

**APERÇU DES RÉPONSES AU QUESTIONNAIRE DE MAI 2008 PORTANT SUR LA  
CONVENTION DE LA HAYE DU 18 MARS 1970 SUR L'OBTENTION DES PREUVES À  
L'ÉTRANGER EN MATIÈRE CIVILE OU COMMERCIALE  
(CONVENTION PREUVES)**

*établi par le Bureau Permanent*

\* \* \*

**SYNOPSIS OF RESPONSES TO THE QUESTIONNAIRE OF MAY 2008 RELATING TO THE  
HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE ABROAD  
IN CIVIL OR COMMERCIAL MATTERS  
(EVIDENCE CONVENTION)**

*drawn up by the Permanent Bureau*

(Version révisée en juillet 2009 /  
revised version as per July 2009)

*Document préliminaire No 8  
à l'intention de la Commission spéciale de février 2009 sur le fonctionnement pratique des  
Conventions de La Haye Apostille, Notification, Preuves et Accès à la Justice*

*Preliminary Document No 8  
for the attention of the Special Commission of February 2009 on the practical operation of the  
Hague Apostille, Service, Evidence and Access to Justice Conventions*

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Une première version de ce document a été établie et publiée sur le site de la Conférence de La Haye le 15 décembre 2008. Une deuxième version a été préparée pour la Commission spéciale et a été mise à jour au 28 janvier 2009. La présente version révisée en juillet 2009 reflète les réponses reçues jusqu'en février 2009, au total 54 réponses.

Ce document n'a pas été traduit. Il s'agit d'une compilation des réponses, exactement comme elles ont été reçues, afin de les rendre facilement accessibles aux experts de la Commission spéciale. Par conséquent, les réponses apparaissent comme elles ont été reçues, dans la langue dans laquelle elles ont été reçues.

Par souci de concision, les réponses aux questions suivantes ont été compilées dans un document distinct, disponible sur demande auprès du Bureau Permanent:

- Les détails relatifs aux traités bilatéraux auxquels sont parties les États non contractants (Q. 3)
- La partie II B: Les statistiques (Q. 6 – 8)
- La partie II D: La jurisprudence et les documents de référence comprenant les guides, les décisions rendues depuis 2003, les livres et articles, la législation nationale ainsi que les instruments bilatéraux et internationaux (Q. 10 – 14)

Notons, en outre, que dans la partie consacrée aux statistiques, un document excel a été mis en ligne sur le site de la HCCH afin de les rendre plus facilement accessibles et d'en faciliter l'analyse.

Tout au long de ce document, les numéros entre crochets ('[#]') se réfèrent au nombre de réponses pertinentes.

\* \* \*

A first version of this document was prepared and published on the Hague Conference's website on 15 December 2008. A second version was prepared for the 2009 Special Commission and was updated until 28 January 2009. The present revised version as per July 2009 reflects the responses received up until February 2009, which amount to 54 responses.

This document has not been translated. It is a compilation of the responses, exactly as they were received to make the responses more readily accessible to experts to the Special Commission. Therefore the responses appear as they were received, in the language in which they were received.

In the interests of brevity, responses to the following questions have been compiled in a separate document, which may be requested from the Permanent Bureau:

- Full details of non-Contracting State bilateral treaties (Q. 3)
- Part II B: Statistics (Q. 6 – 8)
- Part II D: Case Law and Reference Work including Guides, Decisions Rendered since 2003, Books and Articles, Domestic Legislation, Bilateral and International Instruments (Q. 10 – 14)

We further note, that in the case of the statistics, a separate Excel document has been made available on the HCCH website to facilitate statistical analysis and make the statistics more readily accessible.

Throughout this document numbers contained in square brackets ('[#]') refer to the number of relevant responses.

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**List of Responses from States and Regional Economic  
Integration Organisation (REIO)**

**States and REIO [54]**

1. Albania
2. Argentina
3. Australia
4. Bahamas
5. Belgium
6. Brazil
7. Bulgaria
8. Canada
9. Chile
10. China – Hong Kong Special  
Administrative Region<sup>1</sup>
11. Croatia
12. Czech Republic
13. Denmark
14. Ecuador
15. Estonia
16. European Community
17. Finland
18. France
19. Georgia
20. Germany
21. Greece
22. Guatemala
23. Iceland
24. India
25. Israel
26. Italy
27. Japan
28. Latvia
29. Lithuania
30. Luxembourg
31. Malaysia
32. Mexico
33. Moldova
34. Monaco
35. Netherlands
36. New Zealand
37. Norway
38. Paraguay
39. Poland
40. Portugal
41. Republic of Korea
42. Romania
43. Russian Federation<sup>2</sup>
44. Singapore
45. Slovakia
46. South Africa

**Non-Contracting States and REIO [19]**

1. Albania
2. Bahamas
3. Belgium
4. Brazil
5. Canada
6. Chile
7. Croatia
8. Ecuador
9. European Community
10. Georgia
11. Guatemala
12. Iceland
13. Japan
14. Malaysia
15. Moldova
16. New Zealand
17. Paraguay
18. Republic of Korea
19. Trinidad and Tobago

**Contracting States [35]**

1. Australia
2. Argentina
3. Bulgaria
4. China (HK SAR)<sup>1</sup>
5. Czech Republic
6. Denmark
7. Estonia
8. Finland
9. France
10. Germany
11. Greece
12. India
13. Israel
14. Italy
15. Latvia
16. Lithuania
17. Luxembourg
18. Mexico
19. Monaco
20. Netherlands
21. Norway
22. Poland
23. Portugal
24. Romania
25. Russian Federation<sup>2</sup>
26. Singapore

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<sup>1</sup> Henceforth China (HK SAR).

<sup>2</sup> A response was received from the Russian Federation, but it requested that its response not be uploaded. Therefore the Russian Federation's answers do not appear in this document, although it is listed as a responding State.



47. Spain
48. Sweden
49. Switzerland
50. Trinidad and Tobago
51. Turkey<sup>3</sup>
52. Ukraine
53. United Kingdom
54. United States of America

27. Slovakia
28. South Africa
29. Spain
30. Sweden
31. Switzerland
32. Turkey<sup>3</sup>
33. Ukraine
34. United Kingdom
35. United States of America

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<sup>3</sup> A response was received from Turkey, but it requested that its response not be uploaded. Therefore Turkey's answers do not appear in this document, although it is listed as a State which responded.

**États et Organisation régionale d'intégration économique (ORIE)  
ayant répondu :**

**États et ORIE [54]**

1. Afrique du Sud
2. Albanie
3. Allemagne
4. Argentine
5. Australie
6. Belgique
7. Brésil
8. Bulgarie
9. Canada
10. Chili
11. Chine (Région administrative spéciale de Hong Kong)<sup>3</sup>
12. Communauté européenne
13. Corée
14. Croatie
15. Danemark
16. Equateur
17. Espagne
18. Estonie
19. Fédération de Russie<sup>4</sup>
20. Finlande
21. France
22. Géorgie
23. Grèce
24. Guatemala
25. Inde
26. Islande
27. Israël
28. Italie
29. Japon
30. Les Bahamas
31. Lettonie
32. Lituanie
33. Luxembourg
34. Malaisie
35. Mexique
36. Moldava
37. Monaco
38. Norvège
39. Nouvelle-Zélande
40. Paraguay
41. Pays-Bas
42. Pologne
43. Portugal
44. Roumanie
45. Royaume-Uni
46. Singapour

**États non contractants et ORIE [19]**

1. Albanie
2. Belgique
3. Brésil
4. Canada
5. Chili
6. Communauté européenne
7. Corée
8. Croatie
9. Équateur
10. Géorgie
11. Guatemala
12. Islande
13. Japon
14. Les Bahamas
15. Malaisie
16. Moldava
17. Nouvelle-Zélande
18. Paraguay
19. Trinité-et-Tobago

**États contractants [35]**

1. Afrique du Sud
2. Allemagne
3. Argentine
4. Australie
5. Bulgarie
6. Chine (RAS HK)
7. Danemark
8. Espagne
9. Estonie
10. États-Unis d'Amérique
11. Fédération de Russie<sup>4</sup>
12. Finlande
13. France
14. Grèce
15. Inde
16. Israël
17. Italie
18. Lettonie
19. Lituanie
20. Luxembourg
21. Mexique
22. Monaco
23. Norvège
24. Pays-Bas
25. Pologne

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<sup>3</sup> Ci-après « *China (HK SAR)* ».

<sup>4</sup> Une réponse a été reçue de la Fédération de Russie, mais cet État a souhaité que celle-ci ne soit pas mise en ligne. Par conséquent, ses réponses ne figurent pas dans ce document, même si la Fédération de Russie est citée comme un État ayant répondu.

47. Slovaquie  
48. Suède  
49. Suisse  
50. République tchèque  
51. Trinité-et-Tobago  
52. Turquie<sup>5</sup>  
53. Ukraine  
54. États-Unis d'Amérique

26. Portugal  
27. Roumanie  
28. Royaume-Uni  
29. Singapour  
30. Slovaquie  
31. Suède  
32. Suisse  
33. République tchèque  
34. Turquie<sup>5</sup>  
35. Ukraine

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<sup>5</sup> Une réponse a été reçue de la Turquie, mais cet État a souhaité que celle-ci ne soit pas mise en ligne. Par conséquent, ses réponses ne figurent pas dans ce document, même si la Turquie est citée comme un État ayant répondu.

Question	Reply	State [#] refers to number of State responses
<b>PART ONE – General Information and Statistics</b>		
<b>I. Questions for non-Contracting States</b>		
<b>1. Why not Party to the Convention?</b>	The number of cross-border litigation cases that require evidence to be taken from abroad is limited and does not require a global framework.	Albania. [1]
	Legal Obstacles - The Convention does not include a Federal State Clause. Such a clause would have allowed Canada to extend the application of the Convention only to the provinces and territories that implemented the Convention. Without such a clause, the Convention would have to be implemented in all Canadian provinces and territories, which is difficult to achieve.	Canada. [1]
	<p>Our justice is undergoing deep changes, exemplified by the incorporation, in recent years, of a number of reforms in the fields of criminal, labor and family procedure, all of which are now in full operation. Additionally, since 2005, we have been developing a new civil law framework in Chile and, therefore, a series of decisions will be made in the short term, including the possibility of adopting the above Convention.</p> <p>Said decisions will be based on the characteristics of our new civil procedure system, which is expected to suffer drastic changes in respect of the current system; particularly, as regards taking, production and valuation of evidence in trial.</p> <p>All these new ideas, among others, incorporated into the new civil procedure new framework, must be considered before becoming a party to the Convention. Therefore, we deem that the relevant decision may only be made once the new system is fully defined.</p>	Chile. [1]
	Does not have the means or resources to properly implement the Evidence Convention.	Ecuador. [1]
	The availability of possibilities under internal law, bilateral or regional agreements, treaties or instruments means there is no added value in becoming a Party to the Evidence Convention.	Georgia, Japan, Moldova, Paraguay. [4]
	<p>Other Reason:</p> <p><u>Guatemala</u> - The text of the Convention is already being analyzed by the national competent authorities in order to soon be part of the said Convention</p> <p><u>Belgium</u> - la ratification de la Convention n'a jamais été considérée comme prioritaire par rapport aux nombreux autres travaux de ratification qui incombaient au Département.</p>	Guatemala, Belgium. [2]
	Legal Obstacles - There are legal obstacles in your domestic legal system that prevent your State from becoming a Party to the Convention – if so, please specify what these are:	Korea. [1]

	<p>1. Absence of Specified legislation for implementing  2. Difference legal system with common law countries on the litigation process</p> <p>Specific Issues which dissuade:</p> <p>1. Difference legal system with common law countries on the litigation process  2. Choice of language of the requesting letter.  3. Permissible limit of pre-trial discovery of document which isn't exist in domestic process of Korea</p> <p>The question of becoming a Party to the Convention has never been examined in detail.</p>	
<p><b>2. Bilateral Agreements</b></p>	<p>Most states are parties to bilateral agreements which provide rules for the taking of Evidence. The states listed here provided a list of all relevant bilateral treaties. For further details please see the individual State response on the HCCH website (&lt; <a href="http://www.hcch.net">www.hcch.net</a> &gt;).</p>	<p>Bahamas, Trinidad and Tobago, Guatemala. [3]</p> <p>Albania, Belgium, Brésil, Canada, Chile, Croatia, Ecuador, Georgia, Guatemala, Japan, Korea, Malaysia, Moldova, New Zealand, Paraguay, Bahamas, Trinidad and Tobago. [17]</p>
<p><b>3. Consider becoming State Party?</b></p>	<p><b>Yes.</b></p> <p><u>Belgium</u> - la ratification de la Convention a été envisagée et une série de travaux préparatoires nécessaires aient d'ores et déjà été réalisés à cette fin. Dans la situation actuelle, il n'est cependant pas clairement établi si la Belgique peut procéder à une telle ratification ; la question de la ratification par un Etat membre d'un instrument international réglant une matière dont la compétence relève exclusivement de la Communauté européenne est en effet actuellement en discussion au sein de l'Union européenne. S'il s'avère que les Etats membres conservent la faculté de ratification, la Belgique envisagera à nouveau la finalisation des travaux déjà entamés dans ce cadre</p> <p><u>Brésil</u> – La Convention est en train d'être examinée par le Parlement brésilien.</p> <p><u>Chile</u> - YES, as stated in the reply to question No. 1, we are exploring the possibility of becoming a Party to the above Convention. However, a final decision may only be adopted after concluding the new civil procedure legal framework. Only then, based on its new features will it be possible to analyze the strengths and weaknesses that adopting the rules of the Convention might have in our legal system.</p> <p><u>Croatia</u> - In the process of ratification.</p> <p><u>Guatemala</u> - The national competent authorities (Supreme Court of Justice, Society of Law and the Law Department of the Ministry of Foreign Affairs) are already analysing the text of the Convention.</p>	<p>Bahamas, Belgium, Brazil, Chile, Croatia, Georgia, Iceland, Korea, Malaysia, New Zealand, Guatemala, Trinidad and Tobago. [12]</p>

	<p>After their opinion, Guatemala will be prepared to the ratification of the said Convention.</p> <p><u>Iceland</u> - Last spring legislative amendments were made to the Code of Civil Procedure No. 91/1991 in order for Iceland to accede to the Evidence Convention. The deposit of instrument of accession has not yet been sent to the Netherlands, but that will probably be done in September 2008.</p> <p><u>Korea</u> - Discussion for the specific problems relating implementation is ongoing b/w relevant government ministries for the domestic procedure to becoming a State Party of the Evidence Convention</p> <p><u>Malaysia</u> - still considering the possibility of becoming a party to the Evidence Convention</p> <p><u>New Zealand</u> - already taken steps towards becoming a party. Following the New Zealand general election later in the year, officials will seek government approval to complete the remaining steps in 2009.</p> <p><u>Trinidad and Tobago</u> - Currently being reviewed by the Treaties, International Agreements and Legal Division, Ministry of Foreign Affairs, Republic of Trinidad and Tobago.</p>	
<p><b>No.</b></p>		<p>Albania, Canada, Ecuador, Japan, Moldova, Paraguay. [6]</p>

Question	Reply	State [#] refers to number of State responses
<b>II. Questions for Contracting States</b>		
<b>A. Contact Details for Designated Authorities</b>		
<i>See the full replies to the Questionnaire on the Conference's website and the updated information provided in the Full status report of the Evidence Convention</i>		
<b>B. Statistics</b>		
<i>Statistical analysis is provided in the analytical documents, and an excel version of the statistics is available on the HCCH website. Please see individual State responses for greater detail.</i>		
<b>C. General Appreciation of the Evidence Convention</b>		
<b>9. How do you Rate the Convention?</b>	Excellent. <u>India</u> - Prima-facie the objects of the Convention appear to be excellent. However since no requests have been received for execution under the Convention, no specific comments can be provided at this stage.	Bulgaria, India, Israel, Ukraine. [4]
	Good. <u>Netherlands</u> - Background information about the case would be appreciated by the courts.	Argentina, Australia, Czech Republic, Estonia, Finland, France, Germany, Greece, China (HK SAR), Italy, Lithuania, Luxembourg, Mexico, Netherlands, Norway, Poland, Romania, Slovaquie, Suisse, Sweden, United States of America. [21]
	Satisfactory. <u>Portugal</u> - Lengthy execution of requests, lack of sufficient information concerning such execution, even when specifically requested and astray of requests. Thus, it would be valuable to establish a mandatory information mechanism in order to enable a more efficient follow up of the requests.	Denmark, Latvia, Portugal, South Africa, Spain, United Kingdom. [6]

	Unsatisfactory.	[0]
<b>What requires improvement? Possible solutions?</b>	<p>Argentina doesn't find big problems when operating with the Convention. Nevertheless, there are certain aspects related to the appreciation of the topics involved. (e.g. one country excludes certain topics such as testimony of expert witness, copies, etc). Besides, the same country doesn't send copies of medical histories, because they consider it violates people's right to personal intimacy and confidentiality agreements, and they also apply internal law instead of the rules stated in the Convention.</p> <p>Other countries have problems when filling the letter of request's requirements.</p>	Argentina. [1]
	<p>There seems to be some confusion about whether the Evidence Convention provides for taking evidence by video-link, or whether litigants should rely solely on their domestic civil procedure rules if these rules provide for the ability to take video-evidence overseas for court proceedings. Questions of State sovereignty also complicate the use of video-link.</p> <p>Australia has experienced increased interest from Australian legal practitioners in taking evidence overseas by video-link for local court proceedings. Procedures for transmitting requests for taking evidence overseas under the Evidence Convention, or via the diplomatic channel for non Contracting States, function well. However, video-link evidence can be more efficient and convenient for practitioners.</p> <p>Australia has expressed interest, including at the September 2008 Asia-Pacific Regional Meeting held in Hong Kong, in addressing these issues, including possibly by drafting a Protocol to the Hague Evidence Convention that could set out procedures for taking evidence overseas by video-link, and provide an agreed approach, where possible, to the private international law issues raised. Australia would be interested in pursuing this topic further through the Hague Conference.</p> <p>A further issue is that Australia often receives requests under the Convention that provide insufficient information for execution, are addressed to the incorrect Australian authority, have no certification of translation or omit the required Letter of Request. These omissions can undermine the general operation of the Evidence Convention.</p>	Australia. [1]
	<p>It is difficult to generalize the view on practice of the Convention. Generally the mutual cooperation under the Convention with most of the States works well. However, there are unfortunately some States where executing of a request for taking of evidence takes very long time (e.g. United States of America).</p> <p>We would appreciate, if the requested authority could inform, e.g. by informal channel (letter, fax, e-mail) about the delay, about the approximate time needed for the execution,</p>	Czech Republic. [1]



<p>or about the reason why it is not possible to execute the Request.</p> <p>Our courts also mentioned having problems locating current addresses in foreign States (e.g. of the defendant, possible heirs).</p>	
<p>The Danish Ministry of Justice have no specific suggestions for improvements.</p>	Denmark. [1]
<p>Estonia generally thinks that the overall functioning of the convention is quite satisfactory. But the speed of answering the requests could be always better. Estonia agrees that using modern technologies i.e. electronically posted letters could significantly improve the effectiveness of dealing the requests. As a result of that Estonia considers the improved practical handbook on the convention as a desirable solution helping to improve speediness of exchanging necessary data between the member states.</p>	Estonia. [1]
<p>In some cases it takes quite a long time to execute a request. This is problematic especially in family law cases. The State Parties should be urged to execute the requests by using the most expedite proceedings. This could be reminded in the conclusions of the next Special Commission.</p>	Finland. [1]
<p>Si l'Etat français considère que le fonctionnement général de la Convention Preuves est bon, reste qu'il est perfectible et qu'il pourrait utilement être encore amélioré.</p> <p>Notamment, afin de faciliter le traitement des demandes d'obtention de preuves, pourraient être utilisés des formulaires standards ou des formules- modèles multilingues.</p>	France. [1]
<p>It could be useful to draw up multilingual forms.</p> <p>The introduction of deadlines for processing Letters of Request could also be useful.</p>	Germany. [1]
<p>From experience, in many instances letters of request received from other Parties to the Convention are not readily executable because the contents of the letters of request do not fully meet the requirements of the receiving jurisdiction, so further clarifications or amendments are required to enable execution. Development of a database on the laws and practice of Contracting States on the execution of letters of request would be useful.</p>	China (HK SAR). [1]
<p>Multilingual standard forms should be prepared, in keeping with Regulation EC 1206/01 of 28 May 2001, to expedite the review of requests and to ensure that the necessary information under article 3 of the Convention is entered.</p>	Italy. [1]
<p>Comparing the application of the Convention with the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters the latter is applied quite often in Latvia (year 2006: incoming cases - 8, outgoing cases - 109; year 2007: incoming cases - 16, outgoing cases - 204). Therefore the reason why there may have been very few cases in Latvia of sending and receiving Letters of Request concerning evidence might be insufficient knowledge about the possibilities of obtaining evidence from abroad by applying the Convention by courts and parties to the proceedings. Another reason</p>	Latvia. [1]

<p>might be that, although Article 9 of the Convention states that a Letter of Request shall be executed expeditiously, it does not provide for any deadlines of execution. Therefore parties do not have sufficient predictability about the time limit of obtaining the evidence and they may opt for other ways of obtaining documents or other information from abroad or opt for any other evidence that may substitute the one needed from abroad. Therefore, Guide to Good Practice or a Practical Handbook might be a useful means of explaining the actual possibilities provided by the Convention as a helpful tool for the parties to the proceedings in order to obtain the necessary evidence from abroad.</p>	
<p>Particularly with the United States of America we do not have a quick response, since they take more than sixteen months relieving the requests, therefore it is suggested to include in a "Guide of good practices", the central authority's obligation of settling down to give due fulfillment before its national authorities, in order to obtain a quick response</p>	Mexico. [1]
<p>Compte tenu de la faible utilisation de la Convention, il est difficile de porter une appréciation.</p>	Monaco. [1]
<p>Incoming requests: In our experience, some requests are not very clear in what kind of assistance is required, including whether it is a request for service of documents or for hearing of a witness. Also, in some cases, the translations are of a poor quality and thus difficult to understand.</p>	Norway. [1]
<p>In our consideration, after consultation with Polish courts, Practical Handbook would be a useful tool.</p> <p>Polish courts stressed also the need of acceleration of the execution of Letters of Request, especially in case of USA. Moreover it was underlined that requested authorities should inform requesting authority about the delay in execution of a Letter of Request and that the Evidence Convention should provide a time limit to execute of a Letter of Request.</p>	Poland. [1]
<p>The cooperation with some States is sometimes slow.</p>	Romania. [1]
<p>So far, we have had no negative responses on the general operation of the Evidence Convention</p>	Singapore. [1]
<p>Nos expériences sur le fonctionnement de la Convention sont bonnes, mais elles indiquent que quelques états n'exécutent pas les demandes dans le délai satisfaisant même si la Convention ne précise pas le délai dans lequel la demande doit être exécutée. L'exécution de ces demandes est réclamé par notre ministère en qualité de l'Autorité centrale auprès de l'autorité centrale de pays réquis, mais la communication écrite restent quelquefois sans réaction (par exemple Les États Unis ).En outre c'est dommage que la Convention Preuves n'est pas applicable pour les renseignements sur l'adresse de la partie.Ce sont les demandes les plus fréquentes de nos tribunaux slovaques.</p>	Slovaquie. [1]

	<p>Parmi les instruments proposés nous préférons un Manuel pratique tel que Manuel pratique sur le fonctionnement de la Convention Notification de la Haye qui est très souvent utilisé par notre sous-direction afin d'expliquer la Convention Notification plus en détails.</p>	
	<p>Case load too limited to comment</p>	<p>South Africa. [1]</p>
	<p>Les AC cantonales ont qualifié de bon le fonctionnement de la CLaH70. Elles nous ont toutefois fait part des difficultés suivantes :</p> <ul style="list-style-type: none"> <li>• Problème de célérité : <ul style="list-style-type: none"> <li>- Transmission trop lente des requêtes étrangères en Suisse : Il est arrivé que des requêtes soient transmises à l'autorité suisse pour exécution alors que le procès à l'étranger était déjà terminé depuis un certain temps.</li> <li>- Lenteur de l'exécution de la requête dans certains Etats, en particulier en ce qui concerne l'audition de témoins.</li> </ul> </li> <li>• Problème d'application de la Convention : <ul style="list-style-type: none"> <li>- Mauvaise rédaction de la requête. L'exposé de l'objet de l'instance et des faits est parfois trop sommaire ou manque de clarté quant à la preuve à administrer (par ex. questions vagues ou difficiles à saisir: « conditions sociales, morales et économiques » de l'enfant des parties). Il arrive qu'il manque des documents nécessaires à l'exécution de la requête (absence de certificat de décès, copies parfois illisibles, données personnelles incomplètes). A ce propos, un Manuel pratique sur la nature et la teneur des informations devant figurer dans la requête serait le bienvenu. 15</li> <li>- Problème de correspondance entre différents systèmes juridiques, particulièrement concernant le contenu et la forme des commissions rogatoires provenant des pays anglo-saxons (USA) et leur acceptation dans le système juridique suisse.</li> </ul> </li> <li>• Problème d'interprétation de la Convention : <ul style="list-style-type: none"> <li>- Problème de délimitation entre les matières civile et pénale ;</li> <li>- Question de l'application analogique ou non des normes du Chap. I qui pourraient être considérées comme générales et donc recouvrant également le Chap. II (frais, langue, etc.).</li> </ul> </li> <li>• Problème pratique: <ul style="list-style-type: none"> <li>- Prélèvement par contrainte de matières pour effectuer des analyses ADN n'a pas fonctionné.</li> <li>- L'encaissement des frais est souvent difficile étant donné qu'aucune avance de frais n'est exigée.</li> </ul> </li> </ul>	<p>Suisse. [1]</p>
	<p>It can take a long time to get assistance from some States.</p>	<p>Sweden. [1]</p>
	<p>Broad reservations under Article 23 limit the utility of the Convention for U.S. litigants. As a result, American courts are less inclined to require parties to use the Convention in lieu of domestic discovery procedures. Article 23 of the Convention provides that: "A Contracting State may at the time of</p>	<p>United States. [1]</p>

signature, ratification or accession, declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries." Most contracting states have entered some form of Article 23 reservation. At this time, the exceptions include Barbados, Belarus, Bosnia and Herzegovina, the Czech Republic, Israel, Latvia, the Russian Federation, the Slovak Republic, Slovenia, and the United States. The Article 23 reservations of several countries preclude document discovery altogether, including Argentina, Australia, Bulgaria, Denmark, Greece, Hungary, Iceland, Italy, Kuwait, Luxembourg, Monaco, Poland, Portugal, Seychelles, South Africa, Spain, Sri Lanka, Sweden, Turkey, and Ukraine.

A number of other countries have adopted a middle approach of entering "limited" Article 23 reservations which permit the production of documents that are identified with varying degrees of particularity. These include China, Cyprus, Estonia, Finland, France, India, Mexico, the Netherlands, Norway, Romania, Singapore, Switzerland, the United Kingdom, and Venezuela. For instance, France's Article 23 reservation provides that "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" will be executed "when the requested documents are enumerated limitatively in the Letter of Request and have a direct and precise link with the object of the procedure." Similarly, the United Kingdom will execute letters of request which seek "particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or to be likely to be, in his possession, custody or power."

The 2003 Special Commission recommended that "states which have made a general, non-particularised declaration under Article 23 *revisit their declaration* by considering an amendment adopting terms such as those contained in the UK [Article 23] declaration or in Article 16" of the Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad. *See, Permanent Bureau of the Hague Conference on Private International Law, Conclusions and Recommendations Adopted by the Special Commission on the Practical Operation of The Hague Apostille, Evidence and Service Conventions* (28 October to 4 November 2003)(emphasis in original). The referenced Article 16 of the Additional Protocol to the Inter-American Convention provides for the production of documents that are "reasonably identified by date, contents, or other appropriate information."

The 2003 Special Commission also concluded that the terms of Article 23 "are a continued source of misunderstandings." Citing the "history" of the Article 23 provision, the Special Commission "agreed that Article 23 was intended to permit states to ensure that a request for the production of documents must be *sufficiently substantiated* so as to avoid requests whereby one party merely seeks to find out what documents may generally be in the possession of the other party to the proceeding." The Special Commission observed further that "in some instances where States have made a general, non-particularised declaration under Article 23, they may have mistakenly believed that they are only objecting to evidence

requests submitted prior to the *opening of a proceeding in the State of origin.*" Indeed, during the course of the proceedings of the 2003 Special Commission, a delegate from a state that had recently ratified the Convention indicated that her country had entered an Article 23 reservation based upon precisely this misunderstanding. See Hague Conference on Private International Law, *Proces-Verbal/Minutes (No. 4) of Special Commission on the Practical Operation of the Service, Evidence and Legalisation Conventions*, at 11 (Oct. 28, 2003).

The entry of broad Article 23 reservations might also derive from a caricatured view of U.S. discovery proceedings as a "fishing expedition", without judicial supervision or oversight. Such views fail to take into account changes in U.S. civil procedure over the past several years. As noted by one legal scholar: "Rule 26 [of the U.S. Federal Rules of Civil Procedure], the centerpiece of the discovery process, has undergone dramatic revisions as a result of amendments in 1983, 1993, and 2000 that provide for greater judicial control over the discovery process and set limitations on the availability of discovery." See Arthur R. Miller, *The Pretrial Rush to Judgment: Are the "Litigation Explosion", "Liability Crisis", and Efficiency Clichés Eroding Our Day in Court and Jury Trial Commitments*, 78 N.Y.U.L. REV. 982, 1049 (2003); see also Stephen N. Subrin, *Discovery in Global Perspective: Are We Nuts?* 52 DEPAUL L. REV. 299, 301 (2002) ("The rapid pace of amendments to the federal discovery rules has brought expanded case management, discovery conferences, pretrial conferences, required attorney consultations, more stringent certification, numeric discovery limits, the concept of proportionality, mandatory disclosure, [and] a redefinition of 'scope'"); Richard L. Marcus, *Retooling American Discovery for the Twenty-First Century: Toward a New World Order* 7 TUL. J. INT'L & COMP. L. 153, 183 (1999) ("[T]he cumulative effect of the changes that have been made [to the discovery rules] already move beyond mere tinkering. . . . [I]t could be said that America is finally eliminating the 'extravagant' features of discovery, opening the way to accommodation with the practice of the rest of the world"). The 2003 Special Commission specifically acknowledged these changes in U.S. law as limiting "the scope of pretrial discovery, including by increasing the control of judges over discovery proceedings." See 2003 SPECIAL COMMISSION REPORT, at 8.

Unfortunately, the 2003 Special Commission's recommendation that contracting states enter only limited Article 23 reservations seems to have had little effect. Of the eight states that joined the Convention subsequent to the 2003 Special Commission, six have entered blanket Article 23 reservations. Further, to our knowledge, no contracting state has revisited an existing blanket Article 23 reservation.

As discussed elsewhere in this document, U.S. courts apply a "comity" analysis in determining whether to require litigants to utilize the Convention procedures in lieu of domestic discovery procedures. One factor in the comity analysis is the "likelihood that resort to [the Hague] procedures will prove effective." See *Societe Nationale Industrielle*

	<p><i>Aerospatiale v. United States District Court</i>, 428 U.S. 522, 544 (1987). The existence of an Article 23 reservation – in particular, a blanket reservation – signals to the court that requiring resort to the Convention letter of request procedures will not likely be effective.</p> <p>Accordingly, as in 2003, the 2009 Special Commission should consider adopting a strong recommendation that states which have made a general, non-particularised declaration under Article 23 revisit their declaration by either eliminating the declaration altogether or considering a more limited declaration that provides for the production of documents that are reasonably identified by date, contents, or other appropriate information.</p>	
<b>D. Case Law and Reference Work</b>		
<i>These responses have been summarised, for full details of the responses please see the individual State response.</i>		
<b>10. Any guides or practical information?</b>	<b>Yes.</b>	Australia, Czech Republic, Estonia, Greece, Lithuania, Norway, Slovaquie, Spain, Suisse, United States, Urkaine. [11]
	<b>No.</b>	Argentina, India, Mexico, Portugal, United Kingdom. [5]
<b>11. Copies of Decisions rendered since 2003</b>	4 Decisions	Australia. [1]
	3 Decisions dealing with: pre-trial discovery for civil proceedings in a US court, witness contesting approval of the Letter of Request and for the submission of documents.	Germany. [1]
	2 Decisions	China (HK SAR), Netherlands, Portugal. [3]
	7 decisions	Suisse. [1]
	Not Applicable / No decisions.	India, United Kingdom. [2]
	26 decisions	United States. [1]
<b>12. Articles or Books?</b>	5 Texts	Argentina. [1]
	1 Text	France. [1]

	11 Texts	Germany. [1]
	1 Text	Mexico. [1]
	2 Texts	Poland. [1]
	1 Text	Slovaquie. [1]
	5 Texts	Suisse. [1]
	Not Applicable / No Articles.	India, United Kingdom. [2]
<b>13. Details of domestic Implementation</b>	<b>Only the name of the legislation is included, for further details see individual countries's responses</b>	
	Argentine Code Of Civil And Commercial Procedure	Argentina. [1]
	Commonwealth Legislation: <i>Evidence Act 1995 (Cth), Foreign Evidence Act 1994 (Cth), Foreign Proceedings (Excess of Jurisdiction) Act 1984 (Cth)</i> State/Territory Legislation: <i>Evidence on Commission Act 1995 (NSW), Evidence Act 1958 (VIC), Evidence Act 1929 (SA), Evidence Act 1906 (WA), Evidence Act 1971 (ACT), Evidence Act 1977 (QLD), Evidence on Commission Act 1988 (QLD), Evidence Act 2001 (TAS), Evidence on Commission Act 2001 (TAS), Evidence Act (NT), Uniform Civil Procedure Rules 2005 (NSW), General Rules of Procedure in Civil Proceedings 1996 (VIC), Supreme Court Act 1935 (SA), Rules of the Supreme Court 1971 (WA), Court Procedures Act 2004 (ACT), Court Procedures Rules 2006 (ACT), Uniform Civil Procedure Rules 1999 (QLD), Supreme Court Rules 2000 (TAS), Supreme Court Civil Procedure Act 1932 (TAS), Supreme Court Rules (NT)</i>	Australia. [1]
	The Bulagrian law on Ratification of the Evidence Convention, State gazette N 83 of 21.09.1999.	Bulgaria. [1]
	Law no. 126/1976 Coll. (in annex.)	Czech Republic. [1]
	The act of joining the Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters (RT II,1996, 2)	Estonia. [1]
	Act of 19.3.1982 /210. Act on Cooperation between Finnish and Foreign Authorities in Trials and in the Enforcement of a Decision of a Foreign Court in Certain Cases (171/1921)	Finland. [1]
	Law to implement the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Gesetz zur Ausführung des Haager Übereinkommens of 15 November 1965 über die Zustellung gerichtlicher und aussergerichtlicher Schriftstücke im Ausland in Zivil- oder Handelssachen) and to implement	Germany. [1]

the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (Haager Übereinkommens vom 18. März 1970 über die Beweisaufnahme im Ausland in Zivil- oder Handelssachen) (Federal Law Gazette 1977 I p. 3105). b) Regulation on Judicial Assistance in Civil Matters (Rechtshilfeordnung für Zivilsachen - ZRHO)	
Evidence Ordinance (Chapter 8 of the Laws of the Hong Kong Special Administrative Region) Rules of the High Court (Chapter 4A of the Laws of the Hong Kong Special Administrative Region)	China (HK SAR). [1]
Section 78 and Order 26 Rule 19-22 of Civil Procedure Code, 1908.	India. [1]
Planned draft amendments to the Civil Procedure Law and a new draft Law on the Convention passed on August 4, 2008 and still to be adopted by the Parliament.	Latvia. [1]
The Law of the Republic of Lithuania on the Ratification of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters (13 April 2000, No. VIII – 1626) (Code of the Civil Procedure of the Republic of Lithuania)	Lithuania. [1]
Federal code of civil procedures Fourth book of the lone title for international procedural cooperation	Mexico. [1]
Copy of the Implementation Law will be handed over to your Office.	Netherlands. [1]
Court Administration Act	Norway. [1]
See Appendix – Law No 189/2003 regarding international judicial assistance in civil and commercial cases and Order No 2888/7 October 2003	Romania. [1]
Evidence (Civil Proceedings in Other Jurisdictions) Act, Chapter 98, Revised Laws of Singapore; Order 66 of the Rules of Court, Chapter 322, Rule 5, Revised Laws of Singapore.	Singapore. [1]
Voir la réponse sur la question No. 10.	Slovaquie. [1]
the Supreme Court Act of 1959	South Africa. [1]
The 1970 's Convention is self executing and no internal development has been made.	Spain. [1]



	The Act on the taking of evidence for a foreign court of law (1946:816) The Proclamation with certain provisions on the use of The Act on the taking of evidence for a foreign court of law (1947:848) The Act on the taking of evidence at a foreign court of law (1946:817) The Proclamation with certain provisions on the use of The Act on the taking of evidence at a foreign court of law (1947:847)	Sweden. [1]
	Evidence (Proceedings in other Jurisdictions) Act 1975	United Kingdom. [1]
	<i>28 Code of Federal Regulations 0.49 sets the function of the Civil Division of the U.S. Department of Justice as U.S. Central Authority for the Hague Evidence Convention</i>	United States. [1]
<b>14. Any other bilateral treaties regarding evidence abroad?</b>	<b>Yes.</b>	Argentina, Australia, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Latvia, Lithuania, Mexico, Monaco, Norway, Poland, Portugal, Romania, Singapore, Slovaquie, Spain, Suisse, Sweden, Ukraine, United States. [24]
	<b>No.</b>	India. [1]
<b>PART TWO – Substantive Issues</b>		
<b>I. Mandatory or non-mandatory character of the Evidence Convention and “blocking statutes”</b>		
<b>15. Is the Convention mandatory or non-mandatory?</b>	<b>Mandatory.</b> <b>Voir la réponse de la Communauté européenne / see the European Community response –</b> Estonia, Germany, Luxembourg, Slovaquie. <u>Bulgaria</u> - According Article 5, par. 4 of the Constitution of the Republic of Bulgaria “(4) Any international treaty, which has been ratified according to a procedure established by the Constitution, which has been promulgated, and which has entered into force for the Republic of Bulgaria, shall be part of the domestic law of the land. Any such treaty shall take priority over any conflicting standards of domestic legislation.	Argentina, Bulgaria, Communauté européenne, Czech Republic, Estonia, France, Germany, Israel, Luxembourg, Monaco, Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Suisse, Sweden, Ukraine. [19]

Communauté européenne – La Communauté est d’avis que la convention s’applique de façon obligatoire entre les Etats parties et que, dès lors, toute obtention de preuves dans un Etat partie doit se faire conformément à la convention, sous réserve toutefois des dérogations expressément autorisées par la convention elle-même, notamment au titre des articles 27 et 28. Par ailleurs, la Communauté tient à faire les précisions suivantes :

Les Etats membres de la Communauté qui sont Etats parties à la convention ont fait usage de l’article 32 de la convention qui stipule que celle-ci « ne déroge pas aux conventions auxquelles les Etats contractants sont ou seront Parties et qui contiennent des dispositions sur les matières régies par la présente convention » quand la Communauté a adopté le 28 mai 2001 le règlement communautaire no 1206/2001 relatif a la coopération entre les juridictions des Etats membres dans le domaine de l’obtention des preuves en matière civile ou commerciale. Ce règlement prévaut, selon son article 21, sur la convention dans les rapports entre les Etats membres qui sont parties à la convention et s’applique des lors de façon exclusive dans les rapports entre Etats membres au niveau communautaire.

1. Dans les situations où il existe un accord bilatéral régissant les mêmes matières entre un Etat membre de la Communauté et un Etat tiers tous les deux parties à la convention, les Etats concernés sont libres de procéder à une obtention des preuves par les moyens prévus dans un tel accord bilatéral même si ceux-ci ne coïncident pas avec ceux prévus dans la convention.
2. En revanche, dans les rapports entre les Etats membres de la Communauté qui sont parties à la convention et les Etats tiers également parties à la convention, la convention s’applique de façon obligatoire. Des lors, seuls les moyens prévus dans la convention sont à la disposition d’une autorité compétente qui souhaite procéder à une obtention des preuves dans un autre Etat partie. Il convient cependant ici aussi de souligner que les Etats parties ont la possibilité de s’entendre pour déroger aux dispositions du chapitre II de la convention en vertu de son article 28(g).

Czech Republic - The position of the Czech Republic regarding this question corresponds to the response expressed by the European Community.

The Czech Republic became a Member State of the EU on 1<sup>st</sup> of May 2004 and on this date entered into force the Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. This regulation is applied for taking of evidence between Member States of the EU (exclude Denmark) in preference to the Evidence Convention. With other States then Member States of the EU (exclude Denmark), the evidence will be taken pursuant to bilateral treaty, if there is such a bilateral treaty governing the same matter as the Evidence Convention. Consequently, if there is no bilateral treaty the Evidence Convention will be applied. In case of existence of a bilateral agreement between Member State and a third

country, regulating the same substance as the Convention, parties are free to proceed on the basis of this bilateral agreement. In case of existence of a bilateral agreement between Member State and a third State, regulating the same substance as the Convention, parties are free to proceed on the basis of this bilateral agreement. In relations between Member States and third countries both parties of the Convention, the Convention is of mandatory character. In relations between Member States and third State Parties of the Convention, the Convention is of mandatory character.

Estonia - To questions 15, 16 and 33 of this questionnaire a coordinated reply is sent by the European Union.

France - L'Etat français considère comme obligatoire l'application la Convention dès lors qu'une demande d'obtention de preuves émanant d'une juridiction d'un autre Etat partie devrait être exécutée sur le territoire français et réciproquement (hors l'Union européenne où s'applique un règlement communautaire).

Israel - Mandatory. The only authority is the convention. The Israeli law does not provide any other methods of taking of evidence on behalf of a foreign country.

Monaco - Uniquement pour les pays autres que la France avec laquelle Monaco est liée par la Convention du 21 septembre 1949 relative à l'aide mutuelle judiciaire. Cette situation est conforme à l'article 32 de la Convention qui prévoit que « la présente convention ne déroge pas aux conventions auxquelles les Etats contractants sont ou seront Parties et qui contiennent des dispositions sur les matières réglées par la présente Convention ».

Netherlands - refer to the answer from the EU.

Poland - The Republic of Poland considers the Convention as of mandatory character, and thereof taking evidence in the countries being parties of the Convention should be done on the basis of the Convention.

Portugal - The Convention entered into force in Portugal in 1975, after all internal proceedings concerning ratification were completed.

Romania - The position of the Romania regarding this question corresponds to the response expressed by the European Community.

According to the article 32 of the Convention and article 21 of the Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, taking evidence in Member States being parties to the Convention is regulated by the Regulation No 1206/2001.

Spain - This Convention is self-executing to Spain.

Suisse - Comme l'exprime clairement la déclaration formulée par la Suisse relativement à l'art. 1 CLaH70, « la Suisse estime que la convention s'applique de manière exclusive entre

	<p>les Etats contractants. En outre, se référant aux conclusions de la Commission spéciale réunie à La Haye en avril 1989, elle considère que, quelle que soit l'opinion des Etats contractants sur l'application exclusive de la convention, priorité doit être donnée en tout état de cause aux procédures prévues par celle-ci pour les demandes d'obtention de preuves à l'étranger. » Il en résulte que, selon la terminologie proposée par le Questionnaire, la Suisse a un intérêt particulier à ce que soit respectée strictement la voie de l'entraide judiciaire conventionnelle et considère la CLaH70 comme étant obligatoire.</p> <p><u>Sweden</u> – See European Community Response.</p> <p><u>Ukraine</u> - However, when other bilateral or multilateral treaty in this field exists with the same State, the provisions of that other treaty may be applied.</p>	
	<p><b>Non-mandatory.</b></p> <p><u>Australia</u> - Using the Convention is not the only method available to a State Party for obtaining evidence abroad. The Convention itself contemplates the taking of evidence through other means. Article 27 of the Convention provides that the Convention does not prevent Contracting States from permitting less restrictive conditions or alternative means for obtaining evidence. Article 28 of the Convention provides that the Convention does not prevent two or more Contracting States entering an agreement to derogate from various aspects of the Convention. The Convention provides a mechanism by which a Contracting State may seek to obtain evidence located in another Contracting State. If the State chooses to utilise this mechanism, it will enjoy the benefits and guarantees provided for in the Convention. However, there is nothing to prevent a State from approaching another State, outside of the mechanism provided by the Convention, to request that State obtain and provide evidence present within its jurisdiction. Of course, the success of any such request would be contingent on the consent of the requested State—a requesting State operating outside of the Convention will not enjoy the benefits and guarantees of the Convention in compelling the requested State to cooperate. Any attempt by a State to seek to obtain evidence in the territory of another State outside of the mechanism provided by the Convention and without that State's consent would be a breach of the latter State's sovereignty (subject to any other international obligations which may operate to compel cooperation by the requested State).</p> <p><u>China (HK SAR)</u> - The laws of the Hong Kong Special Administrative Region provide a framework for the taking evidence for foreign jurisdictions which may include cases falling outside the scope of the Convention (e.g. in cases where the requesting jurisdiction is not a party to the Convention, or in relation to criminal matters).</p> <p><u>Denmark</u> - The Danish Ministry of Justice considers the Convention to be non-mandatory in the sense that other bilateral or multilateral agreements etc. regarding the same subject</p>	<p>Australia, Denmark, Greece, China (HK SAR), India, Lithuania, Mexico, Singapore, South Africa, United States. [10]</p>

	<p>matter may be applicable.</p> <p><u>Greece</u> - A State Party may take evidence in the territory of our state pursuant to the Convention' means only if it is provided for by our domestic legislation. Moreover, the taking of evidence by foreign officials in Greece always requires specific permission.</p> <p><u>Lithuania</u> - Pursuant to Article 9 of the Convention, we consider the Evidence Convention to be non-mandatory within the context explained in Part 2, IA of the questionnaire.</p> <p><u>Mexico</u> - in accordance with Mexican law, authorities serve a letter rogatory or an international exhort on the basis of an international treaty, or in case such a treaty does not exist, it is done with the support of international judicial cooperation.</p> <p><u>Singapore</u> - If your question is intended to ask whether we would process a request which requires the taking of evidence pertaining to "State interests", our answer is that we would process the request and obtain a hearing date for the examination of the witness. However, we will raise our objections at the hearing to the taking of such evidence based on the general statutory provisions that prevent a foreign applicant from obtaining evidence that pertains to "State interests".</p> <p><u>South Africa</u> - Respect for the legal system of other States.</p> <p><u>United States</u> - The U.S. Supreme Court determined in <i>Societe Nationale Industrielle Aerospatiale v. U.S. District Court</i>, 482 U.S. 522 (1987), that the Hague Evidence Convention is neither exclusive nor mandatory, and that evidentiary mechanisms available in the forum state may also be used on a case by case basis. Nevertheless, some federal courts (e.g., Connecticut, New York, California) and some state courts (e.g., such as New Jersey, Oregon and New York have required first resort to the Convention.</p>	
<p><b>15(a). If non-mandatory, do you consider "State Interests"?</b></p>	<p><b>Yes.</b></p> <p><u>Australia</u> - If a State chooses to operate outside of the Convention in seeking to obtain evidence, subject to any other relevant international obligations, that State must respect the sovereignty of the requested State and only operate within the bounds of any consent provided by that State.</p> <p><u>Denmark</u> - Yes. To give an example the taking of evidence by foreign officials in Denmark will in each instance require specific permission.</p> <p><u>India</u> - To the extent of stipulations in Article 12.</p> <p><u>Mexico</u> - in accordance with the Federal Law of Transparency and Access to Governmental Public Information, the possibility of denying classified information exists.</p> <p><u>United States</u> - The United States considers the Convention to be non-mandatory, but nonetheless considers that "state interests" of the state where the evidence is to be taken</p>	<p>Australia, Denmark, Greece, China (HK SAR), India, Lithuania, Mexico, Singapore, United States. [9]</p>

	<p>must be taken into consideration. In <i>Societe National Industrielle Aerospatiale v. United States District Court</i>, 428 U.S. 522 (1987), the United States Supreme Court concluded that while the Convention does not speak in mandatory terms, lower courts should perform a “comity” analysis whereby the interests of the United States in obtaining evidence located abroad pursuant to non-Convention channels would be weighed against the interests of the state in which the information is located. The Court cited as relevant to any comity analysis, the factors suggested by the Restatement of Foreign Relations of the United States (Revised) Section 437(1)(c): (1) the importance to the ... litigation of the documents or other information requested; (2) the degree of specificity of the request; (3) whether the information originated in the United States; (4) the availability of alternative means of securing the information; and (5) the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.</p>	
<p><b>16. Any Blocking Statutes?</b></p>	<p><b>Yes.</b>  <u>Communauté européenne</u> – Il y a deux instruments communautaires de cette nature: le règlement (CE) no 2274/96 du Conseil du 22 novembre 1996 portant protection contre les effets de l’application extraterritoriale d’une législation adoptée par un pays tiers, ainsi que des actions fondées sur elle ou en découlant (Art. 5(1) : « Aucune personne visée à l’article 11 ne se conforme, directement ou par filiale ou intermédiaire interposé, activement ou par omission délibérée, aux prescriptions ou interdictions, y compris les sommations de juridictions étrangères, fondées directement ou indirectement sur les lois citées en annexe ou sur les actions fondées sur elles ou en découlant. ») et la directive 95/46/CE du Parlement européen et du Conseil du 24 octobre 1995 relative a la protection des personnes physiques a l’égard du traitement des données à caractère personnel et a la libre circulation de ces données (Art. 25(1) : « Les Etats membres prévoient que le transfert vers un pays tiers de données a caractère personnel faisant l’objet d’un traitement après leur transfert, ne peut avoir lieu que si, sous réserve du respect des dispositions nationales prises en application des autres dispositions de la présente directive, le pays tiers en question assure un niveau de protection adéquat. »). En ce qui concerne le règlement no 1206/2001 qui établit un régime communautaire pour l’obtention des preuves, le motif de refus d’exécuter une commission rogatoire prévu à l’article 12(b) de la convention n’est pas prévu. Les Etats membres ne peuvent, dans les rapports entre eux, refuser d’exécuter une demande qu’en invoquant un des motifs prévus à l’article 14 du règlement. En revanche, dans leurs rapports avec des Etats tiers parties à la convention, les Etats membres de la Communauté sont libres d’invoquer le motif prévu à l’article 12(b) de la convention si ceci est prévu dans leur loi nationale. Les Etats membres de la Communauté qui ont adopté des lois de blocage ont</p>	<p>Australia, Communauté européenne, France, Germany, Lithuania, Luxembourg, Mexico, Netherlands, Sweden, United Kingdom. [10]</p>

	<p>indique ou vont indiquer ceci dans leurs réponses individuelles à la question 16.</p> <p><u>Germany</u> - The answer to this question is given by the European Community.</p> <p><u>Luxembourg</u> - Voir réponse de la Commission européenne.</p> <p><u>Mexico</u> - in accordance with the Federal Law of Transparency and Access to Governmental Public Information, the possibility of denying classified information exists.</p> <p><u>Netherlands</u> - refer to the answer from the EU.</p> <p><u>Sweden</u> - See the reply made by the European Community. It should also be noted that Sweden has not adopted any additional blocking statutes in its national legislation.</p> <p><u>United Kingdom</u> - The UK has two statutes which contain provisions that may be seen as "blocking" in this context.</p> <p>The first is the Evidence (Proceedings in Other Jurisdictions) Act 1975. Section 3(3) thereof provides that a person cannot be compelled to give evidence if his doing so would prejudice the security of the United Kingdom. This gives effect to part of the second ground in Article 12 in the Hague Convention under which execution of a letter of request may be refused. A certificate signed by or on behalf of the Secretary of State to the effect that it would be so prejudicial for that person to do so is conclusive evidence of that fact ; but such a certificate is not a necessary condition of this ground of privilege.</p> <p>Further, section 9(4) of the 1974 Act provides that letters of request may not be executed against the Crown which includes present and former Crown officers and servants.</p> <p>The second statute is the Protection of Trading Interests Act 1980. Section 4 thereof provides: "A court in the United Kingdom shall not make an order under section 2 of the Evidence (Proceedings in Other Jurisdictions) Act 1975 for giving effect to a request issued by or on behalf of a court or tribunal of an overseas country if it is shown that the request infringes the jurisdiction of the United Kingdom or is otherwise prejudicial to the sovereignty of the United Kingdom; and a certificate signed by the secretary of State to the effect that it infringes that jurisdiction or is prejudicial shall be conclusive evidence of that fact." The purpose of this enactment was to counter any extra-territorial assertions of sovereignty by third States, particularly in the context of penal anti-trust proceedings.</p>	
	<p>La Suisse ne connaît pas de lois de blocage en tant que telles. Il existe toutefois dans certaines lois des dispositions limitant la participation en Suisse à des procédures d'entraide judiciaire d'obtention de preuves.</p>	<p>Suisse. [1]</p>
	<p><b>No.</b></p> <p>An issue of disclosure by a bank of information containing bank secrecy with regard to a natural or legal person may be decided by a court within a special proceeding under the reasoned application and only in cases determined by the law.</p>	<p>Argentina, Bulgaria, Czech Republic, Denmark, Greece, China (HK SAR), India, Israel,</p>

	<p><u>Czech Republic</u> - The Czech Republic does not have any blocking statutes relating merely to the foreign applicants in order to prevent them from obtaining certain types of evidence. In the Czech Civil Procedure Code there is a general provision (art. 124) that prevents from obtaining information which is protected by an obligation to maintain secrecy as provided by law. The statutes regulating the obligation to maintain secrecy are e.g. No. 412/2005 Coll. Act on protection of secret information and security capacity, No. 85/1996 Coll. Act on advocacy etc. In these cases, the examination may be carried out only if the examined person has been relieved of the duty to maintain confidentiality by the competent authority or by the person in whose favour the duty is; this rule shall analogously apply where the evidence is carried out otherwise than by way of examination.</p> <p><u>Norway</u> - Norwegian legislation does not contain any blocking statutes relating merely to the foreign applicants in order to prevent them from obtaining certain types of evidence. The Norwegian Civil Procedure Code contains a general provision (Section 22-3) that prohibits obtaining information which is protected by an obligation to maintain secrecy as provided by law.</p> <p><u>Slovakia</u> - Slovakia has neither adopted any blocking statutes, nor any (judicial) practice has developed in that direction.</p> <p><u>Ukraine</u> - However, under the Civil Procedural Code of Ukraine, as a general rule, a person may not be questioned as a witness when that person according to the law has obligation to keep secret of the information known owing to his/her official or professional duty – which regard to such information.</p>	<p>Monaco, Norway, Poland, Romania, Singapore, Slovakia, South Africa, Spain, Ukraine, United States.</p> <p>[18]</p>
<p><b>16(a). Purpose, nature and content of blocking statutes.</b></p>	<p><u>Foreign Evidence Act 1994 (Cth)</u> Section 42 of the Foreign Evidence Act gives the Australian Attorney-General the power to prohibit a document or a thing from being produced, or evidence or information from being given, in relation to proceedings before an Australian court that are for the taking of evidence for use in proceedings instituted in or before a foreign court. The Attorney-General can only exercise this power on the ground that he or she is satisfied that it is desirable to do so for the purpose of preventing prejudice to Australia's security. <u>Foreign Proceedings (Excess of Jurisdiction) Act 1984 (Cth)</u> Section 7 of the Foreign Proceedings (Excess of Jurisdiction) Act gives the Australian Commonwealth Attorney-General the power to prohibit producing a document in a foreign court, doing any act in relation to a document which will result in it being produced in a foreign court and the giving of evidence by an Australian citizen or resident in a foreign court. The Attorney-General can only exercise his or her power in relation to proceedings in or before a foreign court, being proceedings relating to one of a series of subjects which bring the matter within Commonwealth power under the Australian constitution. Further, the Attorney-General can only exercise his or her power for one of three reasons—if: (a) making the order is desirable for the protection of the national interest, (b) the assumption of jurisdiction by the foreign</p>	<p>Australia. [1]</p>



	<p>court, or the manner of exercise of jurisdiction by the foreign court, is contrary to international law or is inconsistent with international comity or international practice, or (c) action taken by the foreign authority, or the manner of taking that action, is contrary to international law or is inconsistent with international comity or international practice.</p>	
	<p>Deux articles de la loi n°68-678 du 26 juillet 1968 (les articles 1et 1 bis) – introduits par une loi du 16 juillet 1980- font obstacle aux « demandes d’obtention de preuve sauvages », émises hors les circuits d’entraide judiciaire.</p> <p>Les dispositions de l’article 1<sup>er</sup> de cette loi tendent , « Sous réserve des traités ou accords internationaux », à interdire la communication à des autorités publiques étrangères de documents ou renseignements d’ordre économique, commercial, industriel, financier ou technique dont la communication est de nature à porter atteinte à la souveraineté, à la sécurité, aux intérêts économiques essentiels de la France ou à l’ordre public, précisés par l’autorité administrative en tant que de besoin.</p> <p>L’article 1 prévoit : « Sous réserve des traités ou accords internationaux et des lois et règlements en vigueur, il est interdit à toute personne de demander, de rechercher ou de communiquer, par écrit, oralement ou sous toute autre forme, des documents ou renseignements d’ordre économique, commercial, industriel, financier ou technique tendant à la constitution de preuves en vue de procédures judiciaires ou administratives étrangères ou dans le cadre de celles-ci. »</p> <p>La prohibition qui en résulte est particulièrement large. Elle s’applique en effet :</p> <ul style="list-style-type: none"> <li>- même si la communication du document ou du renseignement n’est pas de nature à porter atteinte à la souveraineté, à la sécurité, à l’ordre public ou aux intérêts essentiels économiques de la France,</li> <li>- même si cette recherche n’est pas suivie d’effet,</li> <li>- et même si la personne poursuivie n’est ni française ni résidente française.</li> </ul>	<p>France. [1]</p>
	<p>Article 801. Court communications [...]</p> <p>2. Courts of the Republic of Lithuania shall not provide with legal assistance when:</p> <ol style="list-style-type: none"> <li>1) an action required is against the public order or independence of the Republic of Lithuania;</li> <li>2) an action required is beyond the remits of courts of the Republic of Lithuania;</li> <li>3) a state from which a request for legal assistance is received has refused provision of legal assistance to courts of the Republic of Lithuania.</li> </ol> <p>Article 802. Rogatory letters</p> <p>1. Courts of the Republic of Lithuania shall execute requests for legal assistance by a court or other authority of a foreign state in compliance with the law of the Republic of Lithuania. A court of the Republic of Lithuania to whom a request for legal assistance has been referred</p>	<p>Lithuania. [1]</p>

	to may, at the initiative of the requesting court or other authority of a foreign state, apply other rules than those provided for by laws of the Republic of Lithuania unless they are prohibited by the law of the Republic of Lithuania or are against the public order of the Republic of Lithuania.	
	Singapore does not have specific foreign statutes but we have general statutory provisions that prevent disclosure of matters relating to state interests.	Singapore. [1]
	<p>La Suisse ne connaît pas de lois de blocage en tant que telles. Il existe toutefois dans certaines lois des dispositions limitant la participation en Suisse à des procédures d'entraide judiciaire d'obtention de preuves, à savoir :</p> <ul style="list-style-type: none"> <li>- Protection de la souveraineté suisse : Le Code pénal suisse (CP, RS 311.0, <a href="http://www.admin.ch/ch/f/rs/c311_0.html">http://www.admin.ch/ch/f/rs/c311_0.html</a>) contient les dispositions suivantes relatives à la sauvegarde de la souveraineté territoriale de la Suisse et étrangère : art. 271 (Actes exécutés sans droit pour un Etat étranger), art. 273 (Service de renseignements économiques), et art. 299 (Violation de la souveraineté territoriale étrangère) CP.</li> <li>- Secret bancaire : La loi sur les banques (LB, RS 952.0, <a href="http://www.admin.ch/ch/f/rs/c952_0.html">http://www.admin.ch/ch/f/rs/c952_0.html</a>) contient à l'art. 47 LB l'obligation du secret bancaire. Ce secret n'est toutefois pas absolu et est levé dans certaines circonstances, notamment en cas de fraude ou autres délits pénaux. Le ch. 4 prévoit en outre une réserve en faveur des dispositions cantonales relatives à l'obligation de renseigner l'autorité et de témoigner en justice. Une demande peut donc avoir différentes issues, selon son lieu d'exécution.</li> <li>- Secrets industriels ou commerciaux : Certains cantons prévoient dans leur Code de procédure des dispositions particulières limitant la participation à des actes d'entraide. Par exemple, le Code de procédure civil tessinois (CPC, RL 3.3.2.1, <a href="http://www.ti.ch/CAN/argomenti/legislaz/rleggi/rl/dati_rl/f/s/84.htm">http://www.ti.ch/CAN/argomenti/legislaz/rleggi/rl/dati_rl/f/s/84.htm</a>) dispose à son art. 231 al. 2 : « Le juge peut dispenser le témoin de la révélation de secrets industriels ou commerciaux quand l'intérêt du témoin à maintenir le secret l'emporte sur l'intérêt de la partie à sa révélation » (traduction).</li> <li>- Secret professionnel: Code pénal suisse Art. 321, qui dispose toutefois que demeurent réservées les dispositions fédérales ou cantonales statuant une obligation de renseigner une autorité ou de témoigner en justice.</li> <li>- Protection des sources: Code pénale suisse Art. 28a</li> </ul>	Suisse. [1]
<b>16(b). When can statute block taking evidence?</b>	La loi de blocage n'est instituée que " sous réserve des traités et accords internationaux » et ne joue donc pas dès lors que la demande d'obtention de preuves a été introduite dans la cadre de la convention ou d'un autre instrument international multi ou bilatéral.	France. [1]
	The provisions provided above are applicable as general principles of the civil procedure and	Lithuania. [1]

	<p>encompass all rogatory letters issued abroad, including requests for the taking of evidence, made under the Evidence Convention.</p> <p>Pursuant to Article 9 of the Convention the judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed. However, it will follow a request of the requesting authority that a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible to perform by reason of its internal practice and procedure or by reason of practical difficulties.</p> <p>Thus national legislation corresponds to the provisions of the Convention.</p>	
	<p>It is possible to raise the law of blockade, when the information has been required by a judicial authority, if it is the same authority that knows of the matter or that issued the letter rogatory based on the Evidence Convention</p>	<p>Mexico. [1]</p>
	<p>We refer to the Singapore High Court decision of Securities and Exchange Commission v Ong Congqin Bobby [1999] 1 Singapore Law Reports 310, where an application was taken out by the United States Securities and Exchange Commission under the Evidence (Civil Proceedings in Other Jurisdictions) Act, Chapter 98, Revised Laws of Singapore, to take evidence from witnesses in Singapore to be used in proceedings in the United States for injunctive relief and disgorgement of illicit profits in connection with insider trading. The issue was whether by giving effect to the request for judicial assistance would be to enforce the penal or public laws of another country. The High Court held that the action for an injunction was a civil proceeding both according to the law of the United States and the law of Singapore. The High Court made an observation that the courts of one country will not execute the penal laws of another country. If the foreign proceeding amounts to an enforcement of a penal law, the Court will not assist in obtaining the evidence.</p> <p>Similarly, if the foreign proceeding amounts to an enforcement of foreign revenue law, the Court will not assist in obtaining the evidence. In this regard, we refer to the Singapore Court of Appeal decision of Brooks Exim Pte Ltd v Bhagwandas [1995] 2 SLR 13. The Court of Appeal held that the courts would not enforce an agreement whose object was to evade the revenue laws of a friendly foreign country.</p>	<p>Singapore. [1]</p>
	<p>En général :</p> <ul style="list-style-type: none"> <li>- D'une manière générale si l'énoncé de fait légal des dispositions concernant la protection de la souveraineté suisse est rempli, l'auteur encourra une sanction pénale. Il est toutefois possible d'obtenir une autorisation en vue de procéder à de tels actes. C'est d'ailleurs ce qui est prévu concernant les commissions rogatoires selon le Chap. II CLaH70.</li> <li>- Le secret bancaire peut quant à lui être levé dans certaines circonstances. Par principe, le détenteur du secret (le client) peut délier la banque de son devoir de discrétion en l'autorisant, voire en l'obligeant à révéler des informations couvertes par le secret. Il est en</li> </ul>	<p>Suisse. [1]</p>

	<p>autre levé par l'autorité judiciaire en application des dispositions de la législation fédérale et cantonale statuant l'obligation de renseigner l'autorité et de témoigner en justice. Des dispositions du droit civil, du droit de la poursuite pour dettes et de la faillite, du droit pénal, du droit administratif et de l'entraide judiciaire en matière pénale révoient en effet des dérogations au secret bancaire. Celui-ci peut ainsi être levé sur ordre d'une autorité judiciaire (cantonale ou fédérale), même contre la volonté du client. Le secret bancaire ne peut être invoqué face à l'autorité de surveillance (Commission fédérale des banques, CFB).</p> <p>Spécificités cantonales :</p> <ul style="list-style-type: none"> <li>- TI : S'agissant du secret bancaire, ne sont pas admises les requêtes d'édition de documents ayant des fins investigatrices (sauf en matière de divorce) ou qui pourraient léser les intérêts de tiers. En particulier, il n'est en principe pas possible d'obtenir l'édition de documents bancaires qui concernent un tiers qui n'est pas partie au procès, sauf si celui-ci invoque abusivement son indépendance juridique par rapport à une partie (cas de la société dominée par une des parties qui en est l'unique actionnaire). Il appartient au juge qui exécute la commission rogatoire (resp. à l'autorité de recours) de décider de l'admissibilité des demandes adressées à une banque.</li> <li>- SG : Dans le cas où une banque se prévaut du secret bancaire, le président peut décider de lever le secret bancaire.</li> </ul> <p>Code de procédure civile suisse :</p> <p>Le projet du futur Code de procédure civile suisse prévoit notamment que le tribunal ordonne les mesures propres à éviter que l'administration des preuves ne porte atteinte à des intérêts dignes de protection des parties ou de tiers, notamment à des secrets 'affaires (art. 153 PCPCS). L'art. 163 al. 2 P-CPCS qui concerne le droit de refus restreint de tiers prévoit (entre autres) que tout tiers peut refuser de collaborer dans la mesure où il pourrait de ce fait se rendre punissable de la révélation d'un secret selon l'art. 321 Code pénal (v. plus haut) ou dans la mesure où il s'agit de la protection des sources selon l'art. 28a Code pénal (v. plus haut). En outre, les titulaires d'autres droits de garder le secret qui sont protégés par la loi peuvent refuser de collaborer s'ils rendent vraisemblable que l'intérêt à garder le secret l'emporte sur l'exigence de la manifestation de la vérité. Sont notamment comprises par ce cas de figure, les personnes soumises au secret bancaire.</p>	
<p><b>16(c). Have blocking statutes ever been applied?</b></p>	<p><b>Yes.</b></p> <p><b>No.</b></p> <p><u>France</u> - L'autorité centrale française n'a pas connaissance d'une utilisation de la loi de blocage par une juridiction française</p> <p><u>Lithuania</u> - According to the information provided by the courts of Lithuania, there were no cases of "blocking" the taking of evidence. In general, there were a few requests only for taking of evidence in the territory of the Republic of Lithuania under the Evidence Convention</p>	<p>[0]</p> <p>Australia, France, Lithuania, Singapore. [4]</p>

	received. <u>Singapore</u> – see answer to 16(b)	
	This data is not available	Mexico. [1]
	Please refer to our answer in Question 16(b).	Singapore. [1]
	Il n'existe pas de statistiques en la matière. Un exemple est mentionné à la question 11.	Suisse. [1]
<b>16(d). Have any measures been taken for violation of blocking statute?</b>	<b>Yes.</b> <u>France</u> - Par un arrêt du 28 mars 2007, la cour d'appel de Paris (9ème chambre B), infirmant un jugement de relaxe prononcé par le tribunal correctionnel de Paris le 1 <sup>er</sup> juin 2006, a déclaré un avocat, coupable du délit de communication de renseignements économique, commercial, industriel, financier ou technique tendant à la constitution de preuves pour une procédure étrangère, et l'a condamné à une peine de 10 000 euros d'amende.	France. [1]
	<b>No.</b>	Australia, Lithuania, Singapore. [3]
	This data is not available	Mexico. [1]
	Les autorités cantonales questionnées ont répondu par la négative.	Suisse. [1]
<b>II. Scope of the Evidence Convention</b>		
<b>A. Interpretation of the phrase "civil or commercial matters"</b>		
<b>17. Interpretation of "civil or commercial matters"</b>	<u>Netherlands</u> - As far as the Central Authority is concerned the above mentioned is not known to us.	Netherlands, Singapore. [2]
	<u>Singapore</u> - This is a matter for judicial interpretation and has not been determined conclusively or subject to judicial interpretation in Singapore.	
<b>17(a). Any issues since 2003?</b>	<b>Yes.</b>	Australia, France, Mexico, Slovaquie, Spain, Suisse. [6]
	<b>No.</b> <u>Denmark</u> - According to the knowledge of the Danish Court Administration the Danish courts have only had very few cases involving The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters since 2003. The Danish Commerce and Maritime Court has informed The Danish Court Administration that the court has not lately received any requests of taking evidence from foreign countries at all. For that reason the interpretation of the phrase "civil or commercial matters" has not given rise to specific issues as regards requests from other contracting states. However The Danish Commerce and Maritime Court has sent at least one request to a court in another contracting	Argentina, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, China (HK SAR), India, Israel, Latvia, Lithuania, Luxembourg, Monaco, Norway, Poland, Portugal,

	<p>state. In this regard the court has not referred to any specific issues or problems on the phrase "civil or commercial matters".</p> <p><u>India</u> - No event till date has given rise to the occasion to seek the interpretation of the term/phrase.</p>	<p>Romania, South Africa, Sweden, Ukraine, United Kingdom, United States. [24]</p>
<p><b>17(a)(i). If yes, how solved?</b></p>	<p>In the New South Wales Supreme Court case of <i>Sykes v Richardson</i> (2007) NSWSC (Unreported Judgments New South Wales), one party argued that an application to obtain evidence should be set aside because the matter was a criminal matter and not a "civil or commercial" matter. The matter involved allegations of conspiracy to manipulate the copper futures market in violation of the <i>Sherman Antitrust Act</i> in the United States of America. The Court considered that the essential issue in deciding this question was whether the proceedings related to the commission of an offence under the law of the country that issued the request, namely the United States of America. In deciding this question, the Court examined the form of the proceedings (the plaintiffs were private parties, the civil standard of proof applied) and an explanatory document issued by Australia in 1979 acknowledging that: "experts agreed that it was quite proper to reject a request if the evidence sought could be directly linked to a penal (or tax) proceeding in the requesting country". The Court also noted the subject matter of the proceedings and the damages that were available to the parties. Finally, it agreed with the principle in <i>Huntington v Attrill</i> [1893] AC 150 that (at 156): [...] no proceeding, even in the shape of a civil suit, which has for its object the enforcement by the State, whether directly or indirectly, of punishment imposed for such breaches by the <i>lex fori</i>, ought to be admitted in the Courts of any other country.</p> <p>The Court ruled that despite the punitive nature of the treble damages sought, the proceedings were not public because the plaintiffs were private parties, the civil standard of proof applied and the plaintiffs sought damages rather than the imposition of fines or imprisonment. The Court therefore resolved that the matter in question was a civil matter and the application to obtain evidence was valid under the Convention.</p>	<p>Australia. [1]</p>
	<p>Courant octobre 2003, l'autorité centrale française a reçu une commission rogatoire décernée par la Haute Cour de Justice d'Angleterre et du Pays de Galles qui, se fondant sur la Convention de La Haye du 18 mars 1970, tendait à ce que plusieurs mesures d'auditions et de productions de pièces soient accomplies, afin de déterminer l'origine frauduleuse ou non de valeurs (des travellers chèques pour une valeur totale de 39 800 €) trouvés sur une personne qui franchissait la frontière à DOUVRES-Est, lors d'un contrôle douanier par les autorités anglaises.</p> <p>Dans cette affaire, était Demandeur : le Detective Constable de la police du conté du K., et Défendeur : un ressortissant français.</p> <p>La demande était transmise aux deux juridictions françaises respectivement compétentes</p>	<p>France. [1]</p>

	<p>pour y donner suite, lesquelles étaient averties de la difficulté quant la nature de l’affaire.</p> <p>En janvier 2004, un des tribunaux français saisi donnait suite à la commission rogatoire, alors que quelques jours après, en février 2004, l’autre tribunal français rendait une ordonnance d’irrecevabilité de la demande d’entraide.</p> <p>Ce dernier tribunal a relevé que les investigations auxquelles le défendeur avait été soumis dans le cadre de la procédure (fouille sur sa personne, interrogatoires, recherche auprès du casier judiciaire français,) constitu[ai]ent des mesures de contraintes propres à la procédure pénale ou douanière ».</p>	
	Particularly with the United States we’ve had problems regarding labour issues that should be taken into account as part of civil matters	Mexico. [1]
	Quelquefois nous avons reçu les commissions rogatoires qui ont pour objet l’obtention de preuve dans les affaires pénales ou administratives. Ces commissions rogatoires ont été envoyées sans l’exécution parce que ces affaires sont exclues du champ d’application de cette convention et il est approprié d’appliquer une autre convention (par exemple la Convention européenne d’entraide judiciaire en matière pénale du 20.4.1959).	Slovaquie. [1]
	Specific issues regarding Labour Law. They were solved by speaking to the Central Authority of the other country to clarify our position	Spain. [1]
	La délimitation de cette notion par rapport à la matière pénale s’est avérée problématique (par ex. dans les cas d’« asset forfeiture » du droit anglo-saxon et plus particulièrement américain).	Suisse. [1]
<b>17(a)(ii). If yes, were Conclusions and Recommendations of 2003 SC followed?</b>	<b>Yes.</b>  <u>Australia</u> - takes a broad and liberal interpretation of the phrase “civil or commercial matters” and accepts matters such as bankruptcy, insurance and employment law, as falling within the scope of this concept.  <u>Suisse</u> - L’Office fédéral de la justice a informé les Autorités centrales suisses des résultats et des différentes Recommandations de la Commission spéciale de 2003 en mettant l’accent sur celles qui sont susceptibles d’améliorer les relations internationales en matière d’entraide. Les Recommandations sont aussi prises en compte dans les lignes directrices de l’OFJ ainsi que lorsque les Autorités centrales suisses demandent un avis informel à l’OFJ	Australia, France, Slovaquie, Suisse. [4]
	<b>No.</b>	Mexico. [1]
<b>17(b). Any discussions with other CAs?</b>	<b>Yes.</b> <u>Australia</u> - In April 2008 the Attorney-General’s Department requested that the Hungarian Ministry of Justice and Law Enforcement clarify whether a proceedings for which Australia had received a Letter of request was civil or commercial in nature. The Attorney-General's	Australia, France, Mexico, Spain. [4]

	<p>Department sent the request by letter.</p> <p><u>France</u> - Dans l'espèce relatée supra, le magistrat de liaison britannique à Paris ainsi que l'autorité centrale anglaise ont été interrogés par l'autorité centrale française quant à la nature civile ou commerciale de l'affaire.</p> <p>Les autorités anglaises ont répondu que la requête était traitée conformément aux dispositions de la loi « <i>Proceeds of Crime Act 2002</i> » et qu'il s'agissait d'un procès civil.</p> <p><u>Mexico</u> - Cross communication with the United States Department of Justice.</p>	
	<p><b>No.</b></p> <p><u>Bulgaria</u> - The interpretation of this phrase has not been discussed.</p> <p><u>Denmark</u> - The Danish Court Administration is not aware of such discussions. The Commerce and Maritime court has only dealt with very few cases involving The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters.</p> <p><u>Estonia</u> - So far it has not been a matter of practical significance.</p> <p><u>India</u> - No event till date has given rise to the occasion to seek the interpretation of the term/phrase.</p> <p><u>Norway</u> - We are aware of there being different interpretations of the term "civil and commercial matters" in the member states. If a requested state considers that a request from Norway falls outside of the scope of the Convention, we would look into the possibility of sending the request through diplomatic channels.</p> <p><u>Suisse</u> - Pour la plupart des AC cantonales, la question ne s'est jamais posée. Certaines autorités ont indiqué que les demandes sortant du cadre « en matière civile ou commerciale » ont jusqu'à présent toujours été rejetées par l'autorité centrale sans nécessité d'un débat préalable de cette notion avec l'autorité requérante ; la matière concernée était en effet clairement identifiable. L'OFJ a lui pour pratique d'expliquer son appréciation de manière informelle sans que pour autant un véritable débat à ce sujet ait lieu.</p> <p><u>United States</u> - The question has not arisen.</p>	<p>Argentina, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Greece, China (HK SAR), India, Israel, Latvia, Lithuania, Mexico, Monaco, Norway, Portugal, Romania, Slovaquie, South Africa, Suisse, Ukraine, United Kingdom, United States. [23]</p>
<p><b>18. Do the following fall within the scope of "civil and commercial"?</b></p>	<p>Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice at this time prefers not to elaborate or speculate on what the meaning of particular terms may be.</p>	Denmark. [1]
	<p>The array of these matters is primarily examined by the relevant judge and it follows the implementation of the European Regulation (EC) 1206/2001 as already mentioned.</p>	Greece. [1]
	<p>This is a matter for judicial interpretation and has not been determined conclusively or subject to judicial interpretation in Singapore.</p>	Singapore. [1]



	<p>Remarque liminaire de la Suisse:  Il est utile de se référer aux considérations de l'Office fédéral de la justice exprimées dans les Lignes directrices relatives à l'Entraide judiciaire internationale en matière civile, p. 8-9, relative à la définition de la notion "civile et commerciale" (<a href="http://www.rhf.admin.ch/etc/medialib/data/rhf.Par.0062.File.tmp/wegl-ziv-f.pdf">http://www.rhf.admin.ch/etc/medialib/data/rhf.Par.0062.File.tmp/wegl-ziv-f.pdf</a>). D'une manière générale l'Office fédéral de la justice se rallie à une interprétation large de la notion de « matière civile ou commerciale ». Celle-ci ne doit pas forcément correspondre à celle utilisée sur le plan interne. Il est toutefois difficile d'en donner une définition. D'une manière négative on peut dire que la CLaH70 ne vise ni la matière pénale, ni la matière fiscale. Enfin lorsqu'il s'agit d'un litige opposant une autorité publique à une personne privée, où l'autorité publique agit dans l'exercice de sa puissance publique, l'affaire ne pourra pas être considérée come étant de nature « civile ou commerciale ».</p>	Suisse. [1]
	<p>It is not possible to determine whether the enumerated types of matters fall within the scope of the phrase "civil and commercial matters". There are no known cases where the issue actually has arisen. Whether the authorities will regard the enumerated types of matters or some of them to fall within the scope of the phrase "civil and commercial matters" must be determined with respect to the circumstances in the specific case. No general answer can therefore be given.</p>	Sweden. [1]
<b>Bankruptcy or insolvency in general</b>	<p>Yes.  <u>Suisse</u> - Cela, sous réserve toutefois, qu'il ne s'agisse pas d'une mesure d'exécution forcée. Dans les arrêts 94 III 37 et 96 III 65, le Tribunal fédéral a admis que la notion de « matière civile et commerciale » comprend également la poursuite pour dettes et la faillite lorsque les créances sont de nature civile.</p>	<p>Argentina, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, China (HK SAR), Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, South Africa, Spain, Suisse, Ukraine, United Kingdom. [24]</p>
	<p>No.</p>	Slovaquie. [1]
<b>Reorganisation under bankruptcy laws</b>	<p>Yes.  <u>Suisse</u> - Cela toujours sous réserve qu'il ne s'agisse pas d'une mesure d'exécution forcée.</p>	<p>Bulgaria, Czech Republic, Estonia, Finland, France, Germany, China (HK SAR), Israel, Latvia, Lithuania, Luxembourg,</p>

		Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, South Africa, Spain, Suisse, Ukraine, United Kingdom. [23]
	No	Argentina, Slovaquie. [2]
<b>Insurance</b>	Yes.	Argentina, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, China (HK SAR), Israel, Latvia, Lithuania, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Slovaquie, South Africa, Spain, Suisse, United Kingdom. [23]
	No.	[0]
<b>Social Security</b>	Yes. <u>China (HK SAR)</u> - Defrauding the social security system may give rise to criminal liability, in which case no. <u>Suisse</u> - Dans un arrêt ATF A 1966 67-73, le Tribunal fédéral des assurances a indiqué qu'il convenait d'accorder l'entraide en matière d'assurances sociales de la même manière qu'en matière civile. Quelques AC (8) se sont néanmoins prononcées par la négative.	Argentina, Bulgaria, France, China (HK SAR), Israel, Mexico, Norway, Poland, Portugal, South Africa, Spain, Suisse, Ukraine. [13]
	No.	Czech Republic, Finland, Lithuania, Monaco, Netherlands, Romania, Slovaquie, United Kingdom. [8]
<b>Employment</b>	Yes.	Argentina, Bulgaria, Estonia, Finland, France, Germany, China (HK SAR), Israel, Latvia,

		Lithuania, Luxembourg, Mexico, Netherlands, Norway, Poland, Portugal, Romania, Slovaquie, South Africa, Spain, Suisse, Ukraine, United Kingdom. [23]
	No	Czech Republic, Monaco. [2]
<b>Taxation</b>	Yes. <u>China (HK SAR)</u> - Tax fraud may be criminal in nature; tax assessment/collection may be civil	Argentina, China (HK SAR), South Africa, Spain, Ukraine. [5]
	No.	Bulgaria, Czech Republic, Finland, France, Lithuania, Mexico, Monaco, Norway, Poland, Portugal, Romania, Slovaquie, Suisse, United Kingdom. [14]
<b>Anti-trust and Competition</b>	Yes. <u>Poland</u> - (in Poland partially it constitutes public law)	Bulgaria, Czech Republic, Estonia, Finland, France, Israel, Latvia, Lithuania, Luxembourg, Monaco, Netherlands, Norway, Poland, Portugal, South Africa, Spain, Ukraine. [17]
	No. <u>United Kingdom</u> - except where individuals or representatives are able to bring actions.	Argentina, Mexico, Romania, Slovaquie, United Kingdom. [5]
	YES and NO / Oui et NON. <u>Suisse</u> - Notamment dans ce domaine, il est nécessaire d'analyser à fond si la nature de la prétention est civile, si les parties qui s'opposent agissent sur un pied d'égalité ou si l'une d'entre elle fait usage de prérogatives de puissance publique à l'égard de	Suisse. [1]

	l'autre. Selon les circonstances du cas d'espèce, ce domaine peut être considéré comme relevant du champ d'application couvert par l'expression "en matière civile et commerciale" ou non.	
<b>Consumer protection</b>	Yes. Suisse - Les AC se sont prononcées par l'affirmative à l'exception d'une.	Argentina, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Slovaquie, South Africa, Spain, Suisse, Ukraine. [23]
	No.	[0]
<b>Regulation and oversight of financial markets and stock exchange</b>	Yes. Yes, excluding criminal matters – Finland.	Finland, China (HK SAR), Latvia, Lithuania, Monaco, Portugal, South Africa, Spain, Ukraine. [9]
	No. Suisse - Néanmoins, la plupart des AC se sont prononcées par l'affirmative à l'exception de quelques unes.	Argentina, Bulgaria, Czech Republic, France, Mexico, Netherlands, Poland, Romania, Slovaquie, Suisse. [10]
<b>Proceeds of crime</b>	Yes. China (HK SAR) - Confiscation would be criminal; forfeiture would be civil	China (HK SAR), Poland, South Africa, Spain. [4]
	No. Australia - Enforcement action in relation to many of these categories of case (for example, insurance fraud, social security fraud, breach of tax law and financial market regulation) can be pursued through both criminal and civil proceedings, depending on the circumstances. These categories may therefore be listed as falling within the "civil and commercial" description because in many cases they can be pursued through civil proceedings, not because they are always or even usually pursued in this way. Processes for mutual assistance in criminal matters should be used to obtain evidence in	Australia, Argentina, Bulgaria, Czech Republic, Finland, France, Lithuania, Mexico, Monaco, Netherlands, Norway, Portugal, Romania, Slovaquie, Suisse, Ukraine. [16]

	proceeds of crime matters. <u>Suisse</u> - Quelques AC se sont néanmoins prononcées par l'affirmative.	
<b>Other matters.</b>	The Argentine Central Authority has a wide criterion of interpretation. When analyzing the admissibility of a letter, the Central Authority reviews the competence of the judge who ordered it.	Argentina. [1]
	It has to be noted that some of matters, e.g. competition, consumer protection may lie within the scope of both private and public law, therefore the application of the Convention may vary depending on whether the case is of public or private character.	Latvia. [1]
	The following are "civil or commercial"- Property relations; family relations; status of natural and legal persons; agency relations; succession; contractual and non-contractual obligations.	Lithuania. [1]
	Divorces, intestate successions	Mexico. [1]
	Administrative Law	Portugal. [1]
	[no specification given]	Bulgaria, South Africa. [2]
	Family matters, establishment of facts, contracts, property rights, housing, compensation of damages, custody, succession, recognition and enforcement of judgements.	Ukraine. [1]
	The Central Authority will consider any request for evidence in a non-criminal proceeding that emanates from a tribunal or other authority that has judicial or adjudicatory powers, including proceedings listed above if they comply with this requirement.	United States. [1]
<b>B. Interpretation of the terms "commenced or contemplated" (Art. 1(2)) and / or "commenced" (Arts 15(1) and 16(1))</b>		
<b>19. When are proceedings "contemplated"?</b>	Australia considers that "contemplated" refers to judicial proceedings that may not have actually been instituted at the time of execution of the Letter of Request; <i>British American Tobacco Australia Services Ltd v Eubanks for the United States of America</i> (2004) 60 NSWLR 483 at 496. This issue is clarified in practice by Australia's Article 23 declaration that Australia 'will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in common law countries'. Australia's policy in this respect is concerned principally with excluding an excessive train of enquiry.	Australia. [1]
	According to the Bulgarian civil procedural Code there is an opportunity for perpetuation of Evidence:  Article 207. Where there is a risk that some item of evidence may be lost or the taking thereof may be impeded, the party may move for the anticipatory taking of the said item of evidence.	Bulgaria. [1]

	<p>Proceeding for Perpetuation of Evidence</p> <p>Article 208. (1) The petition for perpetuation of evidence shall be submitted to the court which examines the case, and if the case has not yet been instituted, any such petition shall be submitted to the regional court exercising jurisdiction over the permanent address of the person to be examined or over the location of the immovable to be inspected.</p> <p>(2) A duplicate copy of the petition for perpetuation of evidence shall be served upon the other party.</p> <p>(3) The ruling of the court, whereby the petition is dismissed, shall be appealable by an interlocutory appeal.</p> <p>(4) Within the same proceeding, the court may take evidence cited by the other party if the said evidence is closely related to the evidence cited by the petitioner.</p> <p>(5) Where the petitioner is not in a position to name the name and address of the other party, the court shall appoint a representative of the said other party.</p> <p>(6) The general rules shall apply regarding the procedure for taking of evidence and the value thereof.</p>	
	<p>In the Czech civil law there is not such a proceeding that could be regarded as "contemplated" in the sense of Article 1(2).</p>	<p>Czech Republic. [1]</p>
	<p>Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice at this time prefers not to elaborate or speculate on what the meaning of particular terms may be.</p>	<p>Denmark. [1]</p>
	<p>According to the Estonian civil procedural law an action is deemed to be filed and being heard by the court if the court has accepted the action and the statement of claim has been served on the defendant/opposing party. But it is also possible in case certain requirements are met to start a separate procedure for collecting and securing evidence before filing the actual lawsuit.</p>	<p>Estonia. [1]</p>
	<p>A la connaissance de l'autorité centrale française, il n'existe pas de décision de jurisprudence qui aurait écarté une demande d'obtention de preuves fondée sur la Convention à raison de ce qu'elle n'aurait pas été faite dans le cadre d'une procédure engagée ou en vue d'une procédure future .</p> <p>En droit français, l'article 145 du code de procédure civile dispose que : « S'il existe un motif légitime de conserver ou d'établir avant tout procès la preuve de faits dont pourrait dépendre la solution d'un litige, les mesures d'instruction légalement admissibles peuvent être ordonnées à la demande de tout intéressé, sur requête ou en référé. »</p>	<p>France. [1]</p>

	<p>Le juge est souverain pour apprécier de la recevabilité de la demande introduite sur le fondement de cet article. Généralement, la jurisprudence témoigne de l'exigence d'un litige potentiel à objet et fondement suffisamment caractérisés. En effet, il ne s'agit pas de permettre à une partie d'exercer des pressions sur une autre ni de permettre de découvrir un fondement juridique afin d'introduire ultérieurement une demande en justice ( Paris, 26 déc. 1986). Néanmoins, une décision précise que le lien avec l'action en justice n'oblige pas les demandeurs à indiquer s'ils engageront un procès pas plus qu'il ne leur incombe d'en énoncer la nature ni le fondement (Cass. com., 28 janv. 1992).</p>	
	<p>From the German point of view, the concept "contemplated judicial proceedings" is to be understood in a broad sense. In principle, it is sufficient for there to be already cause for legal proceedings because the parties are in deep dispute over a state of affairs (Knöfel, Kommentar zum HBÜ, in: Geimer/Schütze, Internationaler Rechtsverkehr in Zivil- und Handelssachen, Loseblatt, situation as of 2007, A i 3f, marginal note 36 with further evidence from literature and legal decisions). Accordingly, it is in particular the German law's proceedings for the preservation of evidence under Section 485 ff of the German Code of Civil Procedure (Zivilprozessordnung - ZPO) that falls under the area of application of the Evidence Convention.</p>	Germany. [1]
	<p>There are no problems with these terms.</p>	Greece. [1]
	<p>There is no concept of the term "contemplated" in Indian law. The provisions of Civil Procedure Code, 1908 which govern the proceedings of civil nature only apply to the proceedings that have commenced before a court.</p>	India. [1]
	<p>The Civil Procedure Law provides that if a person has a cause to believe that the submission of necessary evidence on his/her behalf may later be impossible or problematic, he/she may ask for such evidence to be secured. Applications for securing evidence may be submitted at any stage of the proceedings, as well as prior to the bringing of an action to a court.</p> <p>Amendments to Civil Procedure Law (see answer Nr. 13) would clarify that it is also possible to request the court to secure the evidence before starting proceedings when it is necessary to obtain evidence from abroad. Therefore, proceedings would be regarded as "contemplated" when a party would request a court to secure the evidence before the action is brought to the court. In addition, Paragraph 6 of Article 100 of the Civil Procedure Law requires that in a case when evidence is secured before the court proceedings are commenced the action has to be brought within 30 days. Hence it is not possible to request the court to secure the evidence when a party would not be able to bring proceedings within 30 days.</p>	Latvia. [1]
	<p>The 'Contemplated' judicial procedure should be regarded as a prospective judicial procedure that has not been commenced by a procedural action of a judge, but is considered possible,</p>	Lithuania. [1]

provided that applicant complies with the requirements set out by a court's ruling or by law (e.g. Art. 221, Art. 148 Para 2 of CCP). The acceptance of a statement of claim shall be considered the first stage of a civil procedure (Art. 137).	
In Mexico exists the legal possibility to open a file integrated by different legal action that are to get ready to trial. These actions are generally taken by the plaintiff to initiate with effectiveness a later legal process.	Mexico. [1]
On peut attribuer ce terme à la procédure de référé qui permet de demander l'instauration d'une expertise, notamment en cas de dépérissement des preuves.	Monaco. [1]
As far as the Central Authority is concerned the above mentioned is not known to us.	Netherlands. [1]
According to Norwegian civil procedure rules, it is possible to carry out taking of evidence before the case is commenced, on certain conditions. This is regulated in the Civil Procedure Code section 28-1 and 28-2. (enclosed)	Norway. [1]
Securing Evidence: the evidence may be secured if there is a fear that taking an evidence can become impossible or excessively difficult, or if for other reasons a need arises to confirm the fact.	Poland. [1]
A contemplated judicial proceeding should regard the substance of the process, and not just a prejudicial issue.	Romania. [1]
This is a matter for judicial interpretation and has not been determined conclusively or subject to judicial interpretation in Singapore.	Singapore. [1]
Il n'(est) pas clair quelle procédure on considère comme la procédure « future ». Chez nous une telle définition n'existe pas. En Slovaquie, il n'existe que la disposition dans l'article 78 du Code de procédure civile concernant la procédure judiciaire pour sauvegarder la preuve avant la saisine de la juridiction dans la procédure elle même.	Slovaquie. [1]
La notion de procédure « engagée » renvoie à celle de litispendance. En droit suisse cette notion relève des différents codes de procédure civile cantonaux. Dans la majorité des codes, la litispendance est créée en principe par l'introduction de la demande et dans certains cas par le dépôt de la procédure de conciliation déjà. En matière de procédure civile internationale, le moment déterminant qui doit créer la litispendance a été uniformisé dans l'art. 9 de Loi fédérale sur le droit international privé (LDIP, SR 291; <a href="http://www.admin.ch/ch/f/rs/2/291.fr.pdf">http://www.admin.ch/ch/f/rs/2/291.fr.pdf</a> ): la date du premier acte nécessaire pour introduire l'instance est décisive; la citation en conciliation suffit. Les codes de procédure civile cantonaux ont toutefois été pris en considération en vue de la formulation d'un concept uniforme s'intégrant au P-CPCS. Selon le projet, l'instance est introduite d'une manière uniforme par le dépôt de la requête de conciliation. Lorsqu'une procédure de conciliation	Suisse. [1]



	<p>n'est pas prévue, c'est le dépôt de la demande en procédure sommaire, le dépôt de la requête ou de la requête commune en divorce qui est déterminant (60 P-CPCS). D'ici à l'entrée du P-CPCS, soit aux alentours de 2011, se sont toujours les codes cantonaux qui prévalent.</p> <p>- La notion de procédure « engagée » renvoie de notre avis à la sécurisation de moyens de preuve en vue d'un procès ultérieur (ex : requête de preuve à futur ». Il ne s'agit toutefois pas là d'accorder une protection provisoire au requérant par le biais de mesures conservatoires, domaine réservé de la Convention de Lugano dans le cas de ses États parties. Cette notion ne semble pas poser de problèmes en pratique dans la mesure où tant les codes de procédure cantonaux que le projet de Code de procédure civile suisse prévoient ce genre de procédure – preuve à futur –.</p>	
	In the Ukrainian law there is no such proceedings as could be regarded "contemplated" in the sense of Article 1(2).	Ukraine. [1]
	Not applicable.	United Kingdom. [1]
<b>20. Difficulties with interpreting "commenced or contemplated"?</b>	Yes. <u>Australia</u> - On occasion, clarification has been required in connection with an incoming request as to whether proceedings are in fact commenced or contemplated	Australia. [1]
	No. <u>China (HK SAR)</u> - We are not aware of any recent case on the matter. But see Camaro Trading Co. Ltd. v Nissei Sangyo America Ltd. CACV40/1994 (Court of Appeal) <u>United States</u> - There is a misconception in some civil law jurisdictions that "pretrial" discovery in the United States refers to discovery "before the commencement of the action." For instance, one prominent civil law scholar has erroneously described American discovery as follows: "In the United States, documentary evidence is often requested by the claimant in a specific discovery procedure that precedes the actual lawsuit." This statement is entirely incorrect. In the United States, the term "pretrial" discovery merely refers to the obtaining of evidence subsequent to the initial filing of the complaint which initiates the lawsuit, but prior to the formal testimonial proceedings to decide the merits of the case (i.e., the "trial").	Argentina, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, China (HK SAR), Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovaquie, South Africa, Spain, Suisse, Sweden, Ukraine, United Kingdom, United States. [27]
	As far as the Central Authority is concerned the above mentioned is not known to us.	Netherlands. [1]
	This is a matter for judicial interpretation and has not been determined conclusively or subject to judicial interpretation in Singapore.	Singapore. [1]

<p><b>21. Any difficulties with “commenced” in Arts 15 and 16?</b></p>	Yes.	[0]
	No.	Australia, Denmark, Estonia, Finland, France, Germany, Greece, Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Norway, Poland, Slovaquie, Spain, Suisse, Sweden, United Kingdom. [20]
	Bulgaria has objected to the application of Chapter II of the 1970 Hague Convention (art.16, 17, 18 and 19).	Bulgaria. [1]
	As far as the Central Authority is concerned the above mentioned is not known to us.	Netherlands. [1]
	Romania has objected to the application of Chapter II of the 1970 Hague Convention (art.16, 17 and 18).	Romania. [1]
	Not applicable. We have declared that the whole of Chapter II shall not apply to the Republic of Singapore.	Singapore. [1]
<p><b>22. Should “commenced” have uniform interpretation across Arts 1(2), 15 and 16?</b></p>	Yes. <u>Bulgaria</u> - has objected to the application of Chapter II of the 1970 Hague Convention (art.16, 17, 18 and 19). The term “commenced” is given an uniform interpretation across Articles 1(2) and 15(1) according our legislation.	Argentina, Australia, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, China (HK SAR), Israel, Latvia, Lithuania, Luxembourg, Monaco, Poland, Slovaquie, South Africa, Spain, Suisse, Sweden, Ukraine. [22]
	No. <u>Mexico</u> - there has been no problem regarding this matter	Mexico. [1]
	Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice at this time prefers not to elaborate or speculate on what the meaning of particular terms may be.	Denmark. [1]
	As far as the Central Authority is concerned the above mentioned is not known to us.	Netherlands. [1]

	Romania has objected to the application of Chapter II of the 1970 Hague Convention (art.16, 17 and 18).	Romania. [1]
	We have not reached a decision on this at the present time.	Singapore. [1]
<b>C. Arbitration proceedings</b>		
<b>23. Any requests for evidence in Arbitration Proceedings?</b>	<p><b>Yes.</b></p> <p><u>Netherlands</u> - No issues have occurred.</p> <p><u>Singapore</u> - Not applicable</p> <p><u>Suisse</u> - Seule une AC cantonale a mentionné avoir rencontré un tel cas. Aucun problème particulier n'a été rencontré. La demande consistant à l'obtention de preuves matérielles en Espagne, celle-ci a été transmise à l'autorité centrale de cet Etat.</p>	Netherlands, Singapore, Suisse. [3]
	<p><b>No.</b></p> <p><u>Australia</u>- Australia considers that the application of the Convention is limited to judicial authorities and judicial acts according to Article 1(1) of the Convention. Australia notes, however, that there is nothing within the Convention to prevent its use by two parties in circumstances where both parties consent to it having such additional application.</p> <p><u>Estonia</u> - According to Estonian law an arbitral tribunal (or a party with the consent of the tribunal) may request the assistance of a court to perform an attestation act or to conduct another court activity. In that case the requested court may also seek evidence from abroad using the Evidence Convention.</p>	Australia, Argentina, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, China (HK SAR), Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Poland, Portugal, Romania, Slovaquie, South Africa, Spain, Ukraine, United Kingdom. [25]
	Under Section 27 of the Indian Arbitration and Conciliation Act, 1996 and Arbitral Tribunal or a Party with the approval of the Arbitral Tribunal may apply to the Court for assistance in taking evidence. So far neither India has received nor presented any request in this regard	India. [1]
	There are no U.S. court rulings regarding the application of the Convention to arbitration proceedings. This question has arisen under 28 U.S.C. § 1782, however. That U.S. federal statute, which is independent of the Convention, allows "any interested person" to seek judicial assistance from a U.S. court in obtaining evidence "for use in a proceeding in a foreign or international tribunal."	United States. [1]
	The meaning of the term "tribunal," as used in § 1782, has been the subject of considerable litigation. A series of cases in the 1990s held that that the statute does not extend to private arbitration proceedings. See <u>National Broadcasting Co. v. Bear Stearns &amp; Co., Inc.</u> , 1998 165 F.3d 184 (2d Cir. 1999); <u>Republic of Kazakhstan v. Biederman Int'l</u> , 168 F.3d 880	

(5th Cir. 1999); In re Application of Medway Power, Ltd., 985 F.Supp. 402 (S.D.N.Y. 1997). More recent decisions have taken a more liberal approach. In 2004, the U.S. Supreme Court held that § 1782 can be used to obtain evidence not only on behalf of government courts, but also quasi-judicial agencies. Advanced Micro Devices v. Intel Corp., 542 U.S. 241 (2004). In that case, for instance, the Supreme Court authorized a lower court to provide assistance to an antitrust investigation of the European Commission. The Intel decision did not directly address this issue whether an arbitrator or arbitration tribunal may be considered a "foreign or international tribunal" within the meaning of § 1782. Nevertheless, in the course of discussing a related question, the Supreme Court quoted with approval a scholarly treatise which stated that the "term, 'tribunal ... includes ... administrative as well as arbitral tribunals."

Since Advanced Micro Devices, at least five U.S. district courts have ruled that arbitral panels are "tribunals" within the meaning of § 1782. See In re Oxus Gold PLLC, 2006 U.S. Dist. LEXIS 74118 (D.N.J. Oct. 10, 2006); In re Application of Hallmark Capital Corp., 534 F. Supp. 2d 951 (D. Minn. 2007); In re Roz Trading Ltd., 469 F. Supp. 2d 1221 (N.D. Ga. 2006); Comision Ejecutiva, Hidroelectrica Del Rio Lempa v. Nejapa Power Co., LLC, 2008 WL 480935 (D. Del. 2008, Oct. 14, 2008); In re Application of Babcock Borsig AG,, 2008 WL 4248209 (D. Mass., Oct. 30, 2008). In Oxus Gold, a New Jersey district court held that an arbitration proceeding under the United Nations Commission on International Trade Law (UNCITRAL) Rules constitutes a "foreign or international tribunal" within the meaning of § 1782. However, the holding in the case was relatively narrow. The court distinguished the arbitration proceeding before it from purely private arbitration, noting that the proceeding did not arise from a private contract, but rather from a bilateral investment treaty. More recent decisions have read § 1782 more broadly, without distinguishing between public and private arbitrations. For instance, shortly after the decision of the New Jersey district court in Oxus Gold, the U.S. District Court for the Northern District of Georgia held that an arbitral panel in a purely private arbitration proceeding in Austria was a "tribunal" for the purposes of § 1782. See In re Roz Trading, 469 F. Supp. 2d at 1227. Most other recent decisions have reached a similar result. See, e.g., Hallmark Capital Corp., 534 F. Supp. 2d 951 (involving discovery request for use in Israeli private arbitration); Comision Ejecutiva, 2008 WL 480935 ("Section 1782 does indeed apply to private foreign arbitrations"); Babcock Borsig AG,, 2008 WL 4248209 (holding that ICC arbitral panel was a "tribunal" under § 1782, but declining to allow discovery based on discretionary factors). Nevertheless, the issue continues to be controversial, as illustrated by the decision in Comision Ejecutiva, Hidroelectrica Del Rio Lempa v. El Paso Corp., WL 2008 5070119 (Nov. 20, 2008), where the U.S. District Court for the Southern District of Texas declined to follow the weight of the post-Intel case law, and held that § 1782 does not extend to arbitration proceedings.

	Nevertheless, the term, "foreign or international tribunal", as used in § 1782, would appear to be broader than the term "judicial authority", as used in the Convention. Thus, it is not clear that U.S. courts would deem the Convention applicable to letters of request issued by an arbitral tribunal.	
<b>III. Taking of evidence by video-link</b>		
<b>A. General legal framework</b>		
<b>24(a). Any legal obstacles to taking evidence under Chapter I?</b>	Yes. Ce mode de preuve n'est pas prévu par la législation monégasque.	Monaco. [1]
	No. <u>Australia</u> - There appears to be some uncertainty as to whether the procedures under the Hague Evidence Convention provide for the ability to take video-link evidence. Australia considers that the Hague Convention makes no specific provision for the taking of evidence by video-link. Notwithstanding, Australia considers that there are no legal obstacles to the usage of modern technologies under the Convention. Australia further notes that the private international law issues that may arise as a result of video-link evidence are not all addressed by the Convention. <u>Czech Republic</u> - Taking of evidence by video-link is not specially regulated in the Czech law. The taking of evidence is in general terms regulated in the Civil Courts Procedure law no. 99/1963 Coll. In the part III Head two, § 125 of the law says that: "Every means by that the State of the case can be ascertained may serve as evidence: in particular examination of witnesses, an expert's report, reports and statements of authorities, individuals or legal entities, notarial or executorial records and other documents, checking over and examination of the participants. Unless the way of carrying out the evidence is prescribed, it shall be specified by the court." <u>Estonia</u> - In case requesting state is collecting evidence from abroad under the convention via video-link, we think it is inevitable that article 8 of the Evidence Convention applies. Whether using video-link for the taking of evidence is allowed in certain case also depends on procedural laws of the member states involved. We do not see from Estonian point of view any legal obstacles for taking evidence via video-link by the requested state after having received a letter of request. Estonian Code of Civil Procedure permits court sessions held in form of procedural conference. In a court session organised in the form of a procedural conference, the right of every participant in the proceeding to file petitions and	Australia, Czech Republic, Estonia, Finland, France, Germany, Greece, China (HK SAR), Israel, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovaquie, South Africa, Spain, Suisse, United Kingdom, United States. [25]

applications and to formulate positions on the petitions and applications of other participants in the proceeding shall be guaranteed in a technically secure manner and the conditions of the court session in respect of the real time transmission of image and sound between the participant in the proceeding not present in court premises to the court must be technically safe.

Finland - The convention remains silent on the matter and therefore it is not prohibited to use a video-link. However, this kind of co-operation is based fully on national legislation.

France - La possibilité d'une participation de l'autorité requérante à l'accomplissement de la mesure est explicitement consacrée par la convention (article 8) et elle peut légitimement souhaiter que sa participation se fasse par visioconférence. Dans le cas où le droit de l'Etat d'exécution prévoirait une autre forme d'exécution, la demande devrait être exécutée conformément à l'article 9, alinéa 2, de la convention.

Germany - The term "taking of evidence" is open, allowing the taking of evidence by video-link to be included. The taking of evidence by video-link for foreign court proceedings is regarded as a special form of taking evidence which may take place without any specific provision because it does not contradict the principles of German law. The persons concerned however, whose image and voice are transmitted, have to agree for their evidence to be taken by video-link as in German law.

Greece - Our State bases the use of video-link on the functional development and medium neutral interpretation of the Convention in light of modern technologies.

China (HK SAR) - The Convention is medium-neutral and provides sufficient flexibility (Art 7 to 9) to allow the use of video-link to take evidence. In our opinion, the 1970 Convention does not oblige the member states to carry out such requests, thus the request will have to be carried out on a voluntary basis.

Israel - There is nothing in the convention to exclude a video link. This new medium seems to be covered by the convention as much as any other pre existing medium.

Latvia - Generally Latvia interprets the Convention as medium neutral; however other States Parties' interpretation of provisions of Articles 7 and 8 may have effect on the possibilities of using video-link in the taking of evidence abroad.

Lithuania - The State bases the use of video-link under the Convention on specific provisions such as Arts 7 or 8. Besides, there is a legal basis of taking of evidence by video-link in CCP Arts 9, 177 (extracted in response).

Mexico - in civil or commercial matters a request has not been received, nevertheless, in criminal matters, Mexico has asked for several that have been relieved satisfactorily.

Norway - We do not consider that there are legal obstacles to the taking of evidence by

video-link under Chapter I of the Convention. In this regard, we emphasize that the request must not be carried out in conflict with Norwegian law.

Portugal - The Portuguese Civil Procedure Code also admits this mean of taking of evidence – Law Decree 183/2000, 10.08.

Singapore - Article 9 of the Convention provides that the judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed. In this regard, section 4(1) of the Evidence (Civil Proceedings in Other Jurisdictions) Act, Chapter 98, Revised Laws of Singapore gives the High Court the power by order to make such provision for obtaining evidence in Singapore as may appear to the High Court to be appropriate for the purpose of giving effect to the request. This includes the taking of evidence by video-link.

Slovaquie - L'utilisation de liaisons vidéo n'est pas actuellement réglée par notre Code de procédure civile mais dans sa nouvelle version qui entrera en vigueur en octobre 2008, elle prévoit la possibilité d'ordonner l'audience en utilisant la technique de la visioconférence. C'est-à-dire que dans les tribunaux seront disponibles les équipements de visioconférence. Au contraire, les renseignements sur l'utilisation de cette technologie dans les affaires pénales sont en actualité déjà.

South Africa - The use of video-link under the Convention of specific provisions as Arts 7 or 8

Spain - Spain bases the use of video-link on the functional development and medium neutral interpretation of the Convention in light of modern technologies and on the basis of domestic legislation.

Suisse - Remarque liminaire de la SuisseA titre préliminaire, il est utile de se référer aux considérations de l'Office fédéral de la justice exprimées dans les Lignes directrices relatives à l'Entraide judiciaire internationale en matière civile, p. 35-36 (<http://www.rhf.admin.ch/etc/medialib/data/rhf.Par.0062.File.tmp/wegl-ziv-f.pdf>). Il s'agit également de relever que la forme de la vidéoconférence doit toutefois être considérée comme une forme spéciale au sens de l'art. 9 CLaH70. Dans cette mesure, trois cas de figure doivent ainsi être distingués :

1. Vidéoconférence avec présence des parties ou de leurs représentants mais sans intervention : ce cas de figure est prévu à l'art. 7 CLaH70 et ne nécessiterait aucune autorisation spéciale.
2. Vidéoconférence avec présence des magistrats de l'État requérant mais sans intervention : ce cas de figure est prévu à l'art. 8 CLaH70 et est soumis à l'autorisation de l'autorité d'exécution (cf. réserve suisse ad art. 8 CLaH70).
3. Vidéoconférence avec intervention : Le fait pour une autorité étrangère ou des avocats

	<p>étrangers de procéder à une audition, par vidéoconférence, de témoins ou de parties se trouvant physiquement en Suisse constitue un acte de puissance publique sur territoire suisse. Une telle audition est ainsi soumise à autorisation selon le Chap. II CLaH70. La plupart des AC considère que la base légale d'une telle mesure est plutôt à chercher dans l'évolution fonctionnelle de la Convention (cf. également les diverses conventions bi- et multilatérales en matière pénale qui le prévoient déjà, p. ex. Deuxième Protocole additionnel du 8 novembre 2001 à la Convention européenne d'entraide judiciaire en matière pénale, RS 0.351.12; Accord Suisse-Italie, RS 0.351.945.41). Quelques AC ont toutefois indiqués fonder une telle mesure sur les art. 7 et 8 CLaH70. Ce genre de mesure n'a pour l'heure été utilisée par aucune des AC cantonales questionnées. Elle poserait d'ailleurs des problèmes d'ordre économique, ainsi que des problèmes pratiques tels que la question de l'attribution des frais et de la mise à disposition du matériel (autorités requises, autorités requérantes, parties). Se pose également la question de l'identification des personnes objets de la mesure de preuves et les personnes procédant à ladite mesure. Se posent également des questions techniques (compatibilité de systèmes; mesures de sécurité IT).</p> <p><u>United Kingdom</u> - The UK bases the use of video-link on the functional development and medium neutral interpretation of the Convention in light of modern technologies.</p>	
	It depends on the relevant judge criterion.	Argentina. [1]
	Taking of evidence by video-link is not specially regulated in the Czech law. The taking of evidence is in general terms regulated in the Bulgarian Civil Procedural code	Bulgaria. [1]
	The Danish Ministry of Justice is unable at this time to provide an assessment of what the legal basis under the convention for the taking of evidence by video-link might be.	Denmark. [1]
	Though the taking of evidence by video link has received judicial recognition subject to fulfillment of certain formalities, yet a sound technology/infrastructure to give effect to the same is yet to be evolved	India. [1]
	The Evidence Convention does not expressly require the examined person to be present in person. Instead the Convention is medium neutral. From a Swedish point of view the taking of evidence must be interpreted to encompass the usage of modern technique, such as video-link.	Sweden. [1]
	The Civil Procedural Code of Ukraine does not provide for special procedures to take evidences by video-conference. However, the Code contains general provisions that allow using of technical devices.	Ukraine. [1]
<b>24(b). Any legal obstacles to taking evidence under</b>	<p>Yes.</p> <p><u>Germany</u> - It is not guaranteed that the persons concerned have agreed for their evidence to be taken by video-link.</p>	Germany, Romania (probably because it objected to these



		articles). [2]	
<b>Chapter II?</b>	No. See answer to 24(a) – India, Spain. [2] <u>Australia</u> - Chapter II of the Hague Convention makes no specific provision for the taking of evidence by video-link. Notwithstanding, Australia considers that there are no legal obstacles to the usage of modern technologies under the Convention. Australia further notes that the private international law issues that may arise as a result of video-link evidence are not all addressed by the Convention. <u>Estonia</u> - In case a diplomatic officer or consular agent of a Contracting State aims to collect evidence in the territory of another Contracting State and within the area where he exercises his functions in our opinion article 19 of the Evidence Convention applies. In addition we believe that using video-link must also be in line with the legal provisions of the state of origin of the diplomatic officer or consular agent. <u>Finland</u> - The convention remains silent on the matter and therefore it is not prohibited to use a video-link. However, this kind on co-operation is based fully on national legislation. <u>Greece</u> - Our State bases the use of video-link on the functional development and medium neutral interpretation of the Convention in light of modern technologies. <u>Latvia</u> - Generally Latvia interprets the Convention as medium neutral; however other States Parties' interpretation of provisions of Article 19 may have effect on the possibilities of using video-link in the taking of evidence abroad. <u>Mexico</u> - none has been formulated. <u>South Africa</u> - The use of video-link under the Convention of specific provisions as Art 19. <u>United Kingdom</u> - Just doesn't happen.	Australia, Czech Republic, Estonia, Finland, France, Greece, China (HK SAR), Israel, Latvia, Lithuania, Mexico, Netherlands, Norway, Poland, Slovaquie, South Africa, Spain, Suisse, United Kingdom, United States. [20]	
	Bulgaria has objected to the application of Chapter II of the 1970 Hague Convention (art.16, 17, 18 and 19).	Bulgaria. [1]	
	<u>Monaco</u> - Les juridictions de la Principauté n'ont pas eu, à ce jour, à statuer sur ce point.	Monaco. [1]	
	We have declared that the whole of Chapter II shall not apply to the Republic of Singapore.	Singapore. [1]	
	<b>B. Chapter I – Incoming Letters of Request</b>		
	<b>25. Any requests received since 2003 requiring evidence by video?</b>	Yes. <u>Suisse</u> - (Réponse de 2 AC sur 26)	Australia, France, Israel, Norway, Singapore, Spain, Suisse, United States. [8]
		No.	Argentina, Bulgaria,

	<p><u>Denmark</u> - The Danish Court Administration has not received any formal requests or had such inquiries forwarded by the Danish central authority.</p> <p><u>Finland</u> - Please note that we have had some requests where video-conference has been used under the EU Regulation on Taking of Evidence</p> <p><u>Greece</u> - But it has executed two (2) such requests, based upon the EC Regulation 1206/2001, from Finland.</p> <p><u>Netherlands</u> - The Central Authority has no data on this matter.</p>	<p>Czech Republic, Denmark, Estonia, Finland, Germany, Greece, China (HK SAR), India, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Poland, Portugal, Romania, Slovaquie, South Africa, Ukraine, United Kingdom. [23]</p>
<b>25(a). How many?</b>	Australia has no objection to the taking of evidence via video-link for civil and commercial matters. Australia has previously received requests which required or otherwise involved the use of video-link in their execution. These include special procedure requests, such as appearance by counsel via video-link. However, formal statistics are not kept of the occasions in which video-link has been used to execute a request.	Australia. [1]
	Au moins une. Reque très récemment, la demande vient d'être transmise aux fins d'exécution. On peut observer, par ailleurs, que de nombreuses demandes sont reçues dans un autre cadre juridique : le Règlement (CE) n° 1206/2001 du Conseil du 28 mai 2001 relatif à la coopération entre les juridictions des États membres dans le domaine de l'obtention des preuves en matière civile ou commerciale.	France. [1]
	Eight.	Israel. [1]
	One	Norway. [1]
	One letter of request was received in 2004.	Singapore. [1]
	Three or four.	Spain. [1]
	Les statistiques fournies indiquent qu'au minimum 3 commissions rogatoires de cette nature ont été reçues.	Suisse. [1]
<b>25(b). From which States?</b>	Many were from the United Kingdom and the United States.	Australia. [1]
	Dans le cadre de la convention : l'Australie.	France. [1]
	Dans le cadre du règlement (CE) n° 1206/2001 du Conseil du 28 mai 2001 : le Royaume-Uni, l'Espagne, le Portugal.	
	Portugal, USA	Israel. [1]
	Australia	Norway. [1]
Hong Kong	Singapore. [1]	

	South American countries and Portugal.	Spain. [1]
	Portugal, USA	Suisse. [1]
<b>25(c). Were these requests executed?</b>	Yes.	Australia, Israel, Norway, Singapore. [4]
	No.	Spain, Suisse, United States. [3]
<b>25(d). What technology is used to execute request?</b>	Generally, Australian courts may use a broad range of technologies, depending on the case in question, to execute a Letter of Request using video-link. For example, the <i>Evidence (Audio and Audio Visual Links) Act 1998</i> (NSW) defines video-link as “facilities that enable audio and visual communication between persons at different places” and enables the New South Wales Supreme Court to use any technology that falls within that definition to take video-link evidence.  The broad interpretation of video-link was confirmed in the case of <i>Bell Group Ltd (in liq) and Others v Westpac Banking Corporation and Others</i> (2004) 208 ALR 491, in which the Western Australian Supreme Court approved the decision in <i>Australian Securities and Investments Commission v Rich</i> (2004) 49 ACSR 578, stating:  First, the court should strongly encourage the use of current-generation electronic aids to its work, provided they are cost-effective and their reliability has been adequately established, recognising that a technological innovation which saves time and money may be acceptable even if it delivers a product not quite as good as the traditional alternative. The Court in <i>Australian Securities and Investments Commission v Rich</i> went on to note that in exceptional cases there will be good grounds to take evidence in person and not by video-link.	Australia. [1]
	En application de l’article R. 111-7, 2 <sup>ème</sup> al., du code de l’organisation judiciaire : « Les caractéristiques techniques des moyens de télécommunication audiovisuelle utilisés doivent assurer une transmission fidèle, loyale et confidentielle à l’égard des tiers. Elles sont définies par arrêté du garde des sceaux, ministre de la justice. » Le réseau de transport utilisé actuellement par le ministère de la justice est le réseau RNIS (Réseau numérique à intégration de services / ISDN), appartenant au réseau téléphonique commuté. Le débit nécessaire est de 256 kb/s.	France. [1]
	Secured.	Israel. [1]
	We have equipment for sending evidence taken by video-link encrypted.	Norway. [1]
	A secured video-link on a private network is utilised.	Singapore. [1]
	The nature of the technology used by our authorities to execute incoming letters via video-links is a webcam connection over the Internet	Spain. [1]

	Not applicable.	United States. [1]
<b>25(e). Any technical problems?</b>	Australian courts routinely use video-link facilities to take evidence from within Australia. Feedback from external stakeholders, including State and Territory Justice Departments, indicates that they have not experienced any technical problems in the execution of a request from abroad.	Australia. [1]
	L'autorité centrale française n'a pas connaissance de problèmes techniques ayant empêché l'exécution de telles demandes.	France. [1]
	No.	Israel. [1]
	No technical problems	Norway. [1]
	Not applicable.	Singapore. [1]
	Not applicable.	United States. [1]
<b>25(f). Have there been language barriers?</b>	Yes.	Spain. [1]
	No.	Australia, Israel, France, Norway, Singapore. [5]
<b>25(f)(i). What level of interpretation is required?</b>	Professional accredited interpreters. France - L'Ordonnance de Villers-Cotterêts (éditée par le roi François 1 <sup>er</sup> en août 1539) prescrit l'usage de la langue française dans tous les actes officiels (Article 110 : « Afin qu'il n'y ait cause d'éprouver un doute sur le sens des arrêts donnés par nos Cours, nous voulons et ordonnons qu'ils soient faits et écrits si clairement qu'il n'y ait, ni puisse y avoir, aucune ambiguïté ou incertitude, ni lieu à demander interprétation ». Article 111. « Et puisque de telles choses sont souvent advenues, sur la signification des mots latins contenus dans lesdits arrêts, nous voulons que dorénavant tous arrêts, ensemble toutes autres procédures, soit de nos Cours souveraines et autres subalternes et inférieures, soit de registres, enquêtes, contrats, commissions, sentences, testaments, et autres quelconques actes et exploits de justice, soient prononcés, enregistrés et délivrés aux parties en langage maternel français et non autrement. ») Cependant, l'article 23 du code de procédure civile « Le juge n'est pas tenu de recourir à un interprète lorsqu'il connaît la langue dans laquelle s'expriment les parties. »	Australia, France. [2]
	Parties or counsel.	Israel, France, Spain. [3]
<b>25(f)(ii). Is simultaneous interpretation required?</b>	Yes.	[0]
	No.	Australia, Israel, France, Spain. [4]

<b>25(f)(iii). Is in sequence interpretation required?</b>	Yes.	Israel, France, Spain. [3]
	No.	Australia. [1]
<b>25(f)(iv). Does the law require that proceedings be interpreted in both States?</b>	Interpretation only required in requested State.	Australia, Israel, Spain. [3]
	Interpretation required in both States.	[0]
<b>25(f)(v). Who pays for the interpretation?</b>	If an interpreter is located in the other State, that State may apportion the costs of the service as it deems appropriate. For an interpreter located in Australia, the Australian authority will seek reimbursement from the foreign authority for the costs of the service (in accordance with Art 14) – the foreign authority may apportion the costs as it deems appropriate.	Australia. [1]
	En qu'en vertu de l'article 748 du code de procédure civile, qui a vocation générale à s'appliquer pour les commissions rogatoires en provenance de l'étranger, les sommes dues aux interprètes sont à la charge de l'autorité étrangère. Par exception, pour les mesures d'instructions effectuées en France à la demande d'une juridiction étrangère dans le cadre du règlement n° 1206-2001 du Conseil du 28 mai 2001, les frais d'interprétariat ne sont pas en principe réclamées à la juridiction étrangère requérant ; dans ce cadre, une provision est versée par la partie que le juge désigne afin de couvrir les frais prévisibles de traduction (articles 178-1 et 178-2 du code de procédure civile).	France. [1]
	The Court.	Israel. [1]
	The requesting party	Spain. [1]
<b>25(g). If requests for evidence by video-link rejected, why?</b>	Les principales raisons invoquées sont : le manque d'infrastructures ou de moyens techniques appropriés.	Suisse. [1]
	Although there is no prohibition under U.S. law for a witness to voluntarily submit to an international video conference in which his or her testimony will be obtained by a foreign court or foreign litigators, see 28 U.S.C. section 1782(b), the U.S. Central Authority is aware of no U.S. law that would permit a federal court to compel a witness in the United States to provide such testimony before a foreign tribunal or proceeding. The U.S. Central Authority is only able to execute a Hague Evidence Convention request that can be compelled by a U.S. court under our laws and the testimony taken by an attorney of the Department of Justice. For this reason, we cannot execute a request that asks the U.S. Central Authority to compel a witness to attend an international video conference deposition conducted by lawyers or	United States. [1]

	foreign courts outside of the United States. The parties to the proceedings and the requesting court, however, are free to make their own independent arrangements for a voluntary international video deposition with a witness within the United States.	
<b>26. How would a request for evidence by video-link be handled if witness not willing?</b>	Under domestic legislation Australian courts can compel witnesses to give evidence using video-link technology. For example, the Evidence (Audio and Audio Visual Links) Act 1998 (NSW) provides that a New South Wales court may, on its own motion or on the application of a party, direct that a party (whether or not a party to the proceeding) give evidence or make a submission to the court by video-link. Where the witness opposes the making of such a direction, the court must not make the direction unless the party making the application satisfies the court that it is in the interests of the administration of justice for the court to do so. However, Australia will not compel a person to appear via video-link in a foreign court. In such situations, the evidence would need to be taken by the Australian court through the standard Letter of Request process – however, the court might allow video link to be used for some other purpose, such as to allow counsel or parties to appear at the hearing – this would be decided on a case by case basis.	Australia. [1]
	There has not been such a case. Therefore it is difficult to estimate the consequences of the refuse.	Bulgaria. [1]
	Currently there is no legal basis in force enabling the courts to demand acceptance of the use of video when taking evidence.	Denmark. [1]
	Coercive measures provided by law can be applied if the witness fails to appear for the hearing. If a witness fails to appear in court upon a summons without good reason, the court may impose a fine on or impose compelled attendance on the witness.	Estonia. [1]
	As a requested authority, a Finnish court may order compulsory measures if needed	Finland. [1]
	Dans l’hypothèse où un témoin se refuserait à une audition par visioconférence conduite par l’autorité judiciaire, il reviendrait à celle-ci d’en tirer les conséquences. Si l’article 207 du code de procédure civile prescrit notamment que « Les témoins défaillants et ceux qui, sans motif légitime, refusent de déposer ou de prêter serment peuvent être condamnés à une amende civile d'un maximum de 3 000 euros. », le droit interne prévoit qu’en matière civile, le recours à la visioconférence soit subordonné au consentement de l’ensemble des parties.	France. [1]
	The further proceedings depend on the circumstances of the individual case. The German authority would coordinate further proceedings with the Central Authority of the other contracting party. Should the latter agree to the taking of evidence in a “normal” form, the request would be dealt with in that form. If not, the request for evidence to be given in a “special” form would have to be refused.	Germany. [1]

The Central Authority has received no such request.	India. [1]
Never happened before.	Israel. [1]
According to the Article 9 Para 5 of CCP a court may use any technical devices or appliances to record court proceedings and evidences. According to Article 191 Para 1 of CCP the witness has a duty to evidence in court (subject to exceptions stated in art. 191 s. 2). A witness failing to perform the duty may be subject to a fine of up to 1000 litas. Otherwise, in case of unwilling to give evidence using video-link the examination may be fixed in writing only.	Lithuania. [1]
The competent judge is entitled to issue an order to appear. In case the requested person does not appear, he or she might be arrested or fined.	Mexico. [1]
There is no specific provision under the Portuguese civil procedure law that admits the witness refusal grounded on that reason. The general rule concerning the absence of a witness – article 6529/4 of the Civil Procedure Code – determines that a fine shall be applied and that the witness can be compelled to give evidence by a police authority.	Portugal. [1]
The declaration of the witness can be recorded by stenography, since he/she cannot be forced to give it using this technology (the use of a video-link).	Romania. [1]
If the witness is not willing to give evidence using video-link the request is not ultimately executed in this way	Spain. [1]
La question ne s'est encore jamais posée. Plusieurs réponses théoriques ont été formulées. Une application analogique des mesures de contrainte prévue pour le refus de témoigner ou de se soumettre à une mesure ordonnée par le tribunal serait envisageable. Certaines AC pour leur part renonceraient à l'utilisation de la liaison vidéo. A l'inverse, une AC a indiqué que, dans la mesure où la participation des parties, respectivement des représentants des autorités étrangères se basait sur les art. 7 et 8 CLaH70, le témoin n'était pas habilité à s'opposer à une telle mesure. Un éventuel problème pourrait se poser sous l'angle de la légalité d'un enregistrement vidéo de la mesure.	Suisse. [1]
Pursuant to amendments of the Swedish Code of Judicial Procedure which will come into force 1 November 2008 a witness is not allowed to – on his or her own – determine whether he or she shall be examined by using a video-link or attending in person. (The Code of Judicial Procedure is applicable when taking evidence for a foreign court of law unless the Act [1946:816] on the taking of evidence for a foreign court of law prescribes something else, see section 5 of the last mentioned Act.) The court may impose compulsory measures if the	Sweden. [1]

	witness omits being present through video-link.	
<b>C. Chapter I – Outgoing Letters of Request</b>		
<b>27. Since 2003, have judicial authorities forwarded letters of request which required video-link?</b>	Yes. <u>Australia</u> - considers that the Hague Convention does not make provision for the taking of evidence by video-link. However, permission has been sought for the taking of evidence via video-link from a person located in another country, both outside the convention and as a special procedure.	Australia, Portugal, Spain. [3]
	No. <u>Denmark</u> - According to the knowledge of the Danish Court Administration the Danish courts have not forwarded any requests. However the Court Administration has received preliminary inquiries about the possibilities for utilising the convention. As video equipment is only available in few selected courts on a trial basis these inquiries have been formally answered in the negative. <u>Singapore</u> - We do not have any statistics on this.	Argentina, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, China (HK SAR), India, Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Poland, Romania, Singapore, Slovaquie, South Africa, Suisse, Ukraine, United Kingdom. [25]
<b>27(a). How many?</b>	Six or seven.	Portugal, Spain. [2]
	One	United Kingdom. [1]
<b>27(b). To which States?</b>	Switzerland	Portugal. [1]
	South American countries and U.S.A.	Spain. [1]
	Hong Kong.	United Kingdom. [1]
<b>27(c). Were the requests executed?</b>	Yes.	
	No. <u>Spain</u> - two or three.	Portugal, Spain, United Kingdom. [3]
<b>27(d). What technology is used when request executed?</b>	Australian courts may use a broad range of technologies when a request is executed abroad using video-link. These include closed-circuit television.	Australia. [1]
	Samsung SyncMaster 741MP, Samsung SyncMaster 941MP and Video Communication System Vega Pro S.	Portugal. [1]



	Our authorities use a webcam connection over the Internet.	Spain. [1]
<b>27(e). Any technical problems?</b>	Sometimes incompatibility of video systems used.	Spain. [1]
<b>27(f). Any language barriers encountered?</b>	Yes.	[0]
	No.	Australia, Spain. [2]
<b>27(f)(i). Translation requirements.</b>	Professional accredited interpreters required.	Australia, Portugal. [2]
	Parties or their counsel	Spain. [1]
<b>27(f)(ii). Is simultaneous translation required?</b>	Yes.	[0]
	No.	Australia, Portugal, Spain. [3]
<b>27(f)(iii). Is in-sequence translation required?</b>	Yes.	Spain. [1]
	No.	Australia. [1]
<b>27(f)(iv). Does the law require that proceedings be interpreted in both States?</b>	Interpretation only required in requesting State.	Australia, Portugal, Spain. [3]
	Interpretation required in both States.	
<b>27(f)(v). Who pays for interpretation?</b>	<u>Australia</u> - The bearer of the cost of an interpreter is determined by the court, and depends upon the case in question.	Australia, Portugal, Spain. [3]
	<u>Portugal</u> - The Party or the Court depending on who requested it.	
	<u>Spain</u> - The requesting party	
<b>27(g). If letter of request not executed with video-link, why not?</b>	<u>Portugal</u> - Unavailability of technical equipment.	Portugal, Spain, United Kingdom. [3]
	<u>Spain</u> - Incompatibility of video systems use.	
	<u>United Kingdom</u> - n/a – still pending	
<b>D. Chapter II – Evidence taken in your State</b>		
	No information available concerning Chapter II	Spain. [1]
	Chapter II does not apply.	Singapore. [1]
<b>28. Since 2003, has evidence been taken</b>	Yes. L'Office fédéral de la justice se contente d'octroyer l'autorisation de procéder en Suisse à une	Suisse. [1]

<b>by video-link under Chapter II?</b>	mesure d'obtention de preuves selon le Chap. II. Il ne participe pas à l'exécution ni au suivi de la mesure en tant que telle. Les Autorités centrales cantonales peuvent y participer mais peu le font. Dès lors nous ne pouvons indiquer le nombre de mesures ayant été exécutées.	
	No. <u>Denmark</u> – The Danish Court Administration is not aware of such evidence taken by video-link. <u>Finland</u> - Please note that under the EU Regulation on Taking of Evidence we have had some requests where video-conference has been used.	Australia, Argentina, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, India, Latvia, Lithuania, Mexico, Monaco, Poland, Romania, Slovaquie, South Africa, United Kingdom. [20]
<b>28(a) How many times?</b>	3 autorisations octroyées, v. remarque préliminaire	Suisse. [1]
<b>28(b). For proceedings in which State(s)?</b>	USA, Australie	Suisse. [1]
<b>28(c). What technology was used?</b>		[0]
<b>28(d). Were there technical problems?</b>		[0]
<b>28(e). Were there any language barriers?</b>	Yes.	[0]
	No.	[0]
<b>28(e)(i). Translation requirements.</b>	Professional accredited interpreters required.	[0]
	Parties or their counsel	[0]
<b>28(e)(ii). Is simultaneous translation required?</b>	Yes.	[0]
	No.	[0]
<b>28(e)(iii). Is in-sequence translation required?</b>	Yes.	[0]
	No.	[0]
<b>28(e)(iv). Does the law require that proceedings be</b>	Interpretation only required in requested State.	[0]
	Interpretation required in both States.	[0]

interpreted in both States?		
28(e)(v). Who pays for interpretation?		[0]
28(f). Explain why not ultimately executed		[0]
29. Has video-link ever not gone ahead because of witness objections?	No. <u>Denmark</u> - The Danish Court Administration is not aware of such cases. <u>France</u> - Non, l'autorité centrale française n'a pas connaissance de tels refus de la part de témoins.	Australia, Bulgaria, Denmark, Estonia, Finland, France, Germany, Greece, Latvia, Mexico, Poland, Romania, Slovaquie, Suisse, Sweden, Ukraine, United Kingdom. [17]
	Yes.	[0]
	Court of Rotterdam 4-6-2008, the use of videotaperecording	Netherlands. [1]
	Chapter II does not apply.	Singapore. [1]
<b>E. Chapter II – Evidence sought in another State</b>		
30. Since 2003, has video-link evidence been taken under Chapter II?	Yes. <u>Spain</u> – see previous answers 26, 27 and 28.	[0]
	No. <u>Denmark</u> - The Danish Court Administration is not aware of such cases.	Argentina, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, China (HK SAR), India, Israel, Latvia, Lithuania, Mexico, Monaco, Poland, Portugal, Romania, Slovaquie, South Africa, Suisse, United Kingdom, United States. [24]

	Chapter II does not apply.	Singapore. [1]
<b>30(a). How many times?</b>		[0]
<b>30(b). In which States?</b>		[0]
<b>30(c). What technology is used?</b>		[0]
<b>30(d). Any technical problems?</b>		[0]
<b>30(e). Any language barriers encountered?</b>	Yes.	[0]
	No.	[0]
<b>30(e)(i). Translation requirements.</b>	Professional accredited interpreters required.	[0]
	Parties or their counsel	[0]
<b>30(e)(ii). Is simultaneous translation required?</b>	Yes.	[0]
	No.	[0]
<b>30(e)(iii). Is in-sequence translation required?</b>	Yes.	[0]
	No.	[0]
<b>30(e)(iv). Does the law require that proceedings be interpreted in both States?</b>	Interpretation only required in requesting State.	[0]
	Interpretation required in both States.	[0]
<b>30(e)(v). Who pays for interpretation?</b>		[0]
<b>30(f). If Chapter II request not executed with video-link, why not?</b>		[0]
<b>31. Any case of witness refusing because of technology used?</b>	Yes.	[0]
	No.	Argentina, Bulgaria, Czech Republic, Denmark, Estonia,
	Denmark - The Danish Court Administration is not aware of such cases.	

	France - Non, l'autorité centrale française n'a pas connaissance de telles situations de refus d'utilisation de ces technologies de la part de témoins.	Finland, France, Germany, Greece, China (HK SAR), Israel, Latvia, Mexico, Monaco, Poland, Romania, Slovaquie, Suisse, United Kingdom. [19]
	Chapter II does not apply.	Singapore. [1]
	Technology in U.S. local, state and federal courts vary. Many federal and state courts are now equipped with the modern technology enumerated above. <i>See, for example,</i> <a href="http://www.courtroom21.net/">http://www.courtroom21.net/</a> ; <i>National Center for State Courts technology</i> <a href="http://www.ncsconline.org/D_Tech/">http://www.ncsconline.org/D_Tech/</a> ; <i>National Center for State Courts Court Technology Bulletin</i> <a href="http://www.ncsconline.org/d_tech/CTB2/">http://www.ncsconline.org/d_tech/CTB2/</a> ; <i>Administrative Office of U.S. Courts Pacer Service</i> <a href="http://pacer.psc.uscourts.gov/">http://pacer.psc.uscourts.gov/</a> ; <i>Administrative Office of U.S. Courts Electronic Access to Courts</i> <a href="http://www.uscourts.gov/electaccrt.html">http://www.uscourts.gov/electaccrt.html</a> ; <i>ABA Legal Technology Resource Center</i> <a href="http://www.abanet.org/tech/ltrc/">http://www.abanet.org/tech/ltrc/</a> , <a href="http://www.abanet.org/tech/ltrc/courttech.html">http://www.abanet.org/tech/ltrc/courttech.html</a> ; <i>The Electronic Courtroom: Courtroom 2:</i> <a href="http://www.pamd.uscourts.gov/docs/elec-cr.pdf">http://www.pamd.uscourts.gov/docs/elec-cr.pdf</a> ; <i>Guidelines for Use of the Tax Court's Electronic Courtroom (2004)</i> <a href="http://www.ustaxcourt.gov/electronic_courtroom/electronic_courtroom_guidelines.pdf">http://www.ustaxcourt.gov/electronic_courtroom/electronic_courtroom_guidelines.pdf</a> ; <i>U.S. District Court, District of South Carolina</i> <a href="http://www.scd.uscourts.gov/eCourtroom/index.asp">http://www.scd.uscourts.gov/eCourtroom/index.asp</a> ; <i>U.S. District Court Northern District of Illinois</i> <a href="http://www.ilnd.uscourts.gov/home/CourtRoomTechnology.aspx">http://www.ilnd.uscourts.gov/home/CourtRoomTechnology.aspx</a> ;	United States. [1]
<b>F. General questions regarding the use of modern technologies</b>		
<b>32. Capabilities for taking evidence using modern technologies.</b>	Argentine courts don't have the necessary resources to produce proof through the use of modern technologies.	Argentina. [1]
	A great number of courts don't have either access to internet, videoconferencing equipment, audio recording devices to record oral evidence or testimony, etc.	
	Australian courts are equipped with a range of modern technology resources, including computers, Internet access, videoconferencing equipment and audio recording devices.	Australia. [1]
	There are no such cases. The new information technology has not been introduced for the authorities executing and forwarding requests for obtaining of evidence.	Bulgaria. [1]
	In the Czech Republic all courts are equipped with computers with internet access. Audio	Czech Republic. [1]

	<p>recording is possible at all courts. Records are done into MP3 data format and later available on CD-R.</p> <p>Videoconferencing equipment is available at all Regional courts (8) and Supreme Public Prosecutor's Office. In most cases the District court will be competent for the taking of evidence. However in general, District courts are not equipped with the videoconferencing technology. In case that the District court would receive a request asking for taking of evidence using videoconference, the request would be delegated to the Regional court. Videoconferencing connection is through IP. For connection through ISDN would be some technical modifications necessary, but possible.</p> <p>NOTE! The modern technology used at the courts is advancing. Therefore we advice the foreign authority to contact the Ministry of Justice of the Czech Republic and consult the technical possibilities for taking of evidence by using modern technology, in advance.</p>	
	<p>On a trial basis there has been installed videoconferencing equipment at 5 local courts and two prisons. The pilot project ended in 2008 with a positive review and the Court Administration has recommended a full-scale implementation of video equipment at all Danish courts.</p> <p>In interrogations a closed MPLS network with a fibre-optic connection is required. For each session 4 mbps is reserved, though using the h.264 protocol the conference can take place on a 1mbps connection. As a minimum a 448/576 lines resolution is used.</p> <p>As of July 2008 5 courts participate in a pilot project on the use of speech recognition and 6 courts in a project on sound recording.</p> <p>In general all court rooms are equipped with computers and internet access though only available for use by the court personnel.</p>	Denmark. [1]
	<p>All Estonian courts are equipped with computers and internet access. Four Estonian Courts have equipment for the taking evidences using the videoconferencing.</p>	Estonia. [1]
	<p>All courts in Finland are equipped with computers, Internet access, and audio recording devices. Fixed videoconferencing equipment is at the following District Courts: Helsinki, Espoo, Vantaa, Tampere, Turku, Vaasa, Kouvola, Jyväskylä, Oulu and Rovaniemi as well as in some prisons and police stations. In addition, it is possible to arrange mobile videoconferencing equipment to other courts for a particular case. By the year 2010 fixed videoconferencing equipment will be available in almost all district courts.</p>	Finland. [1]
	<p>En l'état, toutes les juridictions (cours d'appel et tribunaux de grande instance) sont dotées en équipements de visioconférence. Sous réserve de quelques travaux de câblage en cours sur certains sites, ces matériels sont pleinement opérationnels.</p>	France. [1]
	<p>The German courts are largely equipped with computers allowing them Internet access. Videoconferencing equipment is available above all at the Regional and Higher Regional</p>	Germany. [1]

Courts. The Local Courts may also use these facilities, however. Some of this equipment is mobile videoconferencing equipment that can be used at different locations.	
Currently, the Hellenic Ministry of Justice and the First Instance Court of Athens are equipped with videoconferencing equipment but it is scheduled for the rest of the Hellenic First Instance Courts to be equipped in due time.	Greece. [1]
Yes, see Practice Direction 29 and 29.1 ( <a href="http://legalref.judiciary.gov.hk/lrs/common/pd/Practice_Directions.jsp">http://legalref.judiciary.gov.hk/lrs/common/pd/Practice_Directions.jsp</a> )	China (HK SAR). [1]
Not all of the Courts are equipped, but courts that are appointed to perform taking of evidence are equipped for videoconferencing.	Israel. [1]
All courts in Latvia are equipped with computers and high-bandwidth internet access. Court staff and all judges have access to internet and e-mail facilities. Experience of using videoconference and audio recording in court proceedings is limited to recent pilot projects in courts in Latvia. The pilot projects proved technology to be an effective tool of improving the procedural efficiency. Latvia plans to introduce videoconference and audio recording equipment in all courts during years 2009-2011. Centralized internet-based court information system is in place since 1998. The system is used as case management system to process data of court proceedings. Policy makers use the system for analysis of key performance indicators of courts and judges.	Latvia. [1]
Courts of the Republic of Lithuania are equipped with computers, Internet access, however, few of them possess videoconferencing facilities or recording devices. Moreover, such modes as Skype, a freeware application or other types of webcams that may be used for videoconferencing purposes are being blocked in the most of the courts.	Lithuania. [1]
Le Luxembourg est en train d'équiper toutes les juridictions du matériel nécessaire.	Luxembourg. [1]
We don't have such information available.	Mexico. [1]
Chaque magistrat et personnel judiciaire ou administratif du Palais de Justice dispose d'un ordinateur. L'accès à Internet est largement accessible.	Monaco. [1]
All courts have computers, internet access and audio and videoconferencing equipment to facilitate the necessary.	Netherlands. [1]
All courts are equipped with computers and have Internet access. Some courts have videoconferencing equipment today, for example the Supreme Court, Oslo District Court, and Trondheim District Court. Audio recording devices are more pervasive than videoconferencing equipment, although not all courts are equipped with audio recording devices.	Norway. [1]

	There are any technical or legal obstacles for using modern technologies in Polish courts.	Poland. [1]
	All (233) Portuguese courts are equipped with computers, Internet access, videoconferencing equipment and audio recording devices to record oral evidence or testimony.	Portugal. [1]
	The Romanian Courts are equipped with computers and limited Internet access. All the District Courts, the Courts of Appeal and a number of 86 Courts of First Instance have the possibility to record the hearings.	Romania. [1]
	There are five Technology Courts in the Singapore Supreme Court Building. Some of the technological facilities available in each of the Technology Courts include video-conferencing facilities, a document camera and a multi-format disc player. The Supreme Court also uses a Digital Transcription System (DTS) to facilitate digital audio recording of court hearings. The DTS allows the Supreme Court to digitally capture audio recordings of the court proceedings and perform near real-time transcription. The system also allows for the synchronisation of the final digital audio recording with annotations made by Judges during hearings. This feature allows Judges to execute the search and playback function to review the audio recording and the corresponding annotations after the hearings. The DTS also allows for remote transcription so that court transcribers need not be physically present in the courtroom. Since 1 August 2005, the DTS has been made available to all courtrooms in the Supreme Court Building.	Singapore. [1]
	Tous les juges slovaques disposent d'ordinateur avec l'accès à Internet. Les enregistreurs audio sont disponible dans les tribunaux de chaque instance. Actuellement, les équipements de visioconférence ne se trouvent que dans les quatre Cours régionales sur huit, mais ils sont disponibles à la demande pour les tribunaux d'arrondissements dans cette région aussi.	Slovaquie. [1]
	Computers, internet access, audio-recording devices to record oral evidence or testimony	South Africa. [1]
	All the Courts are equipped with computers and internet access. Concerning videoconferencing equipment there is at least one in each "Audiencia Provincial " of the 52 provinces.	Spain. [1]
	La totalité des tribunaux suisses disposent d'ordinateurs et d'un accès à Internet. Certains disposent en sus de matériel d'enregistrement audio, voire vidéo. Par contre aucun tribunal ne possède de matériel de visioconférence.	Suisse. [1]
	All courtrooms in Sweden are equipped with computers and Internet access. The objective is that video conferencing equipment shall be installed in all courtrooms by the end of 2011. As regards video recording devices the National Courts Administration in Sweden (Domstolsverket) has been assigned to see to that new technology is installed and functioning in Swedish courts before 1 November 2008. The new technology will be installed in most of the courtrooms around Sweden (that is 450	Sweden. [1]



	courtrooms). Technology that renders video recording possible will be installed in all courtrooms in the district courts. The appeal courts will also have the opportunity to record the examination of a party, witness or expert on video.	
	<p>The level of supply of the courts with computers, Internet access, videoconferencing equipment, audio recording devices to record oral evidence or testimony is the following (interest towards demand):</p> <p>Local Administrative Courts: Computers - 35%, Internet access – 49%, videoconferencing equipment – 100%, audio recording devices – 78%;</p> <p>Local Economic courts: Computers – 55%, Internet access – 60%, videoconferencing equipment – 100%, audio recording devices – 31%;</p> <p>Local Courts: Computers – 46%, Internet access – 43%, videoconferencing equipment – 100%, audio recording devices – 34%;</p> <p>Appeal Courts: Computers – 61%, Internet access – 54%, videoconferencing equipment – 100%, audio recording devices – 47%;</p> <p>Appeal Economic Courts: Computers – 50%, Internet access – 58%, videoconferencing equipment – 100%, audio recording – 36%;</p> <p>Appeal Administrative Courts: Computers – 39%, Internet access – 34%, videoconferencing equipment – 100%, audio recording devices – 74%.</p>	Ukraine. [1]
	All courts are equipped with computers, internet access and audio recording devices, but only some have videoconferencing equipment.	United Kingdom. [1]
<p><b>33. Should use of modern technology under the Convention be encouraged?</b></p> <p><b>Is an additional protocol required?</b></p>	<p><b>No additional document required.</b></p> <p><u>Lithuania</u> - Taking into account the answers provided by the Lithuanian courts, as executing and requesting authorities within the scope of the Evidence Convention, we are of the opinion, that a Guide to Good Practice could be sufficient, but not necessary, since practical operation of the Convention is not extensive. The reason is that Council Regulation (EC) No. 1206/2001 of 28 May 2001 and bilateral treaties on legal assistance have been more frequently applied by courts for the past 4 years in Lithuania than the Convention. We think the additional protocol or other binding document is not necessary at all.</p> <p>In addition, in case a Guide to Good Practice was produced, it would let the competent authorities (executing and requesting) to coordinate the operation and use of modern technologies in an efficient way for both parties involved in the procedure. For example, the videoconference would work more properly in cross-border procedures if instructions and recommendations concerning this matter were provided in detail. This would help to decrease expenses of courts and make the procedure speedy.</p>	Lithuania, United States. [2]

<p><b>Guide to Good Practice sufficient.</b></p> <p><u>Bulgaria</u> - The position of Bulgaria regarding this question corresponds to the formulation expressed by the European Community.</p> <p><u>Communauté européenne</u> - La Communauté tient à souligner l'importance qu'elle attaché à l'utilisation des technologies modernes dans le processus de l'obtention des preuves à l'étranger. C'est bien pour cette raison que des dispositions promouvant le recours à de telles technologies, en particulier la vidéoconférence et la téléconférence, ont été insérées en 2001 dans le règlement communautaire. Actuellement, des travaux pour promouvoir encore davantage l'utilisation des moyens technologiques modernes sont en cours au niveau de la Communauté dans le cadre de la stratégie dite de « e-justice ». Les expériences qui se feront dans ce domaine pourront s'avérer utiles aussi dans le contexte de l'application de la convention. La Communauté est en tout état de cause d'avis que tous les efforts doivent être mis en œuvre pour promouvoir l'utilisation des technologies modernes, tant au niveau communautaire qu'au niveau des Etats parties a la convention. Dès lors, la Communauté est favorable à l'idée d'un document supplémentaire qui encouragerait les Etats parties a la convention à utiliser davantage les technologies modernes. Elle pencherait plutôt en faveur de l'élaboration d'un guide de bonnes pratiques, mais serait disposée à envisager un protocole additionnel si une majorité des Etats parties à la convention le jugeait utile.</p> <p><u>Israel</u> - Not strictly necessary, but might be needed for questions that might arise.</p> <p><u>Luxembourg</u> - Voir réponse de la Commission européenne.</p> <p><u>Monaco</u> - Il convient d'encourager les Etats à utiliser ces technologies modernes mais il est souhaitable de leur laisser une large marge de manœuvre car la législation interne ne prévoit pas forcément l'utilisation de ces techniques. En outre, le nombre de demandes qui demeure très faible pour Monaco ne saurait justifier le coût induit pour l'installation de tels équipements et nécessiterait des modifications législatives lourdes.</p> <p><u>Romania</u> The position of the Romania regarding this question corresponds to the response expressed by the European Community</p> <p>si des normes semblables seraient nécessaires en matière civile et si elles pourraient</p> <p><u>Suisse</u> - Un Guide serait souhaitable, vu qu'un Protocole nécessiterait des ratifications, ce qui rendrait la mise en oeuvre plus compliquée. Par contre, il reste à examiner, au vu p.ex. des normes détaillées de l'art. 9 du Deuxième Protocole additionnel du 8 novembre 2001 à la Convention européenne d'entraide judiciaire en matière pénale, être fixés dans un Guide qui est moins contraignant qu'un Protocole.</p>	<p>Argentina, Bulgaria, Communauté européenne, Czech Republic, France, Greece, China (HK SAR), Israel, Luxembourg, Monaco, Norway, Poland, Portugal, Romania, Slovaquie, South Africa, Spain, Suisse, Sweden, United Kingdom. [20]</p>
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	<u>Sweden</u> - See the reply made by the European Community.	
	<p>Additional Protocol necessary.</p> <p><u>Australia</u>- Australia considers that an Additional Protocol is necessary to provide an agreed approach to efficiently executing Letters of request by video-link and to address the various private international law issues that may arise, including:</p> <ul style="list-style-type: none"> <li>• Which country's official should administer the oath to the witness,</li> <li>• Which country's laws govern perjury by the witness, and</li> <li>• Which country may punish for contempt of court.</li> </ul> <p>Australia is considering drafting a written proposal that could be circulated to Member States ahead of the Special Commission meeting in February 2009.</p> <p><u>Communauté européenne</u> – Préférence pour le Guide de bonnes pratiques mais disposée à envisager un Protocole additionnel</p> <p><u>Germany</u> - The answer to this question is given by the European Community.</p> <p><u>Mexico</u> - Due to the strict, rigid and written legal system (Napoleonic code) which governs in Mexico, it would be necessary to consider in an additional protocol, the possibility to use modern technology in legal procedures, in order for Mexican authorities to become binded by a common legal framework on this type of evidence.</p>	Australia, Communauté européenne, Germany, Mexico. [4]
	<p>The Danish Court Administration is not aware of any video related use of the evidence convention in Danish courts and is thus not able to comment on the possible added value of a further protocol or guide to good practice. In general the Court Administration would welcome the introduction of further common rules and norms, as long as the work is coordinated with the efforts underway in the context of the "E-justice" cooperation of the EU.</p> <p>It is the overall assessment of the Court Administration that one of the main obstacle to an increased use of the convention for the taking of evidence using video relates to the lack of widespread availability of the necessary technical equipment in the Danish court rooms.</p>	Denmark. [1]
	To questions 15, 16 and 33 of this questionnaire a coordinated reply is sent by the European Union.	Estonia. [1]
	The Netherlands refer to the answer from the EU.	Netherlands. [1]
	We have not reached a decision on this at the present time.	Singapore. [1]

**PART THREE – other OPERATIONAL issues**

**I. Chapter I – Letters of Request**

**A. Preparation of Letter of Request**

<p><b>34. Has CA ever assisted foreign judicial authority in preparing request?</b></p>	<p><b>Yes.</b></p> <p><u>Australia</u> - The Australian Attorney-General's Department provides ad hoc assistance to foreign judicial authorities preparing Letters of Request for taking evidence within Australia. The Department also provides a link to the Hague Conference Model Letter of Request for use with requests to or from Australian courts. The Model Letter of Request is available electronically on the Attorney-General's Department website at: <a href="http://www.ag.gov.au/pil">http://www.ag.gov.au/pil</a>.</p> <p><u>Denmark</u> - Occasionally, the Danish Ministry of Justice as the Central Authority offers guidance to foreign authorities.</p> <p><u>France</u> - L'autorité centrale française a été appelée à fournir, par l'intermédiaire de magistrats de liaison, des indications à des autorités judiciaires qui souhaitent introduire une demande d'obtention de preuves.</p> <p><u>Germany</u> - Information on the permissibility of cross-examination, information on lawyers' right to interrogate witnesses, explanations of the formal requirements to be fulfilled by a Letter of Request.</p> <p><u>India</u> - No. However, the Central Authority would be glad to provide all information in this regard, if approached.</p> <p><u>Israel</u> - It frequently happens, that a representative of a foreign authority contacts in order to get specific directions or to ask questions regarding the Israeli procedures</p> <p><u>Latvia</u> - Information about the national law that describes the available possibilities for the taking of evidence is available on the official website of the European Judicial Network in civil and commercial matters.: <a href="http://ec.europa.eu/civiljustice/evidence/evidence_lat_en.htm">http://ec.europa.eu/civiljustice/evidence/evidence_lat_en.htm</a></p> <p><u>Mexico</u> - The Directorate-General of Legal Affairs of the Mexican Ministry of Foreign Affairs studies and analyzes every request for international legal assistance, and inquiring to the requesting state in the case that a rogatory letter didn't fill out all the necessary requirements to perform the legal assistance, in order to avoid any unnecessary delays on the legal assistance.</p> <p><u>Netherlands</u> - Providing information on available possibilities.</p> <p><u>Norway</u> - We receive such requests for information on a regular basis.</p> <p><u>Romania</u> - Formal assistance, in case of lack of translation of the request or of the annexed</p>	<p>Australia, Denmark, France, Germany, India, Israel, Latvia, Mexico, Netherlands, Norway, Romania, Slovaquie, Spain, Suisse, United States. [15]</p>
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	<p>documents.</p> <p><u>Slovaquie</u> - Il arrive, mais très rarement. En 2006 un tribunal anglais a demandé le renseignement sur la possibilité d'obtenir la preuve à l'intermédiaire de la visioconférence. Notre réponse était défavorable parce que les tribunaux à l'époque ne disposaient pas l'équipements de visioconférence.</p> <p><u>Spain</u> - Our Central Authority has provided information to the foreign judicial authority for the taking of evidence under our domestic law.</p> <p><u>Suisse</u> - Cette aide portait essentiellement sur :l'indication de l'adresse de l'autorité compétente; et les conditions formelles auxquelles la requête doit satisfaire. Bien que certaines AC n'aient jamais été confrontées a un tel cas de figure, elles se sont toutes prononcées en faveur de l'octroi d'une telle aide.</p> <p><u>United States</u> - The U.S. Central Authority receives informal inquiries from time to time from foreign judicial authorities and others regarding the obtaining of evidence in the United States and provides informal information as appropriate. The U.S. Department of State, Bureau of Consular Affairs responds to questions received from foreign judicial authorities about obtaining evidence in the United States. The Secretary of State's diplomatic notes to the Chiefs of Mission of foreign embassies in Washington, D.C. of 1976 and 2003 also addressed this topic. See question 10.</p>	
	<p><b>No.</b></p> <p><i>But would provide such assistance if requested</i> - Argentina, Czech Republic, Estonia, Lithuania, Greece, Monaco.</p> <p><i>And would not provide such assistance</i> – Poland.</p> <p><u>Bulgaria</u> - Department for international cooperation and legal assistance in Civil Matters in the Ministry of Justice, would provide such an information or assistance, , to the foreign Central Authority, if they require it.</p> <p><u>Estonia</u> - Yes, our central authority would provide information to the foreign judicial authority in order to ensure that request for taking of evidences will meet requirements of our domestic legislation and in order to ensure correct and speedy collecting of evidences Explanations of the formal requirements to be fulfilled by a Letter of Request.</p> <p><u>China (HK SAR)</u> - Letters of request in which a private agent is not named in the Hong Kong Special Administration Region would ultimately be passed to the Law Officer (International Law), Department of Justice in order that an application may be made to the Court for the letter of request to be execution. If the letter of request is found not to meet the requirements to enable execution, the Department of Justice would write back to the requesting authority advising the latter of the supplemental information needed in order to</p>	<p>Argentina, Bulgaria, China (HK SAR), Czech Republic, Estonia, Greece, Lithuania, Luxembourg, Monaco, Poland, Portugal, Singapore, South Africa, Ukraine, United Kingdom. [15]</p>

	<p>enable.</p> <p>Information on lawyers' right to interrogate witnesses, Information on the permissibility of cross-examination, <u>Monaco</u> - Oui. Si la Direction des Services Judiciaires était saisie d'une telle demande, elle serait disposée, en collaboration avec les autorités judiciaires compétentes, à assister l'autorité étrangère pour l'informer sur le droit national.</p> <p><u>Portugal</u> - Although such assistance has not yet been required, the Portuguese Central Authority is available to provide it if requested.</p> <p><u>South Africa</u> - But will assist under the circumstances of reciprocity</p> <p><u>Ukraine</u> - There were no particular requests from foreign judicial authorities for assistance in preparing a Letter of Request. Certainly, the Central Authority is ready, when necessary, to provide necessary information which could help future effective execution of the Letter of Request.</p>	
	<p>No statistics available. The Central Authority would provide assistance if requested.</p>	<p>Sweden. [1]</p>
<p><b>35. Has / would CA provide such assistance to parties?</b></p>	<p><b>Yes.</b></p> <p><u>Australia</u> - The Department may provide ad hoc assistance or information to parties and others. This would generally involve informing the parties of the Model Letter of Request for use with requests to or from Australian courts. The Model Letter of Request is available electronically on the Attorney-General's Department website at: <a href="http://www.ag.gov.au/pil">http://www.ag.gov.au/pil</a>.</p> <p><u>Denmark</u> - Occasionally, the Danish Ministry of Justice as the Central Authority offers guidance to foreign lawyers.</p> <p><u>Finland</u> - There have been some inquiries both from Finnish and foreign attorneys.</p> <p><u>France</u> - L'autorité centrale française est régulièrement appelée à fournir des indications à des avocats, magistrats de liaison en vue de préparer des demandes d'obtention de preuves.</p> <p><u>India</u> - See Response to Q.34</p> <p><u>Israel</u> - Yes, if needed. Any private person or lawyer can receive assistance in our office.</p> <p><u>Mexico</u> - The Directorate-General of Legal Affairs of the Mexican Ministry of Foreign Affairs provides assistance and guidance to any person.</p> <p><u>Netherlands</u> - Providing information on available possibilities.</p> <p><u>Portugal</u> - Explaining the legal framework of the Convention on this matter</p> <p><u>Spain</u> - The Central Authority has provided them assistance to contact with the Spanish</p>	<p>Argentina, Australia, Denmark, Finland, France, India, Israel, Lithuania, Mexico, Netherlands, Norway, Portugal, Spain, Suisse, United Kingdom, United States. [16]</p>

	<p>competent Courts or with the Public prosecutor.</p> <p><u>Suisse</u> - Une telle aide a pu prendre la forme de :</p> <ul style="list-style-type: none"> <li>- renseignements à des avocats américains transmettant une commission rogatoire d'un juge américain;</li> <li>- coordination entre les différents tribunaux, au sein d'un canton, des auditions de témoins portant sur une même affaire pour que la partie résidant à l'étranger et son mandataire puissent assister aux différentes auditions;</li> <li>- réponse à des questions pratiques.</li> </ul> <p><u>United Kingdom</u> - Under the Evidence (Proceedings in other Jurisdictions) Act 1975</p> <p><u>United States</u> - The U.S. Central Authority on occasion receives informal inquiries from representatives of parties, and as appropriate, will provide informal and general information regarding the requirements of the Convention or the status of pending requests. The U.S. Department of State Bureau of Consular Affairs receives informal inquiries from representatives of parties regarding international judicial assistance and the Evidence Convention and responds to these inquiries. See also <a href="http://www.travel.state.gov/law/info/judicial/judicial_702.html">http://www.travel.state.gov/law/info/judicial/judicial_702.html</a>, which is currently undergoing complete revision.</p>	
	<p><b>No.</b></p> <p><u>Bulgaria</u> - The assistance or other help would be provided to the foreign Central Authority in practice.</p> <p><u>Czech Republic</u> - The assistance or other help would be provided only to the foreign Central Authority.</p> <p><u>Estonia</u> - It depends of the nature of the request; usually Estonia does provide information regarding Estonian legislation.</p> <p><u>Germany</u> - There is no legal obligation towards the representatives of the parties.</p> <p><u>Greece</u>- But it will provide if needed.</p> <p><u>Latvia</u> - Ministry of Justice as the Central Authority does not provide any specific information to the representatives of parties unless the parties require such information from the Ministry.</p> <p><u>Monaco</u> - La Direction des Services Judiciaires n'a pas été saisie, à ce jour, d'une telle demande. S'agissant d'une demande des parties, elle serait en mesure de leur fournir des informations sur le droit national.</p> <p><u>Romania</u> - it would provide the same assistance, if the representatives would have powers under the Convention, offered by their national law.</p>	<p>Bulgaria, Czech Republic, Estonia, Germany, Greece, Latvia, Luxembourg, Monaco (yes for future assistance), Poland, Romania, Singapore, Slovaquie, South Africa, Ukraine. [14]</p>

	<p><u>Singapore</u> – not applicable.</p> <p><u>South Africa</u> - Central Authority will ensure that representation is available either pro-bono or contracted.</p> <p><u>Ukraine</u> - No particular requests came to the Central Authority.</p>	
<p><b>36. Must a letter of request include specific questions, or a list of matters to be addressed?</b></p>	<p><b>Yes.</b></p> <p>Yes - Specific Questions Required – Argentina, South Africa, Spain.</p> <p><u>Greece</u>- The Letter of Request must include Specific Questions in order to be executed.</p> <p><u>Monaco</u> - Il semble qu'il soit nécessaire que des question exactes soient posées.</p> <p><u>Norway</u> - A list of matters to be addressed is sufficient.</p> <p><u>United Kingdom</u> - Specific questions</p>	<p>Argentina, Greece, Monaco, Norway, South Africa, Spain, United Kingdom. [7]</p>
	<p><b>No.</b></p> <p>No, but list is recommended – Czech Republic, Lithuania, Slovaquie, Ukraine.</p> <p><u>France</u> - Le droit interne français n'a pas d'exigence à cet égard.</p> <p><u>China (HK SAR)</u> - No such requirement is imposed for letters of request as such. However, where private agents are not appointed in an incoming letter of request, it would be left to the Law Officer (International Law) to apply to the Court for execution and to arrange for the evidence to be taken. Given that the Law Officer (International Law) is not party to the foreign legal proceedings, a list of specific questions is required in practice in order to facilitate the taking of evidence. Furthermore, for outgoing requests, according to Order 39, rule 3 of the Rules of the High Court (Chapter 4A of the Laws of Hong Kong) (<a href="http://www.legislation.gov.hk/eng/home.htm">http://www.legislation.gov.hk/eng/home.htm</a>), if evidence is to be obtained by means of written questions, a copy of the interrogatories and cross-interrogatories must be lodged with the letter of request</p> <p>India – A court may issue commission for examination on the interrogatories or otherwise of any person resident within its jurisdiction</p> <p><u>Israel</u> - A list is required. The questions should be specific enough to be addressed in court.</p> <p><u>Singapore</u> – In the absence of local counsel representing the party requesting evidence to be taken, specific questions are required.</p> <p><u>Slovaquie</u> - Les questions exactes ne sont pas obligatoires dans la commission rogatoire. Les témoins sont obligés de s'exprimer d'une manière cohérente sur tous les faites qui leur sont connus. L'interrogeant peut au témoin poser les questions additionnels. Cependant, les questions exactes dans la commission rogatoire nous trouvons plus convenantes.</p> <p><u>Sweden</u> - No such requirement from Swedish laws.</p>	<p>Czech Republic, Finland, France, China (HK SAR), India, Israel, Lithuania, Poland, Singapore, Slovaquie, Sweden, Ukraine. [12]</p>



	<p>The Australian Attorney-General's Department encourages parties preparing a Letter of Request to include specific questions to ensure the Letter of Request provides sufficient detail to be executed and avoid uncertainty.</p> <p>In the New South Wales Supreme Court case of <i>Pickles v Gratzon</i> (2002) 55 NSWLR 533, the Court ruled that a Letter of Request need not disclose with reasonable particularity nature of evidence to be taken. However, a court will not execute a letter of request that is general and does not give sufficient detail to know what specific information is required.</p> <p>In practice, if counsel expect to appear in the Australian court to cross-examine the witness, it may be appropriate to provide a list of matters only.</p>	Australia. [1]
	<p>There is not such a law that requires including specific questions to the Letter of Request. It could be better if the courts include a list of specific questions.</p>	Bulgaria. [1]
	<p>There are no specific requirements regarding this matter. To ensure the quality of the execution of the request it is always better to provide specific questions what should be used during witness examination.</p>	Estonia. [1]
	<p>The answer to this question, too, very much depends on the individual case and cannot be answered in general terms. The starting point is Article 3 (f) of the Evidence Convention. According to this Article, the Letter of Request is required to contain specific questions to the person to be questioned or to specify precisely the facts on which they are to be questioned. The Central Authorities give different answers to the question of whether a list of matters to be addressed is sufficient here. A majority of them still call for a list of questions. However, according to a large minority view, a list of matters to be addressed would suffice if it is not intended to seek disclosure by an adversary of facts supporting a case.</p>	Germany. [1]
	<p>Latvia would apply Article 3(f) of the Convention and it is acceptable that the requirements include specific questions or general description of matters to be addressed.</p>	Latvia. [1]
	<p>It requires an interrogatory plea</p>	Mexico. [1]
	<p>Under Dutch law it is not required to have a list with specific questions provided. It is though very beneficial if such a list is present when the legal request is send.</p>	Netherlands. [1]
	<p>Article 178 of the Portuguese Civil Procedure Code, which rules the content of the letter of request, determines that it shall be sent only with the strictly necessary information.</p> <p>As such a list of specific questions to be used during witness examination is not, in principle, considered compulsory.</p>	Portugal. [1]
	<p>Under the Romanian law, Letters of Request must contain the questions to be put to the persons to be examined or statement of the subject-matter about which they are to be</p>	Romania. [1]

	examined.	
	La grande majorité des cantons exigent que les questions soient formulées de façon suffisamment concrète et claire (autrement la requête est renvoyée pour être améliorée). Dans la mesure où l'état de fait est précis, il n'est pas nécessaire que les questions soient très détaillées. L'expérience montre qu'une liste de questions détaillées facilite le déroulement de la procédure.	Suisse. [1]
	The U.S. Central Authority requires that the Letter of Request provide sufficient detail as to the information being sought so as to permit a lawyer for the U.S. Department of Justice who will implement the request to know what questions must be asked or information solicited at a witness examination. Although providing specific questions helps ensure that the requested information can be obtained and the Letter of Request properly executed, a list of matters to be addressed is permitted as well so long as it is clear as to the specific information that is being sought.	United States. [1]
<b>B. Recommended use of model Letter of Request form</b>		
<b>37. Do Judicial Authorities use the model form?</b>	<p><b>Yes.</b></p> <p><u>Australia</u> - The Attorney-General's Department is rarely involved in outgoing requests and therefore can not indicate with certainty whether the letter is always used. However, the Department provides ad hoc assistance to foreign and domestic judicial authorities preparing Letters of Request and recommends the use of the model letter of request for all Chapter I requests.</p> <p><u>Portugal</u> - But with graphical and some non substantial differences</p> <p><u>Suisse</u> - Certaines autorités ont toutefois adapté le formulaire à leurs besoins.</p>	Australia, Bulgaria, Czech Republic, Estonia, France, India, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovaquie, South Africa, Suisse, United Kingdom, United States. [17]
	<p><b>No.</b></p> <p><u>Denmark</u> - As stated above The Danish Commerce and Maritime Court has informed that they have sent at least one request to a German authority. The court sent the request by using the guidelines on <a href="http://www.ec.europa.eu/justice">www.ec.europa.eu/justice</a>. The court also used the available form on <a href="http://www.ec.europa.eu/justice">www.ec.europa.eu/justice</a>.</p> <p><u>Finland</u> - The form has not been used as such even if its content is usually followed. The cases are different and the old form has not been very handy to use. A translation of the original request is normally needed anyway.</p> <p><u>Germany</u> - The form is only available in English. Use of the form is not provided for in the Regulation on Judicial Assistance in Civil Matters (ZRHO). A full text facilitates examination of the request.</p>	Argentina, Denmark, Finland, Germany, Greece, China (HK SAR), Israel, Latvia, Mexico, Monaco, Norway, Singapore, Spain, Ukraine. [14]

	<p><u>China (HK SAR)</u> - The form is prescribed pursuant to Order 39 rule 3 see Form 35, High Court Form, Cap. 4A (<a href="http://www.legislation.gov.hk/eng/home.htm">http://www.legislation.gov.hk/eng/home.htm</a>).</p> <p><u>Israel</u> - Not all do, some Israeli applicants use more specific or different forms.</p> <p><u>Latvia</u> - The use of the model form is not mandatory; therefore it is the discretion of the judicial authorities to use the model for the Letter of Request.</p> <p><u>Mexico</u> - no, due to ignorance of the Convention</p> <p><u>Monaco</u> - Sans que le formulaire recommandé soit utilisé, les modes d'exécution de ces commissions rogatoires correspondent habituellement aux termes d'une ordonnance-type rendue par le Président du tribunal de première instance.</p> <p><u>Singapore</u> - Our Rules of Court provide for a different form: see Form 76 (Letter of Request for Examination of Witness Out of Jurisdiction) at Appendix A of the Rules of Court. You can assess this at <a href="http://statutes.agc.gov.sg/">http://statutes.agc.gov.sg/</a>.</p> <p><u>Spain</u> - Not all the judicial authorities use the model letter then they do not know it.</p> <p><u>Ukraine</u> - Not all of the Ukrainian courts had possibility to use internet and an access of the model form. However, in the new "Instructions for application of international treaties on legal assistance in civil matters with respect to service of documents, taking evidences and recognition &amp; enforcement of judgements" (27.06.2008 N° 1092/5/54) the use a Letter of Request form was recommended to the courts, thus it may be foreseen that the courts will use the form in future.</p>	
<b>C. Transmission of Letters of Request (Art. 2)</b>		
<b>38. Method of sending letters of request.</b>		
<b>38(a). Sent directly by judicial authority to foreign CA?</b>	<p><b>Yes.</b></p> <p><u>Czech Republic</u> - In few cases it is sent via Ministry of Justice (Central Authority), especially in the cases where some difficulties are expected. In case of some difficulties occurred while executing a request (e.g. long delays) the requesting court ask the Ministry of Justice (Central Authority) to urge the execution of the Request by sending a reminder to the foreign Central Authority.</p> <p><u>Greece</u> - (That is effected since August 2008).</p> <p><b>No.</b></p> <p><u>India</u> - No case has been brought to our knowledge. As per the Rules of Business of Government of India, the Judicial Authorities in India are required to route their requests</p>	<p>Australia, Czech Republic, Denmark, France, Germany, Greece, Lithuania, Luxembourg, Mexico, Netherlands, Norway, Poland, Slovaquie, Sweden, United Kingdom, United States. [16]</p> <p>Argentina, Bulgaria, Estonia, Finland, China (HK SAR), India, Israel,</p>

	through Ministry of Law and Justice.	Latvia, Monaco, Portugal, Romania, Singapore, South Africa, Ukraine. [14]
	<b>Occasionally.</b> Only few times although there is no legal hindrance.	Spain. [1]
	[x] OUI Majorité des cantons. [x] NON Quelques cantons.	Suisse. [1]
<b>38(b). If no, are they first sent to local CA, which then transmits to foreign CA.</b>	<p><b>Yes.</b></p> <p><u>Argentina</u> - This practice is carried out because of the speed, lack of bureaucracy, efficacy and efficiency principles.</p> <p><u>Estonia</u> - The need for taking evidence abroad occurs rather rarely in Estonia, so the judicial authorities do not have many experiences about cross border cooperation. Because of that it is better, that letters of request will be examined first in central authority in order to guarantee that all the necessary requirements are met.</p> <p><u>Finland</u> - The requests are sent through the Central Authority who can give assistance to the requesting court in preparing the Letter of Request and then verify that all the necessary information and translations are attached to the request.</p> <p><u>Israel</u> - All outgoing Letters of Request are transmitted by the judicial authority (i.e., the Court) to our Central Authority, which makes sure that request is properly completed and then transmits the request to the Central Authority of the requested State.</p> <p><u>Latvia</u> - Judicial authorities first send the Letter of Request to the Ministry of Justice, which transmits it to the Central Authority of the respective State. Such practice is used in order to provide assistance to judicial authorities, to collect statistical data and to follow the procedure of taking of evidence abroad.</p> <p><u>Monaco</u> - La Direction a été désignée en qualité d'Autorité Centrale pour la Convention de 1970. Ainsi, (sauf pour ce qui concerne l'aide mutuelle judiciaire entre la France et Monaco) les commissions rogatoires sont adressées par les juridictions ou magistrats compétents à la Direction des Services Judiciaires aux fins d'acheminement à l'autorité centrale étrangère compétente. Il convient de préciser qu'à Monaco, toutes les juridictions sont regroupées dans un même bâtiment : la Palais de Justice. La Direction des Services Judiciaires, autorité centrale, se trouve également dans le même bâtiment. La transmission des commissions rogatoires est donc rapide.</p> <p><u>Portugal</u> - So that the national Central Authority can confirm that the request is correctly</p>	Argentina, Bulgaria, Estonia, Finland, Israel, Latvia, Monaco, Portugal, Romania, Singapore, South Africa, Spain, Suisse, Ukraine. [14]

	<p>addressed to the requested authority.</p> <p><u>Romania</u> - to verify their compliance with the international law;</p> <p><u>Singapore</u> - This enables us to keep track of our statistics.</p> <p><u>South Africa</u> - Diplomatic channels.</p> <p><u>Spain</u> - Due to reasons of statistics control.</p> <p><u>Suisse</u> - Cette centralisation implique un contrôle par l'AC, ce qui permet une meilleure coordination et l'établissement d'une pratique uniforme entre les différentes autorités judiciaires du canton.</p> <p><u>Ukraine</u> - A court transmits a request to the Central Authority (Ministry of Justice of Ukraine) directly or via relevant territorial main department of justice. The Ministry of Justice of Ukraine checks conformity of the request with the Convention before transmitting to the Central Authority of the requested State. Sometimes it helps to discover a need for further complementing a request taking into account also current declarations and reservations of Ukraine and the relevant foreign State (by a translation or doing some other formalities). And the Ministry of Justice sends a request to the relevant Central Authority of the requested State.</p>	
	<p><b>No.</b></p> <p><u>China (HK SAR)</u> - The letters of request are sent to the Chief Secretary for Administration for onward transmission to the requested state. This practice is also discussed in paras 39/3/5 and 39/3/6 of the Hong Kong Court Procedures 2008.</p>	<p>China (HK SAR). [1]</p>
<p><b>39. Does the CA accept letters by private courier?</b></p>	<p><b>Yes.</b></p> <p><u>Suisse</u> - si le requérant est une autorité judiciaire.</p>	<p>Argentina, Australia, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, China (HK SAR), Israel, Latvia, Lithuania, Mexico, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovaquie, Spain, Suisse, Sweden, Ukraine, United Kingdom, United States. [28]</p>

	<p><b>No.</b>  <u>India</u> - No case has been brought to our knowledge. As per the Rules of Business of Government of India, the Judicial Authorities in India are required to route their requests through Ministry of Law and Justice.  <u>Monaco</u> - L'article 975 du Code de procédure civile prévoit que les commissions rogatoires doivent être adressées par la voie diplomatique. Si la Principauté de Monaco a accepté de recevoir les commissions rogatoires par l'intermédiaire d'une Autorité centrale, le mode de transmission demeure classique (courrier).</p>	<p>India, South Africa, Monaco. [3]</p>
<p><b>40. Does the CA accept letters of request sent by electronic means?</b></p>	<p><b>Yes.</b>  <u>Latvia</u> - but only if a written copy is submitted as well  <u>Netherlands</u> - if it is possible to trace the origin of the request. Besides this it would be very good if a request is scanned so one can see the original "blue ink" and/or original (colored) stamps or apostilles.  <u>Romania</u> - yes by fax  <u>Spain</u> - By fax and sending after the original letter  <u>Sweden</u> - Originals should be sent by mail.</p>	<p>Denmark, Estonia, Finland, France, Latvia, Lithuania, Netherlands, Portugal, Romania, Spain, Sweden. [11]</p>
	<p><b>No.</b>  <u>Argentina</u> - Letters of request should be sent from abroad exclusively by official means.  <u>Australia</u> - Requests under the Convention are not currently received electronically. Such requests may be acceptable in principle for the Australian Attorney-General's Department and Australian competent authorities, although concern has been expressed about security, authenticity and the arrangements necessary to admit the documents in an Australian court.  <u>Bulgaria</u> - Letter of Request sent by e-mail or fax are not accepted, because of the fact that the Request must be supplied with original signature and stamp of the requesting judicial authority.  <u>Czech Republic</u> - Letter of Request sent by e-mail or fax are not accepted, because of the fact that the Request must be supplied with original signature and stamp of the requesting judicial authority. Letter of Request sent by electronic means will be accepted only in the case that it will be provided with electronic signature, followed with qualified certificate of the electronic signature, which is recognised in the Czech Republic under the EC Directive no. 99/93 ES, or some international treaty, according to the law. no. 227/2000 Coll., on electronic signature. We advise the Foreign Authority to contact the Ministry of Justice of the Czech Republic in advance and consult the technical possibilities of the competent court.  <u>Greece</u> - The Letters of Request must be in original form, not copies, and transmitted by</p>	<p>Argentina, Australia, Bulgaria, Czech Republic, Greece, Israel, Luxembourg, Mexico, Monaco, Norway, Poland, Singapore, Slovaquie, South Africa, Suisse, Ukraine, United Kingdom, United States. [18]</p>

	<p>official means in order to be examined.</p> <p><u>Luxembourg</u> - En l'état actuel, le Luxembourg exige l'envoi d'originaux</p> <p><u>Mexico</u> - No, due to the written rigid legal system governing Mexico, which demands original seals and signatures to consider a document as valid. (Article 279 of the Federal Code of Civil Procedures)</p> <p><u>Monaco</u> - Toutefois, dans la pratique, par télécopie, si il y urgence, pour commencement d'exécution mais il convient que les originaux suivent.</p> <p><u>Singapore</u> - There are difficulties in verification.</p> <p><u>Slovaquie</u> - La réglementation manque</p> <p><u>Suisse</u> - Les documents doivent être remis en original et signés (il est possible d'envoyer un message d'annonce préliminaire par voie électronique, mais le traitement sera fait sur la base de la requête originale).</p> <p><u>Ukraine</u> - Letters of Request under the Evidence Convention are only accepted in a paper form. Possibility to accept requests by e-mail or fax is not provided for in the Ukrainian legislation.</p> <p><u>United Kingdom</u> - Fax message is unsecure and technology unreliable, and at present central authority has not the resources to fully utilise electronic means of communication - but at some stage in the future will be able to accept request by email.</p>	
	<p>There is no statutory provision as to whether incoming Letters of Request that have been sent by electronic means are to be accepted or not. However, for outgoing Letters of Request, the Regulation on Judicial Assistance in Civil Matters (ZRHO) prescribes that they are to be signed by a judge and stamped with an official stamp or with an official seal.</p> <p>Germany - As in the case of outgoing Letters of Request, a signature and official seal or stamp is required in the case of incoming Letters of Request.</p>	<p>Germany [1]</p>
	<p>We have not received any such request till date. The request can be accepted as per our domestic law</p>	<p>India. [1]</p>
<p><b>D. Contesting Letters of Request</b></p>		
<p><b>41. Can the sending of a request abroad be challenged?</b></p>	<p><b>Yes.</b></p> <p><u>Argentina</u> - The sending or the execution of a letter of request can be contested in Argentina by the party based on either formal requirements or exceptions, such as the ones related to jurisdiction or litispence. However, there are different opinions about how it should be done.</p> <p>Some jurists consider that the requested judge could only review the formal requirements of the letter of request. He could not investigate other elements, such as the requesting judge</p>	<p>Argentina, Australia, Estonia, France, Germany, China (HK SAR), Israel, Latvia, Luxembourg, Monaco, Netherlands, Romania, South Africa, Spain, United Kingdom, United</p>

<p>jurisdiction.</p> <p>On the contrary, other jurists think that when exceptions are opposed to the requested judge, he would be able to deny his assistance, if he considers that the arguments are appropriated.</p> <p><u>Australia</u>- Under domestic law, the sending of a Letter of Request abroad can be contested on a number of grounds. For example:</p> <ul style="list-style-type: none"> <li>• if the person from whom the evidence is sought is willing or able to come to Australia</li> <li>• if the person from whom the evidence is sought is in Australia and able to attend the hearing</li> <li>• if the person from whom the evidence is sought is not able to give evidence material to any issue to be tried in the Australian proceeding</li> <li>• if the evidence would not have been admissible had it been adduced at the hearing in Australia, or</li> <li>• if, having regard to the interests of the parties to the proceeding, justice will be better served by refusing the order.</li> </ul> <p><u>Estonia</u> - The court decision to collect evidence (abroad) is contestable by the parties of the proceedings by lodging an appeal using reasoning of the violation of the rules collecting and interpreting evidence. They usually cannot contest the decisions of the court regarding collecting evidence (e.g abroad) separately during court actions. The actions of Estonian competent authority during processing the letters of requests (e.g declining of forwarding a letter of request) are to be interpreted as administrative acts and therefore can be contested in administrative court.</p> <p><u>France</u> - La voie de l'appel est ouverte à l'encontre d'une décision qui ordonne une mesure d'instruction dans des cas limités.</p> <p><u>Germany</u> - In Germany, the implementation of international mutual assistance in civil proceedings is categorised as judicial administration. Anyone asserting that his rights have been violated by a legal act by the judicial administration may appeal to the competent court under Sections 23 ff of the Introductory Act to the Judicature Act (Einführungsgesetzbuch zum Gerichtsverfassungsgesetz - EGGVG). However, only a few cases are conceivable where this will be the case.</p> <p><u>China (HK SAR)</u> - Matters which can be disputed may include whether it is appropriate for the Court to issue a letter of request in the present case; and whether the evidence sought by letter of request is appropriate.</p> <p><u>Israel</u> - Objections can be raised on basis of the non- fulfilment of the requirements of the convention, or on general rules of court's procedure.</p>	<p>States. [16]</p>
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	<p><u>Latvia</u> - The sending of a Letter of Request itself cannot be contested, but refusal of the court to request evidence including a request to secure evidence from abroad may be contested (Paragraph 9 of Article 100 of the Civil Procedure Law). (see answer Nr. 13)</p> <p><u>Luxembourg</u> - Aucun recours spécial n'est prévu. A défaut, l'article 355 du Nouveau code de procédure civile s'applique.</p> <p><u>Netherlands</u> - In a Dutch procedure the sending of a letter of request can be contested by a party in an incident in that procedure.</p> <p><u>Mexico</u> - The <i>Amparo trial</i> (Constitutional procedure for the protection of fundamental rights and freedoms) establishes the possibility for the impugnation of any act of authority harmful to individual guarantees (fundamental rights and freedoms).</p> <p><u>Monaco</u> - Par l'exercice d'une voie de recours.</p> <p><u>Romania</u> - Objection.</p> <p><u>Singapore</u> - The sending of a Letter of Request abroad can be contested by way of an application to the Court.</p> <p><u>Spain</u> - For procedural reasons.</p> <p><u>United Kingdom</u> - When a party applies, the application must be served on the other side, and they can oppose the application.</p> <p><u>United States</u> - Courts of the United States submit Letters of Request to other states under this Convention upon the application of a party in a proceeding before that court. Any party to that proceeding may raise an objection to the application for a Letter of Request. Such objection would be ruled upon by the court.</p>	
	<p><b>No.</b></p> <p>There is not yet a cross-border electronic signature to identify the origin and authenticity of the Letter of Request.</p> <p><u>Greece</u> - This issue has not been raised in practice</p> <p><u>Sweden</u> - The sending of a letter or request after the domestic court has ordered that evidence shall be taken at a foreign court cannot be contested.</p>	<p>Bulgaria, Czech Republic, Finland, Greece, India, Lithuania, Poland, Slovaquie, Sweden, Ukraine. [10]</p>
	<p>YES and NO / OUI et NON.</p> <p>La pratique est partagée.</p> <p>OUI –: Certains cantons prévoient une voie de recours (Beschwerde, appel) dans leur droit de procédure cantonale. NON De nombreux cantons ne prévoient pas de possibilité de recours.</p>	<p>Suisse. [1]</p>
	<p>Based on the information gathered this issue does not appear to have been raised in practice and the Ministry of Justice is therefore unable to elaborate.</p>	<p>Denmark. [1]</p>

<b>41(a). If yes, how often does such a challenge occur in practice?</b>	Almost always.	[0]
	Often.	Argentina. [1]
	Rarely.	Luxembourg, Romania, South Africa, Spain, Suisse, United Kingdom. [6]
	Never. <u>Latvia</u> – Never in cross-border cases	Latvia, Singapore, Germany, Monaco. [4]
	No information available.	Israel. [1]
	Although complete statistics are not held centrally, feedback from State and Territory stakeholders indicate that legal challenges to sending requests abroad occur regularly.	Australia. [1]
<b>42. Can the execution of a letter of request that has been received be challenged?</b>	<p><b>Yes.</b></p> <p><u>Argentina</u> - The sending or the execution of a letter of request can be contested in Argentina by the party based on either formal requirements or exceptions, such as the ones related to jurisdiction or litispence. However, there are different opinions about how it should be done. Some jurists consider that the requested judge could only review the formal requirements of the letter of request. He could not investigate other elements, such as the requesting judge jurisdiction. On the contrary, other jurists think that when exceptions are opposed to the requested judge, he would be able to deny his assistance, if he considers that the arguments are appropriated.</p> <p><u>Australia</u> - In Australian courts, a person from whom evidence is sought can contest the execution of a Letter of Request on any ground that would normally be available to that person under Commonwealth law or the laws of the State or Territory where the proceedings are held. For example, the person can contest execution on the basis of a right or privilege.</p> <p><u>Estonia</u> - The actions of Estonian competent authority during processing the letters of requests (e.g accepting a letter of request from abroad) are to be interpreted as administrative acts and therefore can be contested in administrative court. Requested state can refuse to execute a letter of a request according to the articles 5 and 12 of the Evidence Convention. A person pointed out in a letter of a request can refuse to perform the procedural acts needed to execute the request according to the article 11 of the Evidence Convention. Estonian Code of Civil Procedure provides several rights to refuse to give evidence e.g privileges of witnesses. For example a witness can refuse to give testimony according e.g as being the descendant and ascendant of the plaintiff or defendant or a sister, stepsister, brother or stepbrother of the plaintiff or defendant, or a person who is or has</p>	<p>Argentina, Australia, Czech Republic, Estonia, France, Germany, China (HK SAR), Israel, Mexico, Netherlands, Poland, Romania, Singapore, South Africa, Spain, United Kingdom, United States. [17]</p>

been married to a sister, stepsister, brother or stepbrother of the plaintiff or defendant or a step or foster parent or a step or foster child of the plaintiff or defendant or an adoptive parent or an adopted child of the plaintiff or defendant the spouse of or a person permanently living together with the plaintiff or defendant, and the parents of the spouse or person, even if the marriage or permanent cohabitation has ended. This list is not exhaustive.

France - Ci-après sont reproduites les dispositions pertinentes du code de procédure civile français à cet égard. Article 742. Le juge ne peut pas refuser d'exécuter une commission rogatoire au seul motif que la loi française revendique une compétence exclusive, ou qu'elle ne connaît pas de voie de droit répondant à l'objet de la demande portée devant la juridiction commettante, ou qu'elle n'admet pas le résultat auquel tend la commission rogatoire. Article 743. Le juge commis peut refuser, d'office ou à la demande de toute personne intéressée, l'exécution d'une commission rogatoire s'il estime qu'elle ne rentre pas dans ses attributions. Il doit la refuser si elle est de nature à porter atteinte à la souveraineté ou à la sécurité de l'Etat français. Les personnes intéressées peuvent également, dans ces mêmes cas, demander au juge commis de rapporter les mesures qu'il a déjà prises et d'annuler les actes constatant l'exécution de la commission rogatoire. Article 745. Si la commission rogatoire a été transmise irrégulièrement, le juge commis peut d'office ou à la demande du ministère public refuser de l'exécuter ; il peut également, à la demande du ministère public, rapporter les mesures qu'il a déjà prises et annuler les actes constatant l'exécution de la commission rogatoire. Article 746. La décision par laquelle le juge refuse d'exécuter une commission rogatoire, annule les actes constatant son exécution, rapporte les mesures qu'il a prises, ou refuse de les rapporter, doit être motivée. Les parties et le ministère public peuvent interjeter appel de la décision. Le délai d'appel est de quinze jours ; il n'est pas augmenté en raison des distances.

Germany - The Letter of Request is dealt with in the form defined by the Central Authority of the requested State, for example in a form not provided for in the law of the requested state and with appropriate measures of compulsion. This judicial action may also violate rights of the persons involved in proceedings.

China (HK SAR) - As a general principle, the Hong Kong court would give effect to a request so far as is permissible under Hong Kong law. In dealing with a request, however, the Hong Kong court will first decide whether it has jurisdiction to make an order to give effect to the request (ie. whether the request complies with the applicable requirements to enable execution), and if so, whether as a matter of discretion it ought to make or refuse such an order. Please see paras. 70/6/2 and 70/6/21 of the HKCP 2008.

Israel - Non fulfilment of convention requirements. On one occasion, a request for discovery of documents was denied as such documents enjoy the privilege under the Israeli law.

	<p><u>Mexico</u> - by means of the Amparo trial</p> <p><u>Singapore</u> – The execution of a Letter of Request received from abroad can be contested by way of an application to the Court.</p> <p><u>Spain</u> - For not meeting the procedural and substantive requirements of the Convention. There is a legal procedure to refuse a letter of request, although it is very rarely employed.</p> <p><u>United States</u> - Any party from whom evidence is requested through a Letter of Request can object to the execution of that request. The U.S. court where the objection is filed would rule upon that objection.</p>	
	<p><b>No.</b></p> <p><u>Greece</u> - This issue has not been raised in practice</p> <p><u>Sweden</u> - The execution of a Letter of Request per se cannot be contested. However, if the foreign court has specific wishes with regard to the procedure, they will be accommodated insofar as they are not contrary to Swedish law and the requested procedure is not impossible to apply on account of the procedure for the taking of evidence at a Swedish court of law or for reasons of practical nature.</p>	<p>Bulgaria, Finland, Greece, India, Latvia, Lithuania, Luxembourg, Monaco, Slovaquie, Sweden, Ukraine. [11]</p>
	<p>Yes and No // Oui et non. La pratique est partagée. NON: Certains cantons ne prévoient pas de possibilité de recours.OUI : Certains cantons prévoient une voie de recours dans leur droit de procédure.</p>	<p>Suisse. [1]</p>
	<p>Based on the information gathered this issue does not appear to have been raised in practice and the Ministry of Justice is therefore unable to elaborate.</p>	<p>Denmark. [1]</p>
<b>42(a) How often does such a challenge occur?</b>	<p>Almost always.</p>	<p>[0]</p>
	<p>Often.</p>	<p>Argentina, United Kingdom. [2]</p>
	<p>Rarely.</p>	<p>Czech Republic, France, Germany, China (HK SAR), Mexico, Netherlands, Poland, Romania, South Africa, Spain, Suisse. [11]</p>
	<p>Never.</p>	<p>Estonia, Monaco, Singapore. [3]</p>
	<p>Although complete statistics are not held centrally, feedback from State and Territory stakeholders indicate that legal challenges to requests received from abroad occur regularly.</p>	<p>Australia. [1]</p>

<b>42(b). Which authority is responsible for informing the requesting authority that the request has been contested?</b>	Central Authority. <u>Australia</u> - Depending on the request, the relevant Central Authority, Competent Authority or Additional Authority is responsible for informing the requesting authority of the fact that the execution of a Letter of Request has been contested in Australia.	Argentina, Australia, Czech Republic, Estonia, Germany, Israel, Mexico, Netherlands, Poland, Romania, South Africa, Spain, United Kingdom. [13]
	Judicial Authority competent to execute request.	Czech Republic, France. [2]
	No information of challenge to execution is provided.	China (HK SAR), Singapore. [2]
	All the above	Suisse. [1]
	Typically, requesting authorities are not notified of any such objection unless the objection has been sustained by a court of the United States. At that time the Central Authority would inform the requesting state. As appropriate, and to the extent the Central Authority is aware of the objection, it may on occasion notify the requesting authority. The parties concerned would not be notified, since the Central Authority only interacts in a formal fashion with the requesting authorities.	United States. [1]
<b>42(c). Who is informed of the challenge: the requesting authority or the parties?</b>	Requesting authority. <u>Singapore</u> - Yes. The present rules do not impose this requirement but it is good practice that we inform the Requesting authority.	Argentina, Czech Republic, Estonia, Germany, China (HK SAR), Israel, Mexico, Netherlands, Poland, Romania, Singapore, South Africa, Spain, United Kingdom. [14]
	Parties.	France [1]
	All the above <u>Australia</u> - If the Letter of Request has been transmitted through a lawyer for one of the parties or through the diplomatic channel, the lawyer or the Embassy/Consulate may also be informed.	Australia, Suisse. [2]
<b>42(d). By what channel is notice of the challenge conveyed?</b>	Informal channel (letter, email, fax, telephone, etc.). <u>Germany</u> - In most cases, notification is informal, but in writing in a letter or in a telefax and a letter.	Australia, Czech Republic, Germany, China (HK SAR), Israel, Netherlands, Poland,

		Romania, Singapore, Suisse, United Kingdom, United States. [12]
	Formal channel (eg, via Hague Service Convention if applicable, or via diplomatic channels).	Argentina, Estonia, France, Mexico, South Africa, Spain. [6]
<b>42(e). Are the foreign requesting authority or the parties permitted to present arguments in favour of the execution of the request?</b>	<b>Yes. Through legal representation in requested state.</b> <u>Germany</u> - The competent Higher Regional Court hears the case pursuant to Section 25 of the Introductory Act to the Judicature Act (EGGVG). It is mandatory to be represented by a lawyer before the Higher Regional Court.	Germany, China (HK SAR), Israel, Mexico, Netherlands, Singapore, United Kingdom, United States. [8]
	<b>Yes. Through written response filed directly from abroad from the requesting authority.</b> <u>Israel</u> - This is the usual procedure but the law doesn't exclude other possibilities.	Argentina, Czech Republic, Israel, Netherlands, Poland, South Africa, Spain, United Kingdom. [8]
	<b>Yes. Through written response filed directly from abroad from interested party.</b>	Estonia, Israel, Netherlands, United Kingdom. [4]
	<b>Yes - other:</b> <u>Australia</u> - The foreign requesting authority or the interested party can present counter arguments by filing a written response with the Crown Solicitor responsible for executing the Letter or Request in the relevant Australian court. Depending on the method of execution of the request and the nature of the objection, the court may also allow other means to present counter arguments. <u>France</u> - Le juge, tenu de respecter les principes directeurs du procès civil, doit, préalablement à la décision, soumettre au débat contradictoire entre les parties, les questions relatives à l'exécution de la commission rogatoire. La décision, motivée, est susceptible d'un recours par voie d'appel.	Australia, France.[2]
	<b>No.</b>	Romania.[1]
	Yes and no // oui et non. When yes: La pratique est partagée selon les cantons. Certains admettent plusieurs possibilités. par le truchement d'avocats de votre État; par une réponse écrite envoyée directement depuis l'étranger par l'autorité requérante; par une réponse écrite envoyée directement depuis	Suisse.[1]

	l'étranger par la partie intéressée	
<p><b>43. Can a party who has already unsuccessfully contested the sending of a letter of request in the foreign requesting State also contest the execution of the request in the requested State?</b></p>	<p><b>Yes.</b></p> <p><u>Australia</u>- Australia would allow this in circumstances where the basis for contesting the letter is specific to Australian law. An example of such a situation is paternity testing – under Australian law, the circumstances in which paternity testing can done under compulsion are extremely limited. Accordingly, the person from whom genetic material is sought may object to the taking of evidence in Australia even if they have already unsuccessfully challenged the sending of the request.</p> <p><u>Estonia</u> - If the parties participate in the proceedings for taking evidence they have according to the Code of Civil Procedure general right to file objections to the activity of the court in directing the proceeding and also object to the violation of procedural provisions and above all, to the violation of the formal requirements of performance of procedural acts.</p> <p><u>France</u> - Une partie conserve la possibilité de saisir le juge chargé de l'exécution de la mesure d'obtention de preuves d'une contestation, quand bien même sa contestation aurait été vaine devant le juge mandant (cf. article 743 cité supra).</p> <p><u>Germany</u> - Such cases are difficult to imagine. Without a precedent, it is practically impossible to make an assessment. However, a foreign decision might not be recognised or executed on account of the fact that the object of the dispute is not a civil or commercial matter, but a dispute under public law. There is a tendency to answer the question by saying yes in principle. Unless there is specific legal justification, an unsuccessful contest in the requesting state has no effect in the requested state.</p> <p><u>China (HK SAR)</u> - In theory yes - it is perceivable that a valid point of law may be raised in the requested jurisdiction</p> <p><u>Israel</u> - Even assuming a rejection to an objection to descending of a request, the executives may be refused in Israel on the basis of local procedural grounds.</p> <p><u>Luxembourg</u> - Seulement lorsque la comission rogatoire est inconciliable avec notre législation</p> <p><u>Mexico</u> - by means of the Amparo trial</p> <p><u>Singapore</u> - It depends on what grounds on which the execution is being contested. For example, if the issue is whether the Assistant Registrar has the jurisdiction to hear the case, it can be contested.</p> <p><u>South Africa</u> - Exhaust all domestic legal remedies.</p> <p><u>United Kingdom</u> - The Civil Procedure Rules allow an application to set aside by anyone who is ordered to give evidence.</p> <p><u>United States</u> - There is no legal prohibition against any party initiating a court action to</p>	<p>Australia, Bulgaria, Estonia, France, Germany, China (HK SAR), Israel, Luxembourg, Mexico, Netherlands, Singapore, South Africa, United Kingdom, United States. [14]</p>

	challenge the execution of a Letter of Request, or to otherwise request to intervene in a pending court proceeding, in order to challenge the execution of a Letter of Request. Whether the party would be allowed by the court to intervene in such pending proceeding or could successfully challenge the execution of the request depends upon the legal and factual merits of their arguments.	
	<b>No.</b>	Czech Republic, Finland, Latvia, Lithuania, Monaco, Poland, Romania, Slovaquie, Spain. [9]
	Based on the information gathered this issue does not appear to have been raised in practice and the Ministry of Justice is therefore unable to elaborate.	Denmark. [1]
	This issue has not been raised in practice	Greece. [1]
	Yes and no // oui et non. OUI – Quelques cantons admettent cette possibilité // NON Majorité des cantons.	Suisse. [1]
<b>E. Execution of the Request</b>		
<b>44. Before whom is a hearing for oral examination under Chapter I convened?</b>	<p><b>Judge / Magistrate / Special Master / Judicial officer.</b></p> <p><u>Argentina</u> - The Argentine Code of Civil and Commercial Procedure states that the hearing will be exclusively heard by the judge</p> <p><u>Czech Republic</u> - Hearing for oral examination is done before a judge only. Some case of taking of evidence may be delegated to an assistant of the judge or a judicial legal officer.</p> <p><u>France</u> - L'article 738 du code de procédure civile prévoit que la commission rogatoire est exécutée par le président du Tribunal de grande instance territorialement compétent ou par le juge désigné par ce dernier.</p> <p><u>Germany</u> - In Germany, such hearings are held by a judge in principle.</p> <p><u>Greece</u> - Hearings are always held before of a judge</p> <p><u>China (HK SAR)</u> - Usually by Master of the High Court. Where private agent is specified in the Letter of Request, the examination will normally be conducted by private examiner. See also Order70 rule 4 of the Rules of the High Court.</p> <p><u>India</u> - Evidence could also be recorded by a Commissioner appointed by the Court executing the request.</p> <p><u>Israel</u> - Usually a Magistrate Judge, sometimes an attorney that is requested by the foreign authority.</p>	Argentina, Australia, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, China (HK SAR), Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovaquie, South Africa, Spain, Suisse, Sweden, Ukraine. [29]



<p><u>Latvia</u> - Witnesses are examined in a court hearing presided over by a judge</p> <p><u>Lithuania</u> - according to the Code of Civil Procedure of the Republic of Lithuania, a hearing for oral examination is convened only before judge.</p> <p><u>Mexico</u> - The letters rogatory are always sent to the competent judicial authorities for their due fulfillment.</p> <p><u>Monaco</u> - un juge</p> <p><u>Norway</u> - Testimonies are to be given in court, before a judge</p> <p><u>Portugal</u> - judge</p> <p><u>Romania</u> - The competent Romanian courts to obtain evidence are the Courts of First Instance. After receiving the request, the instance sets up a date for hearing.</p> <p><u>Singapore</u> - Assistant Registrar</p> <p><u>Slovaquie</u> - Ce sont les juges ou les officiers judiciaires.</p> <p><u>South Africa</u> - see answer 13 above ["Section 33 of the Supreme Court Act 59 of 1959"]</p> <p><u>Sweden</u> - The hearing for oral examination takes place in a district court before a judge.</p> <p><u>Ukraine</u> - A Letter of Request is always sent to the court for execution. A judge performs all necessary proceedings with regard to questioning of a person.</p>	
<p><b>Private examiner commissioned by the executing authority.</b></p> <p><u>Netherlands</u> - if requested</p> <p><u>United Kingdom</u> - By an examiner of the court appointed by the Lord Chancellor.</p>	Australia, China (HK SAR), Netherlands, United Kingdom. [4]
<p><b>Notary.</b></p> <p>A notary may take a person's oath and attest a written statement given under oath if this is necessary for the establishment of a person's rights in a foreign state pursuant to the law of the foreign state or the requirements of the public authorities of the foreign state, or in any other manner.</p>	Estonia. [1]
<p><b>Other.</b></p> <p><u>Australia</u> - A hearing for oral examination is held before a judicial officer in court or before an examiner appointed by the court.</p> <p><u>United Kingdom</u> - A Civil Procedure Rule Practice Direction allows the court discretionary powers for another person to be nominated by the parties to be allowed to take evidence.</p> <p><u>United States</u> - The execution of a Letter of Request is assigned to an attorney within the U.S. Department of Justice. That attorney will attempt to obtain the testimony or evidence on a voluntary basis. Voluntary testimonial evidence can take the form of a notarized affidavit or statement, or it may be obtained through a deposition before stenographer, as</p>	Australia, United Kingdom, United States. [3]

	<p>appropriate. If the witness refuses to provide the evidence voluntarily, the Department of Justice attorney assigned to the request may file a motion with a U.S. federal court pursuant to 28 U.S.C. 1782, seeking a subpoena requiring the appearance of the witness at a deposition. Testimony that is compelled by subpoena takes place at a deposition before a stenographer and is presided over by the attorney that subpoenaed the witness. Evidence is not taken before a judicial officer. The Department of Justice attorney asks the questions requested by the Letter of Request. If requested by the requesting authority or otherwise appropriate under the laws of the jurisdiction within the United States where the testimony is obtained, follow-up questions may be asked by representatives of the parties to the proceeding.</p>	
<p><b>45. Are Chapter I proceedings public or private?</b></p>	<p><b>Public</b>  <b>Public unless judge / magistrate rules otherwise</b> – Czech Republic, Finland, Latvia, Lithuania, Poland, South Africa, Ukraine.</p> <p><u>Bulgaria</u> - In general, the hearings are public, but the judge may in a specific case order to be conducted private hearings.</p> <p><u>Estonia</u> - But the court shall declare a proceeding or a part thereof closed on the initiative of the court or based on a petition of a participant in the proceeding if this is clearly necessary for example for the protection of national security or public order and above all, for the protection of a state secret or information intended for internal use or for the protection of the life, health or freedom of a participant in a proceeding, witness or other person. The court declares a proceeding closed for the protection of the private life of a participant in a proceeding, witness or other person unless the interest of open proceeding exceeds.</p> <p><u>France</u> - En vertu de l'article 744 du code de procédure civile, le juge français qui exécute une commission rogatoire internationale doit respecter les principes directeurs du procès. Par application de ce principe, les audiences se déroulant dans le cadre du chapitre I sont publiques, sauf exceptions prévues par la loi (article 22 du code de procédure civile) ou lorsque le juge en décide autrement pour des raisons tenant à la protection de l'intimité de la vie privée si les parties le demandent ou afin de prévenir des troubles de nature à porter atteinte à la sérénité de la justice (article 435 du code de procédure civile)</p> <p><u>Germany</u> - Unless the proceedings are ones from which, as an exception, the public is excluded in Germany, for example for the purpose of protecting minors. The judge may also himself ask certain individuals to leave the courtroom for reasons of misconduct or other current importance.</p> <p><u>Norway</u> - However, the court can decide that a party or others shall leave the courtroom during the testimony, when it is reason to fear that the witness will not give an unreserved testimony otherwise. Additionally, the court can decide that a court meeting shall be held</p>	<p>Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, India, Israel, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Singapore, Slovaquie, South Africa, Spain, Sweden, Ukraine. [22]</p>

	<p>before" closed doors" under certain circumstances.</p> <p><u>Portugal</u> - Public hearings are the general rule, nevertheless the court may decide otherwise, in duly justified cases.</p> <p><u>Romania</u> - In general, the hearings are public, but the judge may in a specific case order the hearings to be conducted huis clos.</p> <p><u>Slovaquie</u> - Le juge peut prendre la décision sur l'audience à huis clos dans le cas de danger du décèlement des faits celés, du secret commercial, des intérêts importants des parties ou de la morale. Dans ce cas-là le juge peut autoriser la présence de la personne individuelle, mais cette personne est obligée par la discrétion.</p> <p><u>Sweden</u> - The hearing is – in general – public. In certain cases, for reasons of secrecy, the hearings can be held behind closed doors.</p> <p><u>Ukraine</u> - Normally, all the hearings in civil matters are held in an open trial. In several cases directly stipulated in the Civil Procedural Code a judge can decide otherwise.</p>	
	<p><b>Private.</b></p>	<p>Argentina, China (HK SAR), Mexico, Monaco, Netherlands, United Kingdom. [6]</p>
	<p>Generally, Chapter I hearings are public although the executing court may order that the hearing be closed. Examinations conducted other than by an officer of a Court are more likely to be conducted in private.</p>	<p>Australia. [1]</p>
	<p>Both public and private // publique et à huis clos</p> <p>La pratique est partagée selon les cantons. Publiques: Moitié des cantons; À huis clos: Moitié des cantons. Le projet de Code de procédure civile suisse prévoit la publicité des débats et de la délibération de jugement, à l'exception des procédures relevant du droit de la famille. Le huis clos total ou partiel peut être ordonné lorsque l'intérêt public ou un intérêt digne de protection de l'un des participants à la procédure l'exige. Chaque témoin est interrogé hors la présence des autres témoins; la confrontation est réservée.</p>	<p>Suisse. [1]</p>
	<p>Publiques et à huis clos - Cela dépend de la matière</p>	<p>Luxembourg. [1]</p>
	<p>Although depositions are not typically private in the sense that they are not closed as a matter of law to non-parties, they are arranged privately by the Department of Justice lawyer and the witness, or if appropriate, the witness's counsel, and the testimony is taken at a location selected by the Department of Justice as convenient. As a practical matter, there is seldom an opportunity for unrelated parties or individuals to be aware of such depositions or to otherwise attend. As appropriate and if justified, a witness can seek an</p>	<p>United States. [1]</p>

	order of a court requiring that the testimony be confidential and not publicly available.	
<b>46. Do judicial authorities “blue pencil” requests?</b>	Yes. <u>Australia</u> - The response of the judicial authorities to an unclear or objectionable Letter of Request will depend on the request in question. The questions may be rephrased to rectify defaults in translation, and objectionable questions may be rephrased or omitted if the request is otherwise acceptable. Furthermore, the Attorney-General's Department regularly seeks clarification on requests from the foreign authorities prior to forwarding a Letter of Request to the relevant State or Territory. <u>India</u> - So far as they are not prohibited by Indian Laws, the Indian Courts may not “blue-pencil” the requests for taking of evidence and such requests shall be subject to the provisions of Indian Evidence Act, 1872.	Australia, Czech Republic, Finland, France, China (HK SAR), India, Israel, Latvia, Luxembourg, Mexico, Norway, South Africa, United Kingdom, United States. [14]
	No. <u>Portugal</u> - (Public policy reasons may justify such rejection)	Argentina, Bulgaria, Estonia, Greece, Lithuania, Monaco, Netherlands, Poland, Portugal, Romania, Singapore, Slovaquie, Spain, Ukraine. [14]
	Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice is at this time unable to provide an answer to this question.	Denmark. [1]
	Here, too, the answer very much depends on the individual case. The Central Authorities generally endeavour to make it possible to deal with a Letter of Request of the kind referred to in the above question. They delete or rephrase certain passages after consulting with the requesting authority. However, if a certain measure of shocking questions or offensive paragraphs is exceeded, the Central Authorities do not execute the Letter of Request. Thus, both yes and no have been marked as answers.	Germany. [1]
	Yes and no // oui et non OUI (reformulation, restructuration et / ou suppression de passages): Majorité des cantons. NON (la commission rogatoire sera simplement rejetée): Quelques cantons.	Suisse. [1]
	A request under the Evidence Convention shall be complied with unless it is incompatible with Swedish law and the requested procedure is not impossible to apply on account of the procedure for the taking of evidence at a Swedish court or for practical reasons. Accordingly – under abovementioned conditions – a judge may strike out certain questions.	Sweden. [1]
	<b>47. Is the witness provided in advance</b>	Yes.

		[3]
<b>with a copy of the questions / matters to be addressed?</b>	No. <u>Czech Republic</u> - Depending on the matter, the court might invite the witness to bring some documents, that includes requested information (e.g. book-keeping). <u>Germany</u> - However, it cannot be ruled out that the witness is informed of the questions by sources other than German agencies. <u>Israel</u> - Unless requested by the requested authority <u>Ukraine</u> - it is not provided for by the Code.	Argentina, Bulgaria, Czech Republic, France, Germany, Greece, India, Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Slovaquie, South Africa, Spain, Suisse, Ukraine. [23]
	Generally, the witness is provided in advance with a copy of the questions / matters to be addressed. However, this may not occur where there is a special request not to provide the witness with a copy of the questions / matters prior to examination and the Court makes an order to this effect.	Australia. [1]
	Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice is at this time unable to provide an answer to this question.	Denmark. [1]
	To hear a witness during the court session a summons must have been served on him or her. A summons shall contain certain amount of information including the object of the dispute and the matter in which the person is to be heard.	Estonia. [1]
	This is a matter for judicial interpretation and has not been determined conclusively or subject to judicial interpretation in Singapore.	Singapore. [1]
	There are no rules governing this issue. In practice both alternatives are applied.	Sweden. [1]
	There is no law within the United States that requires or prohibits Department of Justice lawyers from sharing the questions/matters to be addressed at a deposition with the witness in advance of a scheduled deposition. To the extent the voluntary testimony is going to be provided by notarized affidavit by the witness, the questions must be provided in advance of the testimony in order to prepare the affidavit. If transcribed testimony is to be provided at a deposition it is within the discretion of the assigned Department of Justice lawyer to provide the witness in advance with a copy of the subject of the deposition or the questions if deemed appropriate.	United States. [1]
<b>48. Are documents produced by a witness authenticated?</b>	Yes.	Estonia, Greece, Lithuania, Mexico, Singapore, Spain,

		Ukraine, United Kingdom. [8]
	<p><b>No.</b>  <u>Australia</u> Documents produced by a witness in an Australian court are identified by the witness, under oath or affirmation, as the documents specified in the Letter of Request, but are not authenticated by the court in any other way.</p> <p><u>Monaco</u> - Il appartient au tribunal requérant de s'assurer de cette authentification</p>	Argentina, Australia, Bulgaria, Czech Republic, Finland, France, Germany, China (HK SAR), Israel, Luxembourg, Monaco, Netherlands, Poland, Portugal, Romania, Slovaquie, South Africa, Sweden, United States. [19]
	Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice is at this time unable to provide an answer to this question	Denmark. [1]
	They are taken on record by appropriate orders of the Court	Israel. [1]
	Yes and No // Oui et non OUI: Quelques cantons. NON: Majorité des cantons.	Suisse. [1]
<b>49. Is an oath generally administered to the witness?</b>	<p>Yes.</p> <p><u>Bulgaria</u> - Under Article 170. of the Bulgarian Civil Procedural Code</p> <p>"(1) Before the examination of a witness, the court shall establish the identity thereof, shall clarify the information as to whether the said witness may be interested, and shall remind the witness of the liability incurable under the law for per jury.</p> <p>(2) The witness shall promise to tell the truth."</p> <p><u>China (HK SAR)</u> - Generally but for outgoing letters of request, O.39,r.3A allows evidence to be taken otherwise in accordance with the procedure of the country where the examination is to take place.</p> <p><u>Germany</u> - A witness shall be sworn in in principle pursuant to Section 391 of the German Code of Civil Procedure (ZPO) unless the court refrains from doing so for specific reasons.</p> <p><u>Portugal</u> - (article 559 ex vi 635 of the Civil Procedure Code)</p>	Argentina, Australia, Bulgaria, Czech Republic, Finland, France, Germany, Greece, China (HK SAR), India, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Portugal, Romania, Singapore, South Africa, Spain, Sweden, Ukraine, United Kingdom. [24]
	<p>No.</p> <p><u>Latvia</u> - but according to Paragraph 2 of Article 169 of the Civil Procedure Law before being examined, a witness shall sign a declaration: "I, . . (given name and surname of the</p>	Denmark, Israel, Latvia, Poland, Slovaquie. [5]

	witness), undertake to testify to the court about everything I know regarding the matter in which I am called as a witness. It has been explained to me that for refusing to testify or for knowingly giving intentionally false testimony I may be criminally liable in accordance with the Criminal Law."	
	There will be distinguished between different procedural actions: hearing a non-party witness. In this case a witness of at least 14 years of age shall be warned against refusal to give testimony without a legal basis and giving knowingly false testimony, and the witness shall confirm this by signing the text of the minutes of the caution. A witness shall not be cautioned if the witness does not understand the meaning of the caution due to mental illness, mental disability or other mental disorder; a party who has not been able to prove, by any other evidence, a fact which needs to be proven by him or her or who has not provided any other evidence, has the right to request the hearing of the opposing party or a third person under oath in order to prove the fact.	Estonia. [1]
	Yes and no // Oui et non OUI: Quelques cantons. NON: Majorité des cantons. Le projet de Code de procédure civile suisse ne prévoit pas le serment pour le témoin.	Suisse. [1]
	If the testimony is provided by deposition, the stenographer will administer an oath. If the testimony is provided by affidavit, generally the affidavit will be signed by the witness and notarized. There is, however, no requirement under U.S. laws that either approach be used, and responsive testimony can be provided without an oath or signed affidavit.	United States. [1]
<b>50. Can the witness be made subject to further examination and recall?</b>	Yes – first request may be re-invoked. <u>Estonia</u> - Neither Estonian law or practice does distinguish between the two described situations.	Australia, Estonia, Norway, Portugal, Singapore, Suisse (moitié de cantons), United Kingdom. [7]
	Yes – Second request necessary. <u>Germany</u> - If the first Letter of Request has been finally dealt with and the documents returned, a new request must be made. If this is not yet the case, the original request may be supplemented. <u>United States</u> - Other than as provided by certain time duration limitations set by the Federal Rules of Civil Procedure, there is generally no prohibition under our laws or procedures for a witness to be made subject to subsequent examination if the testimony has not been completed or all questions identified in the Letter of Request have not been answered by the conclusion of the first examination. However, if the basis for recall is a request by the requesting state's forwarding authority for additional testimony on new matters, a second	Argentina, Bulgaria, Czech Republic, Finland, France, Germany, Greece, China (HK SAR), India, Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Poland, Romania, Slovaquie, South Africa, Spain,

	request will have to be provided.	Suisse (moitié de cantons), Sweden, Ukraine, United States. [25]
	No.	[0]
	Based on the information gathered this issue does not appear to have been raised in practice and the Ministry of Justice is therefore unable to elaborate.	Denmark. [1]
<b>51. If documents are presented to the witness, must they form part of the request and/or be pre-approved? Authentication required?</b>	<p><b>Yes.</b></p> <p><b>They must be part of the Request itself</b> – Argentina, Czech Republic</p> <p><u>Estonia</u> - The matter lies in the discretion of court. All foreign official documents presented to the court are to be weather legalized or certified with an Apostille.</p> <p><u>Germany</u> - These documents must be mentioned and their content described in the Letter of Request and they must be written in or translated into German. In case of their submission, the judge is required to examine them. It depends on the individual case whether authentication or similar formality is required.</p> <p><u>Greece</u> - According to our legislation, these documents must form a part of the Request itself, they must be officially authenticated and have to be presented in the Court officially translated in Greek.</p> <p><u>China (HK SAR)</u> - Such documents should be annexed to the letter of request. Documents presented to the witness during examination would in turn be annexed to the transcript of oral testimony and returned to the requesting State.</p> <p><u>Latvia</u> - Documents that are going to be presented to the witness have to be attached to the Letter of Request. Yet there has not been any experience, but presumably the court would not require any pre-approval of these documents (as they would be attached to the official request).</p> <p><u>Luxembourg</u> - Ils doivent faire partie de la commission rogatoire.</p> <p><u>Monaco</u> - Ils doivent faire partie de la commission rogatoire.</p> <p><u>Poland</u> - Under the Polish law documents that are to be presented to the witness must be enclosed to the Request and pre-approved by the Court</p> <p><u>Romania</u> - Yes, they must be part of the request and they have to be pre-approved by the court. A certification of conformity is needed.</p> <p><u>Singapore</u> - The letter of request contains a list of documents to be examined and shown to the witness. This will be exhibited with the affidavit in support of the application for the examination of the witness. Order 38 rule 10 of the Rules of Court provides: "Office copies of</p>	Argentina, Czech Republic, Estonia, Germany, Greece, China (HK SAR), Latvia, Luxembourg, Monaco, Poland, Singapore, Slovaquie, South Africa, Spain, Ukraine. [15]



	<p>writs, records, pleadings and documents filed in the Registry shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible." Therefore, the documents are deemed admissible and can be presented to the witness during oral examination.</p> <p><u>Slovaquie</u> - ces documents doivent être joints à la commission rogatoire.</p> <p><u>South Africa</u> - Documents must be authenticated</p> <p><u>Spain</u> - The documents must form a part of the request itself and must be approved by the Court.</p> <p><u>Ukraine</u> - All necessary documents may be sent together with the Letter of Request.</p>	
	<p><b>No.</b></p> <p><u>France</u> - Sauf à ce que leur origine soit contestée, les documents présentés à un témoin ne doivent pas être préalablement soumis à une approbation ou à une authentification de la part de la juridiction mandante.</p> <p><u>India</u> - Witness may claim refresh of memory. Hence it would be advisable that such documents accompany the request, so as to avoid delay / non-execution of request. Authentication may not be necessary. Authentication would be required only if the documents are to be admitted in evidence, which is not the case here</p> <p><u>Israel</u> - No. The attorney that examines usually produces the documents in court.</p> <p><u>Lithuania</u> - the oral examination of the witness is executed according to the determinate order of CCP and if documents are to be presented to the witness during oral examination, these must not form a part of the Request itself. However, if these documents have evidentiary power, they must be pre-approved and authenticated by the court.</p> <p><u>Mexico</u> - No, the Court allows support material to help the memory without the need for authentication.</p> <p><u>United Kingdom</u> - Provided the documents are admissible under our law, documents may be presented to the witness without prior approval.</p>	<p>Finland, France, India, Israel, Lithuania, Mexico, Sweden, United Kingdom. [8]</p>
	<p>In Australia, if documents are to be presented to a witness during oral examination they must be pre-approved by the court. The documents must be tendered in court and deemed relevant by the officer of the Court responsible for executing the Letter of Request.</p>	<p>Australia. [1]</p>
	<p>Under the Bulgarian law documents that are to be presented to the witness must be enclosed to the Request and pre-approved by the Court.</p>	<p>Bulgaria. [1]</p>
	<p>Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice is at this time unable to provide an answer to this question</p>	<p>Denmark. [1]</p>

	<p>Yes, these documents presented must form a part of the legal request itself.</p> <p>No, they must not be authenticated if they are part of the legal request.</p>	Netherlands. [1]
	They do not to be authenticated even though they must be attached to the process (article 638.º/6 Civil Procedure Code).	Portugal. [1]
	<p>Yes and no // oui et non</p> <p>Les réponses sont partagées selon les cantons. Pour la majorité d'entre eux, les documents doivent faire partie de la commission rogatoire. Pour quelques-uns, cette exigence n'est pas requise. Il suffit qu'ils soient visés par le juge ou le greffier.</p>	Suisse. [1]
	As a general matter, any documents that might be useful in refreshing the memory of a witness will have to be part of the Request since the assigned Department of Justice lawyer has no access to documents other than those which are part of the Request or otherwise produced by the witness. There is no requirement for approval or pre-approval by courts of documents to be shown to the witness. There is no requirement for the documents to be authenticated.	United States. [1]
<b>52. Sanctions for non-appearance.</b>	The police power will take the witness to the hearing and he/she would be ordered to pay a pecuniary penalty up to \$ 1.000.	Argentina. [1]
	Under domestic legislation, a court can issue a subpoena requiring a witness to appear before the court to execute a Letter of Request. Failure to comply with the subpoena without a lawful excuse is a contempt of court and the witness may be arrested or charged with contempt of court.	Australia. [1]
	<p>According to Article 85 of the Bulgarian Code of Civil Procedure:</p> <p>Witness, When Fined</p> <p>Article 85. (1) If a witness summoned to appear in court fails to appear without reasonable excuse, the court shall impose a fine thereon and shall decree that the attendance of the said witness during the next succeeding hearing be compelled.</p> <p>(2) If a witness refuses to testify without reasonable excuse, the court shall impose a fine thereon.</p> <p>Expert Witness, When Fined</p>	Bulgaria. [1]
	If the summoned person does not appear in the examination or at the expert without apologize, the chairman of the panel may have him attached if the summoned person was warned of the possibility of the attachment. The chairman of the panel shall decide on the attachment by a ruling that shall be delivered to the summoned person at the moment of the	Czech Republic. [1]

attachment. (§52 Czech Civil Procedural Code). It is also possible to fine the person for not appearing in the court without any serious (§ 53 Czech Civil Procedural Code).	
Depending on the circumstances a fine or having the subject sought and retained by the police, would be the most likely sanctions for a non-appearing witness in a civil or commercial case.	Denmark. [1]
If a witness fails to appear in court upon a summons without good reason, the court may impose a fine on or impose compelled attendance on the witness. The court shall not impose a fine on or compelled attendance on the witness if the witness substantiates to the court that the summons was not delivered to him or her on time or that the witness had other good reason for absence.	Estonia. [1]
A witness who without a lawful cause refuses to give evidence may be obliged under threat of a fine to fulfil his or her obligation. If despite this the witness does not consent to give evidence, the court may order him or her to be detained until he or she consents to give evidence.	Finland. [1]
L'article 207 du code de procédure civile prévoit que « Les témoins défaillants et ceux qui, sans motif légitime, refusent de déposer ou de prêter serment peuvent être condamnés à une amende civile d'un maximum de 3 000 euros. ».	France. [1]
The sanctions are provided for in Section 380 of the German Code of Civil Procedure (ZPO). The witness may be charged for the costs caused by his failure to attend. A disciplinary fine may also be imposed on him and in such case as the payment of this fine cannot be enforced, confinement for contempt of court may be imposed.	Germany. [1]
Depending on the case, the court orders either the police to bring by force the non-appearing witness or to condemn the witness in paying a fine of 15 up to 150 euros for non-appearance, provided that the witness was legitimate called to appear in front of the court.	Greece. [1]
A witness who fails to comply with the order for examination will be liable to committal for contempt of court. See para. 70/6/24 of the HKCP 2008 and Order 45 of the Rules of the High Court.	China (HK SAR). [1]
Where a person has failed to attend or to produce documents in compliance with a summons or has intentionally avoided service, the court may issue proclamation requiring him to attend to give evidence or to produce the documents at a time and place to be named therein. A copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides. In lieu of or at the time of issuing such proclamation, or at any time afterwards, the court may, in its discretion, issue a warrant either with or without bail, for the arrest of such person, and may make an order for the	India. [1]

attachment of his property	
Such witness might be subject to the contempt of court legislation, and a compulsory attendance order may be issued against him.	Israel. [1]
According to Paragraph 2 of Art 109 of the Civil Procedure Law, if a witness, without justified reason fails to attend a hearing after being summoned by a court or a judge, the court may impose a fine, or have the witness brought to court by forced conveyance.	Latvia. [1]
Under Article 248 of CCP if a summoned witness fails to appear in the court without a relevant reason, he may be ordered a fine in the amount of one thousand litas and the witness may also be brought to the court on the basis of a court ruling.	Lithuania. [1]
Il s'expose à une peine d'amende de 50 à 2.500 euros.	Luxembourg. [1]
The imposition of a fine or arrest.	Mexico. [1]
Amende civile de 15 à 1500 euros (article 331 du code de procédure civile)	Monaco. [1]
The court can order that the witness has to be brought before it. Second the witness can be kept in custody for up to 1 year if he/she refuses to give a witness statement.	Netherlands. [1]
The court can decide that a witness who does not appear, and who does not have a valid reason for not appearing, shall be brought to the same or a subsequent court meeting. Further, the court may impose a fine.	Norway. [1]
According to Article 274 of the Polish Code of Civil Procedure non-appearance of a witness is punishable with a fine.	Poland. [1]
Unless the witness presents a valuable justification for non-appearance (such as change of residence or illness) a fine will be imposed and the witness can be compelled to give evidence by a police authority.	Portugal. [1]
Judicial fine	Romania. [1]
Contempt of court proceedings.	Singapore. [1]
L'amende d'ordre jusqu'au montant de 50.000 SK (cca 1.666.- EUR), l'assistance de la police, la charge des frais de justice.	Slovaquie. [1]
If subpoenaed to appear in court non-appearance amounts to contempt of court which carries a criminal sanction	South Africa. [1]
According to Section 292 of the Civil Procedural Law , the non-appearance of a witness is punished with a fine of 180 to 600 €	Spain. [1]
D'une manière générale, les sanctions encourues peuvent être la condamnation aux frais engendrés, l'amende et éventuellement le mandat d'amener ainsi que l'application de l'art. 292 CP (infraction pénale) en cas de non-comparution répétée. D'après le projet de Code de	Suisse. [1]

	procédure civile suisse le refus injustifié du tiers, non fondé sur un motif légal et reconnu de dispense, est passible de sanctions (amende d'ordre, commination de l'art. 292 CP, exécution par la force publique, mise à charge des frais ). Le tiers est passible des mêmes sanctions en cas de défaut.	
	A witness who does not appear before the court may receive a default fine or be fetched. If a witness without valid excuse, refuses to take an oath, to testify, to answer a question, or to obey certain court orders, the court shall order the witness to perform his duty under penalty of fine, and, if the witness persists in his denial, under penalty of detention.	Sweden. [1]
	According to Article 94 of the Code of Civil Procedure, witness being properly summoned who without excusable reasons failed to appear before the court or did not report the reasons to a failure to appear, may be compulsory brought before a court by the organs of internal affairs with a compensation in the profit of the state of charges on his realization. A court issues an order compelling the appearance with this aim.	Ukraine. [1]
	If a witness is ordered to attend, and such an order is endorsed with a penal notice, then if that witness fails to attend, they are in contempt of court, and may be fine or imprisoned as a result of their non-attendance.	United Kingdom. [1]
	Civil contempt.	United States. [1]
<b>53. Must interpreters be court-certified?</b>	<p><b>Yes.</b></p> <p><u>Estonia</u> - A person who is not proficient in Estonian shall give an oath or signature on being cautioned of his or her liability in a language in which he or she is proficient.</p> <p><u>Germany</u> - Under Section 189 Paragraph 1 of the German Judicature Act (Gerichtsverfassungsgesetzes - GVG) the interpreter is required to make an oath before the court prior to taking up his activity. If he has been sworn in generally for interpretation of the kind in question, reference to the oath he has taken shall suffice (Section 189 (2) of the German Judicature Act [GVG]).</p> <p><u>India</u> - Yes, they should be approved interpreters.</p> <p><u>Portugal</u> - (Article 139 of the Civil Procedure Code)</p>	Argentina, Bulgaria, Czech Republic, Estonia, Germany, China (HK SAR), India, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovaquie, South Africa, Spain. [20]
	<p><b>No.</b></p> <p><u>France</u> - (Le serment n'est prévu que pour les experts judiciaires, lors de leur inscription sur la liste dressée par la cour d'appel)</p> <p><u>Latvia</u> - Under Article 157 of the Civil Procedure Law the court shall explain to interpreters their duty to translate the explanations, questions, testimony, applications and petitions of persons who are not fluent in the language of the court proceedings, and to translate to such persons the explanations, questions, testimony, applications and petitions of other</p>	Denmark, Finland, France, Greece, Israel, Latvia, United Kingdom, United States. [8]

	<p>participants to the proceedings and the contents of the documents read, the judge's instructions and the court's rulings. The court shall warn interpreters that they are liable in accordance with the Criminal Law for refusal to translate, or for intentionally false translation.</p> <p><u>United States</u> - There is no uniform national rule requiring certification of court interpreters in all cases, although in practice most courts at both the federal and state level do rely on certified interpreters where available.</p> <p>Under the federal Court Interpreter Act of 1978, certified (or otherwise qualified) interpreters are required in judicial proceedings instituted by the federal government when a party (including a defendant in a criminal case) or a witness who may present testimony in such judicial proceedings speaks only or primarily a language other than the English language (or suffers from a hearing impairment which inhibits that party's comprehension of the proceedings and the presentation of such testimony). That statute also mandated development of a national certification examination. Currently, federal certification is available in Spanish, Haitian, Creole, and Navajo.</p> <p>In most (but not all) of the individual states, judges are required (by rule or statute) to use certified (or otherwise credentialed) interpreters to assist with in-court witness examination when one is reasonably available. However, fully certified interpreters are not always available in all required languages. In some states, when a certified interpreter isn't reasonably available, judges are required to use interpreters with a somewhat lower level qualification. Some 40 states participate in the Consortium for State Court Interpreter Certification, which serves to develop and manage proficiency tests for court interpreters. For more information, <a href="http://www.ncsconline.org/D_RESEARCH/CourtInterp.html">http://www.ncsconline.org/D_RESEARCH/CourtInterp.html</a>.</p>	
	<p>In Australia, the relevant court must be satisfied that the interpreter has the qualifications necessary for the task. In addition, interpreters are required to take an oath or make an affirmation before the court.</p>	Australia. [1]
	<p>Yes and no // oui et non La pratique est partagée selon les cantons.</p>	Suisse. [1]
	<p>The interpreters are not – as such – court-certified. However, an individual employed as a public interpreter, or otherwise appointed to assist as an interpreter, shall take an oath before the court undertaking to execute the assignment to the best of his ability. Usually, interpreters are authorized by the Legal, Financial and Administrative Services Agency (Kammarkollegiet).</p>	Sweden. [1]
	<p>Under the Code of Civil Procedure of Ukraine (Article 55) a person having good command of the language of a procedure as well of the language necessary for translation or interpreting may act as a translator or an interpreter before the court. Such a person shall be liable to a</p>	Ukraine. [1]

	criminal responsibility in case of knowingly incorrect translation (interpreting).	
<b>54. How is testimony transcribed?</b>	The court makes a record of the witnesses' testimony.	Argentina. [1]
	In general, testimony is recorded by electronic means and then manually transcribed. Court Reporters can also use computerised stenograph machines to translate shorthand outlines into transcript. The document is then certified by the examiner as being a true and correct transcript of the evidence taken.	Australia. [1]
	Under the Bulgarian law testimony is transcribed to the minutes of the court session	Bulgaria. [1]
	The testimony is transcribed to the minutes. It can be also recorded on request. Such a record would have MP3 data format.	Czech Republic. [1]
	According to Danish law and practise the judge is responsible for transcribing the testimonies during a case. For example the judge can transcribe the testimony himself, he can use a dictaphone or he can entrust the transcription to the personnel that carries out the minutes of the court session. However, the judge is always responsible for the substance of the minutes regardless of his choice of transcription	Denmark. [1]
	A signature shall be given on the text of the oath or caution is prepared in Estonian, translated to the person directly and then signed by him or her.	Estonia. [1]
	When an international request is executed the testimony is written down in a protocol.	Finland. [1]
	"En vertu de l'article des articles 219 et suivants du code de procédure civile, les dépositions des témoins sont consignées dans un procès-verbal daté et signé par le juge, ainsi que par le greffier qui l'a établi".	France. [1]
	A record shall be made of the taking of evidence. Further details are regulated by Sections 159 ff of the German Code of Civil Procedure (ZPO).	Germany. [1]
	The testimony is transcribed by an appointed judicial secretary.	Greece. [1]
	In the form of a deposition or verbatim transcript.	China (HK SAR). [1]
	The judge as the examination of the witness proceeds, shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the judge or otherwise authenticated and shall form part of the record.	India. [1]
	Printed.	Israel. [1]
Under Article 63 of the Civil Procedure Law, minutes of the court hearing shall be written by the secretary of the court.	Latvia. [1]	
Under Article 168 and Article 169 of CCP, testimony (summary of witness evidence) is specified (recorded) in the minutes of a court session.	Lithuania. [1]	

Un procès-verbal est dressé par le greffier et signé par le magistrat et le témoin.	Luxembourg. [1]
First, the summoned must appear before the secretary officer, who will take their testimony based on the questions sent by the requesting authority, later on he will transcribe it, and produce a printed version, which shall be signed by all who gave their testimony.	Mexico. [1]
Le témoignage est transcrit par un greffier sous l'autorité d'un juge.	Monaco. [1]
The court makes a record of the court session and the testimony.	Netherlands. [1]
Statements made by parties, witnesses or experts outside the main hearing for reasons of securing evidence shall be entered in the court record and then read aloud for confirmation. The court may instead of entering the statement decide on audio or video recording. Other statements from parties, witnesses and experts shall be entered in the court record to the extent that the court finds cause to do so.	Norway. [1]
Under the Polish law testimony is transcribed to the minutes of the court session. In some situations it may be also recorded.	Poland. [1]
The general rule determines that the testimony is recorded when the parties require it, the court officiously decides it or when specific legislation determines it. The transcription of those testimonies only takes place in specific situations (appeal) and can be made by the Parties or by the Court (v. article 685-B of the Civil Procedure Code). Nevertheless, the Portuguese procedural law (article 522-A) determines that all testimony given before the final hearing or by letter must be recorded or, when such recording is not possible, transcribed.	Portugal. [1]
According to Art. 198 para. (1) of the Civil Procedure Code, the testimony must be written down by the court clerk and signed (on each page) by the judge, the clerk and the witness.	Romania. [1]
Through Notes of Evidence certified by the Assistant Registrar.	Singapore. [1]
On fait un procès-verbal qui est signé par le témoin.	Slovaquie. [1]
Through stenographic means	South Africa. [1]
A civil servant of the Court transcribe the testimony	Spain. [1]
Transcription manuscrite lors de l'audition (PV) et parfois transcription audio en parallèle et rédaction d'un protocole écrit ultérieurement. D'après le projet de Code de procédure civile suisse, l'essentiel des dépositions est consigné au procès-verbal et signé par le témoin. Les dépositions peuvent également être enregistrées sur bandes magnétiques, vidéo ou par tout autre moyen technique approprié.	Suisse. [1]
Testimony is to be recorded in writing in the protocol of the proceedings. However, in accordance with Article 197 of the Code of Civil Procedure a court during the judicial trial of a	Ukraine. [1]



	case carries out the complete fixing of the hearings with a sound-recorder.	
	Audio recording	United Kingdom. [1]
	By stenographic means, by videography or by any other appropriate mechanism agreed upon by the parties.	United States. [1]
<b>55. To whom is the final transcript delivered?</b>	Representatives for the parties. <u>Latvia</u> - If requested	Latvia. [1]
	Requesting authority. <u>Australia</u> - The final transcript is delivered to the requesting authority and / or any person or party specified in the request as the person who should receive the transcript. <u>Suisse</u> - Pratique de la quasi-totalité des cantons.	Argentina, Australia, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Greece, Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Poland, Romania, Singapore, Slovaquie, South Africa, Spain, Suisse, Sweden, Ukraine, United Kingdom, United States.[28]
	To the Chief Secretary for Administration for transmission to the requesting state.	China (HK SAR).[1]
	It forms part of the court records. Any party to the suit may apply for a copy of the transcript	India. [1]
<b>56. How is a letter of request withdrawn? From whom must the request come?</b>	Representatives of the parties.	Australia. [1]
	The parties themselves.	Australia. [1]
	Requesting authority. <u>Suisse</u> - Pratique de la quasi-totalité des cantons.	Argentina, Australia, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Greece, Israel, India, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Poland,

		Romania, Singapore, Slovaquie, South Africa, Spain, Suisse, Sweden, Ukraine, United Kingdom, United States.[29]
	Other. <u>Denmark</u> - Most likely all of the above would be competent to withdraw a request, depending on the circumstances.	Denmark. [1]
<b>F. Presence of counsel or parties (Art. 7)</b>		
<b>57. Which authority is responsible for informing the requesting authority of the time and place of the execution of the request?</b>	Central Authority.	Australia, Estonia, Greece, Israel, Mexico, Romania, South Africa, Ukraine, United Kingdom. [9]
	Judicial Authority competent to execute request. <u>Sweden</u> – via the Central authority	Argentina, Australia, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, India, Latvia, Lithuania, Luxembourg, Monaco, Netherlands, Norway, Poland, Portugal, Slovaquie, Spain, Sweden. [20]
	Responsibility for informing the requesting authority of the time and execution of a Letter of Request depends on the State or Territory in question.	Australia. [1]
	Private agent of the parties or, in the absence of private agent, Law Officer (International Law)	China (HK SAR). [1]
	Attorney-General's Chambers	Singapore. [1]
	L'Autorité centrale: Quelques cantons L'autorité judiciaire compétente pour exécuter la commission rogatoire: Majorité des cantons	Suisse. [1]
	The U.S. Department of Justice attorney assigned to execute a Letter of Request would generally provide notice to the parties and their representatives, unless it is more practical	United States. [1]

	for the Central Authority to do so. If notice is to be provided to the requesting authority, it would generally be provided by the Central Authority.	
<b>58. How often do requesting authorities ask to know the time and place?</b>	<b>Almost always.</b>	Israel, Spain, United Kingdom. [3]
	<b>Often.</b> <u>Germany</u> - Particularly in relations with the USA.	France, Germany, Portugal, Sweden. [4]
	<b>Rarely.</b> <u>Denmark</u> - According to the knowledge of Danish Court Administration the Danish courts have only had very few cases involving The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters. <u>Germany</u> - In other cases.	Argentina, Australia, Bulgaria, Czech Republic, Denmark, India, Finland, Greece, China (HK SAR), Luxembourg, Mexico, Monaco, Norway, Poland, Romania, Slovaquie, South Africa, Suisse. [18]
	<b>Never.</b> <u>Singapore</u> - Regardless of whether the requesting State asks the requested State to notify it of the hearing date and time, Attorney-General's Chambers automatically informs the requesting State of the hearing time and date.	Estonia, Latvia, Lithuania, Singapore, Ukraine. [5]
<b>59. Who is informed of the time and place?</b>	<b>Requesting authority.</b> <u>Australia</u> - The relevant Australian authority will inform whoever the Letter of Request specifies should be informed. This may include the requesting authority, the parties concerned or the representatives of the parties. <u>Bulgaria</u> - this the practice, but it depends on a content of the request <u>Czech Republic</u> - The relevant authority (competent court) would inform requesting authority (or others) if such a request would be contained in the Letter of Request. <u>Israel</u> - If requested	Argentina, Australia, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, India, Israel, China (HK SAR), Latvia, Lithuania, Norway, Poland, Portugal, Romania, Singapore, South Africa, Spain, Sweden, United Kingdom. [23]
	<b>Parties concerned.</b> <u>Latvia, Lithuania, Norway, Poland</u> – if requested. <u>Netherlands</u> - but only if this is specifically requested in the legal request.	Germany, Latvia, Lithuania, Luxembourg, Netherlands, Norway,

		Poland, Singapore. [8]
	<b>Representatives of the parties.</b> <u>Lithuania, Norway, Poland</u> – if requested. <u>Netherlands</u> - but only if this is specifically requested in the legal request.	Germany, Lithuania, Netherlands, Norway, Poland. [5]
	<b>All the above</b>	Monaco. [1]
	<b>Other</b> - Soit les parties concernées, soit l'autorité requérante, soit tous les deux sont informées sur l'heure et du lieu d'exécution. Ça dépend de la demande de l'autorité requérante.	Slovaquie. [1]
	<b>Other</b> - Information will be provided in case when such request is mentioned in the Letter of the Request.	Ukraine. [1]
	Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice is at this time unable to provide an answer to this question.	Denmark. [1]
	The legal practice of the Central Authorities varies. What is decisive in the first instance is the Letter of Request itself and any requests to be informed it contains. In such cases as a request has been expressed in the Letter of Request for the parties and their representatives to be informed directly, as provided for in Article 7 of the Evidence Convention, this request shall be complied with. If not, only the requesting authority will be informed.	Germany. [1]
	To the central authority	Mexico. [1]
	L'autorité requérante: Quelques cantons; Les parties concernées: Majorité des cantons; Les représentants des parties Majorité des cantons	Suisse. [1]
<b>60. How is the time and place communicated?</b>	Informal channel (letter, email, fax, telephone etc.) <u>Germany</u> - In the overwhelming majority of cases, the informal channel is chosen. Notification is given in writing, however. <u>Sweden</u> - Letter or fax via the central authority	Australia, Bulgaria, Czech Republic, Finland, France, Germany, Greece, China (HK SAR), Lithuania, Monaco, Netherlands, Norway, Poland, Romania, Singapore, Slovaquie, Sweden, Ukraine, United Kingdom, United States. [20]
	Formal channel (eg, via Hague Service Convention if applicable, or via diplomatic channels). <u>Israel</u> - in urgent occasions, may be informal	Argentina, Estonia, India, Israel, Luxembourg, Latvia, Lithuania, Mexico,

		Portugal, South Africa, Spain. [11]
	Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice is at this time unable to provide a definitive answer to this question	Denmark. [1]
	Voie informelle: Majorité des Cantons; Voie officielle: Quelques cantons	Suisse. [1]
<b>61. What remedies as requested State for failure to notify time and place?</b>	No remedies are currently available under domestic legislation. However, in one case where notification was not provided (due to an oversight in the execution of the request), the Australian court ordered that the witness could be recalled if the foreign authority indicated that was necessary.	Australia. [1]
	There are no special remedies. The execution of the request will be resumed, with the notification of the interested parties/authorities.	Bulgaria. [1]
	No Remedies	Czech Republic, Estonia, Germany, India. [4]
	A renewed request may be forwarded if needed.	Denmark. [1]
	Informal inquiry	Finland. [1]
	Aucun recours spécifique n'est prévu afin de remédier à une telle situation, mais le code de procédure civile français fait expressément obligation au juge saisi de la demande d'informer, lorsque cela est demandé, la juridiction requérante des lieu, jour et heure de l'exécution de la commission rogatoire. (article 741)	France. [1]
	The execution of the request, normally, is rescheduled.	Greece. [1]
	Such notifications are only given when a specific request is made by the requesting authority. In practise, no remedy exists if the notification is not given.	Israel. [1]
	Aucun recours particulier n'est prévu.	Luxembourg. [1]
	The central authority can return the entire act to the judicial authority so that it may give due fulfillment to the formalities of the Convention.	Mexico. [1]
	Demande d'une nouvelle convocation du témoin.	Monaco. [1]
	There are no specific remedies available.	Netherlands. [1]
	There are no special remedies. The execution of the request will be resumed, with the notification of the interested parties/authorities.	Romania. [1]
The notification must be repeated (confirm Supreme Court Decision, 03.02.1997 - question 11).	Portugal. [1]	

	The hearing date can be postponed and Attorney-General's Chambers will inform the requesting State and parties concerned of the new hearing date.	Singapore. [1]
	Ils ne peuvent que demander la répétition de l'exécution de la commission rogatoire.	Slovaquie. [1]
	Objections to be registered through diplomatic channels	South Africa. [1]
	If the Spanish competent Court notifies the time and place of the execution to the Spanish Central Authority, the foreign requesting authority is immediately informed . Another question is (and it often happens)if there is not time enough for the execution of the letter of request. In this case, the Spanish Central Authority requests a new second letter	Spain. [1]
	Les voies de recours éventuellement ouvertes dépendent pour l'heure du droit de procédure cantonale. La plupart des cantons ne prévoit aucune possibilité de recours. Certains ont toutefois évoqué les griefs et voies de recours suivants : - Violation du droit d'être entendu : la possibilité pour les parties (et non pas l'autorité requérante) de faire recours contre la décision de clôture de la mesure d'entraide judiciaire pour violation du droit d'être entendu. Une AC a même soutenu que le défaut d'information est une violation du droit d'être entendu fondé sur la convention (art. 7 CLaH70) ; - Invocation de la nullité de la mesure dans le cadre du procès au fond à l'étranger ; - Recours à l'autorité de surveillance.	Suisse. [1]
	An informal inquiry on the status of the case may be sent.	Sweden. [1]
	This situation just would not happen.	United Kingdom. [1]
	In the event the requesting authority has asked that parties or their representative be notified of the time and place of execution, and such notice has not been provided, the parties or their representatives are free to initiate a judicial proceeding and request a remedy that they believe is authorized under the laws of the United States. Whether they can obtain any such remedy depends upon the nature of their claim, the facts, and the validity of any legal rights they assert.	United States. [1]
<b>62. What remedies as requesting State for failure to notify time and place?</b>	Under domestic legislation, the court may make any order and give any direction that would be available to it in similar (domestic) proceedings in the relevant State or Territory.	Australia. [1]
	Bulgarian law does not provide such remedies.	Bulgaria. [1]
	No Remedies	Czech Republic, India. [2]
	A renewed request may be forwarded.	Denmark, Greece. [2]
	In Estonia there are no special remedies for this case. In case the parties (or resp. their representatives) are not notified of the time and place of the execution of the letter of	Estonia. [1]

request (e.g not summoned to court session) it can be considered as a violation of the right of being heard and constitute the ground for appealing the court decision.	
Informal inquiry	Finland. [1]
Aucun recours spécifique n'est prévu pour remédier à une telle situation.	France. [1]
No specific remedies are provided for here. However, the fact that the party or its representatives were unable to take part in the taking of evidence plays a role in evaluating the evidence taken abroad.	Germany. [1]
Aucun recours particulier n'est prévu.	Luxembourg. [1]
They may appear before the central authority to communicate such situation	Mexico. [1]
Demande d'une nouvelle convocation du témoin.	Monaco. [1]
So far this situation it seldom occurred. But as soon as it would be clear that such a notification has not been done, either the court or the Central Authority would notify the parties after all. This can be done before the legal request has been executed or afterwards. Fact is it will be done.	Netherlands. [1]
The notification must be repeated (confirm Supreme Court Decision, 03.02.1997 – question 11).	Portugal. [1]
There are no special remedies. The execution of the request will be resumed, with the notification of the interested parties/authorities.	Romania. [1]
There are no remedies prescribed in the law but may be subject to judicial interpretation.	Singapore. [1]
Ils ne peuvent que demander la répétition de l'exécution de la commission rogatoire.	Slovaquie. [1]
Use of diplomatic channels	South Africa. [1]
The Spanish Central Authority contacts with the foreign requested Authority. In this case, a second new request is desirable.	Spain. [1]
Les voies de recours éventuellement ouvertes dépendent pour l'heure du droit de procédure cantonale. La plupart des cantons ne prévoit aucune possibilité de recours. Certains ont toutefois évoqué la possibilité d'introduire une nouvelle requête. Pour d'autres, il s'agit de recourir contre ce manquement dans le cadre d'un recours contre le jugement au fond rendu en Suisse. En effet, la mesure d'obtention de preuves à l'étranger a été obtenue en violation du droit d'être entendu. Cela se répercute sur la procédure en Suisse qui devient alors lacunaire. Les parties ont donc à leur disposition les mêmes outils que s'ils contestaient une mesure d'obtention de preuves lacunaire dans le cadre d'une procédure interne.	Suisse. [1]
An informal inquiry on the status of the case may be sent.	Sweden. [1]

	<p>This situation just would not happen.</p> <p>The parties to the domestic proceeding (or their representatives) within the United States in which the Letter of Request was sent by the court are free to make any argument to that court that they believe is appropriate under the facts and law, in the event notice was requested by the court but was not given. Whether the parties or their representatives can obtain a remedy depends upon the nature of their claim, the facts and the validity of the legal rights or remedies they assert.</p>	<p>United Kingdom. [1]</p> <p>United States. [1]</p>
<p><b>63. Can representatives of the parties ask follow-up questions at the end of the examination?</b></p>	<p>Yes</p> <p><u>Estonia</u> - The general rules of Code of Civil Procedure about questioning the witnesses apply. The participants (or their representatives) in a proceeding have the right to pose questions to a witness which are necessary in their opinion in order to adjudicate the matter or establish the witness's connection to the matter. Generally the questions should be posed through the court. With the permission of the court they may be posed directly.</p> <p><u>Finland</u> - The representatives of the parties can ask additional questions and the judge may also permit them to examine the witness directly</p> <p><u>France</u>- Au-delà des demandes de formes spéciales, le code de procédure civile français prévoit que les parties et leurs défenseurs, même étrangers, peuvent, sur autorisation du juge, poser des questions, qui doivent être posées ou traduites en langue française. (article 740)</p> <p><u>Israel</u> - The court will allow to add questions and to examine. Representatives may themselves present additional or follow up questions, and cross examine the witness in the presence of the executing authority</p> <p><u>Latvia</u> - The parties to the proceedings as well as their representatives are allowed to examine and cross-examine the witness directly during the proceedings under Paragraph 2 of Article 10 and Paragraph 2 of Article 108 of the Civil Procedure Law</p> <p><u>Lithuania</u> - The representatives of the parties who attend the hearing may ask additional follow-up questions at the conclusion of the executing authority's examination in accordance with the provisions of paragraphs 6 and 7 of Article 192 of the Code of Civil Procedure of the Republic of Lithuania.</p> <p><u>Luxembourg</u> - Le juge pose s'il l'estime nécessaire, les questions que les parties lui soumettent après l'interrogatoire du témoin.</p> <p><u>Norway</u> - The abovementioned is not directly regulated in the Norwegian Civil Procedure Code, but consent may be given by the executing court.</p> <p><u>Portugal</u> - Under the article 638 of the Civil Procedure Code, the legal representatives must examine the witness during the final hearing in the presence of the judge. The judge can</p>	<p>Finland, France, Israel, Latvia, Lithuania, Luxembourg, Norway, Portugal, Singapore, Slovaquie, South Africa, Spain, Suisse, Sweden, United Kingdom. [15]</p>



examine directly the witnesses or not, depending on the previous examination by the legal representatives.

Romania - The parties may ask additional questions with no pre-written follow-up questions (in accordance with the provisions of Article 197 the Code of Civil Procedure).

Singapore - The legal representatives must speak through a locally licensed counsel, who cross-examines the witness in the Assistant Registrar's presence.

Slovaquie - Les représentants des parties avec le mandat général peuvent poser des questions supplémentaires à l'audience par l'intermédiaire de juge ou de juge unique. La demande selon une forme particulière est exigée pour interroger et contre-interroger le témoin.

South Africa –(i) Follow-up questions must be presented to Central Authority on the basis of the second request (ii) Must be a second request (iii) Subject to new request

Spain - Under the laws of our State, the representatives of the parties may ask additional follow-up questions at the conclusion of the executing authority's examination

Suisse - La quasi-unanimité des cantons a répondu par l'affirmative. Selon le projet de Code de procédure civile suisse, les parties peuvent demander que des questions complémentaires soient posées au témoin ou les lui poser elles mêmes avec l'assentiment du tribunal. Ou ces représentants doivent-ils s'exprimer par le truchement d'avocats locaux ? Ou bien doivent-ils adresser leurs questions par écrit au tribunal ? Les pratiques sont partagées selon les cantons. Ou encore votre État autorisera-t-il les représentants des parties à interroger et contre-interroger le témoin directement, en présence de l'autorité exécutant la commission rogatoire ? Veuillez expliquer : La majorité des cantons ont répondu par la négative. Selon le projet de Code de procédure civile suisse, les parties et leurs représentants ne sont pas, en principe, autorisés à questionner directement les témoins (par interrogatoire contradictoire p. ex.).

Sweden - The representatives of the parties may ask additional questions. The judge may also permit the representatives to examine the witness directly.

United Kingdom - In the rare instances where legal representatives attend, follow up questions may be asked but strictly only with the Examiner's Consent to clarify the answer to a particular question or questions. Care must be taken to ensure that all the questions asked of the witness are therefore within the ambit of the letter of request.

If representatives from both sides attend the case-officer at Treasury Solicitor will generally conduct the examination of the witness. It is then in the discretion of the Examiner whether to permit questions from the other two parties. Where only one party is represented it is still within the Examiner's discretion to allow that representative to ask additional questions (although he is less likely to allow this by virtue of the other party not being represented).

	Finally, with the approval of the examiner the Treasury Solicitor case officer may put further questions to the witness to elucidate any points remaining obscure.	
	<p>No</p> <p><u>Greece</u> - Only the questions mentioned in the request will be raised and answered by the relevant parties.</p> <p><u>Poland</u> - Under the Polish law representatives of the parties who attend the hearing cannot ask additional follow-up questions. They must present their follow-up questions in writing to the court.</p>	Czech Republic, Greece, Poland. [3]
	Under Australian law, a special request can be made for the examination and / or cross-examination of a witness by the representatives of the parties, on the approval of the relevant court.	Australia. [1]
	Under the Bulgarian law representatives of the parties who attend the hearing cannot ask additional follow-up questions without the approval of the competent authority.	Bulgaria. [1]
	Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice is at this time unable to provide an answer to this question	Denmark. [1]
	<p>The taking of evidence is carried out according to the German law on civil procedure in principle. The questioning of the witness concerning his person follows the questioning of the witness on the matter in hand. Here, under Section 396 Paragraph 1 of the German Code of Civil Procedure (ZPO), he is to be given the opportunity in the first instance to present his perceptions on the subject on which evidence is to be given in summary form. When the court has then fulfilled its duty of discovery and duty to interrogate witnesses to complete the statement, the parties' right to ask questions begins pursuant to Section 397 of the German Code of Civil Procedure (ZPO). According to Section 397 (2) of the German Code of Civil Procedure (ZPO), it is primarily the parties' lawyers who have the right to directly question witnesses. If a foreign lawyer can operate in court alone in Germany under European Community law or under German law, he does not require the support of a domestic colleague to ask questions, but in principle may participate independently in the taking of evidence. If this is not the case, only the domestic colleague is authorised to ask direct questions. The party usually exercises its right to ask questions by submitting questions to the witness (Section 397 (1) of the German Code of Civil Procedure (ZPO)). However, the party may also be permitted by the court to interrogate the witness directly. A limit is placed on the parties' right to ask questions, however, when the question no longer serves the purpose of interrogation or of exhausting the subject on which evidence is to be given. Thus, for example, exploratory questioning and questions that have as their subject not the witness's actual perceptions but his value judgements are inadmissible. Cross-</p>	Germany. [1]

	examination is unknown in German civil proceedings.	
	Since the request for examination and the questionnaire in normal course would originate from the court of the Requesting State, the follow up questions should normally originate from such court.	India. [1]
	The participation of the parties in such procedure is not allowed, unless it is inquired for in advance by the requesting authority. If the participation is not required in advance, the judicial Mexican authority will perform the interrogation just as it was sent.	Mexico. [1]
	Non à toutes les questions.	Monaco. [1]
	Generally the court will have no objection to this. So possibilities are present.	Netherlands. [1]
	Parties who do not have counsel may represent their own interests as appropriate. Parties who are represented by counsel must speak through their counsel. Whether parties or their representative can ask additional follow-up questions depends upon whether the requesting authority asked that the parties or their representatives be given that right, is otherwise appropriate or is required in the jurisdiction where the testimony is to be taken.	United States. [1]
<b>G. Presence of “members of the judicial personnel” (Art. 8)</b>		
<b>64. Since 2004, has the competent authority authorised the presence of “judicial personnel”?</b>	Yes. <u>Norway</u> - There are no boundaries in Norwegian law regarding the abovementioned, as long as the taking of evidence is lead by the Norwegian judge. The executive court can give its consent.	Germany, Israel, Norway, Spain, Suisse. [5]
	No. <u>Australia</u> - Australia has not designated an authority competent to authorise the presence of a member of foreign judiciary, However, there is nothing to prevent the executing court from allowing the foreign judicial officer to attend and participate to some extent. Statistics are not held centrally on this issue. <u>France</u> - Le code de procédure civile français admet expressément la possibilité pour le juge étranger commettant d’assister à l’exécution de la mesure (article741), ce, sans qu’il soit besoin d’une autorisation de quiconque. <u>India</u> - No request has so far been received.	Argentina, Australia Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Greece, China (HK SAR), India, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Poland, Portugal, Romania, Singapore, Slovaquie, South Africa, United Kingdom. [23]
<b>Which States?</b>	USA	Germany. [1]
	USA, Netherlands.	Israel. [1]

	South American countries, U.S.A, Canada, some European countries ( non members of the E.U)	Spain. [1]
	USA, Allemagne	Suisse. [1]
<b>Can judicial personnel participate and ask questions?</b>	Under Section 10 of the German law implementing the Evidence Convention, members of the foreign court may be present for the taking of evidence if this has been permitted by the competent Central Authority. They do not usually intervene actively in the taking of evidence, however. The questions to be addressed to the person to be interrogated are to be asked already in the Letter of Request (Article 3 (f) of the Evidence Convention). The German judge shall ask the witness these questions. In such case as further questions should arise from the interrogation, he is also required to ask these questions in order to investigate the facts of the case on which the witness is giving evidence if they do not go beyond the Letter of Request.	Germany. [1]
	It is possible, but a specific request is required.	Israel. [1]
	They can ask all kinds of questions mainly.	Spain. [1]
	Possibilité de poser des questions complémentaires.	Suisse. [1]
	A judge in the requesting court has the right to be present when the evidence is taken.	Sweden. [1]
<b>H. Privileges (Arts 11 and 21 e))</b>		
<b>65. Since 2004, has a person refuse to give evidence as a result of a privilege or duty claimed?</b>	Yes. <u>Singapore</u> - Confidentiality of information by public officers, bank officers, etc.	France, Germany, Israel, Luxembourg, Singapore, Slovaquie, Spain, Suisse, United Kingdom. [9]
	No. <u>Australia</u> - The Attorney-General's Department is generally not informed by the parties or the relevant Australian authorities as to the details of execution. Consequently, complete statistics are not held centrally. <u>Denmark</u> - The Danish Court Administration is not aware of such situations.	Argentina, Australia, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Greece, China (HK SAR), India, Latvia, Lithuania, Mexico, Monaco, Poland, Romania, South Africa. [17]
<b>65(a). How often?</b>	Almost always.	[0]
	Often.	[0]
	Rarely.	France, Germany, Israel,

		Luxembourg, Slovaquie, Spain, Suisse, United Kingdom. [8]
	Never.	Estonia. [1]
<b>65(b), (c). Please list the most commonly claimed privileges or duties, and which law claimed under.</b>  (i) = law of execution (ii) = law of request (iii) = both laws.	<p><u>France</u> b) - 1. Interdiction de témoigner 2. Risque de poursuites pénales sur la base des déclarations France c) 1. ii 2. ii</p> <p><u>Israel</u> -b) Privilège de bank statements c) ii</p> <p><u>Luxembourg</u> b) - 1. secret professionnel (i)</p> <p><u>Slovaquie</u> - Le témoin a fait valoir son droit de ne pas témoigner à cause de danger de poursuite pénale à lui-même ou aux personnes apparentées. (i)</p> <p><u>Spain</u> - diplomatic immunity under (i)</p> <p><u>Suisse</u> - 1. Secret professionnel selon le droit étranger (ex. GB) (i) 2. Mode de preuve inadmissible (ii) 3. Secret bancaire (fishing expedition ou lésion d'intérêts de tiers) (i) 4. Lien de parenté (i) 5. Secret professionnel / secret de fonction (i)</p> <p><u>United Kingdom</u> - b) Legal privilege e.g legal advice obtained within the jurisdiction c) (i)</p>	France, Israel, Luxembourg, Slovaquie, Spain, Suisse, United Kingdom. [7]
<b>65(d) What procedures govern the claim of privilege?</b>	A person can claim privilege over evidence subject of a letter of request according to the rules of Estonian Code of Civil Procedure governing proceedings for taking evidence. A witness who refuses to give testimony shall present, not later than in the court session prescribed for his or her questioning, the facts on the basis of which the witness refuses to testify, and shall substantiate such facts to the court. In case he or she gives advance notice of his or her refusal to testify he or she does not need to appear in the court session prescribed for giving the testimony. The court shall make a ruling concerning the legality of the refusal of a witness to give testimony after hearing the participants in the proceeding. If the court does not consider the refusal to give testimony to be legal, the court shall require the witness to give testimony. The witness has the right to file an appeal against such ruling.	Estonia. [1]
	It is possible, but a specific request is required.	Israel. [1]
	La possibilité ladite est réglée par le Code de procédure civile dans l'article 126 paragraphe 1. Le témoin peut contester la dispense avant le témoignage.	Slovaquie. [1]
	The Spanish Central Authority in those cases, always contacts with the Foreign Affairs Ministry.	Spain. [1]
	D'une manière générale la première démarche à entreprendre est de faire opposition à la mesure, en se prévalant de la dispense, devant l'autorité chargée de l'exécution de la commission rogatoire.	Suisse. [1]
	It is not open to the Examiner to rule on the objection. He should be asked to make a note in	United Kingdom. [1]

	the deposition of the question or questions asked and the ground of the witness's objection. He should then adjourn the examination to enable the Treasury Solicitor to obtain the instructions of the Senior Master, and, if the Senior Master so instructs, to proceed to gain the witness's compliance with the Order. Again, the Examiner should explain to the witness the procedure that will be followed. The witness would have a right of Appeal against the Master's decision.	
	A person from whom evidence is being requested may assert an appropriate privilege against disclosure of information requested by the Letter of Request at the time the question is presented. If the U.S. Department of Justice attorney assigned to obtain this evidence is of the view that the assertion of the privilege was improper or is otherwise unsupportable, that attorney may apply to a court for an order compelling a response to the request. The court would determine whether the testimony should be compelled or the privilege sustained.	United States. [1]
<b>I. Translation (Art. 4(1))</b>		
<b>66. Does Article 4(1) apply to documents attached to a letter of request?</b>	Yes. <u>Germany</u> – This is provided for in detail under Section 60 of the Regulation on Judicial Assistance in Civil Matters (ZRHO). <u>Suisse</u> - Bien que la pratique ne soit pas uniforme dans tous les cantons, la plupart d'entre eux ont répondu par l'affirmative.	Argentina, Australia, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, China (HK SAR), India, Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovaquie, South Africa, Spain, Suisse, Sweden, Ukraine, United Kingdom, United States. [30]
	No.	France. [1]
	Given the limited practical experience with applying the convention under Danish law, the Danish Ministry of Justice is at this time unable to provide an answer to this question	Denmark. [1]
<b>J. Costs</b>		
<b>67. For States with</b>	Yes.	Luxembourg, Singapore,

<p><b>more than one official language, has requested State ever requested costs of translation be borne by requesting State?</b></p>	<p><u>Singapore</u> - This depends on how much the experts charge for their services. Parties do not have to pay for court interpreters.</p>	<p>Slovaquie. [3]</p>
	<p>No. <u>Mexico</u> - It's not applicable <u>Netherlands</u> - not applicable for the Netherlands.</p>	<p>Denmark, Estonia, Greece, China (HK SAR), India, Israel, Mexico, Netherlands, Norway, South Africa, Spain, United Kingdom. [12]</p>
	<p>Yes and no // oui et non OUI: Quelques cantons demandent effectivement que les coûts soient supportés par l'Etat d'origine. NON: Toutefois, la plupart des cantons n'ont pas eu à faire de telle demande. Il arrive que la commission rogatoire qui n'est pas traduite est renvoyée par l'autorité requise à l'autorité requérante pour qu'elle se charge elle-même de la faire traduire.</p>	<p>Suisse. [1]</p>
	<p>Not applicable Bulgaria - Not applicable. She has only one official language.</p>	<p>Bulgaria, Romania. [2]</p>
	<p>Sans objet</p>	<p>Monaco. [1]</p>
<p><b>68. Has a request ever been made under Art 14(2) for the costs of special procedures under Art 9(2)?</b></p>	<p>Yes. <u>Australia</u> - Australia has requested reimbursement of fees and costs associated with Article 9(2). When this occurs, the relevant competent authority forwards the request and bill to the Attorney-General's Department to forward to the requesting authority. For example, Australia has requested reimbursement for the services of interpreters and the costs involved in relation to taking blood samples (which entails special postage and courier expenses involved in transmitting blood overseas). In addition, on one occasion Australian authorities flew an expert interpreter, the only one in Australia, from an Eastern State to Western Australia. This involved accommodation and air fares, which were paid by the requesting authority. <u>Bulgaria</u> - We often hire experts and interpreters but we do not register such information. <u>Czech Republic</u> - Detailed data are not available. There had been requests for reimbursement from Switzerland and from the United States of America. Sometimes the fee is charged in advance. Unfortunately we know also case that the fee was paid by the requesting court, however the Request has not been settled (USA-Request for oral evidences, \$91, paid on 24 May 2005). <u>Finland</u> - In an outgoing case a report on the living conditions of a child was requested for</p>	<p>Argentina, Australia, Bulgaria, Czech Republic, Finland, Germany, Poland, Portugal, Romania, Slovaquie, Spain, Suisse, Ukraine, United Kingdom, United States. [15]</p>

	<p>determining custody of the child. The requested state asked for reimbursement of the costs occasioned by use of experts (social workers). The cost was approximately 150 euros.</p> <p><u>Germany</u> - In a few cases, costs for the use of interpreters and experts. The Central Authorities did not give any specific information on how much these costs were.</p> <p><u>Poland</u> - We often hire experts and interpreters but we do not register such information.</p> <p><u>Portugal</u> - Portugal has received requests to reimburse costs occasioned by the use of interpreters and experts (such as social reports, DNA tests, etc). There are substantial differences in terms of the sums involved depending on the requested State.</p> <p><u>Romania</u> - It received a request for the reimbursement of fees and costs. The Romanian requesting court applies the national procedural law for the reimbursement.</p> <p><u>Slovaquie</u> - Nous n'avons pas envoyé la requête de ce type. Nous n'avons reçu que les requêtes concernant le remboursement des coûts des experts, mais le montant exact de ce remboursement nous n'est pas connu.</p> <p><u>Spain</u> - The Spanish central Authority has received sometimes a request for the reimbursement of fees and it has been forwarded to the competent Court which is obliged to pay the cost occasioned by the use of experts</p> <p><u>Suisse</u> - Un tel cas de figure ne s'est présenté qu'en de très rares occasion (p.ex. médecin pour examen de salive). Les montants concernaient portaient en moyenne sur quelques centaines de francs. Dans des cas très rares, l'Etat requérant n'a pas payé tous les coûts réclamés.</p> <p><u>United Kingdom</u> - but only rarely as such costs are usually met by the State of Execution. An example of such a request is in respect of experts fees, to seek a payment on account.</p> <p><u>United States</u> - If execution of a Letter of Request requires additional costs for services beyond what is normally available to the Department of Justice office assigned to the matter, and/or requires the retaining of a private entity to provide those services, any costs and/or fees associated with the service may be requested from the forwarding authority.</p>	
	<p>No.</p> <p><u>Denmark</u> - The Danish Court Administration is not aware of such situations.</p> <p><u>Norway</u> - No information available.</p>	<p>Denmark, Estonia, France, Greece, China (HK SAR), India, Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Norway, South Africa. [15]</p>
<p><b>69. Have costs been</b></p>	<p>Not applicable.</p>	<p>Argentina, Australia,</p>



<p><b>sought for appointing person to secure evidence under Art 14(3)?</b></p>	<p><u>Mexico</u> - No requirements have been made on the matter at hand.</p> <p><u>Spain</u> - The reimbursement of the costs has been sought a posteriori</p> <p><u>United States</u> - There is no law of the United States that requires a party to obtain evidence themselves in respect of a request made under the Evidence Convention. All evidence requests made under the Evidence Convention are executed by the Department of Justice. However, under our laws, any interested party is free to apply to a court to be appointed a commissioner for the purposes of taking evidence in support of a foreign proceeding. See 28 U.S.C. 1782. Such a request is not pursuant to the Evidence Convention. In addition, parties are free to obtain evidence on a voluntary basis outside of the Convention. Any party that obtains evidence on its own must cover the costs or fees that are required to be paid.</p>	<p>Bulgaria, Czech Republic, Estonia, France, Germany, Greece, China (HK SAR), Israel, Latvia, Mexico, Monaco, Netherlands, Poland, Romania, Singapore, Slovaquie, South Africa, Spain, Suisse, Sweden, United States. [23]</p>
	<p>No.</p> <p><u>India</u> - No such occasion has arisen so far</p> <p><u>United Kingdom</u> - When parties ask for an experts report, it is subject to Judiciary approval, it is NOT part of the Law that pre-determines whether an experts report is needed or not.</p>	<p>India, United Kingdom. [2]</p>
<p><b>70. Have costs under Art 26 been sought?</b></p>	<p>Not applicable.</p>	<p>Argentina, Australia, Bulgaria, Czech Republic, Finland, France, Germany, Israel, Latvia, Lithuania, Netherlands, Poland, Romania, Slovaquie, Suisse, Sweden, Ukraine. [17]</p>
	<p>Yes.</p> <p><u>Singapore</u> - From our past cases, the approximate amount of fees and costs incurred in applying for an order for the examination of the witness and in obtaining and serving the process to compel the witness' attendance ranged from S\$1,200 to S\$1,500. The exact amount depends primarily on the quantity of documents to be filed and served. For every page of the Notes of Evidence, parties pay S\$2.50.</p> <p><u>Spain</u> - The reimbursement of the costs has been sought a posteriori</p> <p><u>United States</u> - To the extent stenographic services are required, the requesting state may be required to reimburse any fees or costs that are assessed by the stenographer.</p>	<p>Singapore, Spain, United States. [3]</p>
	<p>No.</p> <p><u>China (HK SAR)</u> - Service is effected by the Court Bailiff and the Hong Kong Special</p>	<p>Estonia, Greece, China (HK SAR), India, Mexico, Monaco, Norway,</p>

	<p>Administrative Region does not seek to effect the cost of service on the requesting Party. However, the charges made by solicitors or other private agents appointed to effect service is not regulated by the Government.</p> <p><u>Estonia</u> - Estonia only has had very little practice regarding this convention.</p> <p><u>India</u> - No judicial authority has so far approached for such reimbursement.</p> <p><u>Monaco</u> - Pas de commission rogatoire reçue qui a engendré des coûts susceptibles d'engager une demande de remboursement.</p> <p><u>Norway</u> - No reimbursement sought to our knowledge.</p> <p><u>Portugal</u> - There is no specific provision for that reimbursement under Portuguese law.</p> <p><u>United Kingdom</u> - Presently, there is no policy to seek reimbursement.</p>	<p>Portugal, South Africa, United Kingdom. [10]</p>
	<p>The Danish Court Administration is not aware of such situations</p>	<p>Denmark. [1]</p>
<b>K. Requests for e-discovery</b>		
<b>71. Any requests for e-discovery?</b>	<p>Yes.</p> <p><u>Australia</u> - Of the requests for e-discovery, some requests were executed and some were not, for reasons not relating to the electronic nature of the stored information.</p>	<p>Australia, France, United Kingdom. [3]</p>
	<p>No.</p> <p><u>Netherlands</u> - we are not aware of any such request.</p> <p><u>Spain</u> - This central Authority has no record of it</p> <p><u>Suisse</u> - (Un seul cas dans le cadre du chapitre II, art. 17).</p>	<p>Argentina, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, China (HK SAR), India, Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Portugal, Poland, Romania, Singapore, Slovaquie, South Africa, Spain, Suisse, Ukraine. [25]</p>
	<p>Under the laws of the United States there is no substantive distinction between evidence that is in paper form as opposed to evidence that is solely found in electronic form. Unless the Letter of Request states otherwise, it is assumed that the evidence being requested includes both paper and electronic evidence. Any protections that might arise out of the privacy laws of the United States would apply equally to paper and electronic forms of evidence. The U.S. Central Authority does not maintain sufficient records to identify cases in which electronic evidence was disclosed and therefore cannot response to the questions below.</p>	<p>United States. [1]</p>

71(a). Have these request been executed?	Yes	France, United Kingdom. [2]
	No.	[0]
71(b). Did the request include specific rules or principles?	Yes.	[0]
	No.	Australia, France, United Kingdom. [3]
71(c). Did the execution of the requests raise any privacy issues?	Yes.	[0]
	No.	Australia, France, United Kingdom. [3]
71(d). When transferring e-evidence, do you encounter compatibility problems?	Almost always.	[0]
	Often.	[0]
	Rarely.	United Kingdom.
	Never.	Australia, France. [2]
	The Danish Court Administration is not aware of such situations.	Denmark. [1]
<b>L. Requests that a special method or procedure be followed in the taking of evidence (Art. 9(2))</b>		
72. Any requests for a "special method or procedure"?	<p>Yes.</p> <p><u>Australia</u> - Although Australia has received requests that the taking of evidence follow a special method or procedure, complete statistics are not held centrally. Examples include requests for the taking of DNA evidence and requests for the appearance of counsel via video-link.</p> <p><u>France</u> - L'autorité centrale française est régulièrement rendue destinataire de commissions rogatoires en provenance des États-Unis d'Amérique qui, quasi-toutes, tendent à l'exportation de la procédure américaine (sténotypiste, enregistrement sonore ou video, cross examination). Dans la plupart des cas, ces commissions rogatoires ont été exécutées en respectant les formes spéciales requises. En revanche, l'autorité centrale française n' a pas connaissance de demandes françaises à exécuter selon une forme spéciale.</p> <p><u>Germany</u> - The following procedures were carried out:</p> <ul style="list-style-type: none"> <li>- Witnesses are only interrogated under oath in principle.</li> <li>- A record is made.</li> <li>- A video/audio recording is made of the interrogation.</li> </ul> <p>The following procedure was not carried out:</p> <ul style="list-style-type: none"> <li>- Cross-examination.</li> </ul>	<p>Australia, France, Germany, China (HK SAR), Mexico, Netherlands, Romania, United States. [8]</p>

	<p><u>China (HK SAR)</u> – oral examination</p> <p><u>Mexico</u> - testimonial, information to banking institutions and documentary evidence</p> <p><u>Netherlands</u> - We have received requests for a special way of questioning a witness (for instance cross-examining). Legal requests have been executed.</p> <p><u>Romania</u> - Biological samples; yes, they were executed</p> <p><u>United States</u> - The Central Authority has received requests that have required that the testimony be transcribed verbatim through stenographic means, through video recordings or by audio recordings. In addition, we have received requests permitting interested parties to cross examine witnesses or ask follow up questions.</p>	
	<p>No.</p>	<p>Argentina, Bulgaria, Czech Republic, Estonia, Finland, Greece, India, Israel, Latvia, Lithuania, Luxembourg, Monaco, Poland, Portugal, Singapore, Slovaquie, South Africa, Spain, Ukraine, United Kingdom. [20]</p>
	<p>The Danish Court Administration is not aware of such situations.</p>	<p>Denmark. [1]</p>
	<p>OUI –:</p> <p>- assermentation : Certains cantons ont été requis de procéder à des assermentations. Celles-ci ont été refusées. - enregistrement vidéo : Dans quelques cas des tribunaux américains ont demandé que des personnes assermentées ou amenées par les parties puissent filmer, enregistrer ou sténographier la déposition du témoin. Certains cantons ont admis ces demandes, alors que d’autres les ont refusées. Dans les cas où la requête a été admise le résultat de ces mesures n’a pas été contrôlé et seul le procès-verbal rédigé sous la direction du juge suisse a été envoyé à l’autorité requérante.</p> <p>NON Pas de requêtes envoyées</p>	<p>Suisse. [1]</p>
<p><b>73. Amendments to domestic law to better accommodate such requests?</b></p>	<p>Yes.</p> <p><u>France</u> - Le code de procédure civile français a été spécialement modifié en vue de permettre d’accueillir favorablement les demande d’entraide devant être exécutées suivant des formes spéciales, notamment l’interrogatoire et le contre-interrogatoire par les représentants des parties (cross-examination). De plus, l’article 739 dudit code prévoit, dans son deuxième alinéa, que si la demande en est faite dans la commission rogatoire, les questions et les</p>	<p>France. [1]</p>

	réponses sont intégralement transcrites ou enregistrées.	
	No. <u>Australia</u> - Domestic legislation enables a court to make such orders for obtaining evidence as that court considers appropriate to give effect to the Letter of Request. A court cannot, however, make an order requiring that particular steps be taken unless those steps are available to the court in similar (domestic) proceedings in the relevant State or Territory.	Argentina, Australia, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, China (HK SAR), India, Israel, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Netherlands, Poland, Romania, Singapore, Slovaquie, South Africa, Spain, Suisse, Sweden, Ukraine, United Kingdom, United States. [29]
<b>M. Pre-trial discovery of documents (Art. 23)</b>		
<b>74. Reasons for broad declaration.</b>	Argentina is analyzing the possibility of adapting the general objection made to the application of Chapter II of the Evidence Convention, into the terms of the Article 16 of the Inter-American Protocol.	Argentina. [1]
	Not applicable. <u>Netherlands</u> - the Dutch declaration under article 23 is in conformity with the UK declaration.	Czech Republic, Denmark, Israel, Latvia, Netherlands, Singapore, Slovaquie, United Kingdom, United States. [9]
	<u>Australia</u> - Australia's declaration under Article 23 does not cover every kind of discovery but only "pre-trial" discovery, without giving further definition by way of limitation to the term "Letter of Request". In practice, Australia's policy is concerned principally with excluding an excessive train of enquiry.	Australia. [1]
	No broad exclusion has been made. Estonia has declared according to the article 23 that it accepts a letter of request on following conditions: - the proceeding has been initiated;	Estonia. [1]

	<ul style="list-style-type: none"> <li>- the documents are reasonably identified by date, contents, or other appropriate information, and</li> <li>- a letter of request specifies those facts and circumstances causing the requesting party reasonably to believe that the requested documents are or were in the possession, control, or custody of, or are known to the person from whom the documents are requested.</li> </ul>	
	<p>Le 19 janvier 1987, la France, revenant sur sa position première prohibant l'exécution de ce type de demande, a modifié sa déclaration relative à l'article 23 afin d'admettre les demandes de production de documents, lorsque ils sont limitativement énumérés dans la commission rogatoire et ont un lien direct et précis avec l'objet du litige.</p> <p>Dans un arrêt rendu le 18 septembre 2003, la cour d'appel de Paris a estimé :</p> <ul style="list-style-type: none"> <li>- qu'une description exacte des pièces réclamées ne pouvait pas être exigée du requérant, et qu'au sens de la réserve française, l'énumération des documents était limitative dès lors que ces deniers étaient identifiés avec un degré raisonnable de spécificité en fonction d'un certain nombre de critères tels que leur date, leur nature, leur auteur,</li> <li>- que la communication des pièces pouvait valablement être demandée pour une période excédant celle des faits sur lesquels portaient le procès et correspondant à l'opération juridique de cession de parts critiquée.</li> </ul>	France. [1]
	<p>There is no reason to do so. Germany allows Letters of Request submitted in pre-trial discovery proceedings to be processed to an appropriate extent within the country. Such requests can be dealt with under Section 14 Paragraph 2 of the law implementing the Evidence Convention insofar as this is not precluded by fundamental principles of German procedural law.</p>	Germany. [1]
	<p>We consider the possibility of modifying our declaration but we currently have no intention to file an amendment that could be based on the United Kingdom's declaration due to the fact that our State is in the process of reforming our legislation according to several EU Directives and within this scope this amendment is under consideration.</p>	Greece. [1]
	<p>We have made our intention very clear in our declaration.</p>	India. [1]
	<p>Having regard to the history of the provision, indicated in the Conclusions and Recommendations, and taking into account very infrequent use of the Convention, we are of the opinion that there is no necessity for the revision of the declaration at the moment.</p>	Lithuania. [1]
	<p>The United Mexican States has made a specific declaration to article 23, nevertheless as Central authority; we had no knowledge of such recommendations made by the 2003 special commission.</p>	Mexico. [1]
	<p>Les autorités monégasques n'ont pas été saisies de telles demandes et examineront la question au regard des conclusions de 2003</p>	Monaco. [1]

	Norway has earlier specified its declaration.	Norway. [1]
	No interest (see Romanian declaration)	Romania. [1]
	Consideration of South African domestic law	South Africa. [1]
	We continue studying the possibility of modifying our declaration but regretfully, up to this moment, there is no agreement to file a declaration that could be based on either the United Kingdom's declaration or article 16 of the Additional Protocol of 1984 to the Inter-American Convention on the Taking of Evidence Abroad.	Spain. [1]
	La Suisse a fait une déclaration spécifique en vertu de l'art. 23 qui explique les critères pour une non-exécution des commissions rogatoires qui ont pour objet une procédure « <i>pre-trial discovery of documents</i> ».	Suisse. [1]
	Sweden has, in pursuance of Article 23 stated that a Letter of Request issued for the purpose of obtaining pre-trial discovery of documents as known in common law countries will not be executed. By letter dated 10 July 1980 and received on 11 July 1980, Sweden has made the following declaration with regard to Article 23 of the Convention: The Swedish Government understands "Letters of Request issued for the purpose of pre-trial discovery of documents" for the purposes of the foregoing Declaration as including any Letter of Request which requires a person: a. to state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his possession, custody or power; or b. to produce any documents other than particular documents specified in the Letter of Request, which are likely to be in his possession, custody or power.	Sweden. [1]
<b>75. If the portion of request seeking discovery is too broad, does this taint request for oral testimony?</b>	<b>Request for oral evidence will be executed.</b>	Argentina, Australia, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, China (HK SAR), Latvia, Lithuania, Luxembourg, Monaco, Portugal, Norway, Romania, Slovaquie, Sweden, United Kingdom. [20]
	<u>Australia</u> - Generally, if a portion of a Letter of Request which seeks documents is too general and cannot be honoured, the Attorney-General's Department will seek clarification from the authority that is making the request. Once the request for documents has been clarified, the entire request will be referred to the relevant judicial authority for execution. If the request for documents can not be clarified, the request may be executed in part – ie, the request for oral evidence may still be executed.	
	<u>China (HK SAR)</u> - In practice, rather than immediately proceeding to execute the remaining part of the Request, the Requesting State would be informed that the Letter of Request is too broad. Execution would be suspended pending a supplemental letter of request to clarify the scope of the request.	
	<b>Request will be rejected in its entirety.</b>	Mexico, South Africa, Spain. [3]
	Given the limited practical experience with applying the convention under Danish law, the	Denmark. [1]

	Danish Ministry of Justice is at this time unable to provide an answer to this question.	
	This would need consideration by the concerned court to whom the request is sent for execution.	India. [1]
	But only until the time that the additional information has been given by the requesting state. Then execution of the request will take place.	Netherlands. [1]
	We have declared that we will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents.	Singapore. [1]
	Le témoignage oral de devrait pas servir à contourner les critères de la déclaration spécifique que la Suisse a fait en vertu de l'art. 23.	Suisse. [1]
	The U.S. Central Authority requires that the Letter of Request provide sufficient detail as to the information being sought so as to permit the U.S. Department of Justice attorney who will implement the request to know what questions need to be asked at a witness examination or what documents are to be obtained. So long as the information being sought is clear, the request will be executed whether it seeks documents or testimony. If one portion of a request cannot be executed, attempts will be made to execute any remaining portions of the request that can be executed.	United States. [1]
<b>II. Taking of evidence by diplomatic officers, consular agents and commissioners (Chapter II)</b>		
<b>76. Have made an Art 18 Declaration?</b>	Yes. <u>India</u> – Yes, however so far no such request has been received in the Ministry.	India. [1]
	No. Denmark - No such declaration has been made.	Bulgaria, Czech Republic, Denmark, Estonia, Finland, Greece, Israel, Mexico, Monaco, Portugal, Slovaquie, South Africa, Spain, United Kingdom, United States. [15]
	Not applicable as the Netherlands have not made any declaration.	Netherlands. [1]
	Chapter Two does not apply.	Singapore. [1]
	Romania has not made such declaration.	Romania. [1]
<b>How often is such assistance provided?</b>	Often	[0]
	Sometimes	[0]
	Rarely	[0]



76(a). Which methods of compulsion were used?		[0]
76(b). Which types of officers have been assisted?	Diplomatic Officers, Consular Agents	[0]
	Commissioners	[0]
77. Why total objection to Chapter II?	The Argentine Republic has objected the Chapter II of the Evidence Convention since the consular rules do not give Consular Agents and Commissioners the faculty to carry out the acts it states. They are only allowed to notify judicial and extrajudicial decisions and to conduct rogatory letters.	Argentina. [1]
	Australia notes its declaration under Article 15 that evidence may be taken by a diplomatic officer or consular agent only if permission to that effect is given upon application to the Secretary of the Australian Attorney-General's Department. Australia reiterates its declaration that the Secretary to the Australian Attorney-General's Department will be its competent authority for the purposes of Article 16 and is empowered to specify conditions with respect to any permission given under that Article. Australia further notes that a diplomatic officer, consular agent or commissioner authorised to take evidence <i>may not</i> take evidence by compulsion and that Australia will not assist to obtain evidence by compulsion.	Australia. [1]
	Bulgaria has excluded the application of the provisions of Chapter II (with the exception of art. 15) because Chapter II is strong interference with national sovereignty. Under the law of our State only Bulgarian authorities are competent to undertake any actions related to Bulgarian nationals.	Bulgaria. [1]
	Denmark has pursuant to article 15 (2), required that a diplomatic officer may only take evidence following permission to that effect from the Ministry of Justice. The reason for this is apprehension in regards to the unchecked gathering of evidence on Danish territory by foreign officials.	Denmark. [1]
	Estonia has not objected to the application of Chapter II. Competent authority for granting permissions provided in articles 16 and 17 is Estonian Ministry of Justice.	Estonia. [1]
	Tel n'est pas le cas de la France.	France. [1]
	Needs no reply.	India. [1]
	The United Mexican States expressed and made total reservation regarding the dispositions contained in the Articles 17 and 18 of this chapter in relation to the "commissioners" and the use of compulsory measures by diplomatic and consular agents, because all evidence must be obtained under the guarantee of juridical safety for the governed one.	Mexico. [1]

	Not applicable as the Netherlands have not made any declaration.	Netherlands. [1]
	Poland has excluded the application of the provisions of Chapter II (with the exception of art. 15). We consider Chapter II as to strong interference with national sovereignty. Under the law of our State only Polish authorities are competent to undertake any actions related to Polish nationals.	Poland. [1]
	Romania made a reservation with regard to the non-applicability of Chapter II (with the exception of Art. 15), for the following reasons: On the one hand, applying these provisions would result in exceeding the consular/diplomatic competences allowed by Romanian legislation both for the foreign diplomatic missions or consular offices in Romania and for the Romanian diplomatic missions or consular offices abroad. On the other hand, it was considered that such an extension of consular competences, including for the hearing of persons who belong to a third State, may be interpreted by that State as an act of jurisdiction that is not recognised by its own legislation.	Romania. [1]
	We have not reached a decision on this at the present time.	Singapore. [1]
	South Africa has entered a reservation with regards to articles 15 and 16 of the Convention.	South Africa. [1]
	None.	Spain. [1]