Report on "Italy" : the application of foreign law in civil matters in the eu member states and its perspective

LEUZZI, Concetta, ROMANO, Gian Paolo & European Commission
**Summary**

The analysis of the questionnaires received shows that the necessity to resort to foreign law varies among the concerned legal professionals. Lawyers, although not specialized in only international and cross-border cases, are most frequently confronted with the necessity to refer to foreign law. Moreover, their activity is partially of a cross-border profile (the percentage varies between twenty-five percent to fifty percent and between fifty percent to seventy-five percent). As for judges (1st and 2nd instance), their frequency in applying foreign law and the proportion of "international cases" in their annual caseload are generally extremely low. The frequency with which notaries apply foreign law varies quite a lot; however, in general the proportion of their “international cases” still remains low (less than twenty-five percent).

As regards the trend in the occurrence of application of foreign law, most of the judges interviewed have declared that in the last five years the number of cases that necessitate consultation of foreign law in their day-to-day work has not noticeably changed. Conversely, in relation to both the lawyers and the notaries interviewed, the said tendency may be described as a relative increase. For civil servants, the only respondent to the questionnaire reported a high frequency in applying foreign law and a considerable increase in foreign law issues in the last five years.

In relation to the treatment of foreign law, in Italy almost all judges, the majority of notaries and the sole civil servant interviewed have declared that Italian legislation does not allow avoidance of or reference to a foreign applicable law. On the contrary, most lawyers interviewed acknowledged having avoided dealing with foreign law. The reasons most frequently invoked are the difficulty in accessing information on the law, the high cost of such access and finally the clients’ ‘will’. A few respondents have reported giving “special or preferential treatment” to cases involving the law of other EU Member States.

With regard to access to information on foreign law, the procedures for ascertaining foreign law vary not only among the different categories of legal professionals but also among the members of the same category. Irrespective of the respondents’ profession, the internet is the most commonly used means of foreign law ascertainment. Conversely, paid foreign legal databases are the least utilized. Concerning each category, the majority of judges and notaries tend to use the official sources available on internet. However, most of the lawyers prefer to ask for opinions from both amicus curiae and foreign experts, even if they are costly. The civil servant generally uses official documents (e.g., laws and case law) or certificates of law transmitted via diplomatic channels (e.g., via the Ministry of Justice or the Ministry of Foreign Affairs). As regards the mechanisms of international cooperation in this field, those provided by the European Convention on Information on Foreign Law, adopted in London on 7 June 1968, have turned out to be the least used. Conversely, the diplomatic channels, even if frequently considered a lengthy process, are still the most used mechanisms by the judges and the civil servant, while they are practically never used by notaries or the majority of lawyers. However, with regard to judges, it is noteworthy that our findings on the subject are at odds with the figures at the Ministry of Justice's disposal. As a matter of fact, the International Relations Office of the Ministry furnished conclusive data that, contrary to the survey results, shows that the traditional diplomatic channels are a means of access to information on foreign law rarely used by
Italian judges. Namely, the ministerial office declared that since 2005 requests have ranged from nineteen (2005 the minimum number received) to forty-nine (2009 the maximum number received).

The large majority of the respondents, irrespective of their professional category, report a need in reforming the existing system of access to information on foreign law.
Introduction

The Swiss Institute of Comparative Law ("The Institute") sent fifty-two (52) questionnaires concerning the application of foreign law to the following legal categories: judges, both Courts of Appeal and Tribunals of first instance, well-known law firms, notaries and academics specialized in private international law, some of which have his/her own law firm. The Institute also sent the questionnaire to the International Relations Office at the Ministry of Justice, the National Association of civil Registry officers (A.N.U.S.C.A.) and some registrars.

The total number of responses received was nineteen (19): eight (8) judges, six (6) lawyers, among whom two are also academics, four (4) notaries and one (1) a registrar. The Office at the Ministry of Justice did not fill in the questionnaire, but it gave useful information about the practicalities one of the means for researching foreign law at judges’ disposal, namely the diplomatic channel. A.N.U.S.C.A. did not respond to the questionnaire.

With respect to the geographic area of activities, registrars, notaries and Tribunals of first instance act at local level, while the Court of Appeals have regional or interprovincial competence. On the contrary, the lawyers and academics we have chosen to interview act all at a regional, national or international level.

1. Frequency of Resort to Foreign Law

1.1. Lawyers

1.1.1. General Observations

The frequency in the application of foreign law varies among the six (6) respondents. Two (2) declared that they deal with foreign law between one and three times for month, one (1), who is also an academic, stated that the frequency is "at least one a week". Conversely, the other three (3) assert that they refer to foreign law only several times a year.

As regards the proportion of foreign law cases, despite the fact that none of the lawyers interviewed specialize in only international and cross border cases, the majority of lawyers responded that their activity is partially of a cross-border profile. The percentage ranged from twenty-five percent to fifty percent and from fifty percent to seventy-five percent. Two lawyers stated that the percentage of their "international cases is less than 25 %" (Question four).

1.1.2. Types of Cases

In Italy, lawyers are involved in both contentious and non-contentious application of foreign law (Question five). As mentioned before, the demand for legal services related to foreign law seems to be high in litigation (indicated by all the respondents) and relatively high in the field of drafting legal documents (five out of six cases). However, the survey indicates that there is also demand in the field of legal counseling and not only at the pre-trial stage (four cases out of six). In fact, one lawyer reported that he is primarily confronted with the need to access information on foreign law when writing legal opinions.
As regards the field in which legal services are mostly solicited (Question seven), three lawyers out of five remarked that the need to access foreign law arises in cases related to drafting contracts. Foreign law issues mainly arise when the parties choose a foreign law to govern their contractual obligations or when a foreign law is applicable pursuant to the Italian private international law or the lex fori (1 respondent) or, lastly, in the presence of foreign counterparties. One respondent has declared that he is the party willing to carry out commercial operations connected to more than one jurisdiction, which brings about the need to deal with foreign law. The other fields mentioned by the respondents are as follows: inheritance law, family law, bankruptcy law (one respondent out of five), international and cross-border taxation (one respondent out of four), and tort law (one respondent out of five).

1.1.3. Trends

The general tendency concerning the number of cases that imply foreign law application may be described as a relatively moderate increase in the part of “international cases”. In three out of six cases there has been a moderate increase and in one a considerable rise. The last two respondents declared that there has been no noticeable change in the number of “international cases” (Question eight).

Most respondents who observed a change in the number of “foreign law cases” explained this trend as the result of the general increase in the number of foreign companies established in Italy (Question nine). However, they differed in their opinion regarding other possible reasons. The second reason invoked was the increase flow of capital from other EU Member States (two cases out of three). The respondent who declared that there has been a noticeable increase in the number of cases added the following: a general increase in immigration trends and the opening of internal borders following the enlargement of the EU. The last three principal reasons mentioned by the interviewed lawyers were the increased movement of persons/workers towards Italy from other EU Member States, the increased number of companies established in other EU Member states and directing their activity to Italy and the increased judicial cooperation within the EU and between neighbouring states.

It is noteworthy that all the respondents tended to privilege the “European factor” while explaining the change observed.

1.2. Judges

1.2.1. General Observations

In the course of the survey, it became apparent that the judges responding to the survey rarely apply foreign law, even when their average number of cases each year is pretty high.

The frequency in application of foreign law is extremely low. The majority of the judges who responded to the questionnaire stated that they are obliged to refer to foreign law only several times per year (seven cases out of eight) (Question six). One judge of 2nd instance stated that he has never applied foreign law. The average proportion of “international cases” in the judges’ annual caseload was generally estimated as “less than 25%” (Question four).
One of the respondents pointed out that the reasons for the low proportion of international cases are the notoriously extreme length of Italian proceedings and the resulting common use of arbitration clauses in international business contracts.

1.2.2. Types of Cases

Among the areas of litigation most commonly subject to foreign law in Italy, judges cited contract law (five out of eight respondents), inheritance law (three out of eight judges) and tort law (three out of eight cases). The other areas mentioned that generate the most need in foreign law are family law, competition law and maritime law.

Aside from the direct application of foreign law to resolve a case, a few interviewed judges (two out of eight respondents) declared that they are more frequently confronted with the need to gather information on foreign law to settle purely procedural issues, i.e. when deciding upon the recognition and enforcement of foreign judgments (exequatur) and when implementing letters of rogation.

1.2.3. Trends

Most judges (five out of eight) responding to the questionnaire declared that in the last five years the number of cases that necessitate consultation of foreign law has not changed (Question eight).

One of the respondents noted that Italy is mainly an importer country. On the one hand, the need to apply foreign law remains steady. But on the other hand, certain professional categories (e.g., judges) are not well trained in the application of foreign law.

Only one judge observed a noticeable change in the number of cases requiring consultation of foreign law. When asked about the reasons of such an increase, it is interesting to note that judges are inclined to see the “European factor” in the increase of cross-border litigation. In fact, the interviewed judges who have noticed an increase in the number of cases that necessitate consultation of foreign law linked it to the increased flow of capital from other EU Member States, the general increase in influx of EU capital to the Italian economy, the general increase in immigration trends, the adoption of EU rules of Private international law and the increase of judicial cooperation within the EU (Question nine).

1.3. Notaries

1.3.1. General Observations

The responses from the notaries revealed more disparity than what was found with judicial authorities. Despite the fact that the part of “international cases” in their practice is still low (in three out of four cases “less than 25 %”) (Question four), the general tendency is a relatively frequent use of foreign law. In fact, the frequency in application of foreign law varies between one and three times for month (two out of four) and once a week (one out of four). Only one notary reported that he is obliged to refer to foreign law in his every day work only several times a year. (Question six).

It is noteworthy that despite their different geographical areas of activity (North, South, and Centre of Italy), there are no relevant differences in the notaries’ answers.
1.3.2. Types of Cases

Notaries are confronted with the need to obtain information on foreign law when drafting legal documents (wills, contracts, minutes of shareholders meetings etc), when verifying the legal status of an applicant's person, above all for legal persons, or assets abroad and in the context of legal counseling (Question five).

According to the respondents, most of the cases brought before them which imply reference to foreign legal norms concern corporation matters (all respondents), matrimonial property (all respondents) and international inheritance cases (two out of four respondents), including both successions opened abroad for clients living in Italy and successions opened in Italy for foreign clients (Question seven).

In the context of corporation matters, foreign law is consulted for a company’s relocation, both when Italian companies move abroad and when foreign corporations move to Italy, and in mergers when at least one of the corporations is not Italian.

Foreign family law is examined for the purposes of drafting real estate contracts when at least one of the parties is a citizen of a foreign country. As a matter of fact, Italian notaries are required by law to verify both the contracting capacity of the parties and the seller’s and purchaser’s marital status and matrimonial property regime.

Furthermore, if a contracting party is a legal person governed by foreign law, the competent notary must verify the person’s right to sign according to the applicable law.

1.3.3. Trends

Italian notaries reported that the trend in the need to refer to foreign law has considerably increased. All respondents pointed out that the number of cases that necessitate consultation of foreign law has changed. One (1) out of four (4) said it has changed moderately, but three (3) out of four (4) declared that it has changed considerably (Question eight).

When asked about the reasons for such a change, the notaries linked it (unanimously) to the opening of frontiers following the enlargement of the EU. The unanimously invoked reasons were the increasing in immigration trends and the opening of internal borders following the enlargement of the EU. Other reasons listed were the increased movement of persons/workers towards Italy from other EU member States and the increased number of foreign companies established in Italy or, if established in other EU member states, directing their activity to Italy (Question nine).

It is interesting to note that Italian notaries are not inclined to see the general internationalization of the Italian economy (the general increase in influx of foreign capital into the country’s economy and the increased flow of capital from other EU Member states) as a plausible reason for the increasing trend (only one respondent out of four).
1.4. Civil Registry Officers

1.4.1. General Observations

Only one registrar officially agreed to be interviewed. However, it is noteworthy that she not only stated that the part of “international cases” in her practice is pretty high (from fifty percent to seventy-five percent) and that she needs to refer to foreign law every day (Question four), but she also remarked that the number of cases that necessitate consultation of foreign law in her day to day work has considerably increased in the last five years.

1.4.2. Types of Cases

The registrar mentioned mainly family law and personal rights (e.g., the right to be incinerated). She added that the reason why she is most frequently confronted with the necessity of foreign law in those types of cases is that the Italian choice of law rules refer to foreign law in most of the cases concerning family law.

1.4.3. Trends

The trend in referring to foreign law in every day practice has been defined by the official registrar as considerably increasing. She thought the reason for the increase was the general increase in immigration and the increased movement of persons/workers towards Italy from other member States.

2. Treatment of Foreign Law in Practice

2.1. Avoidance of Foreign Law Application

Twelve respondents (12) out of eighteen (18) (one of the judges interviewed reported of having never applied foreign law) have denied having ever avoided application of or reference to a foreign law in a given case. In particular, all the judges and notaries interviewed, except one, respectively, and the civil servants remarked that Italian legislation does not allow avoidance of or reference to a foreign applicable law (Question eleven). On the contrary, the majority of the five lawyers included in the survey acknowledged having avoided dealing with foreign law.

2.1.1. Judges

Among the interviewed judicial authorities (8 judges), only one respondent admitted avoiding the application of foreign law, albeit rarely.

This response is interesting because it gives an insight into the reasons why a judge may renounce the application of foreign law. Firstly, he generally discourages applicants from requesting that foreign law be applied. Secondly, information on foreign law is generally not easily available. And thirdly, obtaining information on foreign law generates procedural delays and backlogs.

Only three (3) judges out of seven (7) responded to the question of whether their decision not to apply foreign law was contested. (Question 15) They unanimously responded that their decision has
been subject to contestation. However, one respondent pointed out that his answer is a hypothesis and is not founded on statistical data.

2.1.2. Lawyers

The majority of responding lawyers acknowledged having avoided foreign law and/or discouraging their clients from invoking it before Courts (Question eleven). Only two lawyers stated that they have never avoided application of or reference to a foreign law in a given case.

The reasons most frequently invoked for their avoiding foreign law are the difficulty in accessing information on the law (two lawyers out of four), the high cost of access (two out of four) and the clients’ will (one out of four). One respondent emphasized that it is just generally easier for lawyers to apply domestic law since that is what they know.

As for the mechanism used to compensate a “foreign law evasion”, three (3) out of four (4) lawyers indicated that they give legal advice according to Italian law. Only one lawyer resorted to the alternative law indicated by the relevant conflict of law rule. The remarks expressed by the respondents during the survey lead to the conclusion that the legal professionals do not absolutely discourage their clients from claiming that foreign law applies, but only do so when the relevant conflict of law rule allows it. The tendency can indeed be perfectly justified according to Italian private international law. In fact, as the survey shows, the demand in legal services related to foreign law is the strongest in the fields of legal counseling and drafting legal documents, like contracts. Therefore it is perfectly understandable that lawyers tend to discourage their clients from invoking foreign law if their clients are allowed by law to choose which regulation they want to apply to their relationship.

As regards contestation of their decisions, only one of the interviewed lawyers reported having a decision not to apply or refer to the applicable foreign law contested (Question fifteen).

2.1.3. Notaries

The notaries denied having ever avoided the application of foreign law in a given case (Question eleven). Only one notary declared that it has rarely avoided application or reference to foreign law, and then only because information on foreign law is generally not easily available.

Concerning challenges to their decisions not to apply or refer to the applicable foreign law, notaries appeared quite divergent in their replies.

Out of four (4) notaries, one (1) did not answer the question at all, two (2) indicated that the issue is “irrelevant since within the Italian legal framework no procedure for challenging decisions on the ground of non application of foreign law exists,” and the last stated that his decisions not to apply or refer to the applicable foreign law have never been contested (Question fifteen).

2.1.4. Public Registrars

The only public registrar responding to the questionnaire denied having ever avoided the application of or reference to foreign law in a given case. In particular, she has stated that Italian legislation does not allow such avoidance (Question eleven).
2.2. Errors in Foreign Law Application

It seems that despite its delicate nature, the question of error in the application of foreign law was seriously approached by all the professional categories interviewed (Question sixteen A).

Among judges, five (5) out of eight (8) answered the question. Among those who did not respond, one specified that he has never been obliged to refer to foreign law; another referenced the lack of available data on the matter; and the last referred to the judge’s ability to request the help of an expert when there is difficulty in dealing with foreign law. Two (2) judges out of the five (5) who replied admitted committing errors while applying foreign law. They explained their response by the fact that there is insufficient information on the content of foreign law.

Among notaries, only one respondent admitted errors in the application of foreign law. As for lawyers, two (2) respondents out of six (6) gave such an admission. The lawyers and the notary have shared the same experience. The error was provoked by the insufficiency of information on the content of the foreign law. One of the lawyers also mentioned the erroneous translation of the contents of foreign law (question B).

2.3. Treatment of the Law of EU Member States

Irrespective of their professional category, the majority of the respondents (12 out of 19) claimed not to give "special treatment" to cases involving the law of other EU Member States (see Table below). One lawyer did not answer the question and one judge declared that he has never had the chance to apply foreign law.

Table I: Legal professionals exercising a special treatment of “intra-communitarian” foreign law:

<table>
<thead>
<tr>
<th>Professional category:</th>
<th>Number of positive answers:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges</td>
<td>2</td>
</tr>
<tr>
<td>Lawyers</td>
<td>1</td>
</tr>
<tr>
<td>Notaries</td>
<td>2</td>
</tr>
</tbody>
</table>

On the basis of the obtained data, one may suppose that among the legal professionals only a few tend to give a more favorable treatment to "intra-community" foreign law.

Among the Italian professionals that have asserted to give some “special treatment” to cases involving the law of other EU Member states, the selected data reveals three principal reasons for such treatment. First, it is easier to access legal information in those members states due to the existence of the European Judicial Network in Civil and Commercial Matters (four out of five respondents). Second is the duty of mutual recognition and cooperation resulting from the EU Treaty (two out of five cases). The last is the easier access to legal information due to the geographical and/or linguistic proximity of such States (one respondent out of five). One of the judges who claimed to give "special treatment" to cases involving the law of other EU Member States explained that such cases generally concern important questions of law and can therefore set relevant precedents. One of the notaries pointed out that in his opinion foreign law assessment is easier within the EU framework thanks to the harmonization of the laws of the EU Member States.
3. **Access to Information on Foreign Law**

3.1. **Means of Foreign Law Ascertainment**

3.1.1. **Frequency of Use**

Irrespective of the respondents’ profession, the official sources of foreign law available on internet are the means most used (seven out of eighteen respondents use it never, four rarely). On the contrary, paid legal databases appear to be the least utilized.

**Table II: Procedural means of foreign law ascertainment (Question 19)**

<table>
<thead>
<tr>
<th>Means of ascertainment</th>
<th>Most frequently</th>
<th>Frequently</th>
<th>From time to time</th>
<th>Rarely</th>
<th>Never</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official sources of foreign law available on the Internet</td>
<td>2</td>
<td>6</td>
<td>8</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Paid foreign legal data bases</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Original versions of texts of laws, jurisprudence and doctrine available in the libraries and databanks of your country</td>
<td>1</td>
<td>3</td>
<td>6</td>
<td>4</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Opinions of an amicus curiae</td>
<td>1</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Opinions of a foreign legal expert</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>5</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Official documents (laws, case-law, etc.) or certificates of law transmitted via diplomatic channels (e.g. via the Ministry of Justice or the Ministry of Foreign Affairs)</td>
<td>2</td>
<td>2</td>
<td>5</td>
<td>2</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Official documents (laws, case-law, etc.) or certificates of law transmitted by a foreign colleague (e.g. a foreign legal professional exercising the same functions in the concerned foreign country)</td>
<td>2</td>
<td>2</td>
<td>5</td>
<td>2</td>
<td>4</td>
<td>4</td>
</tr>
</tbody>
</table>

**Table III: Frequency of use by professional category of users (Question 19)**

The internet is preferred by the majority of judges and notaries, although they used it with different frequencies. A general lack of trust as to the information on foreign law available on the Internet is, however, reported by a number of respondents (Table IV).

Both Judges and the interviewed civil servant also use traditional means of access to legal information (transmission of information via diplomatic channels).
On the other hand, the popularity of direct communication with foreign colleagues, reported by a number of respondents in every legal profession concerned, is worth noticing.

<table>
<thead>
<tr>
<th>Means of ascertainment</th>
<th>Judges</th>
<th>Lawyers</th>
<th>Notaries</th>
<th>Civil Registry officers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official sources of foreign law available on the Internet</td>
<td>Most frequently/frequently/from time to time/n/a (1,1,5,1 of 8)</td>
<td>Most frequently/frequently/from time to time (2,2,2 of 6)</td>
<td>Frequently/from time to time (3,1 of 4)</td>
<td>n/a</td>
</tr>
<tr>
<td>Paid foreign legal data bases</td>
<td>Frequently/from time to time/rarely/ never/n/a (1,1,1,4,1 of 8)</td>
<td>Most frequently/rarely/never (2,3,1 of 6)</td>
<td>Rarely/never/n/a (1,2,1 of 4)</td>
<td>n/a</td>
</tr>
<tr>
<td>Original versions of texts of laws, jurisprudence and doctrine available in the libraries and databanks of your country</td>
<td>From time to time/rarely/n/a (3,3,2 of 8)</td>
<td>Most frequently/frequently/from time to time/rarely/never (2,1,1,1,1 of 6)</td>
<td>Frequently/from time to time/never (1,2,1 of 4)</td>
<td>n/a</td>
</tr>
<tr>
<td>Opinions of an amicus curiae</td>
<td>Most frequently/frequently/from time to time/never/rarely/n/a (1,1,1,2,2,1 of 8)</td>
<td>Frequently/from time to time/never (3,1,2 of 6)</td>
<td>Rarely/from time to time/n/a (1,2,1 of 4)</td>
<td>n/a</td>
</tr>
<tr>
<td>Opinions of a foreign legal expert</td>
<td>Most frequently/from time to time/rarely/n/a (1,1,4,2 of 8)</td>
<td>Most frequently/frequently/from time to time/never (1,3,1,1 of 6)</td>
<td>From time to time/never (2,2 of 4)</td>
<td>From time to time</td>
</tr>
<tr>
<td>Official documents (laws, case-law, etc.) or certificates of law transmitted via diplomatic channels (e.g. via the Ministry of Justice or the Ministry of Foreign Affairs)</td>
<td>From time to time/most frequently/frequently/rarely/n/a (4,1,1,1,1 of 8)</td>
<td>Never/from time to time/most frequently/rarely (3,1,1,1 of 6)</td>
<td>Never</td>
<td>Most frequently</td>
</tr>
<tr>
<td>Official documents (laws, case-law, etc.) or certificates of law transmitted by a foreign colleague (e.g. a foreign legal professional exercising the same functions in the concerned foreign country)</td>
<td>From time to time/n/a never/frequently/rarely (2,2,2,1,1 of 8)</td>
<td>Most frequently/frequently/from time to time/never (2,1,2,1 of 6)</td>
<td>Never/rarely/from time to time/n/a (1,1,1,1 of 4)</td>
<td>n/a</td>
</tr>
</tbody>
</table>
3.1.2. Problems encountered

Table IV: Problems related to access to information on foreign law (Question 20)

<table>
<thead>
<tr>
<th>Means of ascertainment</th>
<th>Problem</th>
<th>Costly</th>
<th>Lengthy</th>
<th>Not available for my profession</th>
<th>Not available in my country</th>
<th>Low quality of information obtained</th>
<th>Other</th>
<th>n/a</th>
</tr>
</thead>
<tbody>
<tr>
<td>Official sources of foreign law available on the Internet</td>
<td></td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>6</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>Paid foreign legal databases</td>
<td></td>
<td>9</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Original versions texts of laws, jurisprudence and doctrine available libraries and databanks of your country</td>
<td></td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>3</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>Opinions of an amicus curiae</td>
<td></td>
<td>5</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Opinions of a foreign legal expert</td>
<td></td>
<td>10</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Official documents (laws, case-law, etc.) or certificates of law transmitted via diplomatic channels (e.g. via the Ministry of Justice or the Ministry of Foreign Affairs)</td>
<td></td>
<td>0</td>
<td>8</td>
<td>2</td>
<td>0</td>
<td>0</td>
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<td>8</td>
</tr>
<tr>
<td>Official documents (laws, case-law, etc.) or certificates of law transmitted by a foreign colleague (e.g. a foreign legal professional exercising the same functions in the concerned foreign country)</td>
<td></td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>10</td>
</tr>
</tbody>
</table>

As it appears from the Table above (table IV), information obtained through both official sources of foreign law available on Internet and original versions of texts of laws, jurisprudence and doctrine available in Italian libraries and data banks are generally considered to be low quality. As for paid foreign legal databases and the opinions of both a foreign legal expert and amicus curiae, most of the respondents remarked that they are too expensive. Conversely, lengthiness is the major problem mentioned in relation both to diplomatic channels and foreign colleague cooperation.

It is noteworthy that, on the one hand, a lot of legal professionals chose not to give their opinion on the subject. On the other hand, some of those who have responded, namely three (3) judges, two (2) notaries and two (2) lawyers, preferred to indicate “Other problem”. This last type of remarks concerns all the sources indicated in the questionnaire.

As regards information obtained through the internet, one judge highlighted that such a source may be deemed to be the “judge’s private knowledge”, the use of which is forbidden by the principles regarding evidence in the Italian legal framework (the same observation was pointed out in relation to the foreign legal databases available for payment). Another judge mentioned his general lack of knowledge of foreign languages prevents any resort to the original versions of texts of laws,
jurisprudence and doctrine. Finally, one of the four notaries underlined the fact that the said means are not available for all the foreign countries.

As to the original version of texts of laws, jurisprudence and commentaries available in Italian libraries and data-banks, the uncertainty concerning their reliability and accuracy (three interviewed mentioned this) and the difficulties in finding them were referenced. In addition, a lawyer said that there are very few such resources available. A judge also underlined the general lack in the Italian courts of trained collaborators.

Opinions of foreign legal experts have been considered either unofficial documents or unreliable means. As for the official documents transmitted by a foreign college, a judge stated that it is not always possible to get in touch with a foreign college.


3.2.1. Frequency of Use

Irrespective of the professional category, the selected data reveals that the least used mechanism of international cooperation is the European Convention on Information on Foreign law, adopted in London on 7 June 1968. All the respondents indicated that they have never used this mechanism, except one judge who claimed to have invoked the convention from time to time. On the contrary, the diplomatic channels seem to be the most used mechanism both by the judges and the civil servant (Table VI).

However, it is noteworthy that our findings on the subject are at odds with the figures at the Ministry of Justice’s disposal. As a matter of fact, the International Relations Office at the Ministry provided us with conclusive data that, contrary to the survey’s outcome, shows that the traditional diplomatic channels are means of access to information on foreign law that are rarely used by Italian judges. Namely, the ministerial office declares that since 2005 there have been between nineteen (2005 the minimum number received) and forty-nine (2009 the maximum number received) requests received per year.
## Table V: Frequency of use of mechanisms of international cooperation (Question 21)

<table>
<thead>
<tr>
<th>Mechanism of international cooperation</th>
<th>Frequency of use</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Most frequently</td>
</tr>
<tr>
<td>The diplomatic channels (e.g. via the Ministry of Justice or the Ministry of Foreign Affairs)</td>
<td>4</td>
</tr>
<tr>
<td>The bilateral mechanisms of judicial cooperation (e.g. <em>magistrats de liaison</em>, etc)</td>
<td>1</td>
</tr>
<tr>
<td>The European Judicial Network in Civil and Commercial Matters</td>
<td>0</td>
</tr>
<tr>
<td>The mechanism of the European Convention on Information on Foreign Law, adopted in London on 7 June 1968</td>
<td>0</td>
</tr>
</tbody>
</table>
Table VI: Frequency of use by professional category of users (Question 21)

<table>
<thead>
<tr>
<th>Mechanisms</th>
<th>Judges</th>
<th>Lawyers</th>
<th>Notaries</th>
<th>Public Records Officers</th>
</tr>
</thead>
<tbody>
<tr>
<td>The diplomatic channels (e.g. via the Ministry of Justice or the Ministry of Foreign Affairs)</td>
<td>Most frequently/ Frequently/ Rarely/ n/a (2, 3, 2,1 of 8)</td>
<td>Most frequently, frequently/ Never (1,1,4 of 6)</td>
<td>Never</td>
<td>Most frequently</td>
</tr>
<tr>
<td>The bilateral mechanisms of judicial cooperation (e.g. <em>magistrats de liaison</em>, etc)</td>
<td>Most frequently Frequently/ From time to time/ Rarely (1,1,1,4 of 8)</td>
<td>Rarely/ Never (2,4 of 6)</td>
<td>Never</td>
<td>n/a</td>
</tr>
<tr>
<td>The European Judicial Network in Civil and Commercial Matters</td>
<td>From time to time/rarely/ never/n/a (2,2,2,1 of 8)</td>
<td>From time to time/ never (1,5 of 6)</td>
<td>From time to time/ Never/n/a (1,2,1 of 4)</td>
<td>n/a</td>
</tr>
<tr>
<td>The mechanism of the European Convention on Information on Foreign Law, adopted in London on 7 June 1968</td>
<td>From time to time/ Never/n/a (1,6,2)</td>
<td>Never</td>
<td>Never</td>
<td>n/a</td>
</tr>
</tbody>
</table>
3.2.2. Problems Encountered

Table VII: Problems in functioning of international cooperation mechanisms (Question 22)

<table>
<thead>
<tr>
<th>Mechanisms</th>
<th>Problem</th>
<th>Costly</th>
<th>Lengthy</th>
<th>Not available for my profession</th>
<th>Not available in my country</th>
<th>Low quality of information obtained</th>
<th>Other</th>
<th>n/a</th>
</tr>
</thead>
<tbody>
<tr>
<td>The diplomatic channels (e.g. via the Ministry of Justice or the Ministry of Foreign Affairs)</td>
<td></td>
<td>1</td>
<td>9</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>The bilateral mechanisms of judicial cooperation (e.g. magistrats de liaison, etc)</td>
<td></td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>The European Judicial Network in Civil and Commercial Matters</td>
<td></td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>The mechanism of the European Convention on Information on Foreign Law, adopted in London on 7 June 1968</td>
<td></td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>14</td>
</tr>
</tbody>
</table>

The data concerning the professionals who have responded to the above question reveal that the major problem with the international cooperation mechanisms is not only the length of each procedure, but also the lack of general knowledge as their existence and how they function. The fact that the majority of the legal professionals have not answered questions 21.2, 21.3, 21.4 confirms this finding.

This can be explained also with the fact that foreign law is rarely applied by the Italian judges participating in the survey.

As for notaries, one of the respondents pointed out that through National Confederations notaries have reached the same result which had been the objective for both the creation of the European judicial network in civil and commercial law and the institution of the diplomatic channels mechanism. However, he has also added that despite the creation of the mentioned network among National Confederations, the fastest and the most economical means for ascertaining the contents of foreign law still remains the legal opinions of experts abroad.

Of the same view is a lawyer, who supported his position by claiming that law is by its very nature a national matter.
3.3. The Need in Improvement of System of Access to Information on Foreign Law

Fourteen (14) respondents out of nineteen (19) believe that the Italian system for accessing information on foreign law needs to be modified and/or improved. The suggested improvements may be summarized as follows.

Firstly, the creation of certified and regularly up-dated foreign websites or data banks where one can find the official texts of legislation, case law and the scholars opinions translated into his or her national language. Secondly, the possible development of entities created solely to provide official assessments of foreign law. Such institutions should be easily accessible and cost efficient and the time required for a legal opinion should be known in advance. Thirdly, in connection with the framework of international cooperation, it is highly desirable for Italian judges to spread the knowledge of both its existence and how it functions and to improve the current methods. Lawyers and notaries underlined the importance of establishing systems of cooperation among both legal practitioners and their Confederations.

Concerning the national legal framework, the civil servant suggested that they should be allowed by law to ask for the assistance of the Ministry of Justice in ascertaining the content of foreign law in the same manner that article 14 of Italian private international law already authorizes for judges.

As for the Judges, they specifically underlined the necessity of establishing an official translation system for judicial documents, legislation and case law.

Concetta Leuzzi & Gian Paolo Romano
Swiss Institute of Comparative Law