

Judicial co-operation in civil matters: accession of the European Community to the Hague Conference on Private International Law HCCH

2005/0251(AVC) - 09/12/2005 - Initial legislative proposal

PURPOSE : to enable the European Community to accede to the Hague Conference on Private International Law (HCCH).

PROPOSED ACT : Council Decision.

CONTENT : the objective of the Hague Conference on Private International Law (HCCH) is to work for the progressive unification of the rules of private international law. Since the entry into force of the Treaty of Amsterdam, the Community has competence to adopt measures in the field of judicial co-operation in civil matters having cross-border implications insofar as necessary for the proper functioning of the internal market. The Community has exerted this competence by adopting a number of instruments, many of which coincide, partially or fully, with the areas of work of the HCCH.

The adoption of these internal instruments entailed an implicit transfer of external competences in the areas covered by them from the Member States to the Community. In view of these newly acquired external powers and its increasing involvement in the work of the organisation, it became necessary for the Community to become a full member of the HCCH. At present, the Community enjoys only observer status in the organisation. Full membership of the Community in the HCCH is essential for two reasons:

- from a political point of view, membership would grant the Community a status consistent with its new role as a major international player in the field of civil judicial cooperation;
- from a legal point of view, membership would enable the Community to fully participate in the negotiations of conventions in areas of its competence by expressing its views and positions and ensuring the consistency and coherence between its own rules and envisaged international instruments.

Moreover, the Community as such rather than its Member States would be the subject of the rights and obligations stemming from Hague Conventions in areas of its competence.

Lastly, since the Statute of the HCCH contemplates only membership of States, not of international organisations, Community accession requires amendments to the Statute. Consequently, the amendments of the Statute would enter into force on 1st of July 2006 and the formal decision to admit the Community to the HCCH would be taken in the first week of July 2006. It is necessary to launch the procedure for a Council decision on the accession of the Community to the HCCH already at this time in order to ensure that the Community is ready to accede by the beginning of July 2006. The Community will then be able to deposit its instrument of accession as soon as the HCCH has taken the formal decision to admit it.