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**ÉTUDE DE FAISABILITÉ SUR L'ADMINISTRATION DU DROIT ÉTRANGER  
QUESTIONNAIRE**

*préparé par le Bureau Permanent*

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**FEASIBILITY STUDY ON THE TREATMENT OF FOREIGN LAW  
QUESTIONNAIRE**

*drawn up by the Permanent Bureau  
Document préliminaire No 25 d'octobre 2007  
à l'intention du Conseil d'avril 2008  
sur les affaires générales et la politique de la Conférence  
Preliminary Document No 25 of October 2007  
for the attention of the Council of April 2008  
on General Affairs and Policy of the Conference*

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## **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**

#### **Introduction**

In April 2006, the then Special Commission (now called Council) on General Affairs and Policy of the Hague Conference on Private International Law (the "Hague Conference") invited the Permanent Bureau to prepare a feasibility study on the development of a new instrument for cross-border co-operation concerning the treatment of foreign law.<sup>1</sup>

With a view to beginning the assessment of the need for such an instrument, the Permanent Bureau organised a meeting of experts in this area with either a commercial law or family law perspective. This meeting took place on 23-24 February 2007. In preparation for the meeting, the experts were provided with a succinct analysis document drawn up by the Permanent Bureau. At the meeting, the experts were also provided with summary tables on the status of and access to foreign law in a sample of jurisdictions and a sample of legal norms in relation to the treatment of foreign law. A Report on the meeting was prepared for the attention of the Council of April 2007.<sup>2</sup> The experts emphasised "that there should be no attempt to comprehensively harmonise the different approaches to the treatment of foreign law, as there is no need or likelihood of success for harmonisation."<sup>3</sup> The experts acknowledged, however, "that there is clearly a need to facilitate access to foreign law" and "supported the Permanent Bureau's continued work in the area."<sup>4</sup> The meeting concluded that further work was required in order to reach an affirmative or negative answer regarding the feasibility of establishing an efficient and effective instrument under the auspices of the Hague Conference. In particular, the experts suggested that a Questionnaire be prepared as part of a more elaborate scientific study.<sup>5</sup>

At its April 2007 meeting, the Council invited the Permanent Bureau to develop a Questionnaire, as suggested by the meeting of experts, with a view to identifying practical difficulties in accessing the content of foreign law and determining the areas of foreign law for which information is required.<sup>6</sup> This questionnaire would also invite Members to comment on the models suggested in the Report on the meeting of experts and their possible implementation.<sup>7</sup> Finally, the questionnaire should seek to identify in particular whether there is a practical need for the development of such an instrument.

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: REPUBLIC OF CROATIA**

#### **For follow-up purposes**

Name of contact person: Ms. Vesna Merlić, Ministry of Justice of the Republic of Croatia

Telephone number: 00 385 1 3710 718

E-mail address: Vesna.Merlic@pravosudje.hr

## 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 Conventions<sup>8</sup>  YES  NO
- b) The Montevideo Convention<sup>9</sup>  YES  NO
- c) The Minsk Convention<sup>10</sup>  YES  NO
- d) Any bilateral treaty  YES  NO

(Please indicate the number of bilateral treaties concluded: \_\_\_\_)

2) If not, does your State intend to become in the near future a Party to:

- a) The London Convention  YES  NO
- b) The Montevideo Convention  YES  NO
- c) The Minsk Convention  YES  NO
- d) or conclude any bilateral treaty  YES  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: \_\_\_\_ No of weeks: \_\_\_\_

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: \_\_\_\_ 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: \_\_\_\_ No of weeks: \_\_\_\_

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)
- 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:

## **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):

THIS INFORMATION IS NOT PROVIDED IN NON-OFFICIAL LANGUAGES.

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?

YES. Please specify for which areas of the law:

The Ministry of Justice responds to requests for information on the following: access to justice including legal aid; jurisdiction of the courts; bringing a case to a court; procedural time limits; applicable law; service of documents; taking of evidence and modes of proof; enforcement of judgments; divorce and legal separations; parental responsibility; parent-child relationship; international child protection including child abduction and child adoption; maintenance (child support and other forms of family support); traffic accidents; other types of torts; commercial contracts; sale of goods; property; inheritance; bankruptcy; choice of court agreements; and legalisation and/or certification of documents.

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?

Responses are only given in the Croatian language

NO

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

YES

THIS SERVICE IS FREE OF CHARGE.

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 litigationstage**

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:

\_1\_ %

(year: 2006). 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: maritime law

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

AUSTRIA, GERMANY, SLOVENIA, BOSNIA AND HERZEGOVINA, ITALY,  
CANADA, SERBIA, USA,  
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND –  
IN MARITIME LAW

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<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)  [X ] 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)  [X ] by any other method (please specify):

Parties may submit a public deed on the content of foreign law

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:

[1 ] Internet (official legislation, case-law and legal publications websites)

[3 ] Internet (legislation, case-law and legal publications from private databases (as opposed to official databases))

[4 ] Local or personal library (local electronic databases)

[2 ] Local or personal library (printed legislation, case-law and legal publications)

[5 ] Other: Public deeds on the content of foreign law submitted by parties

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:

If the parties dispute the content of foreign law, the court will request through official channels a note on the content of the foreign law through the Ministry of Justice, which will request a note on the content of foreign law through diplomatic channels from the competent body.

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:

1. TRANSLATION OF THE TEXT BY A CERTIFIED COURT INTERPRETER FOR THE RELEVANT LANGUAGE
2. TRANSLATION PROVIDED BY A PARTY, IF THE OTHER PARTY SO AGREES

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?

[X] YES

It must be a reputable institute specialized in the legal field for which the note on the content of foreign law is requested.

[ ] NO

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

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

Other(s):

A request to the Ministry of Justice for information on the content of foreign law from the competent foreign body through the Ministry of Foreign Affairs by diplomatic channels or through a foreign Ministry of Justice (through the line department)

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: THESE COSTS ARE COVERED FROM THE STATE BUDGET OF THE REPUBLIC OF CROATIA, BECAUSE THE CONTENT OF FOREIGN LAW IS requested by the judicial bodies financed from the State Budget.

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:

1. Information on parties and a brief description on the legal grounds of the case.

2. Type of question: the title of the legal source and the text of the legal source.
3. Questions are asked by the judicial body, which can also be upon a motion by a party.
4. The reasons: a lack of information on the content of foreign law.
5. If there is information on the content of foreign law, and this information is in a foreign language, a translation is requested.

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 If this is in line with international agreements.

NO, please explain: If this is not stipulated by an international agreement, the request is sent through diplomatic channels.

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

YES

NO, please explain:

NO DIRECT CONTACT MAY BE MADE

#### **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

1. BY MEANS OF ESTABLISHING A BODY IN CHARGE OF MONITORING AND THE PROVISION OF INFORMATION
2. BY LAUNCHING AN INTERNET PAGE CONTAINING A LIST OF AUTHORITIES IN MEMBER STATES THAT ARE AUTHORISED TO PROVIDE INFORMATION ON FOREIGN LAW

NO Please explain:

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 This would speed up the course of the proceedings and contribute to a reduction in the costs of the proceedings.

Please explain:

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

YES

OFFERS VARIOUS OPTIONS DEPENDING ON THE CIRCUMSTANCES OF EACH PARTICULAR CASE

NO

Please explain:

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



YES

NO

Please explain:

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

THE APPLICATION OF LAW IS PART OF ADMINISTRATION OF JUSTICE, AND ADMINISTRATION OF JUSTICE MUST REMAIN WITHIN THE PURVIEW OF THE JUDGE.

NO, please explain:

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

YES

NO, please explain:

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

In complex cases it is necessary to have information on the content of different areas of law.

NO, please explain:

e) Should this instrument and / or these mechanisms contain provisions on legal assistance to accommodate individuals with little or no resources?

YES

NO, please explain:

f) Should this instrument and / or these mechanisms be extended to notaries and other professionals who need to have access to the content of foreign law in contexts other than litigation (*e.g.* in relation to successions)?

YES

THEY SHOULD BE ALLOWED ACCESS TO INFORMATION ON THE CONTENT OF FOREIGN LAW IF, UNDER THE INTERNAL LEGISLATION, THEY HAVE BEEN DELEGATED THE AUTHORITY TO PASS DECISIONS ON MERITS.

ALL BODIES PERFORMING PUBLIC SERVICE FUNCTIONS MUST HAVE ACCESS TO INFORMATION ON FOREIGN LAW (PROPER ADMINISTRATION)

NO, please explain:

31) If this is not yet the case for your State / REIO, are you of the opinion that it would be useful to make information on the content of the law of your State / REIO available online in a central database?

YES

THIS WOULD SAVE TIME AND MONEY AND FACILITATE THE EXERCISE OF THE RIGHT OF ACCESS TO COURT

NO

Please explain.

32) Are you of the opinion that it would be useful to have information on the content of the law of your State / REIO available online in a standard electronic format (*e.g.* in the form of country profiles that are based on a pre-established, harmonised structure) available in English and French (or other language(s)) in addition to its language of origin?

YES

ACCURATE AND AVAILABLE INFORMATION ON THE CONTENT OF LAW WOULD, FOR A START, REDUCE THE NUMBER OF DISPUTES BECAUSE THE OUTCOME OF THE DISPUTE WOULD BE LESS UNCERTAIN FOR THE PARTY. THE USE OF ENGLISH AND FRENCH WOULD BE USEFUL AND NECESSARY, IN VIEW OF THE EXTENT OF USAGE OF THESE LANGUAGES

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

Bringing a case to a court

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:

34) Are you of the opinion that the instrument identified under Question No 29 should be developed in combination with either of the instruments described under *Questions Nos 31 and 32*?

YES

The availability of information on line makes data accessible at any time from anywhere in the world.

NO

Please explain.

35) Other comments on the models proposed in Preliminary Document No 21 A, any other model, or on a possible future instrument in this field: