



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 November 2008

15226/08

JUSTCIV 235

NOTE

from : General Secretariat of the Council
to : Committee on Civil Law Matters (General Questions)

Subject : Accession by the European Community to Conventions of The Hague Conference
on Private International Law

Delegations will find attached a copy of the letter sent to the Hague Conference on Private International Law on 14 October 2008 concerning the accession by the European Community to Conventions of The Hague Conference on Private International Law.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE, FREEDOM AND SECURITY

Directorate E : Justice
The Director

Brussels,
JLS-E2 D(2008)15901

Mr Hans Van Loon
Secretary General
Permanent Bureau
The Hague Conference
Scheveningseweg 6 2517KT The
Hague Netherlands

Subject: Accession by the European Community to Conventions of The Hague Conference on Private International Law

We refer to your letter of 2 March 2007 addressed to Mr Franco Frattini, Vice-President of the European Commission, and Ms Zypries, Minister of Justice of Germany representing the Presidency of the Council of the European Union, concerning the accession of the European Community to the Conventions of The Hague Conference on Private International Law ("the Hague Conference"). Upon its accession to The Hague Conference in 2007, the European Community made a declaration pursuant to which it would endeavour "to examine whether it is in its interest to join existing Hague Conventions in respect of which there is Community competence".

In the meantime, the European Community has already expressed its interest as regards the **1996 Child Protection Convention**, by adopting on 5 June 2008, Council Decision 2008/431/EC authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children¹.

¹ OJ L 151, 11.6.2008, p. 36.

We would like to inform you about the outcome of the examination of the Community's interest in acceding to existing Hague Conventions and thus to share with The Hague Conference steps envisaged by the European Community as regards particular Hague Conventions. It has to be emphasized that the European Community, in the context of "post-Hague Programme", i.e. a new multiannual programme in the area of freedom, justice and security (2010-2014), will continue its reflections on policy development in the relevant civil justice areas covered by the Hague Conventions and may take steps as regards the Hague Conventions that are not at present classified as conventions for immediate action by the European Community.

In the course of 2008, the European Commission and the Member States of the European Union have had in-depth discussions on the Community's interest in acceding to particular Hague Conventions, taking due account of the fact that the subject matters covered by the various Conventions do not all fall within exclusive Community competence. This examination took account of the note "Examination by the European Community of existing Hague Conventions" that you kindly submitted enclosed to your letter of 2 March 2007. When examining the Community interest in joining the Hague Conventions, several aspects were considered to be of relevance, such as the existence and extent of Community competence over the subject matter covered by the Convention in question; the compatibility of the Convention in question with existing or proposed Community legislation, as well as the state of ratification of the Convention in question.

With regard to **the 1961 Apostille Convention** and **the 1980 Child Abduction Convention** the European Community intends to take no further steps. All Member States are parties to these two Conventions which therefore already apply throughout the Community.

II. Course of action

Following the examination, the remaining Hague Conventions were classified into the groups described below for action by the European Community or its Member States.

- (a) Conventions which the European Community should join;
- (b) Conventions requiring further reflection;
- (c) Conventions which should be left aside;
- (d) Conventions which should be left for the Member States to join.

(a) Conventions which the European Community should join

Following the discussions in the Civil Law Committee, the European Community is envisaging to join ¹ the following Hague Conventions:

(i) **the 1996 Child Protection Convention**

The final procedure which will allow all Member States to become party to the 1996 Child Protection Convention in the interest of the Community is now well underway with the adoption of Council Decision on 5 June 2008. This Convention will become applicable throughout the Community as soon as the individual Member States have accomplished their internal ratification or accession procedures.

(ii) **the 2005 Choice of Court Convention**

The 2005 Choice of Court Convention allows for the signature and ratification or accession by regional economic integration organisations. In the light of the impact assessment the European Community has initiated a process of becoming party to the Convention. On 5 September 2008, the European Commission submitted a proposal for a Council Decision on the signing of the said Convention by the European Community and this proposal is now being examined in the relevant forum.

(iii) **the 2007 Child Support Convention** and

(iv) **the 2007 Protocol on the law applicable to maintenance obligations.**

The Community participated fully in the negotiation of the 2007 Child Support Convention and there is broad support for the Community and the Member States to become Contracting Parties to this Convention.

¹ If there is a Community interest in becoming a Party to the Convention falling under its competence and if the particular Hague Convention does not contain a Regional Economic Integration Organisation (REIO) clause (as is the case with many of the Hague Conventions), two legal options are possible:

- the EC negotiates its accession to a particular Hague Convention via an amendment to the Convention involved, in order to allow the EC to become a Party to the Convention; or
- the EC decides to authorise its Member States to become a Party to the Hague Convention in the interest of the Community.

Regarding the 2007 Protocol on the law applicable to maintenance obligations, the Community took an active part in its negotiation, taking into account the pending draft Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

Thus, the Community will accede to these two instruments in the near future, in particular, as regards the signature and conclusion of the above-mentioned Protocol. In the context of the negotiations on draft Regulation on maintenance obligations, a political compromise has been reached within the Community according to which the Community will sign and ratify the said Protocol to allow it to become part of Community law. As the rules of the said Protocol will have to apply within the European Community at the latest on the date of the application of the Regulation in question, necessary measures can be expected in the very near future.

(b) Conventions requiring further reflection

Further reflection by the European Community is necessary on how to proceed in relation to the following Conventions:

- (i) **the 1965 Service Convention;**
- (ii) **the 1970 Evidence Convention**

Most of the Member States are party to these two Conventions (25 Member States are party to the 1965 convention and 23 Member States are party to the 1970 convention). The European Community will finalise the discussion as to whether it is in the interests of the Community for all Member States to be party to these two Conventions in order to be able to build upon these conventions in Community's judicial cooperation with non-EU countries.

- (iii) **the 1970 Divorce Convention**

Thirteen Member States are already party to the 1970 Divorce Convention and this Convention might be seen as a useful instrument in relations between the Community and third States. However, the European Community will consider further if it is in the interest of the Community to proceed and to authorise the remaining Member States to accede to this convention. For this purpose, feedback from the Member States that already have some experience with the Convention will be necessary.

(iv) **the 1980 Access to Justice Convention**

The European Community considers that it could be useful for it to be able to use the 1980 Access to Justice Convention in its relations with third states, taking into account existing Community instrument (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 disputes¹). Thus, after further discussions, it is possible that the Community will move to join this Convention via its Member States.

(v) **the 2006 Securities Convention**

The European Community would like to inform the Hague Conference that the discussions on the proposal for a Council decision concerning the signing of the Hague Convention on the Law applicable to certain rights in respect of securities held with an intermediary are still ongoing in the relevant EC institutions.

(c) Conventions which should be left aside

At the moment, the European Community does not see the interest in proceeding with the following conventions (particularly, given the fact that the matters covered by these conventions to a large extent fall within the scope of existing Community instruments on conflict of laws rules that have universal scope of application):

(i) **the 1971 Traffic Accidents Convention;**

(ii) **the 1973 Product Liability Convention**

With the adoption of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)² and Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)³ the matters dealt with in the 1971 Traffic Accidents Convention and the 1973 Product Liability Convention are now covered by Community legislation. There seems therefore to be no need for the Community to take steps to join the 1971 Traffic Accidents Convention⁴ and 1973 Product Liability Convention.

¹ OJ L 026 , 31.01.2003 p. 41.

² OJ L 199, 31.7.2007, p. 40.

³ OJ L 177, 4.7.2008, p. 7.

⁴ However, in the future there might be need to take an account of the report to be prepared by the Commission by 20 August 2011 on the application of the Rome II Regulation, and in particular on the situation resulting from the fact that the Member States apply to traffic accidents two parallel systems (accordingly, the Regulation provides for the study "on the effects of Article 28 of this Regulation with respect to the Hague Convention of 4 May 1971 on the law applicable to traffic accidents").

(iii) **the 1978 Agency Convention.**

Similar arguments apply to 1978 Agency Convention. The matters dealt with in the 1978 Agency Convention are to a certain extent already covered by Community legislation¹. At present, the Community's interest in joining this Convention therefore seems to be limited, and no steps will be taken with regard to this Convention.

(d) Conventions which should be left for the Member States to join

At present, the European Community takes the approach that action at European Community level is not imminent² and thus it is at the discretion³ of Member States as regards accession to the following conventions:

- (i) **the 1961 Forms of Wills Convention;**
- (ii) **the 1978 Marriage Convention;**
- (iii) **the 1978 Convention on the Law Applicable to Matrimonial Property Regimes;**
- (iv) **the 1985 Trusts Convention;**
- (v) **the 1989 Convention on the Law Applicable to Succession to the Estates of Deceased Persons;**
- (vi) **the 1993 Intercountry Adoption Convention and**
- (vii) **the 2000 Protection of Adults Convention.**

¹ Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I).

² However, it has to be emphasized that the European Commission will continue to reflect on the 1961 Forms of Wills Convention, the 1978 Convention on the Law Applicable to Matrimonial Property Regimes and the 1989 Convention on the Law Applicable to Succession to the Estates of Deceased Persons, in the context of its ongoing work on wills and succession and matrimonial property. Thus, the statement above in the point (d) is subject to the further Commission's steps in the ongoing work in this area.

³ From the legal point of view, the Member States can accede to the relevant Convention as long as the EC has not exercised its competence under Article 65 of the EC Treaty.

III. Conclusion

This overview sets out the European Community's future intentions concerning accession to particular Hague Conventions. The Community interest in acceding to particular Hague Conventions is of an evolving nature and, obviously, the European Community will continue to reflect on its activities in the areas covered by the Hague Conventions that will possibly be reflected in the post Hague Programme.

Yours sincerely,

F. Fonseca Morillo
Director
DG Justice Freedom and Security
European Commission

C. Jacob
Chairman of the Civil Law Committee
Council of the European Union
