

**APERÇU DES RÉPONSES AU QUESTIONNAIRE DE SEPTEMBRE 2008 PORTANT SUR  
LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 TENDANT À FACILITER  
L'ACCÈS INTERNATIONAL À LA JUSTICE  
(CONVENTION ACCÈS À LA JUSTICE)**

*établi par le Bureau Permanent*

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**SYNOPSIS OF RESPONSES TO THE QUESTIONNAIRE OF SEPTEMBER 2008  
RELATING TO THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON  
INTERNATIONAL ACCESS TO JUSTICE  
(ACCESS TO JUSTICE CONVENTION)**

*drawn up by the Permanent Bureau*

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

*Document préliminaire No 9  
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 9  
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 12 janvier 2009. 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'à mars 2009, au total 38 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 telles qu'elles ont été reçues et dans la langue dans laquelle elles ont été reçues.

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

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A first version of this document was prepared and published on the website of the Hague Conference on 12 January 2009. A second version was prepared for the 2009 Special Commission and was updated until 28 January 2009. The present final version, revised as per July 2009, reflects the responses received up until March 2009, which amount to 38 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 in the Special Commission. Therefore the responses appear as they were received, in the language they were received in.

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

## TABLE OF CONTENTS

<b>PART ONE – GENERAL INFORMATION AND STATISTICS</b> .....	<b>1</b>
<b>I. QUESTIONS FOR NON-CONTRACTING STATES</b> .....	<b>1</b>
1. Why not Party to the Convention? .....	1
2. Consider becoming State Party? .....	5
3. Applications under Article 1(2)? .....	6
4. Bond / security imposed by law on non nationals? .....	6
5. Bond / security imposed because foreigner? .....	12
6. Bilateral, multilateral or regional instruments .....	13
<b>II. QUESTIONS FOR CONTRACTING STATES</b> .....	<b>14</b>
<b>CHAPTER II OF THE CONVENTION</b> .....	<b>14</b>
<b>B. OPERATION OF THE ACCESS TO JUSTICE CONVENTION</b> .....	<b>14</b>
9. Rate operation of the Convention. ....	14
10. Any difficulties applying the Convention? .....	15
<b>C. STATISTICS</b> .....	<b>16</b>
<b>PRELIMINARY COMMENTS</b> .....	<b>16</b>
Chapter I (Applications for legal aid – Incoming) .....	17
11. Incoming applications for legal aid .....	17
12. Categories of persons granted legal aid in your State. ....	17
13. Average time to process application .....	18
<b>CHAPTER I (APPLICATIONS FOR LEGAL AID – OUTGOING)</b> .....	<b>19</b>
14. Outgoing applications for legal aid. ....	19
15. Categories of persons granted legal aid abroad .....	20
Chapter I (Legal advice) .....	21
17. How many applications? How many granted? .....	21
Chapter II (Applications to render enforceable orders for the payment of costs and expenses of proceedings pursuant to Art. 15 – Incoming) .....	22
18. If operation of Chapter II is not excluded .....	22
18(a). How many incoming Article 15 applications? .....	22
18(b). How many applications have resulted in a foreign costs order? .....	22
<b>CHAPTER II (APPLICATIONS TO RENDER ENFORCEABLE ORDERS FOR THE PAYMENT OF COSTS AND EXPENSES OF PROCEEDINGS PURSUANT TO ART. 15 – OUTGOING)</b> .....	<b>23</b>
19. If operation of Chapter II not excluded .....	23
19(a). How many outgoing Article 15 applications? .....	23
20. Most frequently applied chapters. ....	24
<b>D. CASE LAW AND REFERENCE WORK</b> .....	<b>24</b>
21. Any guides produced? .....	24
23. List of references for bibliography .....	25
24. Domestic implementing legislation .....	26
25. Bilateral, regional or multilateral instruments? .....	32
<b>PART TWO – SUBSTANTIVE ISSUES</b> .....	<b>33</b>
<b>A. SCOPE OF THE ACCESS TO JUSTICE CONVENTION</b> .....	<b>33</b>
<b>CHAPTER I (LEGAL AID)</b> .....	<b>33</b>
26. Has your State granted legal aid to legal persons? .....	33
27. Exercised power under Article 28(1) reservation? .....	34

**B. THE CONCEPT OF HABITUAL RESIDENCE ..... 34**  
28. Concept of Habitual Residence caused difficulty?..... 34

**C. MODEL FORMS ..... 35**  
29. Satisfied with model forms?..... 35

**D. REGIONAL OR MULTILATERAL AGREEMENTS (ART. 21)..... 35**  
30. Co-existence of instruments in practice ..... 35

## Access to Justice Questionnaire

### List of States and Regional Economic Integration Organisation (REIO) responses

#### States and REIO [38]

1. Argentina
2. Australia
3. Brazil
4. Bulgaria
5. Canada
6. China – Hong Kong Special Administrative Region<sup>1</sup>
7. Croatia
8. Cyprus
9. Czech Republic
10. Denmark
11. Ecuador
12. European Community<sup>2</sup>
13. Finland
14. France
15. Germany
16. Iceland
17. Japan
18. Latvia
19. Lithuania
20. Luxembourg<sup>3</sup>
21. Malaysia
22. Mexico
23. Netherlands
24. New Zealand
25. Norway
26. Poland
27. Portugal
28. Romania
29. Saint Vincent and the Grenadines<sup>3</sup>
30. Slovakia
31. South Africa
32. Spain
33. Sweden
34. Switzerland
35. Turkey
36. Ukraine
37. United Kingdom<sup>3</sup>
38. United States of America

#### Non-Contracting States and REIO [22]

1. Argentina
2. Australia
3. Brazil
4. Canada
5. China (Hong Kong SAR)
6. Denmark
7. Ecuador
8. European Community<sup>2</sup>
9. Germany
10. Iceland
11. Japan
12. Malaysia
13. Mexico
14. New Zealand
15. Norway
16. Portugal
17. Saint Vincent and the Grenadines<sup>3</sup>
18. South Africa
19. Turkey
20. Ukraine
21. United Kingdom<sup>3</sup>
22. United States of America

#### Contracting States [16]

1. Bulgaria
2. Croatia
3. Cyprus
4. Czech Republic
5. Finland
6. France
7. Luxembourg<sup>3</sup>
8. Latvia
9. Lithuania
10. Netherlands
11. Poland
12. Romania
13. Slovakia
14. Spain
15. Sweden
16. Switzerland

<sup>1</sup> Henceforth China (Hong Kong SAR).

<sup>2</sup> A response was received from the European Community (EC). However, the EC cannot become a Party to this Convention.

<sup>3</sup> These States replied to the Questionnaire but requested that their responses not be uploaded. Therefore, although listed as having responded, their answers do not appear in this document.

**Questionnaire Accès à la justice**  
**États et Organisation régionale d'intégration économique (ORIE)**  
**ayant répondu :**

**États et ORIE [38]**

1. Afrique du Sud
2. Allemagne
3. Argentine
4. Australie
5. Brésil
6. Bulgarie
7. Canada
8. Chine (Région administrative spéciale de Hong Kong)<sup>4</sup>
9. Chypre
10. Communauté européenne<sup>5</sup>
11. Croatie
12. Danemark
13. Équateur
14. Espagne
15. États-Unis d'Amérique
16. Finlande
17. France
18. Islande
19. Japon
20. Lettonie
21. Lituanie
22. Luxembourg<sup>6</sup>
23. Malaisie
24. Mexique
25. Norvège
26. Nouvelle-Zélande
27. Pays-Bas
28. Pologne
29. Portugal
30. Roumanie
31. Royaume-Uni<sup>6</sup>
32. Saint-Vincent-et-les Grenadines<sup>6</sup>
33. Slovaquie
34. Suède
35. Suisse
36. République tchèque
37. Turquie
38. Ukraine

**États non contractants et ORIE [22]**

1. Afrique du Sud
2. Allemagne
3. Argentine
4. Australie
5. Brésil
6. Canada
7. Chine (RAS Hong Kong)
8. Communauté européenne<sup>5</sup>
9. Danemark
10. Équateur
11. États-Unis d'Amérique
12. Islande
13. Japon
14. Malaisie
15. Mexique
16. Nouvelle-Zélande
17. Norvège
18. Portugal
19. Royaume-Uni<sup>6</sup>
20. Saint-Vincent-et-les Grenadines<sup>6</sup>
21. Turquie
22. Ukraine

**États contractants [16]**

1. Bulgarie
2. Chypre
3. Croatie
4. Espagne
5. Finlande
6. France
7. Lettonie
8. Lituanie
9. Luxembourg<sup>6</sup>
10. Pays-Bas
11. Pologne
12. Roumanie
13. Slovaquie
14. Suède
15. Suisse
16. République tchèque

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<sup>4</sup> Ci-après « China (Hong Kong SAR) ».

<sup>5</sup> Une réponse a été reçue de la part de la Communauté européenne (CE). Cependant la CE ne peut devenir État partie à la Convention.

<sup>6</sup> Une réponse a été reçue de la part de ces États, mais ils ont souhaité que celles-ci ne soient pas mises en ligne sur le site de la Conférence. Par conséquent, leurs réponses ne figurent pas dans ce document, même s'ils sont cités comme des États ayant répondu.

Questions	Responses	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>	No added value from the Convention.	Australia, Denmark, Germany, New Zealand [4]
	Domestic legal system has obstacles.  <u>Ecuador</u> - The justice system is under restructure on the light of the new Constitution of Ecuador that entered into force on October 20, 2008. <u>Mexico</u> - Article 10 of the Convention is incompatible with the Mexican legislation.	Ecuador, Mexico [2]
	State lacks means or resources to implement.  <u>Mexico</u> - Article 10 of the Convention is incompatible with the Mexican legislation, and would require a Reserve.  <u>Ukraine</u> - The current system of legal aid does not foresee the free legal aid in civil and commercial matters. The existing system covers only expenses on legal aid in criminal matters. The issue on accession to the Convention may be reconsidered after implementation of the Law "on Legal Aid" after its adoption by the Parliament.	Ecuador, Mexico, Ukraine [3]
	Specific issues arising out of the Access to Justice Convention are dissuasive	United States [1]



	<p><u>United States</u></p> <p>By way of background, in the U.S. system, access to the courts, administrative tribunals and other mechanisms of dispute resolution, as well as to the advice and services of qualified legal counsel, is available on a non-discriminatory basis, without regard to citizenship or nationality. Low-cost or free legal assistance is also available to persons of limited means in many routine civil proceedings before state and federal courts, without regard to citizenship. In criminal proceedings, such assistance is guaranteed regardless of citizenship or immigration status by the constitutional entitlements to effective assistance of counsel and equal protection of the laws. In various civil contexts, however, illegal aliens may not be eligible for the same benefits as non-citizens who are lawfully in the United States.</p> <p>No unified, comprehensive system for the provision of low/no cost legal assistance exists in the United States. Rather, such assistance is provided under various rules and programs in the federal and 50 states systems, as well as in the commonwealths, territories and local jurisdictions.</p> <p>The main sources of legal assistance are the large number of separate and independent staff-based service providers, funded by a variety of governmental and non-governmental sources. They include (among others) pro bono contributions by practicing attorneys, non-profit or charitable programs affiliated with religious organizations, efforts sponsored by the American Bar Association, and over 130 programs funded and monitored by the Legal Services Corporation, which is organized under a federal statute. LSC-funded programs are permitted to serve financially eligible individuals who are U.S. citizens or who are members of specified categories of aliens (including lawful permanent resident aliens; non-citizen spouses, parents, or children of U.S. citizens, individuals granted asylum or refugee status or withholding of deportation, and aliens in certain visa categories. Other legal service providers will represent eligible clients regardless of their immigration status.</p> <p>In many situations involving civil litigation, state or local law or rules of court may authorize a judge to require the posting of security for costs or satisfaction of a judgment (for example, through a bond) by a non-resident party (including both out-of-state as well as foreign parties). The purpose of a requirement is to ensure that the prevailing party will be able to obtain satisfaction of a final judgment or an award of costs,</p>	
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	<p>expenses, and attorneys' fees from a non-resident litigant who has no assets in, and few ties to, the forum. Thus, if the court has reason to believe that the prevailing party will find it difficult to collect, the court can in its discretion require the posting of a suitable bond.</p> <p>Neither the Federal Rules of Civil Procedure nor any federal statutes expressly authorize federal courts to order bonds to cover costs. However, it is widely held that federal courts possess inherent authority to do so, and the local rules of some district courts authorize the posting of security for costs. When there is no local rule, the federal court may follow relevant forum state court practice, particularly when a party is a nonresident.</p>	
	<p>Becoming a Party has never been examined in detail.</p>	<p>China (Hong Kong SAR), Iceland, Japan , Malaysia, New Zealand, Norway, South Africa [7]</p>
	<p>Improving access to justice for the Australian community is a high priority for the government. Australia considers access to justice issues to be broader than the provision of legal aid. For example, at the Commonwealth level, the Attorney-General is keen to promote the role of alternative dispute resolution services as an integral part of the legal system. The Australian legal system already provides legal aid without discrimination on the basis of nationality or citizenship.</p>	<p>Australia [1]</p>
	<p><u>Canada (français)</u></p> <p>Au Canada, la compétence pour la justice pénale est partagée entre le gouvernement fédéral en vertu de son pouvoir constitutionnel pour ce qui est de l'élaboration de lois en matière pénale, et les gouvernements provinciaux en vertu de leur pouvoir constitutionnel relatif à l'administration de la justice.</p> <p>L'aide juridique en matière civile relève de la compétence des provinces, dans le cadre de la compétence constitutionnelle des provinces et des territoires relative à l'administration</p>	<p>Canada [1]</p>

	<p>de la justice. Chaque province et territoire a établi son propre régime d'aide juridique avec ses propres règles d'admissibilité, ainsi que sa propre liste de services offerts.</p> <p>Le gouvernement du Canada, de son côté, s'engage à veiller à ce que les Canadiens économiquement désavantagés aient un accès équitable à l'aide juridique. Le Transfert canadien en matière de programmes sociaux (TCPS) est le principal programme de transfert du gouvernement du Canada qui offre du soutien financier aux provinces et aux territoires pour les études postsecondaires, les places en garderie et les programmes sociaux. Parmi les services financés, on retrouve l'aide juridique en matière civile.</p> <p><u>Canada (English)</u></p> <p>In Canada, the responsibility for criminal law is divided between the federal government under its constitutional authority in matters of criminal law making, and the provincial governments under their constitutional authority for the administration of justice.</p> <p>Civil legal aid falls under provincial jurisdiction, as part of the constitutional responsibility of the provinces and territories for the administration of justice. Each province and territory has established its own legal aid plan with its own rules for eligibility as well as its own list of services provided.</p> <p>The Government of Canada however, is committed to ensuring that economically disadvantaged Canadians have equitable access to legal aid. The Canada Social Transfer (CST) is the main Government of Canada transfer program providing financial support to provinces and territories for post-secondary education, child care spaces and social programs. Amongst the services funded is civil legal aid.</p>	
	<p>Taking into account existing Community instruments (Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, and Council Regulation (EC) 4/2009 of 18 December 2008, on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations), the reflexion on the character of the Convention – whether ratification by Member States must be preceded by EC's authorization or not – must be concluded.</p>	<p>Portugal [1]</p>

<p><b>2. Consider becoming State Party?</b></p>	<p><b>Yes.</b></p> <p><u>Argentina</u> - Argentina has been studying the matter since the ratification of the Protocol on Cooperation and Legal Assistance in Civil, Commercial, Labor and Administrative Matters, developed in our region. Presently, the ratification of the Convention on Access to Justice is being considered, as a means to expand the criteria set by both Conventions. The Office of International Assistance of the Ministry of Foreign Affairs, International Trade and Worship, has prepared a preliminary analysis of the Convention in view of its potential ratification. Said paper will be submitted to several areas of this Ministry [MFA] and to the Ministry of Justice for its consideration.</p> <p><u>Brazil</u> - The Convention was sent to the Congress on June 5th, 2008.</p> <p><u>European Community</u> - Pour ce qui est des conventions notification et accès à la justice, la question de l'adhésion de la Communauté par le biais de l'adhésion de tous ses États membres nécessite davantage de réflexion au niveau communautaire et aucune position définitive n'a été arrêtée à ce stade.</p> <p><u>Malaysia</u> - Malaysia envisages studying the Access to Justice Convention in future.</p> <p><u>Mexico</u> - Is in review by competent authorities.</p> <p><u>Norway</u> - We will consider the possibility to undertake a wider examination of the convention.</p> <p><u>Turkey</u> - Cette Convention a été signée en 2004 par la Turquie. Selon notre constitution, les conventions doivent être adoptées par une loi de notre Parlement afin que celles-ci puissent être en vigueur. Pour cette raison, Un projet de loi a été élaboré, et a été présenté au Parlement. Les travaux continuent sur ce projet de loi au sein du Parlement de Grande Nation de la Turquie.</p>	<p>Argentina, Brazil, European Community, Malaysia, Mexico, Norway, South Africa, Turkey [8]</p>
	<p><b>No.</b></p>	<p>Australia, China (Hong Kong SAR), Denmark,</p>

		Ecuador, Iceland, Japan, New Zealand, Portugal, Ukraine, United States [10]
<b>3. Applications under Article 1(2)?</b>	<b>No.</b>	Denmark, South Africa [2]
	<b>No information available.</b>	Argentina, Australia, Brazil, China (Hong Kong SAR) Ecuador, Germany, Iceland, Japan, Malaysia, Mexico, New Zealand, Norway, Portugal, Turkey, Ukraine, United States [16]
<b>4. Bond / security imposed by law on non nationals?</b>	<b>Yes.</b>  <u>Argentina</u> - The Argentine Code of Civil and Commercial Procedure demands the payment of a security in those cases where the plaintiff is not a resident or has no properties in	Argentina, Brazil, China (Hong Kong SAR), Denmark,

	<p>the country. Notwithstanding, this payment will not be required should any of the Conventions mentioned in answer 6) of this Questionnaire be applicable.</p> <p><u>Brazil</u> - The Article 835 of the Brazilian Code of Civil Procedure provides for the need of a deposit in the case of proceedings brought forth by a plaintiff, whether he is a national or a foreigner, who lives abroad or travels abroad while his case is still pending. The deposit shall suffice to cover the attorney's costs and fees of the other party, if the plaintiff does not own immovable property which will ensure them the payment.</p> <p>According to the Article 836, the referred deposit will not be required in cases of execution grounded on extrajudicial titles and in cases of counterclaim.</p> <p>Other exceptions to this rule are grounded in some treaties which Brazil is a party to, and will be listed in the question number 6.</p> <p><u>China (Hong Kong SAR)</u> - Under Order 23 rule 1 of the Rules of the High Court (Cap 4A), "Where, on the application of a defendant to an action or other proceeding in the Court of First Instance, it appears to the Court-</p> <p>(a) that the plaintiff is ordinarily resident out of the jurisdiction,...</p> <p>then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceeding as it thinks just."</p> <p>"Where an order is made requiring any party to give security for costs, the security shall be given in such manner, at such time, and on such terms (if any) as the Court may direct." (Order 23 rule 2 of the Rules of the High Court).</p> <p>There are also specific rules on security for costs against a resident outside the jurisdiction in other proceedings such as bankruptcy proceedings or proceedings relating to intellectual property. (The relevant legal provisions can be found at <a href="http://www.legislation.gov.hk/eng/home.htm">http://www.legislation.gov.hk/eng/home.htm</a> ).</p> <p><u>Denmark</u> - According to the Danish Administration of Justice Act, § 321, the courts may impose on a plaintiff, who is not resident or domiciled within the European Economic Area</p>	<p>Germany, Iceland, Japan, New Zealand, Norway, South Africa, Turkey, United States [12]</p>
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("EØS-landene"), to provide security for the possible costs of the defendant, but only if the defendant make such a request. The size and character is determined by the court.

Germany – Les Articles pertinents du Code de la procédure civile allemand se lisent comme suit :

Article 108 Nature et montant de la caution

(1) <sup>1</sup>Lorsqu'il ordonne la constitution d'une caution *judicatum solvi* le tribunal peut déterminer la nature et le montant de la caution à verser à sa libre appréciation. 2 Dans la mesure où rien n'a été déterminé par le tribunal et rien d'autre n'a été convenu par les parties, la caution sera fournie par cautionnement écrit, irrévocable, inconditionnel et illimité d'un établissement de crédit autorisé à exercer ses activités sur le territoire national ou par dépôt d'argent ou de titres susceptibles de constituer une sûreté en vertu de l'article 234 par. 1 et 3 du Code civil.

(2) Les dispositions de l'article 234 par. 2 et de l'article 235 du Code civil s'appliquent par analogie.

Article 109 Restitution de la caution

(1) Lorsque la cause justifiant la constitution d'une caution a disparu, le tribunal ayant ordonné ou autorisé la constitution de la caution fixe sur demande un délai pendant lequel la partie en faveur de laquelle la caution a été fournie doit donner son consentement à la restitution de la caution ou prouver qu'elle a intenté l'action pour revendiquer ses droits.

(2) 1A l'expiration du délai le tribunal doit ordonner sur demande la restitution de la caution à moins que l'introduction de l'action n'ait été prouvée entre-temps ; lorsque la caution a été constituée par un cautionnement le tribunal ordonne l'extinction du cautionnement. 2 Cette ordonnance ne produit effet qu'après avoir acquis force de chose jugée.

(3) 1 Les demandes et le consentement à la restitution de la caution peuvent être consignés dans un procès-verbal dressé devant le greffier. 2 Le tribunal statue par décision.

(4) Le recours immédiat peut être introduit par le demandeur à l'encontre de la décision rejetant la demande prévue au paragraphe 1 et par les deux parties à l'encontre de la décision visée au paragraphe

	<p>Article 110 Caution <i>judicatum solvi</i>  (1) Les demandeurs n'ayant pas leur résidence habituelle dans un État membre de l'Union européenne ou un État contractant de l'Accord sur l'Espace économique européen fournissent une caution <i>judicatum solvi</i> sur la demande du défendeur.  (2) Cette obligation ne se rapporte pas aux cas :</p> <ol style="list-style-type: none"> <li>1. où aucune caution ne peut être exigée sur la base de conventions internationales ;</li> <li>2. où la décision portant sur le remboursement des frais de justice au défendeur serait exécutée sur la base de conventions internationales ;</li> <li>3. où le demandeur dispose sur le territoire national de biens fonciers suffisants ou de créances garanties par une sûreté réelle pour couvrir les frais de justice.</li> <li>4. d'actions reconventionnelles;</li> <li>5. d'actions introduites suite à un appel public.</li> </ol> <p>Article 111 Caution <i>judicatum solvi</i> exigée <i>a posteriori</i>  Le défendeur peut également demander le versement d'une caution lorsque les conditions pour l'obligation de fournir une caution n'apparaissent qu'au cours du litige et à moins qu'une partie de la prétention suffisante pour couvrir les frais de justice ne soit incontestée.</p> <p>Article 112 Montant de la caution <i>judicatum solvi</i>  (1) Le montant de la caution à fournir est déterminé par le tribunal à sa libre appréciation.  (2) 1La détermination s'effectue sur la base du montant probable des frais de justice à supporter par le défendeur. 2Les frais occasionnés au défendeur du fait d'une action reconventionnelle ne seront pas pris en compte.  (3) Lorsqu'il résulte au cours du litige que la caution fournie ne suffit pas, le défendeur peut demander la fourniture d'une caution ultérieure à moins qu'une partie de la prétention suffisante pour couvrir les frais de justice ne soit incontestée.</p> <p>Article 113 Fixation d'un délai pour la constitution de la caution <i>judicatum solvi</i>  1En ordonnant la constitution d'une caution le tribunal fixe un délai pour le défendeur pendant lequel ce dernier doit fournir la caution. 2A l'expiration du délai il y a lieu soit de déclarer retirée l'action sur demande du défendeur lorsque la caution n'a pas été versée jusqu'au moment de la décision, soit de rejeter un recours du demandeur lorsque ce recours fait l'objet de la procédure.</p>	
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	<p><u>Iceland</u> - There is a provision in Article 133 of the Code of Civil Procedure on security of costs. The provision stipulates that the defendant can demand, when a case is registered at the court, that the plaintiff provides a security of the legal costs if the plaintiff is domiciled outside the European Economic Area, outside a Member State of EFTA or outside a Member State of the Hague Convention on Civil Law from 1 March 1954 and persons, that are domiciled in Iceland, are not exempted from providing such a security in the home country of the plaintiff.</p> <p><u>Japan</u> - The provision of Article 75 (1) of the Code of Civil Procedure is as follows: "If a plaintiff does not have any domicile, business office or other office in Japan, the court, upon the petition of a defendant, shall make an order to the effect that the plaintiff should provide security for court costs. The same shall apply if any deficiency occurs in such security." However, Article 10 of the Act on Special Provisions of Civil Court Proceedings for Enforcement of the Convention on Civil Procedure (<i>Minji sosho tetsuzuki ni kansuru joyaku tou no jissi ni tomonau minji sosho tetsuzuki no tokurei tou ni kansuru horitsu</i>) provides that the plaintiff does not have to provide security under Article 75 (1) of the Code of Civil Procedure, where he/she is a national of a contracting state to the Convention on Civil Procedure and has a domicile, business office or other office in a contracting state to the Convention on Civil Procedure, notwithstanding the fact that he/she does not have any domicile, business office or other office in Japan.</p> <p><u>New Zealand</u> - A court has the discretion to order the giving of security for costs by a plaintiff who is resident out of New Zealand (or is a corporation or a subsidiary of a corporation incorporated outside New Zealand) or where there is reason to believe that the plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in their proceeding. Where a plaintiff is resident overseas, the courts have held that:</p> <ul style="list-style-type: none"> <li>• There is no fixed principle that a plaintiff with no assets in New Zealand should be ordered to give security.</li> <li>• The Court's discretion is to be exercised taking into account all the circumstances of the case and arriving at a conclusion that is just between the parties.</li> <li>• The ease, convenience and cost of enforcing a costs judgment in the plaintiff's country of residence are primary considerations.</li> </ul>	
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- Otherwise, security by a plaintiff resident overseas may be ordered where there is reason to believe the plaintiff will be unable to pay the defendant's costs if the plaintiff is unsuccessful.
- The discretion should not be used to shut out a genuine claim by a plaintiff of limited means. On the other hand, a plaintiff of limited means must not be allowed to use an inability to pay costs as a means of putting unfair pressure upon a defendant.

In New Zealand, legal aid is available to a party to certain types of proceeding before a New Zealand court, whether that person is resident in New Zealand or not, who meets the relevant means and merits test. Some proceedings are specifically excluded from the coverage of the legal aid scheme. Also, in New Zealand legal aid is a loan not a grant. It is subject to the condition that the recipient must repay an amount determined by the Legal Services Agency, which administers the scheme. The repayment conditions may be waived where it would cause hardship.

If a plaintiff is legally aided this is a factor to be taken into account in refusing or reducing an order for security for costs. In practice, orders are not often made against legally aided plaintiffs as this might prevent a plaintiff of limited means from a chance to pursue a genuine claim.

Norway - According to the Norwegian Civil Procedure Code 17 June 2005 § 20-11, security for legal costs may be imposed in certain cases on a plaintiff who is not resident in Norway if so is required by the defendant. However, such security can not be required if it will collide with an international obligation to treat parties resident abroad and parties resident in Norway equally, or if it would appear disproportionate considering the nature of the case, relations between the parties and other circumstances.

The amount is determined by the court.

South Africa - A person not domiciled in South Africa (a peregrinus) may in very limited circumstances be required to provide security for costs. A court would be reluctant to make such an order if it would result in the peregrinus being unable to prosecute his/her action. The court should have regard to particular circumstances of the case, and to considerations of fairness and equity to both parties. Relevant case law in this regard is

	<p>Magida v Minister of Police 1987 (1) SA 1 (A). It is also unlikely that such an order would be made against an indigent person.</p> <p><u>Turkey</u> - En principe, on exige des cautions ou dépôts, toutefois, les personnes de ressortissants étrangers ou des personnes ne disposant pas de domicile ou de résidence habituelle puissent être exemptées de ces cautions ou dépôts, à condition qu'il soit un traité bilatéral ou multilatéral entre notre pays et le pays auquel appartiennent ces personnes, ou qu'il soit une application de la règle de réciprocité entre deux pays</p> <p><u>United States</u> - Yes, in certain instances state law (including rules of court) may provide that non-residents (both out-of-state and foreign) must provide security for costs or satisfaction of judgment in connection with pending legal proceedings. Federal courts are also authorized to impose such requirements.</p>	
	<p><b>No.</b></p> <p><u>Australia</u> - Australian law does not compulsorily prescribe any security, bond or deposit upon certain categories of persons such as foreign nationals or persons who are not resident or domiciled in Australia for reason of their nationality alone. However, there is a general discretion allowing courts to order security for costs (see High Court Rules 2004, Part 59). Some court rules provide that in exercising this discretion, the Court may take into account the fact than an applicant is ordinarily resident outside Australia. (See for example Order 28, Rule 3 of the Federal Court Rules.)</p> <p>See also section 671 Uniform Civil Procedure Rules 1999 (Queensland); Order 42.21 Uniform Civil Procedure Rules 2005 (New South Wales); Order 62.02 Supreme Court (General Civil Procedure) Rules 2005 (Victoria); Order 25/2 Rules of the Supreme Court 1971 (Western Australia); Order 100.01 Supreme Court Rules 1987 (South Australia); Order 828 Supreme Court Rules 2000 (Tasmania); Order 1901 Court Procedures Rules 2006 (Australian Capital Territory); Order 62.02 Supreme Court Rules 2008 (Northern Territory).</p>	<p>Australia, Malaysia, Mexico Portugal, Ukraine, [5]</p>
<p><b>5. Bond / security imposed because foreigner?</b></p>	<p><b>No.</b></p>	<p>Argentina, Australia, Brazil, China (Hong Kong SAR),</p>

		Denmark, Ecuador, Germany, Iceland, Japan, Malaysia, Mexico, New Zealand, Norway, Portugal, South Africa, Turkey, Ukraine, United States [18]
<b>Comments</b>	No information available.	Turkey [1]
<b>6. Bilateral, multilateral or regional instruments.</b>	<b>Yes.</b>  Most States are Parties to bilateral agreements which provide rules related to access to justice. 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 (< <a href="http://www.hcch.net">www.hcch.net</a> >).	Argentina, Australia, Brazil, Denmark, Germany, Malaysia, New Zealand, Norway, Portugal, Turkey, Ukraine [11]
	<b>No.</b>	China (Hong Kong SAR), Iceland, United States [3]

II. Questions for Contracting States		
Chapter II of the Convention		
B. Operation of the Access to Justice Convention		
<b>9. Rate operation of the Convention.</b>	Good.	Croatia, Poland, Romania, Sweden, Switzerland [5]
	Satisfactory.	Slovakia the Netherlands [2]
	Since the Access to Justice Convention is in force for the Republic of Bulgaria, the Ministry of Justice has not received or send any applications as requesting or as a requested State. Therefore it is difficult for our State to rates the general operation of the Access to Justice Convention. That is why we are not able to give an opinion and indicate a particular aspect of the Convention which requires improvement or encounter difficulties.	Bulgaria [1]
	The Central Authority of the Republic of Cyprus, has not received yet any application based on the provisions of the Convention.	Cyprus [1]
	The Czech Central and Transmitting Authority have not received yet any application based on this Convention.	Czech Republic [1]
	The Central Authority has not had any cases based on this convention.	Finland [1]
	Le faible nombre de dossiers enregistrés au sein du bureau de l'entraide civile et commerciale internationale (jamais plus de 5 dossiers par an) pour les pays concernés par cet instrument ne permet pas d'émettre un quelconque avis sur la qualité de la coopération permise par la Convention Accès à la Justice.	France [1]
	There have not been such cases based on the Convention.	Latvia [1]
	The Central Authority has not received any requests pursuant to this convention	Lithuania [1]
	The evaluation is rather problematic as we have had a very limited (almost none) direct experience with the application of the Convention.	Slovakia [1]

	Nous ne disposons pas d'aucune information sur le fonctionnement de la présente Convention étant donné que toutes les demandes reçues dans les dernières années ont été menées à bien selon l'Accord Européen sur la transmission des demandes d'assistance judiciaire du Conseil de L'Europe du 27/1/1977 ou bien selon la Directive Communautaire 2003/8/CE du Conseil du 27 janvier 2003 en ce qui concerne les pays membres de la U.E.	Spain [1]
	It should however be noted that the convention is rarely applied in Sweden. Therefore, the Swedish experience is limited.	Sweden [1]
	En tant qu'Etat requis en application stricte de la Convention (d'autorité expéditrice à AC) la grande majorité des AC cantonales signalent qu'aucune demande n'a été formulée aux AC au cours de ces 5 dernières années. Malgré cela, elles ont qualifié le fonctionnement général comme étant bon.	Switzerland [1]
	Since 2003 the <i>Raad voor Rechtsbijstand</i> (Legal Aid Board) received no requests in its capacity as Central Authority or Transmitting Authority. The reason is that the Dutch legal Aid Act has in itself a provision which provides that legal aid is granted in respect of legal interests situated within the legal sphere of the Netherlands, to natural persons or legal entities whose financial capacity does not exceed the amounts referred to in Section 34, legal Aid (Section 12.1 Legal Aid Act). So there must be applications under the Convention but they are not registered as such because the applicant for legal aid applies for legal aid under section 12.1 through a lawyer and not through a Central Authority.	The Netherlands [1]
<b>10. Any difficulties applying the Convention?</b>	<b>No.</b>	Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Lithuania, Poland, Romania, Slovakia, Sweden, Switzerland the Netherlands [13]
	There have not been such cases based on the Convention.	Latvia [1]

<b>C. Statistics</b>		
	<b>Preliminary Comments</b>	
	Poland does not have any separate register for cases based on this convention, therefore we are not able provide statistics	Poland [1]
	Sweden does not register cases referring to under which Convention the request is made. Therefore there are no statistics concerning these questions (11-20)	Sweden [1]
	Le droit à l'assistance judiciaire gratuite est un droit fondamental de procédure consacré par la constitution (art. 29, al. 3, Cst.). Celle-ci ne fixe toutefois qu'un standard minimal. Selon la jurisprudence du Tribunal fédéral (ATF 120 Ia 217 ff du 31 mai 1994) "l'octroi de ce droit ne doit pas être subordonné à l'existence d'un traité international avec l'Etat du domicile du plaideur ou à l'assurance de l'égalité de traitement dans cet Etat." En tant qu'institution de procédure, l'assistance judiciaire gratuite est actuellement réglée d'abord par les cantons. Leur pratique est très différente, notamment en ce qui concerne l'indemnité de l'avocat d'office. Un projet de code de procédure civile suisse (P-CPCS) a été rédigé et est maintenant soumis aux discussions parlementaires. On peut compter pour une entrée en vigueur pour 2011. Le projet P-CPCS introduit une réglementation fédérale unifiée. En tant qu'Etat requis en application stricte de la Convention la grande majorité des 26 AC cantonales signalent qu'aucune demande n'a été formulée aux AC au cours de ces 5 dernières années. Les demandes émanant des personnes résidentes à l'étranger parviennent normalement directement au Tribunal compétent ou au Service de l'assistance juridique. Quelques AC signalent des cas très rares (envoyés et /ou reçus). Dans la mesure où la plupart des AC ne possèdent pas de statistiques à ce sujet et n'ont pas communiqué d'estimation, il n'est pas possible de faire une évaluation approximative; pour cette raison, les tableaux statistiques ne sont pas remplis. Certaines réponses au questionnaire ne sont donc pas représentatives pour la Suisse mais reflètent la situation dans quelques cantons. Les pays en provenance desquels la Suisse a reçu le plus grand nombre de demandes d'assistance judiciaire sont la France, l'Allemagne et le Portugal.	Switzerland [1]

Chapter I (Applications for legal aid – Incoming)											
<b>11. Incoming applications for legal aid</b>	<b>2003</b>		<b>2004</b>		<b>2005</b>		<b>2006</b>		<b>2007</b>		
	0		0		0		0		0		Bulgaria [1]
	0		0		0		0		0		Croatia [1]
	0		0		0		0		0		Cyprus [1]
	0		0		0		0		0		Czech Republic [1]
	0		0		0		0		0		Finland [1]
	5 Confédération suisse (3), Serbie et Monténégro (2).		1 Confédération suisse		0		0		2 Confédération suisse		France [1]
	No information available		No information available		0		0		0		Latvia [1]
	0		0		0		0		0		Lithuania [1]
	0		0		0		0		0		Romania [1]
	0		0		0		0		0		The Netherlands [1]
	Data not available		Data not available		Data not available		Data not available		Data not available		Slovakia [1]
	<b>12. Categories of persons granted legal aid in your State.</b>	<b>Nationals of Contracting State</b>	<b>Habitual residents of Contracting State</b>	<b>Former habitual residence in your State (Art. 1(2))</b>	<b>Recognition or enforcement of judgment (Art. 13)</b>	<b>Was legal aid made available?</b>	<b>No information available.</b>				
France [1] Switzerland [2]		Switzerland [0]	[0]	[0]	[0]	Bulgaria Poland Slovakia Spain					



						Switzerland (Majorité des AC) the Netherlands [6]	
	There have not been such cases based on the Convention.						Latvia [1]
<b>13. Average time to process application</b>	See answer on question number 9.						Bulgaria [1]
	[...] Since the Access to Justice Convention is in force for the Republic of Bulgaria, the Ministry of Justice has not received or send any applications as requesting or as a requested State. Therefore it is difficult for our State to rates the general operation of the Access to Justice Convention. That is why we are not able to give an opinion and indicate a particular aspect of the Convention which requires improvement or encounter difficulties.						
	La demande complète est adressée dès réception et sans délais à l'autorité française compétente pour statuer sur celle-ci, à savoir le bureau d'aide juridictionnelle (outre les bureaux d'aide juridictionnelle du Conseil d'État, de la Cour nationale du droit d'asile et de la Cour de Cassation, il existe un bureau d'aide juridictionnelle dans le ressort de chaque tribunal de grande instance).						France [1]
	L'autorité centrale française ne dispose d'aucune statistique relative au délai moyen de traitement de telles demandes par les bureaux d'aide juridictionnelle.						
	There have not been such cases based on the Convention.						Latvia [1]
	Courts handle requests immediately.						Poland [1]
No information available.						Slovakia [1]	
1-2 mois.						Switzerland [1]	

**Chapter I (Applications for legal aid – Outgoing)**

14. Outgoing applications for legal aid.	2003	2004	2005	2006	2007	
	0	0	0	0	0	0
0	0	0	0	0	0	Croatia [1]
0	0	0	0	0	0	Cyprus [1]
0	0	0	0	0	0	Czech Republic [1]
0	0	0	0	0	0	Finland [1]
0	3 Confédération suisse (2), Serbie et Monténégro (1).	1 Confédération suisse	2 Confédération suisse	2 Confédération suisse	2 Confédération suisse	France [1]
No information available	No information available	0	0	0	0	Latvia [1]
0	0	0	0	0	0	Lithuania [1]
0	0	0	0	0	0	Romania [1]
0	0	0	0	0	0	The Netherlands [1]
Poland does not have any separate register for cases based on this convention, therefore we are not able to provide statistics.						Poland [1]
No information available						Slovakia [1]
Pas de statistiques représentatives disponibles ou pas de cas signalés par les AC.						Switzerland [1]

15. Categories of persons granted legal aid abroad.	Nationals of Contracting State	Habitual residents of Contracting State	Former habitual residence in your State (Art. 1(2))	Recognition or enforcement of judgment (Art. 13)	Was legal aid made available?	No information available.	
	[0]	[0]	[0]	[0]	[0]	Bulgaria Poland Romania Slovakia Spain Switzerland [6]	
	Le bureau de l'entraide civile et commerciale internationale n'a été rendu destinataire d'aucune décision étrangère attribuant l'assistance judiciaire dans les Etats concernés à un résident français						France [1]
	There have not been such cases based on the Convention						Latvia [1]
	See answer on question number 9.  [...] Since the Access to Justice Convention is in force for the Republic of Bulgaria, the Ministry of Justice has not received or send any applications as requesting or as a requested State. Therefore it is difficult for our State to rates the general operation of the Access to Justice Convention. That is why we are not able to give an opinion and indicate a particular aspect of the Convention which requires improvement or encounter difficulties.						Bulgaria [1]
	La demande complète est adressée dès réception et sans délais à l'autorité centrale désignée.  L'autorité centrale française ne dispose d'aucune statistique relative au délai moyen de traitement des demandes formées en cette matière.						France [1]
	There have not been such cases based on the Convention						Latvia [1]
	Immediately.						Poland [1]
	Le délai peut varier entre 2-6-8 mois; dans des cas particuliers jusqu'à deux ans.						Switzerland [1]

Chapter I (Legal advice)		
<b>17. How many applications? How many granted?</b>	None.	Bulgaria, the Netherlands [2]
	Aucune demande de consultation juridique n'a été portée à la connaissance du bureau de l'entraide civile et commerciale internationale.	France [1]
	There have not been such cases based on the Convention.	Latvia [1]
	None.	Lithuania [1]
	Poland does not have any separate register for cases based on this convention, therefore we are not able provide statistics.	Poland [1]
	Très rare ou pas de cas.	Switzerland [1]

<b>Chapter II (Applications to render enforceable orders for the payment of costs and expenses of proceedings pursuant to Art. 15 – Incoming)</b>						
<b>18. If operation of Chapter II is not excluded</b>	Poland does not have any separate register for cases based on this convention, therefore we are not able to provide statistics.					Poland [1]
	No information available					Slovakia [1]
	Pas de statistiques représentatives disponibles ou pas de cas signalés par les AC.					Switzerland [1]
<b>18(a). How many incoming Article 15 applications?</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	
	0	0	0	0	0	Bulgaria [1]
	0	0	0	0	0	Croatia [1]
	0	0	0	0	0	Cyprus [1]
	0	0	0	0	0	Czech Republic [1]
	0	0	0	0	0	France [1]
	No information available	No information available	0	0	0	Latvia [1]
	0	0	0	0	0	Lithuania [1]
	0	0	0	0	0	Romania [1]
	0	0	0	0	0	The Netherlands [1]
<b>18(b). How many applications have resulted in a foreign costs order?</b>	There have not been such cases based on the Convention					Latvia [1]
	Not aware of any					Slovakia [1]
	No information available					Bulgaria, Switzerland [2]

Chapter II (Applications to render enforceable orders for the payment of costs and expenses of proceedings pursuant to Art. 15 – Outgoing)						
<b>19. If operation of Chapter II not excluded</b>	<i>Chapter II was subject to a reservation excluding its application.</i>					
<b>19(a). How many outgoing Article 15 applications?</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	
	0	0	0	0	0	Bulgaria [1]
	0	0	0	0	0	Cyprus [1]
	0	0	0	0	0	Czech Republic [1]
	0	0	0	0	0	France [1]
	No information available	No information available	0	0	0	Latvia [1]
	0	0	0	0	0	Lithuania [1]
	0	0	0	0	0	Romania [1]
	0	0	0	0	0	Slovakia [1]
	0	0	0	0	0	The Netherlands [1]
Comments	Poland does not have any separate register for cases based on this convention, therefore we are not able provide statistics.					Poland [1]
<b>19(b). Number of enforcement order for payment of cost?</b>	No information available.					Bulgaria, Poland, Switzerland [3]
Comments	There have not been such cases based on the Convention					Latvia [1]

<b>20. Most frequently applied chapters.</b>	Legal aid, including legal advice (Arts 1-13)	Security for costs and enforceability of orders for costs (Arts 14-17)	Copies of entries and decisions (Art. 18)	Physical detention and safe-conduct (Arts 19-20)	
	Switzerland (1) Poland France (1)	Switzerland (2) Poland	Bulgaria Switzerland (3)	Switzerland (4)	
Comments	There have not been such cases based on the Convention.				Latvia [1]
	We are not able to assess the number of requests, however frequently they concern: security for cost and enforceability of orders for cost (Arts 14-17)				Poland [1]
	No information available				Slovakia [1]
<b>D. Case law and reference work</b>					
<b>21. Any guides produced?</b>	No such material is known.				Sweden [1]
	There are no guides or desk instructions developed in order to assist the Transmitting Authorities and Central Authorities. The only kind of assistance provided is due to organising training seminars.				Bulgaria [1]
	We don't have any guides, desk instructions or any other practical information for application of the Article 15 Access to Justice Convention.				Croatia [1]
	We do not have any guides, desk instructions or practical information for application of the Article 15 Access to Justice Convention.				Czech Republic [1]
	No information available				Lithuania [1]
	"Obrót prawny z zagranicą w sprawach cywilnych i karnych", Jan Ciszewski, 2008 LexisNexis				Poland [1]
	Only an instruction letter to courts with no legal standing was produced upon designation of district courts as transmitting authorities.				Slovakia [1]
	Dans le site web de l'Atlas Judiciaire Européen en matière civile: <a href="http://ec.europa.eu/justice_home/judicialatlascivil/html/la_information_es.htm">http://ec.europa.eu/justice_home/judicialatlascivil/html/la_information_es.htm</a> se trouve disponible toute l'information concernant la même dans le domaine de l'Union Européenne,				Spain [1]

	<p>tel que procédure, autorités expéditrices, réceptrices, communications des États Membres et formulaires en toutes les langues.</p> <p>Aussi, dans le site web du Réseau Judiciaire Européen en Matière Civile et Commerciale: <a href="http://ec.europa.eu/civiljustice/legal_aid/legal_aid_gen_es.htm">http://ec.europa.eu/civiljustice/legal_aid/legal_aid_gen_es.htm</a> y est reflétée la législation de tous les pays communautaires, relative à l'assistance juridique gratuite, à l'exception du Danemark, avec ses différentes particularités, conditions pour l'obtenir et prestations qui découlent de sa concession dans chaque État.</p>	
	Since the enforcement of the Access to Justice Convention, the State has not come out with decisions that apply or relate to the Convention.	Bulgaria [1]
	No information available.	Croatia [1]
	No decision available.	Czech Republic [1]
	No information available	Lithuania [1]
	No information available	Poland [1]
	To our knowledge there have been no such decision given in Slovakia.	Slovakia [1]
<b>23. List of references for bibliography.</b>	The Ministry of Justice issues journals which includes articles analysing International legal acts on which the Ministry of Justice is notified as a central authority. Such articles also connect to the Access to Justice Convention. These journals are only available in Bulgarian language.	Bulgaria [1]
	We don't have such reference of articles or books.	Croatia [1]
	We do not have such references or books.	Czech Republic [1]
	No information available	Lithuania [1]
	No information available	Poland [1]
	We are not aware of any articles or books publish on the subject matter in Slovakia.	Slovakia [1]
	<p>- Gerhard Walter, Internationales Zivilprozessrecht der Schweiz, 4. Auflage, Haupt Verlag, Bern 2007</p> <p>- Gerhard Walter, Monique Jametti Greiner, Ivo Schwander, Internationales Privatrecht und Verfahrensrecht : Texte und Erläuterungen, Stämpfli Verlag Bern, 1993-2007</p>	Switzerland [1]



<p><b>24. Domestic implementing legislation</b></p>	<p>The domestic legislation does not include articles which directly implements the Access to Justice Convention. In cases when legal aid requests related to exemptions from fees and expenses are send to the Central authority, these requests have been examined by the Bulgarian court according to the general provisions of the Bulgarian Civil Procedures Code.</p> <p>Rules regarding exemptions from fees and expenses are provided in Section II, Chapter Eight of the Bulgarian Civil Procedures Code.</p> <p>n case when Legal aid requests are related to providing free defence, Chapter ten of the Bulgarian Civil Procedures Code are applied.</p> <p>Please find attached Chapter Eight – Fees and Expenses, Section II – State fees and expenses and Chapter ten of the Bulgarian Civil Procedures Code.</p> <p>According to Council Directive 2002/8/EC of 27 January 2003 to Improve Access to Justice in Cross-border Disputes by Establishing Minimum Common Rules Relating to Legal Aid for Such Disputes, the Bulgarian government has adopted a Legal Support Law which is in force from 01.01.2006. According to article 6 of the law, the legal support shall be organised by the National Bureau of legal support (NLAB) and the Attorney Councils. The National Bureau of Legal Aid shall be an independent state body to the Minister of Justice, and shall have its seat in Sofia.</p> <p>For further details, please visit the web site of the National Bureau of Legal Aid on <a href="http://www.nbpp.government.bg">www.nbpp.government.bg</a>.</p>	<p>Bulgaria [1]</p>
	<p>The implementation of the Access to Justice Convention is not needed, because according to article 140. of the Constitution of the Republic of Croatia, the Access to Justice became a part of the internal legal order and is above law in terms of legal effects.</p> <p>Act of free legal aid (Official Gazzette, Nr. 62/08.) which enters into force on 1.st of February 2009. regulates that the beneficiary of legal aid are the Croatian citizens and foreigners with temporary or permanent residence, asylum seekers and those granted asylum, foreigners under temporary protection, who are unable to bear the costs of legal assistance without risk to their livelihood.</p>	<p>Croatia [1]</p>

	<p>According to the Council Directive 2002/8/EC of 27 January 2003 to Improve Access to Justice in Cross-border disputes by establishing minimum common rules relating to legal act for such a disputes, the Croatia has brought Act of free legal aid and the Directive is completely implemented in Chapter VII. of that Act.</p>	
	<p>The Access to Justice Convention has been ratified by Law No. 4 (III) of 2000.</p> <p>Law No. 165(I)of 2002 as amended by Laws Nos. 22(I)of 2005, 77(I)of 2005 and 43(I) of 2006.</p> <p>Also the Legal Aid Procedural Rule No.1 of 2003, Legal Aid Procedural (Amendment) Rule of 2007.</p> <p>The Ratification Law No. 20(III)of 2007 of the European Agreement on the Transmission of Applications of Legal Aid.</p>	<p>Cyprus [1]</p>
	<p>The implementation of the Access to Justice Convention into Czech national legislation is not needed. According Article 10 of the Constitution of the Czech Republic the Access to Justice Convention became part of the national law by publishing in the Collection of laws under No. 58/2001 Coll. on 2 July 2001.</p> <p>Besides that the general rules on non-discrimination with respect to legal aid granting to foreigners are included in Articles 48 and 50 of the Act No. 97/1963 Coll., on International Private Law and the Procedure Rules relating thereto.</p>	<p>Czech Republic [1]</p>
	<p>The national provisions implementing the Convention are found in the 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 and subsequent amendments).</p> <p>The Finnish Act on Legal Aid (257/2002) contains rules on non-discrimination with respect of legal aid. According to Chapter 1 Section 2 of the Act legal aid shall be given to persons domiciled or habitually resident in Finland, as well as persons domiciled or habitually resident in a Member State of the European Union or the European Economic Area. In addition, legal aid shall be given irrespective of domicile or residence, if the person has a matter to be heard by a Finnish court of law or if there otherwise is a special reason for legal aid to be given. Legal advice, as a part of legal aid, shall be provided irrespective of residence under the conditions laid down in the Convention on International Access to</p>	<p>Finland [1]</p>

	Justice. Legal aid shall not be given to a company or a corporation. Legal aid shall be given in a business matter, other than a court case, to a person pursuing a business only if there is a special reason for the same, taking due note of the nature and extent of the business operations, the financial and personal situation of the person and the circumstances as a whole.	
	Voir les versions informatiques jointes : -du décret n°88-979 du 11 octobre 1988 portant publication de la convention Accès à la Justice, -de la loi n°91-647 du 10 juillet 1991 relative à l'aide juridique, -du décret n°91-1266 du 19 décembre 1991 portant application de la loi du 10 juillet 1991, -du décret n°91-1369 du 30 décembre 1991 fixant les modalités particulières d'application dans les départements d'outre-mer, à Saint-Barthélemy, Saint-Martin et Saint-Pierre-et-Miquelon, ainsi qu'en Polynésie française de la loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique -de l'ordonnance n°92-1143 du 12 octobre 1992 relative à l'aide juridictionnelle à Mayotte, -de l'ordonnance n°92-1147 du 12 octobre 1992 relative à l'aide juridictionnelle en Nouvelle-Calédonie et dans les îles Wallis et Futuna, -de la circulaire du 29 mars 2006.	France [1]
	The State Ensured Legal Aid Law lays down the general rules governing the provision of state legal aid. The State Ensured Legal Aid Law contains rules on non-discrimination with respect of legal aid. According to Chapter 1 Section 3 the following persons have the right to legal aid: 1) a citizen of Latvia; 2) a non-citizen of Latvia; 3) a stateless persons; 4) a European Union citizen who is not a citizen of the Republic of Latvia, but resides legally in the Republic of Latvia; 5) a citizen of a state that is not a Member States of the European Union if he or she legally resides in the Republic of Latvia and has received a permanent residence permit; 6) a person who has right to legal aid ensured into by the Republic of Latvia in accordance with the international agreements entered into by the Republic of Latvia; and 7) an asylum seeker, a refugee and a person who has been granted the alternative status in the Republic of Latvia.	Latvia [1]
	I. The Law of the Republic of Lithuania on State-Guaranteed Legal Aid (28 March 2000 No VIII-1591, as last amended on 15 April 2008 – No X-1492):  <a href="http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=326190">http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=326190</a>	Lithuania [1]

	<p>II. The national provisions implementing the Convention are found in the Law of the Republic of Lithuania on the Ratification of the Convention on International Access to Justice (13 April 2000 No VIII-1627, came into force on 31 May 2000):</p> <p>Article 1. Ratification of the Convention</p> <p>Pursuant to Article 67 (point 16) and Article 138 (paragraph 1 point 6) of the Constitution of the Republic of Lithuania; taking into consideration decree of the President of the Republic of Lithuania dated 11 February 2000 "For submitting to the Seimas of the Republic of Lithuania (Parliament) to ratify the Convention on International Access to Justice", Seimas of the Republic of Lithuania ratifies the Convention of 25 October 1980 on International Access to Justice with declarations.</p> <p>Article 2. Declarations of the Republic of Lithuania</p> <p>Seimas of the Republic of Lithuania declares that:</p> <p>1) Ministry of Justice of the Republic of Lithuania is designated as the Central Authority for the purposes of receiving and forwarding applications for legal aid (Articles 3, 4 and 16 of the Convention);</p> <p>2) whereas it is provided in Article 16 of the Convention, the Republic of Lithuania will not accept applications made directly;</p> <p>3) and whereas it is provided in Articles 7 and 17 of the Convention, the Republic of Lithuania declares that it will accept applications for legal aid submitted only in the Lithuanian, English, French or Russian languages, or, where the application is made in none of those languages, the application for legal aid and supporting documents shall be accompanied by a translation into Lithuanian, English, French or Russian languages.</p>	
	No information available.	Poland [1]
	In view of the fact that the Convention is considered self executing and has priority over national law. No implementing legislation was necessary.	Slovakia [1]
	Dans le cadre communautaire, la Directive du Conseil 2003/8/ CE du 27 janvier 2003, qui vise à améliorer l'accès à la justice dans les différends transfrontaliers par le biais de l'établissement des règles minimales communes relatives à la justice gratuite pour lesdits différends, est appliquée dans tous les États Membres de l'Union Européenne, sauf au Danemark.	Spain [1]

	<p>En Espagne, la Loi 16/2005 du 18 Juillet qui modifie la Loi 1/1996 du 10 Janvier d'assistance juridique gratuite, pour régler les spécialités des différends transfrontaliers civils et commerciaux dans l'Union Européenne désigne, dans son article 48, comme autorités expéditrices et réceptrices des demandes d'assistance juridique gratuite les Ordres des Avocats.</p> <p>Quant au salaire minimum interprofessionnel, calculé annuellement, comme une des conditions requises pour déterminer si l'on peut octroyer à la personne intéressée l'assistance juridique gratuite, il faut rappeler que cette référence a été remplacée par le Décret Royal - Loi 3/2004 du 25 Juillet par l'Indicateur Public de Revenus d'Effets Multiples (IPREM). Par conséquent, le montant annuel de l'IPREM sera actuellement de 6.707.40 euros quand les normes correspondantes aient trait audit salaire minimum interprofessionnel.</p> <p>(See questionnaire under question 21)</p>	
	<p>The Access to Justice Convention is implemented in the following legislation.</p> <p>Legal Aid</p> <p>- Section 12 paragraph 2 of the Act of legal aid (1996:1619), only in Swedish:</p> <p><a href="http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BMAXPAGE%7D=26&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;%24%7BBASE%7D=SFST&amp;%24%7BFORD%7D=FINN&amp;%24%7BFREETEXT%7D=&amp;BET=1996%3A1619&amp;RUB=&amp;ORG=">http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BMAXPAGE%7D=26&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;%24%7BBASE%7D=SFST&amp;%24%7BFORD%7D=FINN&amp;%24%7BFREETEXT%7D=&amp;BET=1996%3A1619&amp;RUB=&amp;ORG=</a></p> <p>- Section 35 of the ordinance concerning legal aid (1997:404), only in Swedish:</p> <p><a href="http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BMAXPAGE%7D=26&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;%24%7BBASE%7D=SFST&amp;%24%7BFORD%7D=FINN&amp;%24%7BFREETEXT%7D=&amp;BET=1997%3A404&amp;RUB=&amp;ORG=">http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BMAXPAGE%7D=26&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;%24%7BBASE%7D=SFST&amp;%24%7BFORD%7D=FINN&amp;%24%7BFREETEXT%7D=&amp;BET=1997%3A404&amp;RUB=&amp;ORG=</a></p>	Sweden [1]

	<p>Security for litigation costs</p> <ul style="list-style-type: none"> <li>- Section 5 of the Act (1980:37) concerning obligations for foreign plaintiffs to provide security for litigation costs, only in Swedish: <a href="http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BOOHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BBASE%7D=SFST&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;BET=1980:307">http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BOOHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BBASE%7D=SFST&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;BET=1980:307</a></li> <li>- Announcement (2005:784) concerning exemption in certain cases for foreign plaintiffs to provide security for litigation costs, etc., only in Swedish: <a href="http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BOOHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BMAXPAGE%7D=26&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;%24%7BBASE%7D=SFST&amp;%24%7BFORD%7D=FINDD&amp;%24%7BFREETEXT%7D=&amp;BET=2005%3A784&amp;RUB=&amp;ORG=&amp;%24%7BSORT%7D=%C5R%2CLPNR+">http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BOOHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BMAXPAGE%7D=26&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;%24%7BBASE%7D=SFST&amp;%24%7BFORD%7D=FINDD&amp;%24%7BFREETEXT%7D=&amp;BET=2005%3A784&amp;RUB=&amp;ORG=&amp;%24%7BSORT%7D=%C5R%2CLPNR+</a></li> </ul> <p>Copies of entries and decision</p> <ul style="list-style-type: none"> <li>- The ordinance (2003:234) concerning the time for rendering judgments and decisions etc.: <a href="http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BOOHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BMAXPAGE%7D=26&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;%24%7BBASE%7D=SFST&amp;%24%7BFORD%7D=FINDD&amp;%24%7BFREETEXT%7D=&amp;BET=2003%3A234&amp;RUB=&amp;ORG=&amp;%24%7BSORT%7D=%C5R%2CLPNR+">http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BOOHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BMAXPAGE%7D=26&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;%24%7BBASE%7D=SFST&amp;%24%7BFORD%7D=FINDD&amp;%24%7BFREETEXT%7D=&amp;BET=2003%3A234&amp;RUB=&amp;ORG=&amp;%24%7BSORT%7D=%C5R%2CLPNR+</a></li> </ul> <p>Immunity</p> <ul style="list-style-type: none"> <li>- Act (1985:988) concerning immunity for certain witnesses, only in Swedish: <a href="http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BOOHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BMAXPAGE%7D=26&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;%24%7BBASE%7D=SFST&amp;%24%7BFORD%7D=FINDD&amp;%24%7BFREETEXT%7D=&amp;BET=1985%3A988&amp;RUB=&amp;ORG=&amp;%24%7BSORT%7D=%C5R%2CLPNR+">http://62.95.69.15/cgi-bin/thw?%24%7BHTML%7D=sfst_lst&amp;%24%7BOOHTML%7D=sfst_dok&amp;%24%7BSNHTML%7D=sfst_err&amp;%24%7BMAXPAGE%7D=26&amp;%24%7BTRIPSHOW%7D=format%3DTHW&amp;%24%7BBASE%7D=SFST&amp;%24%7BFORD%7D=FINDD&amp;%24%7BFREETEXT%7D=&amp;BET=1985%3A988&amp;RUB=&amp;ORG=&amp;%24%7BSORT%7D=%C5R%2CLPNR+</a></li> </ul>	
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	<p>Actuellement, le droit de la procédure civile suisse n'est pas réglé dans une loi fédérale unique mais principalement par les codes de procédure civile cantonaux (26) plus une loi de procédure fédérale, soit 27 sources différentes. En 1999, la Suisse a adopté la base constitutionnelle nécessaire en vue de l'unification de la procédure civile à l'échelon national. Un projet de code de procédure civile suisse (P-CPCS) a été rédigé et est maintenant soumis aux discussions parlementaires. On peut compter pour une entrée en vigueur pour 2011. La nouvelle loi règlera p.ex. la question des sûretés en garantie des dépens ainsi que celle de l'assistance judiciaire. Dans tous les cas, les dispositions des traités internationaux en vigueur pour la Suisse sont réservées.</p> <p>Déjà aujourd'hui, le droit à l'assistance judiciaire gratuite est un droit fondamental de procédure consacré par la constitution (art. 29, al. 3, Cst.: "Toute personne qui ne dispose pas de ressources suffisantes a droit, à moins que sa cause paraisse dépourvue de toute chance de succès, à l'assistance judiciaire gratuite. Elle a en outre droit à l'assistance gratuite d'un défenseur, dans la mesure où la sauvegarde de ses droits le requiert."). La constitution ne fixe toutefois qu'un standard minimal. En tant qu'institution de procédure, l'assistance judiciaire gratuite est actuellement réglée d'abord par les cantons. Leur pratique est très différente, notamment en ce qui concerne l'indemnité de l'avocat d'office. Le projet P-CPCS introduit une réglementation fédérale unifiée.</p>	Switzerland [1]
	Act of 28 October 1991, implementing the 1980 Hague Convention on International Access to Justice and the 1977 European Convention on the Transmission of Applications for Legal Aid.	The Netherlands [1]
<b>25. Bilateral, regional or multilateral instruments?</b>	<b>Yes.</b> Most States are parties to bilateral agreements which provide rules related to access to justice. 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 (< <a href="http://www.hcch.net">www.hcch.net</a> >).	Bulgaria, Czech Republic, Finland, France, Lithuania, Luxemburg, Poland, Romania, Slovakia, Spain, Switzerland, the Netherlands [12]

PART TWO – SUBSTANTIVE ISSUES		
A. Scope of the Access to Justice Convention		
Chapter I (Legal aid)		
<b>26. Has your State granted legal aid to legal persons?</b>	<b>No.</b>	Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Lithuania, Poland, Romania, Slovakia, Spain, Switzerland, the Netherlands [13]
<b>Comments</b>	There have not been such cases based on the Convention	Latvia [1]
	NON On n'a pas accordé jusqu'à moment l'assistance judiciaire à des personnes morales, cependant les suivantes personnes morales quand elles justifient l'insuffisance de moyens pour plaider, peuvent la demander : 1) Associations d'utilité publique, prévues à l'article 32 de la Loi organique 1/2002, du 22 Mars, qui régleme le Droit d'Association. 2) Fondations inscrites au Registre Public pertinent.	Spain [1]
	Remarque relative au projet de code de procédure civile suisse (P-CPCS): Le droit à l'assistance judiciaire des personnes morales et des patrimoines indépendants (la masse en faillite p. ex.) est controversé. La pratique dominante la réserve aux personnes physiques. Le Tribunal fédéral a laissé la question indécise pour les personnes morales, et ne l'a pas reconnu à la masse en faillite. Le projet utilise une formulation ouverte, qui correspond à la Constitution fédérale (voir art. 29, al. 3, Cst.). L'assistance judiciaire – pilier de la procédure sociale – est par nature destinée aux personnes physiques. Il est toutefois imaginable que les personnes morales y aient exceptionnellement droit. Aussi faut-il réserver à la pratique la possibilité de trouver les solutions qui conviennent aux cas particuliers.	Switzerland [1]
	Due to the lack of statistics concerning the application of the Access to Justice-convention, it is not possible to provide an answer as to whether legal aid has been granted to legal persons under the just-mentioned convention.	Sweden [1]



<p><b>27. Exercised power under Article 28(1) reservation?</b></p>	<p><b>No.</b></p> <p><u>France</u> - Le bureau de l'entraide civile et commerciale internationale n'a jamais été destinataire de telles demandes.</p> <p><u>Slovakia</u> - no information available that this reservation was ever exercised.</p>	<p>France, Romania, Slovakia [3]</p>
<p>Comments</p>	<p>The Republic of Bulgaria has not made a reservation under Article 28(1) of the Convention.</p> <p>The Republic of Croatia has not made reservation under Article 28(1) of the Convention</p> <p>Latvia has not made the reservation under Article 28 (1) of the Convention.</p> <p>Not applicable since Sweden has not made a reservation under article 28(1) of the Convention.</p> <p>No reservation was made. According to article 12. 1 of the Dutch Legal Aid Act, legal aid shall be granted only in respect of legal interests situated within the legal sphere of the Netherlands, to natural persons or legal entities whose financial capacity does not exceed the amounts referred to in Section 34 of that Act.</p>	<p>Bulgaria [1]</p> <p>Croatia [1]</p> <p>Latvia [1]</p> <p>Sweden [1]</p> <p>The Netherlands [1]</p>
<p><b>B. The concept of habitual residence</b></p>		
<p><b>28. Concept of Habitual Residence caused difficulty?</b></p>	<p><b>No.</b></p>	<p>Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Lithuania, Poland, Romania, Slovakia, Spain, Switzerland, the Netherlands [13]</p>
<p>Comments</p>	<p>There have not been such cases based on the Convention.</p> <p>Sweden is not aware of any particular difficulties with regard to interpretation or application of the concept of <i>habitual residence</i>.</p>	<p>Latvia [1]</p> <p>Sweden [1]</p>

	It should however be noticed the Swedish Council on legislation ( <i>Lagrådet</i> ) seized upon the matter in the government bill (1985/86:161) presented in the course of procedure for implementation. It queried whether the Swedish term proposed by the government was compatible with the wording in the convention, that is <i>résidence habituelle</i> or habitual residence.	
<b>C. Model Forms</b>		
<b>29. Satisfied with model forms?</b>	<b>Yes.</b>  <u>France</u> - Il convient de noter que s'agissant des relations entre la Confédération suisse et la France en cette matière, le formulaire annexé à la Convention et celui retenu pour l'application de l'Accord européen sur la transmission des demandes d'assistance judiciaire sont utilisés indifféremment, ce dernier document étant également commun à l'Accord européen et à la Directive 2003/8/CE du Conseil du 27 janvier 2003.	Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Lithuania, Poland, Romania, Slovakia, Switzerland, the Netherlands [12]
	<b>No.</b>  Elaborer Formulaire en plusieurs langues: français, anglais, espagnol et allemand, par exemple	Spain [1]
Comments	There have not been such cases based on the Convention.	Latvia [1]
	Sweden does not have any particular opinion on the matter as the Convention is applied rarely.	Sweden [1]
	Bien que, vu le petit nombre de cas une pratique manque	Switzerland [1]
<b>D. Regional or multilateral agreements (Art. 21)</b>		
<b>30. Co-existence of instruments in practice</b>	<b>The European Agreement of 27 January 1977 on the Transmission of Applications for Legal Aid (Strasbourg Convention)</b>  <u>Cyprus</u> - Yes. Ratification Law No. 20(III) of 2007 refers. No instrument takes precedence over the other since they are both international treaties with the same force.  <u>Czech Republic</u> - Because of lack of applications submitted on the basis of the Access to Justice Convention it is not possible to answer the question on co-existence with multilateral instruments in practice.	Cyprus, Czech Republic, Finland, France, Latvia, Lithuania, Poland, Slovakia, Spain, Sweden, Switzerland, the Netherlands [12]

	<p><u>Finland</u> - Since the Central Authority has not received any applications, it is not possible to give an explanation on co-existence in practice. However, either one the instruments could equally be applied.</p> <p><u>France</u> - Cet instrument est appliqué pour les pays hors Espace Judiciaire européen et non signataires ou n'ayant pas ratifié à ce jour la Convention Accès à la Justice.</p> <p><u>Latvia</u> - Please see the answer of the European Community on this question.</p> <p><u>Lithuania</u> - Since the Central Authority has not received any applications, it is not possible to give an explanation on co-existence in practice. However, either one the instruments could equally be applied.</p> <p><u>Poland</u> - The applicant makes a choice which of the two instruments to use</p> <p><u>Slovakia</u> - Not Party</p> <p><u>Spain</u> - Cette Convention s'applique pour les États européens qui ne sont pas compris dans la Directive 2003/8/CE du Conseil du 27 janvier 2003</p> <p><u>Sweden</u> - Regarding the relation to the Council Directive 2002/8/EC of 27 January 2003 to Improve Access to Justice in Cross-border Disputes by Establishing Minimum Common Rules Relating to Legal Aid For Such Disputes, see the letter sent by the European Union. Sweden is not aware that there has been any actual conflict between the Access to Justice Convention and the Strasbourg Convention. As regards the relationship between them, no instrument automatically takes precedence before the other.</p> <p><u>Switzerland</u> - Par rapport aux Etats qui ont ratifié la Convention Accès à la justice ainsi que l'Accord européen du 27 janvier 1977 sur la transmission des demandes d'assistance judiciaire, la coordination entre les deux conventions est assurée, en Suisse, par des Autorités centrales identiques pour chacune d'elles. La question de la prévalence devrait probablement être résolue en vertu du principe de la priorité à la convention la plus favorable au requérant.</p>	
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	<p><u>The Netherlands</u> – As stated above there have been no applications since 2003 under the Hague Convention. From 2003 there have been 3 incoming requests concerning the European Convention and 1 outgoing request. See also the explanation given in the response to Question 9.</p>	
	<p><b>Council Directive 2002/8/EC of 27 January 2003 to Improve Access to Justice in Cross-border Disputes by Establishing Minimum Common Rules Relating to Legal Aid For Such Disputes</b></p> <p><u>Bulgaria</u> - The Directive has wider application through the Legal Support Law which is in force from 01.01.2006. A possible reason for that, might be the fact that the only three legal aid applications, which have come during the last two years, are from member state countries. For more details, please see question 24.</p> <p><u>Croatia</u> – See answer on question 24 [...] According to the Council Directive 2002/8/EC of 27 January 2003 to Improve Access to Justice in Cross-border disputes by establishing minimum common rules relating to legal act for such a disputes, the Croatia has brought Act of free legal aid and the Directive is completely implemented in Chapter VII of that Act.</p> <p><u>Cyprus</u> - Yes. The Legal AID Law No. 165(I)of 2002, as amended refers. The Ratification Law of the Convention on International Access to Justice No.4(III)of 2000 takes precedence over the Legal Aid Law No. 165(I) of 2002 as amended by Laws No. 22(I) of 2005, 77(I)of 2005, 43(I)of 2006 and also the Legal Aid Procedural Rule No. 1of 2003 and the Legal Aid(Amendment) Procedural Rule of 2007. This is due to Article 169(3) of the Constitution of Cyprus that provides interalia, the following: "treaties, conventions and agreements concluded...shall have, as from their publication in the official gazette of the Republic, superior force to any municipal law..."</p>	<p>Bulgaria, Croatia, Cyprus, Czech Republic, European Community, Finland, France, Latvia, Lithuania, Poland, Romania, Slovakia, Spain, the Netherlands [14]</p>

Czech Republic - The Article 20 of the Directive governing relations with other instruments. This Article provides that Directive, as between the Member States and in relations to all matters to which applies, takes precedence over provisions contained in bilateral and multilateral agreements concluded between Member States, including the Access to Justice Convention of 25 October 1980. The applications for Legal Aid within the EU Member States are transmitted from Czech Republic under this regional instrument to Receiving Authorities designated by EU Member States. The applications for Legal Aid incoming from EU Member States to Czech Republic are managed under the above mentioned regional instrument. For completeness we note that the above mentioned Directive has been implemented into national legislation by the Act No. 629/2004 Coll. on granting of the Legal Aid in the Cross-border Disputes within the European Union.

European Community - La Communauté européenne a adopté, le 23 janvier 2003, la directive 2003/8/CE visant à améliorer l'accès à la justice dans les affaires transfrontalières par l'établissement de règles minimales communes relatives à l'aide judiciaire accordée dans le cadre de telles affaires. Cette directive fixe des règles minimales en matière d'aide judiciaire et permet dès lors aux États membres de prévoir des dispositions plus favorables lors de la transposition en droit national. Les États membres étaient tenus de transposer la directive avant le 30 novembre 2004, à l'exception d'une disposition pour laquelle le délai était fixé au 30 mai 2006. Les règles de la directive s'appliquent par conséquent actuellement dans toute la Communauté. La directive contient un article (article 20) qui règle les relations avec d'autres instruments. Selon cet article, les dispositions de la directive prime, dans les relations entre les États membres et pour toute matière à laquelle elle s'applique, sur les dispositions contenues dans les accords bilatéraux ou multilatéraux conclus entre les États membres, y compris la convention de La Haye du 25 octobre 1980 tendant à faciliter l'accès international à la justice. La directive prime également sur l'accord européen du 27 janvier 1977 sur la transmission des demandes d'aide judiciaire (la convention de Strasbourg).

Finland - This directive has been implemented in the national legislation and it is applicable between the European Union Member States. During the past few years the Central Authority has not received any applications for legal aid related to states outside of the European Union. Concerning the issue on precedence see the answer to question 24 supra.

France - Selon les termes de l'article 20 de la Directive mentionnée plus haut « En ce qui concerne les relations entre les États membres et pour toute matière à laquelle s'applique la présente directive, les dispositions de cette dernière priment sur les dispositions contenues dans les accords bilatéraux et multilatéraux conclus entre les États membres ». Dès lors l'application de la Convention du 25 octobre 1980 pour les rapports avec les États de l'espace judiciaire européen ne peut se concevoir que dans deux cas particuliers :

- Lorsque les champs territoriaux retenus pour les deux « instruments » ne sont pas superposables :

Ainsi si la France a déclaré que le cadre territorial retenu pour la Convention Accès à la Justice était l'ensemble du territoire de la République française, la Directive européenne déjà mentionnée n'est en revanche pas applicable aux communautés autonomes d'outre-mer suivantes : Saint-Pierre et Miquelon, Nouvelle-Calédonie et Dépendances, Polynésie Française, Mayotte, îles Wallis-et-Futuna.

- Lorsque le champ matériel retenu pour les deux « instruments » n'est pas compatible :

Le champ d'application de la Convention Accès à la Justice est plus vaste que celui de la Directive puisque outre les affaires civiles et commerciales, il couvre également les affaires administratives et fiscales (dont la consultation juridique).

Par ailleurs, il convient de mentionner que l'article 13 de la Convention (« Lorsqu'une personne a été admise, en application de l'article premier, au bénéfice de l'assistance judiciaire dans un Etat contractant à l'occasion d'une procédure ayant donné lieu à une décision, elle bénéficie, sans nouvel examen, de l'assistance judiciaire dans tout autre Etat contractant où elle sollicite la reconnaissance ou l'exécution de cette décision. ») doit pouvoir trouver application indépendamment des dispositions fixées par la Directive, cet article n'ayant pas d'exact équivalent juridique dans le texte communautaire (article 9). En effet au terme de ce dernier article, la continuité de l'assistance judiciaire accordée dans un État et poursuivie dans l'autre, peut ne pas être automatique puisque la demande peut y faire l'objet d'un nouvel examen.

Remarque : la désignation du bureau de l'entraide civile et commerciale internationale, comme autorité expéditrice et réceptrice de demandes formées en vertu de la Directive 2003/8/CE du Conseil du 27 janvier 2003, a été revue au bénéfice d'un autre service de la Chancellerie, à savoir le bureau de l'aide juridictionnelle du Service de l'Accès au Droit et à la Justice et de l'Aide aux Victimes. C'est désormais ce département ministériel qui gère ce secteur, le bureau de l'entraide civile et commerciale internationale demeurant, quant à lui, compétent pour l'application des instruments internationaux en cette matière, hors le champ de ladite Directive (la nouvelle déclaration a été adressée aux BAJ le 13 mai 2008, elle a été envoyée aux services de la Commission mais n'apparaît pas encore sur l'Atlas judiciaire européen).

Latvia - Please see the answer of the European Community on this question.

Lithuania - This directive has been implemented in the national legislation and it is applicable between the European Union Member States with the exception of Denmark. Pursuant to Article 20 of the Directive:

"This Directive shall, as between the Member States, and in relation to matters to which it applies, take precedence over provisions contained in bilateral and multilateral agreements concluded by Member States including:

(a) the European Agreement on the transmission of applications for legal aid, signed in Strasbourg on 27 January 1977, as amended by the additional Protocol to the European Agreement on the transmission of applications for legal aid, signed in Moscow in 2001;

(b) the Hague Convention of 25 October 1980 on International Access to Justice."

Poland - Poland as a member state uses this Directive in relations with other member states.

Romania - La question fera l'objet d'une réponse coordonnée de la Communauté européenne

Slovakia - Directive takes priority in cases to which it applies

	<p><u>Spain</u> - Ce chapitre est le plus important dans le domaine de l'entraide judiciaire. La plus grande partie des demandes appartiennent à cette Convention (Directive du Conseil, 2002/8/EC)</p> <p><u>The Netherlands</u> - Since 2004 there has been a steady increase of requests under the Council Directive. In the year 2007 the Legal Aid Board as a Central Authority received 50 requests. However, see also the explanation given in the response to Question 9.</p>	
	<p><b>The Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk Convention) adopted by the Commonwealth of Independent States</b></p> <p><u>Lithuania</u> - Republic of Lithuania is not a party to this convention.</p> <p><u>Poland</u> - Poland is not a party to that convention.</p> <p><u>Slovakia</u> - Not party.</p> <p><u>Spain</u> - Espagne n'est pas membre de la Convention de Minsk.</p> <p><u>Sweden</u> - Sweden is not a party to the Minsk Convention.</p>	<p>Lithuania, Poland, Slovakia, Spain, Sweden [5]</p>
	<p><b>Other agreements</b></p> <p><u>European Community</u> - Dans ce contexte, il convient par ailleurs de signaler que le règlement communautaire sur la signification et la notification des actes mentionné ci-dessus contient une disposition (article 21 sur l'aide judiciaire) selon laquelle le règlement ne porte pas atteinte à l'application de l'article 13 de la convention accès à la justice dans les relations entre les États membres parties à cette convention.</p> <p>Ces États membres pourront donc continuer à appliquer l'article 13 de la convention accès à la justice s'ils le souhaitent.</p> <p>Enfin, il y a lieu de souligner que la Communauté est sur le point de finaliser un règlement</p>	<p>European Community, Slovakia [2]</p>



	<p>en matière d'obligations alimentaires. Ce règlement contiendra un chapitre sur l'accès à la justice qui regroupe toutes les règles qui seront d'application en matière d'aide judiciaire dans les procédures relatives aux obligations alimentaires, instaurant ainsi un régime d'aide judiciaire particulier pour les obligations alimentaires. Ce régime est inspiré des dispositions actuelles de la directive 2003/8/CE et des dispositions prévues dans la convention de La Haye du 23 novembre 2007 sur le recouvrement international des aliments destinés aux enfants et à d'autres membres de la famille. Il s'appliquera entre les États membres en ce qui concerne l'aide judiciaire en matière d'obligations alimentaires lorsque le règlement communautaire sera d'application, mais ne portera par ailleurs pas atteinte aux dispositions de la directive 2003/8/CE telles que transposées en droit national par les États membres.</p> <p><u>Slovakia</u> – Not applicable.</p>	
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