



Access to Foreign Law in Civil and Commercial Matters

Conclusions and Recommendations

From 15 to 17 February 2012, at a conference organised jointly by the European Commission and the Hague Conference on Private International Law, experts from Albania, Australia, Belgium, Canada, China, Croatia, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, India, Japan, Kenya, Latvia, Lithuania, Malta, Mexico, the Netherlands, Oman, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States of America, Venezuela, the United Nations, the International Monetary Fund, the World Bank Group, the Commonwealth Secretariat, the International Organisation of la Francophonie, the League of Arab States, the European Parliament, the European Commission, the International Bar Association – Arbitration Committee, the International Union of Notaries, the American Association of Private International Law, the Council of the Notariats of the European Union, the European Group on Private International Law, the Uniform Law Commission, the American Bar Association Section of International Law, the Max Planck Institute for Comparative and International Private Law, the Swiss Institute of Comparative Law, the Free Access to Law Movement, as well as the Permanent Bureau of the Hague Conference on Private International Law, met in Brussels, Belgium, to discuss access to foreign law in civil and commercial matters.

The joint conference unanimously reached the following conclusions and made the following recommendations:

1. The conference emphasises the increasing need in practice to facilitate access to foreign law, in many areas of the law such as in family law, the law of succession and commercial law, as a result of, among other things, globalisation and the cross-border movement of persons, goods, services and investments.
2. The conference stresses the need for, and the advantages of, co-operative mechanisms to be developed at the global level to facilitate access to foreign law.
3. The conference agrees that access to foreign law is an important component of access to justice, strengthens the rule of law, and is fundamental to the proper administration of justice.

4. The conference confirms that any global instrument in this field should focus on the facilitation of access to foreign law and should not attempt to harmonise the status of foreign law in national procedures.
5. Any future instrument in this field should not be exclusive in nature, but rather should be complementary to existing and future mechanisms that also facilitate access to and the treatment and application of foreign law.
6. Any future instrument should contemplate a range of mechanisms to cater to the needs of various actors of different means and resources who are seeking access to foreign law, including judges, legal practitioners, notaries, government officials and the general public, in a variety of circumstances, and should be operational in different legal systems and traditions, and address language barriers. Circumstances may include cross-border litigation and non-contentious matters such as contractual negotiations, estate planning, and family arrangements.
7. The conference recognises the opportunity offered by advances in information technology, with a view to providing effective, cost-efficient and prompt access to foreign law.
8. Mindful of the “Guiding Principles to be Considered in Developing a Future Instrument” (annexed hereto) proposed by the experts group convened by the Hague Conference on Private International Law in October 2008, the conference confirms that States should make available without cost to users legislation and relevant case law online. Such information should be authoritative, up-to-date, and also include access to law previously in force.
9. The conference recognises that additional mechanisms are needed to obtain tailored foreign legal information, for example, the application of the information to specific facts, which may require the interpretation of the relevant law by judges, government officials, foreign law experts or expert institutes.
10. The conference notes initiatives among courts of different States to facilitate the requesting and the receiving of opinions or decisions on foreign law in particular cases and encourages broad dissemination of the terms, the implementing procedures and actual experience with such initiatives.
11. The conference recognises that where in the context of adjudication involving foreign law, an opinion or a decision on the application of that law from a foreign court is requested, procedures should assure the due process rights of the parties.
12. The conference notes initiatives in different States and regions establishing and promoting networks for legal professionals, including judges, which facilitate co-operation and enhance access to foreign law.
13. The conference highlights the value of establishing or improving mechanisms to identify qualified experts or expert institutes to assist with accessing the content of and interpreting foreign law.

14. The conference recognises that tailored foreign legal information, for example, the application of the information to specific facts, which may require the interpretation of the relevant law by judges, government officials, foreign law experts or expert institutes, does not necessarily have to be provided without cost to users, and the provision of such services at a cost may enable better services.

ANNEXE / ANNEX

Guiding Principles to be Considered in Developing a Future Instrument¹

Free access

1. State Parties shall ensure that their legal materials, in particular legislation, court and administrative tribunal decisions and international agreements, are available for free access in an electronic form by any persons, including those in foreign jurisdictions.
2. State Parties are also encouraged to make available for free access relevant historical materials, including preparatory work and legislation that has been amended or repealed, as well as relevant explanatory materials.

Reproducing and re-use

3. State Parties are encouraged to permit and facilitate the reproduction and re-use of legal materials, as referred to in paragraphs 1 and 2, by other bodies, in particular for the purpose of securing free public access to the materials, and to remove any impediments to such reproduction and re-use.

Integrity and authoritativeness

4. State Parties are encouraged to make available authoritative versions of their legal materials provided in electronic form.
5. State Parties are encouraged to take all reasonable measures available to them to ensure that authoritative legal materials can be reproduced or re-used by other bodies with clear indications of their origins and integrity (authoritativeness).
6. State Parties are encouraged to remove obstacles to the admissibility of these materials in their courts.

Preservation

7. State Parties are encouraged to ensure long-term preservation and accessibility of their legal materials referred to in paragraphs 1 and 2 above.

Open formats, metadata and knowledge-based systems

8. State Parties are encouraged to make their legal materials available in open and re-usable formats and with such metadata as available.
9. States Parties are encouraged to cooperate in the development of common standards for metadata applicable to legal materials, particularly those intended to enable and encourage interchange.
10. Where State Parties provide knowledge-based systems assisting in the application or interpretation of their legal materials, they are encouraged to make such systems available for free public access, reproducing and re-use.

¹ Principles developed by the experts which met on 19-21 October 2008 at the invitation of the Permanent Bureau of the Hague Conference on Private International Law as part of its feasibility study on the "access to foreign law" project.

Protection of personal data

11. Online publication of court and administrative tribunal decisions and related material should be in accordance with protection of personal data laws of the State of origin. Where names of parties to decisions need to be protected, the texts of such decisions and related material can be anonymized in order to make them available for free access.

Citations

12. State Parties are encouraged to adopt neutral methods of citation of their legal materials, including methods that are medium-neutral, provider-neutral and internationally consistent.

Translations

13. State Parties are encouraged, where possible, to provide translations of their legislation and other materials, in other languages.
14. Where State Parties do provide such translations, they are encouraged to allow them to be reproduced or re-used by other parties, particularly for free public access.
15. State Parties are encouraged to develop multi-lingual access capacities and to co-operate in the development of such capacities.

Support and co-operation

16. State Parties and re-publishers of their legal materials are encouraged to make those legal materials more accessible through various means of interoperability and networking.
17. State Parties are encouraged to assist in sustaining those organisations that fulfil the above objectives and to assist other State Parties in fulfilling their obligations.
18. State Parties are encouraged to co-operate in fulfilling these obligations.