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(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 5 October 2006

on the accession of the Community to the Hague Conference on Private International Law

(2006/719/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c), in conjunction with the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament ⁽¹⁾,

Whereas:

- (1) 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. The HCCH has to date adopted a substantial number of conventions in different fields of private international law.
- (2) Since the entry into force of the Treaty of Amsterdam, the Community has competence 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. 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.
- (3) It is essential that the Community be granted a status that corresponds to its new role as a major international player in the field of civil judicial cooperation and that it be able to exercise its external competence by participating as a full member in the negotiations of conventions by the HCCH in areas of its competence.
- (4) By decision of 28 November 2002, the Council authorised the Commission to negotiate the conditions and modalities of Community accession to the HCCH.

- (5) By a joint letter from the Commission and the Presidency to the HCCH of 19 December 2002, the Community applied to become a member of the HCCH, and requested the opening of negotiations.
- (6) In April 2004, a Special Commission on General Affairs and Policy of the HCCH expressed the unanimous view that, as a matter of principle, the Community should become a Member of the HCCH and determined certain criteria and procedures for the modalities of its membership.
- (7) In June 2005, the Diplomatic Conference of the HCCH adopted by consensus the amendments to the Statute of the HCCH (Statute) necessary to allow the accession of a Regional Economic Integration Organisation and the Members of the HCCH were subsequently invited to cast their votes on the amendments, if possible within a period of nine months.
- (8) The amendments to the Statute will enter into force three months after the Secretary General of the HCCH has informed the Members that the required two-thirds majority for amending the Statute has been reached. Shortly after the entry into force, an extraordinary meeting of the Council on General Affairs and Policy will formally decide upon the Community's accession to the HCCH.
- (9) The outcome of the negotiations on the revision of the Statute is satisfactory, taking into account the interests of the Community.
- (10) Article 2A of the revised Statute entitles the Community, as a Regional Economic Integration Organisation, to become a Member of the HCCH.

⁽¹⁾ Not yet published on the Official Journal.

- (11) The Community should accede to the HCCH.
- (12) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption of this Decision.
- (13) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on the European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision and is not bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

Sole Article

1. The Community shall accede to the Hague Conference on Private International Law (HCCH) by means of the declaration of acceptance of the Statute of the HCCH (Statute), as set out in Annex I to this Decision, as soon as the HCCH has taken the formal decision to admit the Community as a Member.

2. The Community shall also deposit a declaration of competence specifying the matters in respect of which competence has been transferred to it by its Member States, as set out in Annex II to this Decision, and a declaration on certain matters concerning the HCCH, as set out in Annex III to this Decision.

3. The President of the Council is hereby authorised to carry out such procedures as may be necessary to give effect to paragraphs 1 and 2.

4. The text of the Statute is attached to this Decision as Annex IV.

5. For the purpose of this Decision the term 'Member State' shall mean Member States with the exception of Denmark.

Done at Luxembourg, 5 October 2006.

For the Council

The President

K. RAJAMÄKI

ANNEX I

Instrument of accession to the Hague Conference on Private International Law

Mr J.H.A. VAN LOON
Secretary-General
Hague Conference on Private International Law
Scheveningseweg 6
2517 THE HAGUE
Netherlands

Dear Sir,

I have the honour to inform you that the European Community has decided to accede to the Hague Conference on Private International Law. I therefore ask you to accept this instrument, by which the European Community accepts the Statute of the Hague Conference on Private International Law in accordance with Article 2A thereof. I enclose a declaration by the European Community specifying the matters in respect of which competence has been transferred to it by its Member States and a declaration on certain matters concerning the Hague Conference on Private International Law.

The European Community formally and without reservation accepts 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.

I have the honour to be, Sir, yours faithfully,

President of the Council of the European Union

ANNEX II

Declaration of competence of the European Community specifying the matters in respect of which competence has been transferred to it by its Member States

1. This Declaration is given pursuant to Article 2A(3) of the Statute of the Hague Conference on Private International Law and specifies the matters in respect of which competence has been transferred to the European Community by its Member States.
2. 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). Such measures include:
 - (a) improving and simplifying the system for cross-border service of judicial and extrajudicial documents; cooperation in the taking of evidence; the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;
 - (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;
 - (c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.
3. 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.
4. Furthermore, 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).
5. 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 (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings,
 - Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters,
 - Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction, recognition and enforcement in civil and commercial matters,
 - Council Regulation (EC) No 1206/2001 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 (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, and
 - Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

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.

6. 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 ⁽¹⁾. The Community's external competence is exclusive to the extent to which an international agreement affects internal Community rules or alters their scope ⁽²⁾. 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.
7. 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 listed at point 5 above.
8. 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 Article 2A(4) of the Statute.

⁽¹⁾ Opinion 1/76 of the Court of Justice, ECR 1977, p. 741; Opinion 2/91, ECR 1993, p. I-1061; Case 22/70 (AETR); Commission v Council, ECR 1971, p. 263; Case-C-467/98 (open skies), Commission v Denmark, ECR 2002, p. I-9519.

⁽²⁾ Case 22/70 (AETR), Commission v Council, Case-C-467/98 ('open skies'), Commission v. Denmark.

*ANNEX III***Declaration by the Community on certain matters concerning the Hague Conference on Private International law**

The European Community endeavours to examine whether it is in its interest to join existing Hague Conventions in respect of which there is Community competence. Where this interest exists, the European Community, in cooperation with the HCCH, will make every effort to overcome the difficulties resulting from the absence of a clause providing for the accession of a Regional Economic Integration Organisation to those Conventions.

The European Community further endeavours to make it possible for representatives of the Permanent Bureau of the HCCH to take part in meetings of experts organised by the Commission of the European Communities where matters of interest to the HCCH are being discussed.

ANNEX IV

STATUTE OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

The Governments of the countries hereinafter specified:

the Federal Republic of Germany, Austria, Belgium, Denmark, Spain, Finland, France, Italy, Japan, Luxembourg, Norway, the Netherlands, Portugal, the United Kingdom of Great Britain and Northern Ireland, Sweden and Switzerland;

In view of the permanent character of the Hague Conference on Private International Law;

Desiring to stress that character;

Having, to that end, deemed it desirable to provide the Conference with a Statute;

Have agreed upon the following provisions:

Article 1

The purpose of the Hague Conference is to work for the progressive unification of the rules of private international law.

Article 2

Members of the Hague Conference on Private International Law are the States which have already participated in one or more Sessions of the Conference and which accept the present Statute.

Any other State, the participation of which is from a juridical point of view of importance for the work of the Conference, may become a Member. The admission of new Member States shall be decided upon by the Governments of the participating States, upon the proposal of one or more of them, by a majority of the votes cast, within a period of six months from the date on which that proposal is submitted to the Governments.

The admission shall become effective upon the acceptance of the present Statute by the State concerned.

Article 2A

1. The Member States may, at a meeting concerning General Affairs and Policy where the majority of Member States is present, by a majority of the votes cast, decide to admit also as a Member any Regional Economic Integration Organisation which has submitted an application for membership to the Secretary General. References to Members under this Statute shall include such Member Organisations, except as otherwise expressly provided. The admission shall become effective upon the acceptance of the Statute by the Regional Economic Integration Organisation concerned.

2. To be eligible to apply for membership of the Conference, a Regional Economic Integration Organisation must be one constituted solely by sovereign States to which its Member States have transferred competence over a range of matters within the purview of the Conference, including the authority to make decisions binding on its Member States in respect of those matters.

3. Each Regional Economic Integration Organisation applying for membership shall, at the time of such application, submit a declaration of competence specifying the matters in respect of which competence has been transferred to it by its Member States.

4. Each Member Organisation and its Member States shall ensure that any change regarding the competence of the Member Organisation or in its membership shall be notified to the Secretary General, who shall circulate such information to the other Members of the Conference.

5. Member States of the Member Organisation shall be presumed to retain competence over all matters in respect of which transfers of competence have not been specifically declared or notified.

6. Any Member of the Conference may request the Member Organisation and its Member States to provide information as to whether the Member Organisation has competence in respect of any specific question which is before the Conference. The Member Organisation and its Member States shall ensure that this information is provided on such request.

7. The Member Organisation shall exercise membership rights on an alternative basis with its Member States that are Members of the Conference, in the areas of their respective competences.

8. The Member Organisation may exercise on matters within its competence, in any meetings of the Conference in which it is entitled to participate, a number of votes equal to the number of its Member States which have transferred competence to the Member Organisation in respect of the matter in question, and which are entitled to vote in and have registered for such meetings. Whenever the Member Organisation exercises its right to vote its Member States shall not exercise theirs, and conversely.

9. 'Regional Economic Integration Organisation' means an international organisation that is constituted solely by sovereign States, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its Member States in respect of those matters.

Article 3

1. The Council on General Affairs and Policy (hereafter the Council), composed of all Members, has charge of the operation of the Conference. Meetings of the Council shall, in principle, be held annually.

2. The Council ensures such operation through a Permanent Bureau the activities of which it directs.

3. The Council shall examine all proposals intended to be placed on the agenda of the Conference. It shall be free to determine the action to be taken on such proposals.

4. The Netherlands Standing Government Committee, instituted by Royal Decree of February 20 1897 with a view to promoting the codification of private international law, shall, after consultation with the Members of the Conference, determine the date of the Diplomatic Sessions.

5. The Standing Government Committee shall address itself to the Government of the Netherlands for the convocation of the Members. The Chair of the Standing Government Committee presides over the Sessions of the Conference.

6. The Ordinary Sessions of the Conference shall, in principle, be held every four years.

7. If necessary, the Council may, after consultation with the Standing Government Committee, request the Government of the Netherlands to convene the Conference in Extraordinary Session.

8. The Council may consult the Standing Government Committee on any other matter relevant to the Conference.

Article 4

1. The Permanent Bureau shall have its seat at The Hague. It shall be composed of a Secretary General and four Secretaries who shall be appointed by the Government of the Netherlands upon presentation by the Standing Government Committee.

2. The Secretary General and the Secretaries must possess appropriate legal knowledge and practical experience. In their appointment account shall also be taken of diversity of geographic representation and of legal expertise.

3. The number of Secretaries may be increased after consultation with the Council and in accordance with Article 9.

Article 5

Under the direction of the Council, the Permanent Bureau shall be charged with:

- (a) the preparation and organisation of the Sessions of the Hague Conference and the meetings of the Council and of any Special Commissions;
- (b) the work of the Secretariat of the Sessions and meetings envisaged above;
- (c) all the tasks which are included in the activity of a secretariat.

Article 6

1. With a view to facilitating communication between the Members of the Conference and the Permanent Bureau, the Government of each of the Member States shall designate a national organ and each Member Organisation a contact organ.

2. The Permanent Bureau may correspond with all the organs so designated and with the competent international organisations.

Article 7

1. The Sessions and, in the interval between Sessions, the Council, may set up Special Commissions to prepare draft Conventions or to study all questions of private international law which come within the purpose of the Conference.
2. The Sessions, Council and Special Commissions shall, to the furthest extent possible, operate on the basis of consensus.

Article 8

1. The budgeted costs of the Conference shall be apportioned among the Member States of the Conference.
2. A Member Organisation shall not be required to contribute in addition to its Member States to the annual budget of the Conference, but shall pay a sum to be determined by the Conference, in consultation with the Member Organisation, to cover additional administrative expenses arising out of its membership.
3. In any case, travelling and living expenses of the delegates to the Council and the Special Commissions shall be payable by the Members represented.

Article 9

1. The budget of the Conference shall be submitted each year to the Council of Diplomatic Representatives at The Hague for approval.
2. These Representatives shall also apportion among the Member States the expenses which are charged in that budget to the latter.
3. The Diplomatic Representatives shall meet for such purposes under the chairmanship of the Minister of Foreign Affairs of the Kingdom of the Netherlands.

Article 10

1. The expenses resulting from the Ordinary and Extraordinary Sessions of the Conference shall be borne by the Government of the Netherlands.
2. In any case, the travelling and living expenses of the delegates shall be payable by the respective Members.

Article 11 (French text only)

Les usages de la Conférence continuent à être en vigueur pour tout ce qui n'est pas contraire au présent Statut ou aux Règlements.

Article 12

1. Amendments to the present Statute must be adopted by consensus of the Member States present at a meeting concerning General Affairs and Policy.
2. Such amendments shall enter into force, for all Members, three months after they are approved by two thirds of the Member States in accordance with their respective internal procedures, but not earlier than nine months from the date of their adoption.
3. The meeting referred to in paragraph 1 may change by consensus the periods of time referred to in paragraph 2.

Article 13

To provide for their execution, the provisions of the present Statute will be complemented by Regulations. The Regulations shall be established by the Permanent Bureau and submitted to a Diplomatic Session, the Council of Diplomatic Representatives or the Council on General Affairs and Policy for approval.

Article 14

1. The present Statute shall be submitted for acceptance to the Governments of States which participated in one or more Sessions of the Conference. It shall enter into force as soon as it is accepted by the majority of the States represented at the Seventh Session.
2. The statement of acceptance shall be deposited with the Netherlands Government, which shall make it known to the Governments referred to in the first paragraph of this Article.

3. The Netherlands Government shall, in the case of the admission of a new Member, inform all Members of the statement of acceptance of that new Member.

Article 15

1. Each Member may denounce the present Statute after a period of five years from the date of its entry into force under the terms of Article 14(1).

2. Notice of the denunciation shall be given to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiration of the budgetary year of the Conference, and shall become effective at the expiration of the said year, but only with respect to the Member which has given notice thereof.

The English and French texts of this Statute, as amended on..... 200..., are equally authentic.
