter)***

c) Should the information received be non-binding (as opposed to binding)?

YES

NO, please explain: ***Information received has not to be, at least in a first phase of the future instrument, constricted, because only the judge or of another person executing Law can admit a second evidence from the party which can be prejudiced for this information***



- d) Should this instrument and / or these mechanisms be general in order to permit access to different areas of foreign law (as opposed to being limited to certain area(s) of the law)?
- YES
- NO, please explain:

33) If information on the content of the law of your State were to be made available worldwide in either of the forms mentioned in Questions Nos 31 and 32, please identify for which of the following subjects it would be most valuable?

- Legal order in general
- Organisation of the courts of justice system
- Organisation of the administrative tribunals system
- Legal professions
- Access to justice including legal aid
- Jurisdiction of the courts / administrative tribunals
- Bringing a case to a court / an administrative tribunal
- Alternative dispute resolutions
- Procedural time limits
- Applicable law
- Service of documents
- Taking of evidence and modes of proof
- Interim measures and precautionary measures
- Enforcement of judgments
- Simplified and accelerated procedures
- 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
- Secured interests
- Inheritance
- Bankruptcy
- Legalisation and / or certification of documents
- Notarial acts or certificates
- Other, please specify: ***For the reasons stated above the legal system in general should be object of proof.***

