

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

2005/0251(AVC) - 07/04/2006 - Legislative proposal

This document presents the technical instrument by which the European Community accepts the Statute of the Hague Conference on Private International Law Council (HCCH). The text of the proposed Council Decision does not differ from that of the Commission's initial proposal (please refer to the summary of the previous initial proposal of 9 December 2005).

By participating in the Hague Conference, the European Community shall formally and without reservation accept the obligations arising from its membership of the Hague Conference on Private International Law, as set out in the Statute, and formally undertakes to fulfil the obligations upon it at the time of its accession.

In this context, a **Declaration of competence** of the European Community specifying the matters in respect of which competence has been transferred to it by its Member States:

- **Internal level:** the European Community has internal competence to adopt general and specific measures relating to private international law in various fields in its Member States. In respect of matters within the purview of the HCCH, the European Community notably has competence under Title IV of the EC Treaty to adopt measures in the field of judicial cooperation in civil matters having cross-border implications insofar as necessary for the proper functioning of the internal market (Articles 61(c) and 65 EC Treaty).

In areas which do not fall within its exclusive competence, the European Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the European Community. Any action by the European Community shall not go beyond what is necessary to achieve the objectives.

The European Community has made use of its competence by adopting a number of instruments under **Article 61(c) of the EC Treaty**, such as:

- § Council Regulation 1346/2000/EC of 29 May 2000 on insolvency proceedings;
- § Council Regulation 1348/2000/EC of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;
- § Council Regulation 44/2001/EC of 22 December 2000 on jurisdiction, recognition and enforcement in civil and commercial matters;
- § Council Regulation 1206/2001/EC of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;
- § 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;

- § Council Regulation 2201/2003/EC of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000/EC;
- § Regulation 805/2004/EC of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

In addition, the European Community has competence in other fields which can be subject to conventions of the HCCH, as in the field of the internal market (Article 95 EC Treaty) or consumer protection (Article 153 EC Treaty). Furthermore, provisions on private international law can also be found in other Community legislation, notably in the area of consumer protection, insurance, financial services and intellectual property. Thus, the Community Directives affected by the Hague Convention on the Law Applicable to Certain Rights of Securities held with an Intermediary were adopted on the

basis of **Article 95 of the EC Treaty**.

- **External level:** even if there is no explicit reference to external competence in the EC Treaty, it results from the jurisprudence of the Court of Justice of the European Communities that the provisions of the EC Treaty referred to above constitute legal bases not only for internal acts of the Community, but also for the conclusion of international agreements by the Community. The Community may conclude international agreements whenever the internal competence has already been used in order to adopt measures for implementing common policies, as listed above, or if international agreement is necessary to obtain one of the European Community's objectives. The Community's external competence is exclusive to the extent to which an international agreement affects internal Community rules or alters their scope. Where this is the case, it is not for the Member States but for the Community to enter into external undertakings with third States or International Organisations. An international agreement can fall entirely or only to some extent within exclusive Community competence.

- **Derogations:** Community instruments are normally binding for all Member States. Concerning Title IV of the EC Treaty which comprises the legal basis for judicial cooperation in civil matters, a special regime applies to Denmark, Ireland and the United Kingdom. Measures taken under Title IV of the EC Treaty are not binding upon or applicable in Denmark. Ireland and the United Kingdom take part in legal instruments adopted under Title IV of the EC Treaty if they notify the Council to that effect. Ireland and the United Kingdom have decided to opt in on all measures provided.

- **Evolution:** the extent of competence which the Member States have transferred to the European Community pursuant to the EC Treaty is, by its nature, liable to continuous development. The European Community and its Member States will ensure that any change in the Community's competences will be promptly notified to the Secretary-General of the HCCH as stipulated in the Statute.