EUROPEAN CONVENTION ON INFORMATION ON FOREIGN LAW (ETS NO. 62) AND ITS ADDITIONAL PROTOCOL (ETS NO.97)

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Report on the state of play and assessment of implementation of the Convention and its Additional Protocol

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REPORT ON THE STATE OF PLAY AND ASSESSMENT OF IMPLEMENTATION OF THE EUROPEAN CONVENTION ON INFORMATION ON FOREIGN LAW (ETS No. 62) AND ITS ADDITIONAL PROTOCOL (ETS No. 97)

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INTRODUCTION

1. The European Convention on Information on Foreign Law (ETS No. 62) and its Additional Protocol (ETS No. 97) were concluded in 1968 and 1978 respectively. The chief reason for the Council of Europe adopting these texts was the increased movement of persons and goods in Europe and the attendant increase in the number of cases in which, under the rules of conflict of laws, courts were required to apply a principle of foreign law.[1] Whereas the London Convention applies to information on civil and commercial law, civil and commercial procedure and judicial organisation,[2] the Protocol made it possible to extend its scope to information on substantive and procedural law and judicial organisation in the criminal field, including prosecution authorities, as well as the enforcement of penal measures.[3]

2. The intention was, therefore, to create a mechanism for co-operation between States with a view to making it easier for judicial authorities increasingly confronted with this problem to have full knowledge of the foreign law concerned. Facilitating knowledge of foreign law is also an indirect means, as the drafters pointed out themselves, of contributing to greater unity between the Council of Europe's member States.[4]

3. In accordance with its terms of reference (main result 4), the European Committee on Legal Co-operation (CDCJ) agreed at its 95th plenary meeting (4-5 and 23-24 November 2021) to examine the operation and evaluate the implementation of the European Convention in the field of information on the foreign law and its Additional Protocol.

4. To this end, a questionnaire was sent on 6 July 2022 to signatory States and/or parties to the Convention and its Protocol. National authorities of 30 States,[5] including non-signatory[6] or non-member States of the Council of Europe,[7] replied to the questionnaire.

5. This report reviews how the Convention and its Additional Protocol are used in practice within the different States parties. These texts offer considerable benefits, which is why they continue to be implemented effectively (I). However, there are limits and their analysis makes it possible to understand why these mechanisms have not enjoyed greater success (II), in which case action to remedy the situation and pave the way for quantitative and qualitative development of the convention-based solutions should be envisaged (III).

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[1] Explanatory report to the European Convention on Information on Foreign Law, signed in London, 5.VI.1968, No.1.
[2] Art. 1 § 1.
[3] Art. 1.
[4] Preamble to the London Convention.
[5] Austria; Belgium; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Georgia; Germany; Greece; Italy; Lithuania; Malta; Republic of Moldova; Norway; Poland; Portugal; Romania; Slovak Republic; Spain; Sweden; Switzerland; Türkiye and the United Kingdom.
[6] Non-state Party (ETS 62,97) – Andorra; Non-States Parties (ETS 97) - Monaco; Slovenia.
[7] Morocco.

I. BENEFITS OF THE CONVENTION-BASED MECHANISMS

6. Although the texts of the Convention and its Additional Protocol date from long ago, they are still relevant today and there are a number of reasons for this. For one thing, in most States, the competent authorities – chiefly judges – still tend to take an empirical and approximate approach in the absence of a clearly defined and effective method for unilaterally establishing the content of foreign law.[8] Accordingly, there is no miracle solution for achieving this within reasonable timeframes and at little cost. Furthermore, international co-operation within other bodies does not seem so well developed.[9]

i. A broad scope of application

7. Whilst the EU Council decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (2001/470/EC) introduced a mechanism comparable to the one set up by the London Convention and its Additional Protocol, its scope is nonetheless more restricted than that of the texts adopted under the aegis of the Council of Europe, in two respects. Firstly, the mechanisms introduced by the decision cover only civil and commercial matters and not criminal cases. Secondly, in geographical terms they obviously concern only European Union Member States whereas the London Convention is currently in force in 47 States (including five non-member States)[10] and the Protocol in 41 (including by three non-member States)[11]. Consequently, it appears that the tools introduced by the Council of Europe for establishing the content of foreign law remain unparalleled, at least on the European continent.[12]

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[8] For comparative law data, see G. Cerqueira and N. Nord (ed.), *La connaissance du droit étranger. A la recherche d'instruments de coopération adaptés*. Etudes de droit international privé comparé, Société de législation comparée, coll. Colloques, vol. 46, 2020; see also T. C. Hartley, "Pleading and Proof of Foreign Law: The Major European Systems Compared", I.C.L.Q. 45 (1996), pp. 271-292; S. Lalani, "Establishing the Content of Foreign Law: A Comparative Study", Maastricht Journal of European and Comparative Law 2013, vol. 20, no. 1, pp. 75-112; C. Esplugues Mota, J. L. Iglesias, G. Palao Moreno (ed.), *Application of Foreign Law*, Munich, Sellier, 2011.

[9] Some information on the work carried out is available at the following address: https://www.hcch.net/en/publications-and-studies/studies/access-to-foreign-law1

[10] Belarus, Costa Rica, Mexico, Morocco, Russian Federation. As a consequence of its aggression against Ukraine, the Russian Federation ceased to be a member of the Council of Europe on 16 March 2022 following a respective decision by the Committee of Ministers made in the context of the procedure launched under Article 8 of the Statute of the Council of Europe for a serious violation of Article 3 of the Statute. The legal and financial consequences of the cessation of membership were outlined in resolution CM/Res(2022)3 adopted on 23 March 2022 by the Ministers' Deputies, including the immediate implications for the status of the Russian Federation as a Contracting Party to treaties elaborated in the framework of the Council of Europe. In its paragraph 8 the resolution states that the Russian Federation *"will […] continue to be a Contracting Party to those conventions and protocols concluded in the framework of the Council of Europe, to which it has expressed its consent to be bound, and which are open to accession by non-member States"*. On 17 March 2022, the Committee of Ministers also decided to suspend all relations with Belarus and its rights to participate in all meetings and activities of the Organisation.

[11] Belarus, Mexico, Morocco.

[12] For America, see InterAmerican Convention on Proof of and Information on Foreign Law (B-43), signed in Montevideo on 8 May. Two European States, Spain and Ukraine, are party to it.

ii. A popular mechanism and open to diverse categories of legal practitioners

8. Two other noteworthy factors should also be mentioned. First, legal practitioners themselves are aware of the benefits of the Council of Europe's instruments in this sphere. One such perceived benefit is the considerable geographical range of the Convention and its Protocol, which provides the authorities of States parties with a vast network extending even beyond the European continent alone.[13] Having an established, precise and detailed procedure is also favoured, as there is certainty as to how it is to be implemented, unlike most bilateral conventions which are vague in this respect.[14] Furthermore, it must also be pointed out that the Convention and Protocol are not reserved for the use of judges alone. Under Article 3§1 of the Convention, a request for information may be drawn up by a non-judicial authority even if it must then be formally transmitted by a judicial authority. In addition, under Article 3 of the Protocol, a request for information may also emanate *"from any authority or person acting within official systems of legal aid or legal advice on behalf of persons in an economically weak position"*.

iii. Effective use of the instruments

9. The States parties' replies to the questionnaire also reveal satisfaction with the implementation of the convention-based mechanisms and their proven effectiveness.

10. Quantitatively speaking, the actual use of the instruments in the different States parties must be underlined. Detailed statistics provided by some of them demonstrate that the convention-based mechanisms created by the Council of Europe are amongst the tools used in practice, while showing up major variations between the States in question, covering every imaginable scenario. In some cases, there are more incoming requests than outgoing ones,[15] and the opposite in others.[16] In a few rare cases, a balance can be observed.[17] Considerably more use is made of the Convention than the Additional Protocol. However, the replies to the questionnaire are mostly of a global nature, making no distinction between the two instruments. Some States do differentiate data for the two instruments though, which makes it possible to conclude that there is some degree of balance.[18] This also corroborated by certain States, although they did not provide any detailed statistics.[19] Moreover, even where differentiated data were not provided, the list of topics concerned points to the same conclusion.[20] An explanation, in theory, of the differences in frequency of use can be found in the respective topics covered. The use of foreign law is more commonplace in the civil and commercial fields, civil and commercial procedure and judicial organisation (covered by the Convention) than in the area of criminal law and criminal procedure to which the Protocol applies and where the principle of territoriality remains key. Nevertheless, both the data

[13] F. Hermite, "La coopération internationale dans la recherche du droit étranger", *L'application du droit étranger*, Société de législation comparée, coll. Colloques, vol. 36, 2018, pp. 61-74, specifically p. 71.
[14] F. Mélin, "La coopération internationale dans la recherche du droit étranger : les méthodes classiques", *ibid*, pp. 39-59, specifically pp. 51 and 58.
[15] Belgium, Cyprus, France, Germany, Greece, Republic of Moldova, and Switzerland.
[16] Italy, Croatia, Lithuania, Poland, Romania, Türkiye and Slovenia.
[17] Austria, Czech Republic, and Portugal.
[18] Belgium, France, Lithuania, Portugal, Switzerland and Türkiye.
[19] United Kingdom.
[20] Based on the replies from Malta, the Republic of Moldova and Romania.

reported by the States and their comments show that the two instruments are living mechanisms that are frequently used.

iv. Usefulness of replies and short timeframes

11. In qualitative terms, when the Convention and its Protocol are used, the outcomes appear to be satisfactory in most cases. More specifically, there are two salient points. On the one hand, even when they have seldom been used in a given State, their usefulness and value are nevertheless emphasised in the reply to the questionnaire.[21] On the other hand, the timeframes set for a response are often short (contrary to statements of doctrine)[22] according to States and, more generally, practitioners using these instruments.[23] Precise timeframes are not given but more general indications are often frequently provided, such as processing in a few days,[24] in a few weeks[25] or promptly.[26] Further corroboration of this finding is the fact that, in most cases, only fringe examples, where the lead-time for a response is considered to be too long, are cited.[27] Indications of time in this respect vary from four months[28] to several years.[29] This would suggest then that the mechanisms set up are satisfactory in most situations. There is no overall hostility on the part of any State towards this machinery because of the procedural timeframes it entails. It is crucial to emphasise here that e-mailing is now widely accepted, which obviously simplifies contact and speeds up the process. Of the States which replied to the questionnaire, only three expressly stated that they did not accept requests submitted electronically: Denmark, Türkiye and Slovak Republic.[30] The Republic of Moldova explained that its authorities accepted the use of e-mails but welcomed the sending of a hard-copy original by post.

12. More specifically, the usefulness of the convention-based instruments was highlighted in two clearly identified cases in the replies to the questionnaire. The first of these related to understanding a foreign legal system that followed a different tradition from that of the requesting State. In particular, being able to put questions to another State provides insight regarding concepts and notions that might be totally alien to the legal order served by the

[21] Portugal expressly emphasised the usefulness and high quality of the Convention and its Protocol in its replies.
[22] See for example C. Azcarraga Monzonis, "The Urgent Need for Harmonization of the Application of Foreign Laws by National Authorities in Europe", International Journal of Procedural Law, Volume 3 (2013), No. 1, pp. 104-125, specifically p. 118, note 42 ; R. Hausmann, "Pleading and proof of foreign law – A comparative analysis", *Eu. L.F.*, 2008, pp. 1-13, specifically p. 8; W. Pintens, "L'établissement du contenu du droit étranger en Belgique", in C. Witz (dir.), Application du droit étranger par le juge national : Allemagne, France, Belgique, Suisse, Société de législation comparée, coll. Colloques, vol. 15, 2014, pp. 37-46, specifically p. 44; P. Rabourdin and H. Muir-Watt, Rép. Dalloz, Dr. International, *V°*Loi étrangère : établissement du contenu de la loi étrangère, n°59.
[23] F. Mélin, "La coopération internationale dans la recherche du droit étranger : les méthodes classiques", *in* L'application du droit étranger, SLC, 2018, coll. Colloques, vol. 36, p. 39, specifically p. 58. See however S.M. Carbone, "La conoscenza del diritto straniero e il giudice italiano", Il diritto del commercio internazionale, 2009, pp. 193-206, specifically p. 199.
[24] Based on the replies from Portugal, Greece, and Slovenia.
[25] Reflected on the reply from Italy; see also F. Mélin, op. cit., p. 58, regarding Austria.
[26] Based on the reply from Greece.
[27] Based on the replies from Austria, the Czech Republic, Germany, Lithuania, Norway, Poland, and Portugal.
[28] Reflected in the reply from Portugal.
[29] Mentioned in the replies from Austria, Germany, Poland, and Slovenia.
[30] E-mailed requests are accepted only exceptionally under regulation No. 910/2014.

judge who is required to apply the foreign law in question.[31] The second relates to the possibilities opened up for identifying and understanding sources of case-law that are key to the foreign law but more difficult to access than the legal texts themselves, which can be easily consulted on many member States' official websites.[32]

v. Procedure free of charge or at little cost

13. Finally, there is one other key benefit of convention-based mechanisms that must be emphasised: the procedure is free of charge in most cases. The possibility for the requested State to claim reimbursement of costs from the requesting State where a reply is drawn up by a private body or a qualified lawyer, provided for in Articles 6§3 taken in conjunction with Article 15§1 of the Convention, is rarely used. Only a few States refer to its use in their replies to the questionnaire but this remains an exceptional and marginal phenomenon.[33] This finding can only be an incentive for using the Convention and the Protocol as the other means of ascertaining the content of foreign law often entail substantial costs.[34]

14. Accordingly, there are a number of positives to be emphasised for the procedures created by the Council of Europe to facilitate the understanding of foreign law. However, there are certain obstacles that also quickly arise in practice and may explain why the Convention and the Protocol are not more frequently used in the States parties.

[31] Reply from Portugal, gave the example, where inheritance law is concerned, of having to understand Nordic systems, English law, and Scottish law whose rules differ substantially from those of Portuguese law.
[32] Based on the replies from Malta and Portugal.
[33] Reply from Switzerland mentioned only one case; the United Kingdom stated that external lawyers are sometimes used under Convention 062 and the costs passed on to the requesting State with their consent where this is more efficient or the matter is very technical; Türkiye indicated that, generally, there is no charge for inquiries but a fee may be charged in cases where costs were incurred, for example, for an expert report; Croatia also pointed out that the costs billed by the United Kingdom were very high.
[34] See in this connection, in the publication *La connaissance du droit étranger. A la recherche d'instruments de coopération adaptés*, *op. cit.*, C. Nourissat, "Connaissance du droit étranger et coopération internationale : entre nécessité impérieuse et obstacles à surmonter", pp. 23-33, specifically p. 32, O. Berg, "L'avocat et le droit étranger : entre connaissance et representation", pp. 65-68, specifically p. 66; J. Bauerreis, "L'application du droit étranger en Allemagne", pp. 83-89, specifically p. 88.

II. LIMITS OF THE CONVENTION-BASED MECHANISMS

15. There are four main stumbling blocks that emerge from the replies to the questionnaire as serious hindrances to effective implementation of the convention-based instruments.

i. Obstacle linked to languages and translations

16. The first obstacle, which might be described as a classic feature of international relations, concerns language and translations. It should be pointed out that under Article 14 of the Convention "[*t]he request for information and annexes shall be in the* language *or in one of the official languages of the requested State or be accompanied by a translation into that language. The reply shall be in the language of the requested State*". Despite being designed to facilitate exchanges, these rules - in the eyes of some - constitute a real obstacle for the implementation of the convention-based machinery and an explanation as to why the Convention and its Protocol are not used more frequently. Such requirements make people reluctant to use the Convention,[35] particularly because of the translation costs they entail.[36] Moreover, the frequent need to have texts translated in one direction and then in the other is bound to increase the risk of errors.[37] The States themselves point out that the obligation to translate material gives rise to numerous difficulties in practice. Several of them stressed that the translations of requests they have received are of poor quality and very tricky to understand as a result.[38] The problem is reported by many respondents and is therefore not a peripheral one.[39] For the replies being sent the other way, the Portuguese authorities stated that they have difficulties finding translators with knowledge of the different legal systems that enables them to supply a clear translation.

ii. Obstacle linked to lack of precision in communications

17. A lack of precision in communication is the second obstacle pointed to in the replies to the questionnaire, and it applies in both directions. Some States said that the requests they receive are not specific enough and they have to ask for clarification from the requesting State in order to identify exactly which legal issue is involved.[40] Two concrete examples were given. The first related to requests asking for all the legislation on a given subject (such as the law on inheritance), without specifying any scope or, notably, the legal issue to be dealt with by

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[35] A. Bucher, "Article 16", in A. Bucher (éd)., Commentaire romand. Loi sur le droit international privé. Convention de Lugano, Helbing Lichtenhahn 2011, n°13.
[36] B. Rodger & J. Van Doorn, "Proof of Foreign Law: the Impact of the London Convention", (1997) 46 International and Comparative Law Quarterly, p. 151-166, specifically p. 164.
[37] M. Stürner – F. Krauss, *Ausländisches Recht in deutschen Zivilverfahren. Eine rechtstatsächliche Untersuchung,* Internationales und europäisches Privat – und Verfahrensrecht, vol. 22, Nomos, 2018, p. 45, § 44.
[38] For a clear example of this difficulty from the outset, see G. Brulliard, Convention européenne relative à l'information sur les droits étrangers [compte-rendu], Revue internationale de droit comparé 1973, 25-2, pp. 389-396, specifically p. 394; concerning the United Kingdom, B. Rodger & J. Van Doorn, "Proof of Foreign Law: the Impact of the London Convention", specifically p. 164.
[39] Mentioned by the Czech Republic Germany, Italy, Lithuania, Portugal and in their replies.
[40] Based on the reply from the United Kingdom and the comments of France and the Republic of Moldova.

the authorities of the requesting State.[41] The second referred to facts of the case not being summarised and, instead, the request being accompanied by lengthy documents that needed to be read through before the exact nature of the request could be understood.[42] This resulted each time in a mobilisation of the requested State's human resources and a longer lead-time to deliver the final reply. Conversely, some States found that the replies they received were unsatisfactory because they were too general. In some such cases, the reply merely provided links to websites where the requested State's laws can be consulted.[43]

iii. Obstacle linked to the impossibility of direct exchanges

18. The third obstacle mentioned by the States is that there is no possibility for direct exchanges between the authorities of the requesting State and the individual tasked with drawing up the reply within the requested State.[44] In particular, clarifying insufficiently detailed replies is complicated as the requester has to go back through the circuit prescribed by rules in the Convention, which is likely to cause substantial delays.[45]

iv. Obstacle linked to the lack of knowledge of legal practitioners concerning the Convention and its Protocol

19. Aside from replies to the questionnaire, another issue is quite clear: many of the legal practitioners required to apply foreign law often have no idea that the Convention and the Additional Protocol exist at all. This is a major handicap that goes some way towards explaining why these tools are not used more within the States parties. It is not a problem specific to the Council of Europe's texts in this field. The same goes for other instruments, such as, in European Union law, the abovementioned Council decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (2001/470/EC). More generally, it is often emphasised that this lack of knowledge on the part of practitioners is a factor that is common to numerous instruments and resources facilitating a full understanding of foreign law.[46] It is vital, therefore, to build awareness of the London Convention and its Protocol as well as the mechanisms they enshrine so that more use is made of them in practice. This is one of the possible avenues for improvement to be explored with a view to perfecting the convention-based mechanisms.

[41] Example given by Türkiye.
[42] Example given by Austria.
[43] Example given by Türkiye. Slovenia provided examples along the same lines.
[44] See the reply from Portugal and also from Estonia. In legal doctrine, see C. Witz, "L'application du droit étranger en Allemagne, (Questions choisies)", Mélanges en l'honneur du Professeur Jean-Michel Jacquet, LexisNexis, 2013, pp. 457-470, specifically p. 461.
[45] Portugal provided a detailed reply on this point.
[46] For such observations, see, in the *La connaissance du droit étranger. A la recherche d'instruments de coopération adaptés*, *op. cit.*, M. Vautravers, "Le point de vue du bureau du droit de l'Union, du droit international privé et de l'entraide civile, direction des affaires civiles et du Sceau – France", pp. 209-218, specifically p. 213 ff. and R. Rodriguez, "Knowledge of Foreign Law and the London Convention of 1968 – Council of Europe's CDCJ", pp. 219-220.

III. AVENUES FOR IMPROVING THE CONVENTION-BASED MECHANISMS

20. Various lines of action can be identified, and most of which emerge from suggestions made by the States themselves in their replies to the questionnaire. It is certainly the case that the authorities which use the Convention and its Protocol are best placed to suggest improvements to the mechanisms in place. The following suggestions could be envisaged as functioning alone or in conjunction with others.

i. Organisation of webinars

21. One initial measure was put to the States parties in the questionnaire for evaluating the London Convention and its Additional Protocol, with question No. 7 asking for views on the usefulness of organising one or more webinar(s) on the practical operation of the Convention and its Protocol. As well as building awareness of the instruments themselves, online sessions of this nature would help to clarify some of the rules. They could also be recorded and made available to all the authorities of the States parties for consultation at any time, and possibly to a broader target audience in order to promote the instruments. However, not all States seem convinced by this proposal. While 10 of them said that they would be in favour and specified various aims to be pursued, 16 were against the idea and two did not express any opinion. Austria suggested another approach: meetings could be organised so that the people responsible for the application of the texts within the receiving authorities could meet one another and discuss certain issues regarding the texts (exchanges of best practice and contact details, e-mail correspondence, etc.).

22. An alternative to the organisation of webinars would the recording of one or several short tutorial videos on the implementation of the Convention in practice. They could be made available on a webpage dedicated to the Convention and be prepared with the assistance of one or several consultants.

ii. Creating standard templates

23. A second possible measure would be to create standard templates. At present, there is little standardisation in the States parties, with Türkiye being the only one to state that its authorities used a standard form. Several States expressly proposed that a standard form be created to make it more straightforward to use the Convention and the Protocol.[47] Different approaches could be envisaged. The standard form could be created for requests only,[48] as this is often a weak point highlighted by the States. It could be generalised and cover both the request and the reply, which is sometimes too general in nature.[49] To be effective, standard forms should be comprehensible to all authorities of the States parties. A multilingual format could be envisaged, with the different parts of the form translated into the official languages of the States parties on the document itself. However, this entails the obvious risk of a document overloaded with text that might undermine the success of the Convention and its Protocol. For

[47] Belgium, Czech Republic, Denmark, Georgia, Republic of Moldova, Poland, and Slovak Republic.
[48] Reflected in the replies from Belgium, Czech Republic, Denmark, Republic of Moldova, and Poland.
[49] Reflected in the replies from Georgia and the Slovak Republic.

that reason, an encoding technique assigning a reference number to each piece of text on the form seems better suited to the task. All the texts and reference numbers would be grouped together in a multilingual listing that could be used to decrypt the form. The multilingual listing could be directly integrated into a computer application to facilitate translation into the language used by the authority concerned, with the form automatically read and translated.[50] The elaboration of a standard form (requests and replies) and its listing could be prepared by one or several consultants under the authority of the CDCJ and these tools could be made available on a dedicated webpage of the CDCJ, to which the forms could expressly refer.

iii. Creating a database

24. A third possible measure is the creation of a database compiling the replies already provided by States within the framework of the Convention and the Additional Protocol,[51] the main reason being the similarity of many of the questions asked. Simply consulting such a database could yield an instant reply, without having to request information from the authorities of the State party whose law is involved. The gains in terms of time and effort are self-evident. The database could be created at different levels. Centralisation within each State party would be possible and appears to have already been done in some.[52] Subject to available budgetary resources, centralisation by the general secretariat of the Council of Europe could be envisaged and seems to be a good idea as it offers the advantage of greater visibility and, therefore, ease of access for all State party authorities. However, the language issue would still have to be overcome. A translation into English and French, the Council of Europe's two official languages, could be systematically provided in order to facilitate understanding of the replies to information requests. In addition, the database could be further complemented by links to the official websites of States parties disseminating their legislation. Such tool would be available on the webpage of the CDCJ dedicated to the Convention. However, information on national situations concerning a request would run the risk of no longer being up-to-date between the moment the reply to a request is entered into the database and the moment it is consulted. Moreover, creating and keeping up-to-date such a database would represent a significant workload and imply important financial resources.

iv. Preparing a practical guide

25. The fourth measure that could be envisaged is the production of a practical guide to implementing the Convention and the Protocol.[53] Such a tool would be a useful means of raising awareness of the existing mechanisms, clarifying certain rules regarded as problematic and also exchanging good practices prevailing in different States parties. Other international organisations use such devices for some of their instruments, one example being the Hague

[50] Regarding the use of this encoding method for civil status certificates within the International Commission on Civil Status, J. Massip, F. Hondius, C. Nast and F. Granet, Commission Internationale de l'Etat Civil, Kluwer Law International, 2018, § 81.
[51] Reflected in the replies from Austria, Italy and the United Kingdom; comp. the proposals set out in the document "Access to Foreign Law in Civil and Commercial Matters, Conclusions and Recommendations of the European Commission and the Hague Conference on Private International Law".
[52] Austria mentioned in particular this point in its reply.
[53] The Czech Republic, which is in favour of such a measure, suggested that real cases should figure in such a guide.

Conference on Private International Law which has published practical handbooks[54] or guides to good practice[55] for several of its international conventions. A practical guide to the Convention and its Additional Protocol could be based in part on the States' replies to the questionnaire. Some of them have referred to their own good practices which could be condensed. There could be reminders or more detailed information on rules which the States themselves currently regard as the trickier ones to implement. The drawing up of requests, also a source of problems in the eyes of many States, could be tackled in the same way. In this connection, the practical guide could contain standard forms to facilitate request drafting. The drafting of replies could be treated in the same way. The preparation of this practical guide could be done by one or several consultants under the authority of the CDCJ. Subject to available resources, translations of the guide in other languages than the official languages of the organisation (English and French) could be envisaged at a later stage. This practical guide could be made available on a dedicated webpage on the Convention.

v. Establishing timeframes for replies

26. The fifth measure relates to timeframes for replies. Even though the States' replies show that the system in place is largely satisfactory, it is clear from some examples reported that it has not always worked and there is room for improvement. The Convention text seems rather vague in this respect. Article 12 simply states that "*[t]he reply to a request for information shall be furnished as rapidly as possible. However, if the preparation of the reply requires a long time, the receiving agency shall so inform the requesting foreign authority and shall, if possible, indicate at the same time the probable date on which the reply will be communicated*". One comparison is enlightening on this point. In EU law, Article 8§1 of Council decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters mentioned several times above states that *"[t]he contact points shall respond to all requests submitted to them without delay and at the latest within fifteen days of receipt thereof. If a contact point cannot reply to a request within that time limit, it shall inform the maker of the request briefly of this fact, indicating how much time it considers that it will need to reply, but this period shall not, as a rule, exceed thirty days"*. This text is far more precise and sets clear deadlines, which can but strengthen confidence in that system. Here again, various solutions for improving the functioning of the London Convention and the Protocol can be imagined. One such solution could be to distinguish between urgent requests and ordinary requests, possibly via two tick-boxes on the standard forms. The requesting authority should of course give a reason for the urgency of the request and another set of tick-boxes corresponding to different reasons might be provided for that purpose. A less binary approach entails a clear statement by the requesting party of its expectations regarding the timeframe,[56] making it possible to set a precise deadline for the reply while maintaining dialogue with the requested authority, expressly provided for in the text itself.

vi. Updating and availability of contact points

27. The sixth measure is an eminently practical one and once again based on a suggestion put forward by several States in their reply to the questionnaire. The contact points listed for the

[54] Available at: https://www.hcch.net/fr/publications-and-studies/publications2/practical-handbooks
[55] Available at: https://www.hcch.net/fr/publications-and-studies/publications2/guides-to-good-practice
[56] Reflected in the replies from Poland and Portugal.

different States parties are not always up to date, and this can block or slow down the procedure. Therefore, it is suggested that a continually updated list of them be easily accessible on the CDCJ's webpage dedicated to the Convention[57]. For this purpose, CDCJ delegations and those of the other States Parties could be called upon to confirm or provide updated contacts details of their national contact points on a regular basis. Such a system could be further enhanced by establishing a contact point within the Council of Europe secretariat for authorities of States parties seeking confirmation of addresses and other details for other States parties. Where it is found that information is incorrect or missing, the secretariat contact point would carry out the necessary research and then forward the relevant information to the requesting State's authorities.[58]

vii. Direct and informal contacts

28. In a similar vein, a seventh possible measure can be gleaned from numerous replies to the questionnaire. A number of States have said or at least implied that it is necessary to have, in addition to institutional contact details, a direct, personal contact within the other States parties whom they could swiftly and informally consult (by phone or e-mail).[59] The aim is not to circumvent the initial procedure provided for in the Convention in which a request is to be transmitted to the receiving agency of the requested State as provided for in Article 5 of the Convention. It is after that procedure that this possibility of direct contact could come in useful, so that no time is lost in obtaining clarification of a question or reply which might sometimes raise doubts because of their wording. It would be simple enough to add to the list of contact points in the different States parties in order to get exchanges flowing, which could have a spin-off benefit of encouraging people to use the convention-based mechanisms, with the guarantee of being able to count on an identifiable talking partner rather than just an exchange with an institution as a whole.

viii. Using official languages in exchanges

29. An eighth and final measure could be proposed to remedy one of the biggest problems, highlighted by nearly all replies from the States to the questionnaire, namely the language used in communication between the parties. The initial aim of Article 14 § 1 of the Convention, stating that the request will be in the language or in one of the official languages of the requested State or be accompanied by a translation into that language and that the reply will be in the language of the requested State, was to facilitate comprehension in communication. As we have seen, putting that rule into practice has proven to be somewhat tricky. However, it should be pointed out that the Convention allows the possibility of introducing a scheme derogating from the prescribed system. Under paragraph 2 of Article 14, "*two or more Contracting Parties may decide to derogate, as between themselves, from the provisions of the preceding paragraph"*. Therefore, solutions that are less binding on the States concerned would be conceivable. Accordingly, if following the principle laid down would adversely affect the functioning of the Convention between them in practice, two or more States could agree, for example, to use only the official languages of the Council of Europe, English and French, to simplify their authorities' task. This could make it easier to find translators with the necessary

[57] Reflected in the replies from Austria, Czech Republic, Greece, Italy, and Finland.
[58] Portugal suggested such solution .
[59] As expressly stated in the replies from Italy and Portugal.

expertise. That is just one example. States are free to adopt the rules that suit them in the light of the given circumstances, but they do not appear to be aware of the possibility as it is not mentioned in their replies to the questionnaire. It merits greater attention as it could potentially overcome a concrete obstacle to the implementation of the Convention and the Protocol.

CONCLUSION

30. In conclusion, there is a common theme running through all the replies to the questionnaire and all the measures suggested. The webpage on the Convention and its Protocol currently featuring on the Council of Europe's website appears to be inadequate. It contains only official information on the texts themselves but nothing regarding their actual implementation. Therefore, it appears crucial to create a webpage on the CDCJ's website that would be dedicated to the Convention and its Protocol. Such a webpage would represent a practical tool responding to the real needs of practitioners. It would also help to build awareness of the available mechanisms amongst a very wide target audience. Depending on the suggestions adopted, it could also feature a practical guide, standard forms and a listing, the contact details of the competent authorities of the States parties, the recordings of webinars or tutorial videos and a database of replies already provided within the convention framework. This would provide a dedicated place for obtaining full knowledge of the convention, similarly to those set up for various conventions by the Hague Conference.[60] Finally, with a view to disseminating and promoting the webpage on the Convention and other tools, it would be expedient to organise, subject to available resources, a launching event/webinar gathering States Parties and non-Parties as well as a selection of stakeholders (umbrella organisations, international networks of professionals, etc.).

[60] See for example the Apostille section, https://www.hcch.net/fr/instruments/conventions/specialised-sections/apostille.