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NOTE VERBALE - 247 -

The Embassy of Italy presents its compliments to the Permanent Bureau of the Hague Conference on Private International Law and, with reference to the "Feasibility study on the treatment of foreign law", has the honour to forward the Questionnaire (Preliminary Document No. 25), duly filled in by the competent authority.

The Embassy of Italy avails itself of this opportunity to renew to the Permanent Bureau of the Hague Conference on Private International Law the expression of its highest consideration.

The Hague, 5. 2. 2008



Permanent Bureau -
The Hague Conference on Private
International Law

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No. 27042		REÇUE	7 FEB 2008
RÉPONDUE		No.	
DOSSIER B.OI.A.15.B			
Faisabilité - droit étr.			

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 ⁸ | <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| b) | The Montevideo Convention ⁹ | <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |
| c) | The Minsk Convention ¹⁰ | <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: ____)

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 type="checkbox"/> NO |
| c) | The Minsk Convention | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| d) | or conclude any bilateral treaty | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

ANSWER NOT AVAILABLE

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: 25 | 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: 38 | 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: / ____ |

⁸ 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.

⁹ 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.

¹⁰ 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:
- Question No 3 (incoming requests)
☐ YES
☒ NO
 - Question No 4 (outgoing requests)?
☐ YES
☒ NO
- 6) If so, in which areas of the law? Please specify for each of the sub-questions:
- -
- 7) Please indicate, if applicable, in bullet form to what extent you are satisfied with the instruments referred to in Question No 1: ANSWER NOT AVAILABLE
- 8) Please indicate, if applicable, in bullet form any shortcomings of these instruments:¹¹ ANSWER NOT AVAILABLE

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 legislation¹² 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):
- ☐ 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?^{13 14}
 Yes, but only in the context of the judicial cooperation field.

¹ 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.

² In force or which was in force.

³ 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.

⁴ 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 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 torts; consumer protection; commercial contracts; sale of goods; securities transactions; property; secured interests; inheritance; bankruptcy; choice of court agreements; or legalisation and / or certification of documents.

☒ YES. Please specify for which areas of the law: ANY AREAS

☐ 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

- 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:
ANSWER NOT AVAILABLE

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:

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

- a) ☐ *ex officio* without the assistance of an expert¹⁶ (e.g. law firm, specialised institute,¹⁷ 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:

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

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:

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:

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

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

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:

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:

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

- ☐ YES ☐ NO, please explain: