AFFAIRES GÉNÉRALES ET POLITIQUE
GENERAL AFFAIRS AND POLICY

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Février / February 2005

HccH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

NOTE RELATIVE A L'ADMISSION DE LA COMMUNAUTE EUROPEENNE AU SEIN DE LA CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE

Mise à jour du Document préliminaire No 13 de février 2004

établie par le Secrétaire général

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NOTE ON THE ADMISSION OF THE EUROPEAN COMMUNITY TO THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

Update to Preliminary Document No 13 of February 2004

drawn up by the Secretary General

Document préliminaire No 20 de février 2005
à l'intention de la Commission spéciale de mars / avril 2005
sur les affaires générales et la politique de la Conférence

Preliminary Document No 20 of February 2005
for the attention of the Special Commission of March / April 2005
on General Affairs and Policy of the Conference

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NOTE RELATIVE A L'ADMISSION DE LA COMMUNAUTE EUROPEENNE AU SEIN DE LA CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE

Mise à jour du Document préliminaire No 13 de février 2004

établie par le Secrétaire général

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NOTE ON THE ADMISSION OF THE EUROPEAN COMMUNITY TO THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

Update to Preliminary Document No 13 of February 2004

drawn up by the Secretary General

1. It will be recalled that the Special Commission on General Affairs and Policy of the Conference discussed the request submitted by letter of 19 December 2002 to the Secretary General for admission of the European Community to the Hague Conference on Private International Law, at its meetings of 1-3 April 2003,[1] and 6-8 April 2004. In his "Note on the Admission of the European Community to the Hague Conference on Private International Law", Preliminary Document No 13 of February 2004 for the attention of the Special Commission of April 2004 (Annex 1),[2] the Secretary General had presented several recommendations which were discussed at the April 2004 meeting.

2. The Special Commission of April 2004 discussed the request for admission at length. According to the Conclusions of the meeting:

> "**8. Admission of the European Community to the Hague Conference on Private International Law**
>
> The Special Commission on General Affairs and Policy expressed the unanimous view, that as a matter of principle, the European Community should become a Member of the Hague Conference, the modalities of such membership to be determined according to the following criteria and procedures.
>
> The admission of the European Community will require a modification of the Statute, of the Rules of Procedure for Plenary Meetings and of the Regulations on Budgetary Matters. Work on these modifications should be undertaken in parallel and any final decision on the admission of the European Community should be taken on the basis of an agreed package of amendments to all the relevant instruments.
>
> The modification of the Statute should not be restricted to the admission of the European Community but should allow for the admission of any Regional Economic Integration Organisation (REIO) to which its Member States have transferred competence on matters of private international law.
>
> It was further agreed that Membership of the European Community – or REIOs in general - should not lead to additional voting or procedural rights (the principle of "non-additionality"). In any case, there was a common wish that the work of the Conference be conducted as much as possible on a consensus basis.
>
> Differing views were expressed on the question of how competences of the European Community should and could be declared and exercised, and how it would be ensured that clarity is provided. There was a common wish that a free flow of ideas be maintained during the meetings of experts.
>
> The amendment of the Statute should – without prejudice to the possibility of further reform at a later stage – include further limited revisions in respect of Articles 3, 4, 5, 6, 7 and possibly 12 and 13.

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[1] See "Conclusions of the Special Commission of April 2003", paragraph 8, p. 10.

[2] The Annexes to Preliminary Document No 13, being very voluminous, are omitted. They are, however, accessible on the website of the Hague Conference, at:
< www.hcch.net/upload/wop/genaff2005/genaff_pd13f_annex_a.pdf >
< www.hcch.net/upload/wop/genaff2005/genaff_pd13f_annex_bcd.pdf >. Furthermore, the attachment to Preliminary Document No 13 is not reproduced in the attached annex.

The experts were invited to give further thought to the interpretation of Article 12 (on amendment) of the Statute.

It was agreed that the Secretary General, assisted by the Informal Advisory Group and in consultation with the European Commission, should draw up a complete proposal, including modifications of the Statute, the Rules of Procedure and the Regulations on Budgetary Matters. This proposal should be submitted for consideration, if possible, to the next meeting of the Special Commission.

Pending the formal admission of the European Community as a Member of the Conference, the Conference should continue to facilitate participation of the European Community in the work of the Conference."

3. The Secretary General, therefore, convened a second meeting of the Informal Advisory Group, which was held on 16 and 17 December 2004, again chaired by H.E. Mrs Xue Hanqin, Ambassador of the People's Republic of China in the Netherlands. The list of participants is attached to this Note (Annex 2). The European Commission attended the meeting both days. In preparation for this meeting, the Secretary General had prepared several draft proposals for (1) amendment to the Statute of the Conference, (2) an Agreement between the Hague Conference and the European Community, and (3) the Rules of Procedure for Plenary Meetings, with Explanatory Notes.

4. Considering the discussions at the meeting of the Special Commission from 6-8 April 2004, and the views expressed in the Informal Advisory Group, the Secretary General submits a draft Recommendation for consideration by the Special Commission on General Affairs and Policy of the Conference at its meeting on 31 March-1 April 2005 (Prel. Doc. No 21A), with Explanatory Notes (Prel. Doc. No 21B). The members of the Informal Advisory Group were given the opportunity to comment on an earlier draft of this Recommendation and their comments have been taken into account.

The draft Recommendation addresses itself to the Twentieth Session, for consideration by its Commission I, on General Affairs and Policy, and then by the Plenary, the Decision of the Plenary to be included in the Final Act of the Twentieth Session.

5. The Recommendation consists of six points:

- amendments to the Statute with a view to their submission to Member States for their approval in accordance with Article 12;
- adoption, as the English version of the amended Statute equally authentic to the French original authentic text, of the text which appears in Annex 2 to the draft Recommendation;
- a procedure for the voting on the amendments;
- amendments to the Rules of Procedure for Plenary Meetings;
- concerning certain assurances given by the European Community;
- concerning the decision to admit the European Community as a Member of the Hague Conference.

6. It will be seen that the draft Recommendation (contrary to what was proposed in Prel. Doc. No 13, point 19, pp. 7-8) no longer contains a proposal for a separate Agreement between the Hague Conference and the European Community. One of the advantages of such agreement would have been that it could have set out in greater detail the specific reasons for the admission of the European Community as well as

modalities and conditions specific for the European Community. The disadvantages of a separate agreement – in particular the additional complexity to which it may lead – however, were considered greater than its advantages by most members of the Informal Advisory Group. The Secretary General, in the light of the arguments presented, has therefore decided not to include such an agreement in the present draft Recommendation. Consequently, the modalities and conditions now appear, *for REIOs (Member Organisations) in general*, in the proposal for amendment to the Statute.

7. It is proposed that the Special Commission of March / April 2005, first, agree on the *text* of the amendments to the Statute of the English version as equally authentic to the original French text, and of the amendments to the Rules of Procedure, next determine the *procedure* for the vote on the amendments to the Statute (and the English version), and finally prepare the decision on the admission of the European Community as a Member of the Hague Conference on Private International Law.

A N N E X E S

Annex 1

Affaires générales et politique
General affairs and policy

Doc. prél. No 13
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Février / February 2004

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NOTE RELATIVE A L'ADMISSION DE LA COMMUNAUTE EUROPEENNE AU SEIN DE LA CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE

établie par le Secrétaire général

* * *

NOTE ON THE ADMISSION OF THE EUROPEAN COMMUNITY TO THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

drawn up by the Secretary General

Document préliminaire No 13 de février 2004
à l'intention de la Commission spéciale d'avril 2004
sur les affaires générales et la politique de la Conférence

Preliminary Document No 13 of February 2004
for the attention of the Special Commission of April 2004
on General Affairs and Policy of the Conference

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Annex 1

NOTE RELATIVE A L'ADMISSION DE LA COMMUNAUTE EUROPEENNE AU SEIN DE LA CONFERENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVE

établie par le Secrétaire général

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NOTE ON THE ADMISSION OF THE EUROPEAN COMMUNITY TO THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

drawn up by the Secretary General

INTRODUCTION

1. As appears from the Conclusions of the Special Commission held from 1-3 April 2003 on General Affairs and Policy of the Conference:[1]

> The Special Commission on General Affairs and Policy took note with much interest of the request, submitted by letter of 19 December 2002 to the Secretary General, for admission of the European Community to the Hague Conference on Private International Law, as well as of the comments made by Member States as reflected in the Secretary General's letter of 13 March 2003.
>
> It was agreed that, following receipt as soon as possible of further information to be supplied by the European Community in particular concerning the respective competences of the Community and its Member States, and of comments and questions by Member States on this information, the Secretary General will convene an informal advisory group which will examine the issues linked to the request, including those mentioned in the letter of 13 March 2003, and assist the Secretary General in the preparation of recommendations to be considered by the Special Commission on General Affairs and Policy to be convened in the spring of 2004.
>
> The informal advisory group will include persons with experience in public international law as well as in the work of the Hague Conference, representing various regions of the world and different legal systems.
>
> Complementary information, in particular concerning the respective competences of the Community and its Member States, was supplied by the Director General for Justice and Home Affairs of the European Commission in his letter of 31 July 2003, circulated by the Secretary General to all Member States of the Conference by circular letter L.c. ON No 37(03) of 25 August 2003. This led to the submission of further comments by Member States (**see Annex A, EC Membership Documents**, Parts 3 and 4).

2. An Informal Advisory Group, chaired by H.E. Mrs Xue Hanqin, Ambassador of the People's Republic of China to the Kingdom of the Netherlands, was convened by the Secretary General and met from 21 to 23 January 2004 at the Permanent Bureau at The Hague – the List of Participants is attached to this Note. On the second day experts from the European Commission, led by Mr Mario P. Tenreiro, Head of the Civil Co-operation Unit, Directorate of Justice and Home Affairs, were present to give further explanations and respond to questions.

3. Considering the discussions of the meeting of the Special Commission from 1-3 April 2003, the comments submitted by Member States, the written information provided by the European Commission, and, in particular, the views expressed in the Informal Advisory Group, the Secretary General submits the following recommendations to the Special Commission of April 2004:

(a) The Special Commission may wish to decide, as a matter of principle, that the European Community (EC) should become a Member of the Hague Conference on Private international Law (HCCH), the modalities of such membership to be determined according to the criteria and procedures set out *infra* II (paragraphs 16-30) and III (paragraphs 32-33).

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[1] See *Conclusions of the Special Commission held from 1-3 April 2003 on General Affairs and Policy of the Conference*, drawn up by the Permanent Bureau, April 2003, paragraph 8, Page 10.

(b) The admission of the EC will require a modification of the Statute, of the Rules of Procedure for Plenary Meetings and of the Regulations on Budgetary Matters. Work on these modifications should be undertaken in parallel and any final decision on the admission of the EC should be taken on the basis of an agreed package of amendments to all the relevant instruments.

(c) Pending the formal admission of the EC as a Member of the Organisation, HCCH shall continue to facilitate full EC participation in the work of the Organisation.

I. ISSUES TO BE ADDRESSED

Current situation

4. As the Informal Advisory Group agreed, from a practical standpoint, participation of and negotiations by the EC has been facilitated to a very large extent within the existing structure of HCCH. Moreover, issues about voting have been recently avoided by applying the consensus method instead of the detailed Rules of Procedure for Plenary Meetings (hereinafter RP). On the other hand, it was felt that it was not satisfactory that the EC – while being vested with significant competence in private international law, in a position, in practice, to negotiate and formally to join the latest Hague Convention (*cf.* Article 18, Securities Convention), and, most likely, future Hague Conventions – should retain from a formal standpoint, the status of an Observer. Granting Member status to the EC would also offer an opportunity to clarify and, if appropriate, regulate several other issues such as the declaration and exercise of competences, the modalities of participation and eligibility for election, the right to vote, financial aspects and the effect of evolving EC competences on existing Hague Conventions.

A. Declaration and exercise of competences

5. The Informal Advisory Group held extensive discussions on the question of the respective competences of the EC and its Member States, the evolving nature of these competences, as well as their impact on the negotiations within HCCH.

It was recognised that the division of competences between the EC and its Member States is a highly complex issue. It was also recognised that the movement of competences is a continuing and sometimes delicate matter. Especially for non-EC Member States, however, it was felt that it was essential to know, before and during negotiations, who had the authority to negotiate and to conclude a Convention. Moreover, after the conclusion of any Convention – especially in the case of a subsequent shifting of competences to the EC – it was vital to be able to ascertain who was the responsible Party to the Convention (see *infra* E).

6. As regards the position before and during the negotiations and at the time of the conclusion of any treaty, the preponderant view within the Informal Advisory Group was that there should be at least a general understanding of the division of competences as between the EC and its Member States in respect of the subject matter in question. No final conclusion was reached on the desirability or feasibility of detailed declarations of competences, although it was felt that the FAO model (a declaration for each single item of the agenda) would not be practicable.

7. The Informal Advisory Group attached great value to preserving, as a resource of HCCH, direct input from the diverse legal systems and the rich variety of private international law traditions in Europe. In this respect, it would be important to maintain a degree of flexibility, especially in the early stages of the discussions and negotiations, so as to ensure the best possible combination of variety of input and efficiency. It was also pointed out that the input of European legal systems would be conveyed by the European Commission on the basis of the input it receives from EC Member States in the context of EC coordination.

B. Modalities of participation and eligibility for election

8. This question was discussed mainly with regard to EC participation in budgetary decisions (see also *infra* paragraph 11), without a conclusion being reached. *De facto*, it has already been ensured that, as far as negotiations on Conventions are concerned, the EC is represented not only at the Diplomatic Sessions, Special Commissions and formal working groups but also in informal groups and drafting committees in which EC Member States' experts take part.

C. The right to vote

9. The Informal Advisory Group agreed that Membership of the EC should not lead to additional voting rights (the principle of "non-additionality), and that in cases where a vote was to be taken on a matter within EC competence:

- the EC should have a number of votes equal to the number of its Member States present at the vote (or, alternately, entitled to vote) and which have transferred competence to it over the matter in question, and
- whenever the EC exercised its right to vote, its Member States should not exercise theirs, and conversely.

10. The Informal Advisory Group also agreed that the RP should be modified to reflect the preference of HCCH Member States to avoid voting and strive for consensus.

D. Financial aspects

11. The Informal Advisory Group discussed only briefly the nature of the financial obligations that would follow from EC membership (regular contribution to the budget, or payment to cover administrative and other expenses). For some this question was related to that of EC participation in the meetings of the Council of Diplomatic Representatives which, according to the Statute, decides on budgetary matters.

E. Effect of evolving EC competences on existing Hague Conventions

12. As regards the impact of evolving EC competences, and the resulting changes to the distribution of competence between the EC and its Member States, Article 18(2) of the Hague Securities Convention provides a model for future Hague Conventions. The Informal Advisory Group discussed only briefly the effects of such changes on existing, and possible future treaty obligations arising under Hague Conventions adopted before 2000, which, contrary to the Securities Convention (Article 18(1)), do not expressly provide for the adherence to the Convention by Regional Economic Integration Organisations. Three aspects were mentioned:

(1) Effects on Convention obligations

13. The effect of the exercise by the EC of legislative competence in a field already covered by a Hague Convention adopted prior to 2000 may vary depending on the nature of the Convention in question.

On the one hand, there are the Conventions that establish universally applicable choice of law rules: such Conventions cannot co-exist with later EC instruments providing for incompatible universally applicable choice of law rules. On the other hand, there exist Conventions that are based on reciprocity, in particular the numerous Hague Conventions establishing forms of judicial and administrative co-operation among courts and Central

Authorities: such Conventions may co-exist with later EC instruments providing for differing or stricter reciprocal obligations among EC Member States (*inter se*). Indeed, many of the Hague Conventions make express provision for the possibility of more integrated approaches at regional level. Still, non-EC States Parties to such Conventions must be able to rely on Convention obligations assumed by the original EC parties.

(2) Specifically: on monitoring and review of Conventions

14. The issue was also raised by the respective roles of the EC and its Member States in relation to the monitoring of existing Conventions, where changes of competence may have occurred. The importance of maintaining direct involvement by the individual States in the processes of monitoring and review was acknowledged.

(3) On the possibility to join Conventions

15. The exercise of legislative competence by the EC in a field already covered by Hague Conventions negotiated and adopted before 2000 may also have an impact on the possibility for EC Member States to join such Conventions. It was recognised that the procedure followed for the 1996 Convention (signature and ratification) "in the interest of the EC" might be used for other Conventions. These questions may need further discussion.

II. MODIFICATIONS REQUIRED IN THE FORMAL FRAMEWORK[2]

16. The current formal framework of HCCH consists of:

(a) the Statute, adopted by the Seventh Session in 1951, and entered into force on 15 July 1955;
(b) the (standard) Rules of Procedure for Plenary Meetings (RP), adopted at each Diplomatic Session since the XIth Session in 1968;
(c) the Regulations on Budgetary Matters (RB), adopted on 4 November 1994, and the Pension Scheme Rules, entered into force on 1 June 1981 (**see Annex B, basic HCCH documents**).

EC Membership will necessitate an amendment of the Statute, the RP and the RB.

This was the predominant view among the Informal Advisory Group.

A. Amendment of the Statute

(1) Character of the amendment

17. The Statute may be amended in accordance with its Article 12 (see *infra* paragraph 25), either by an addition to Article 2, or by a separate article following Article 2, so as to allow Regional Economic Integration Organisations (REIO's),

- constituted by sovereign States,
- a majority of which are Member States of HCCH, and
- to which its Member States have transferred competence over a range of matters within the purview of HCCH, including the authority to make decisions binding on its Member States in respect of those matters,

[2] Recommendations of the Secretary General. Notes on the views of the Informal Advisory Group appear in italics.

to become Members of HCCH (*cf.* Article II(4) of the Constitution of the Food and Agricultural Organisation of the United Nations, hereinafter "FAO Constitution", **see Annex C, FAO and FAO related documents on REIO's**).

> *The Informal Advisory Group agreed that the amendment of the Statute should not be restricted to the admission of the EC but should allow future admissions of other REIO's to which its Member States would have transferred competence on matters of private international law. The group discussed the possibility of a wider definition, not restricted to REIO's (since the EC's competences are not limited to* economic *matters) but in the end preferred to follow the precedents of other international organisations such as FAO, because, in any event, the EC was also an REIO.*

18. As a consequential change, Article 2, paragraphs 2 and 3 of the Statute may need amendment so as to apply also in the case of REIO's.

As an alternative to such an amendment, one could follow the example of Article II(3) FAO Constitution: application for Membership with the Secretary General (*cf.* also FAO, General Rules of Procedure, Rule XIX (Annex C)); decision by a Diplomatic Session or Special Commission on General Affairs and Policy by a two-thirds majority of the votes cast, provided that a majority of the Member States is present.

19. In order for the Statute to retain its succinct form and character, the *principles* governing the *admission* of REIO's could be included in the Statute itself, while the rights and obligations of each REIO could be laid down in a separate Agreement, as follows:

> The conditions and modalities of the admission shall be determined in an agreement between HCCH and such REIO, approved in accordance with the procedure (set out *supra* paragraphs 17 and 18), at the same time as the decision on the admission, and will enter into force at the same time as that decision. That agreement shall determine, in particular, the following matters:
>
> (a) the declaration and exercise of competences by the REIO and by those of its Members that are also Member States of HCCH.
>
> *See Article II(5)-(8) FAO Constitution; Rule XLI FAO General Rules of Procedure; Rule II(1) and (5)-(7), Rules of Procedure Codex Alimentarius Commission (hereinafter: Codex) (Annex C);*
>
> (b) the modalities of the participation of the REIO and its Members in the meetings of the Organisation and the eligibility for election in bodies constituted by the Organisation.
>
> *See Article II(9) FAO Constitution; Rule II(2) and (4) Codex;*
>
> (c) the right to vote of the REIO and its Member States.
>
> *See Article II(10) FAO Constitution; Rule II(3) Codex;*
>
> (d) the financial contribution of the REIO to the Organisation.
>
> *See Article XVIII(6) FAO Constitution*, and possibly;
>
> (e) the possibility of the REIO and/or its Member States to adhere to Hague Conventions adopted before 2000.

The agreement between HCCH and the REIO could be accompanied by amendments of the RP – for (a), (b) and (c), see *infra* paragraphs 26-29 - and of the RB (for (d)), see *infra* paragraph 30.

20. In the less preferred alternative to that proposed in the previous paragraph, the rights and obligations of an REIO might be spelled out in the Statute itself. As a minimum, this would probably require including in the Statute rules similar to Articles II(5)-(9) and XVIII(6) FAO Constitution (the right to vote could be left to the RP, as is the case at present).

As in the previous alternative, further details might be regulated through amendments of the RP and the RB.

21. The inclusion of a provision on REIO's in the Statute may lead to (minor) consequential changes and / or clarifications in the Statute. The term "Members" should be clear as to whether it is intended to include also REIO's or only States (Articles 2-4, 6, 8-10, 12, 13, 15).

(2) Scope of the amendment

22. One possibility, which found some support in the Informal Advisory Group, would be to leave it at this: HCCH has developed organically from its Statute, has been able recently to increase its membership by more than one-third, and works generally well, despite the fact that "constitutional" changes have occurred which are not reflected in the Statute.

23. On the other hand, it may be argued that since (1) the Statute has now been in force for almost fifty years and has never been reviewed, and (2) the revision that will now be needed so as to make provision for the EC, is a rare, and possibly (see *infra* paragraph 25) somewhat complicated event, the occasion should be seized to undertake a general review of the Statute. Such a review may, in any event, be desirable so as to equip the Organisation with the organs and procedures needed to enable it more fully to perform its mission in a new global environment. However, such a reform may involve a very lengthy process.

24. At this stage, it is proposed – without excluding a further reform at a later stage – to revise the Statute, at this point, no more than is necessary to adapt it to current needs. This would mean that, in addition to the inclusion of REIO's (with the changes proposed *supra* paragraphs 17-21), the following Articles would be amended:

- Article 3: confirm the role of the (Special) Commission on General Affairs and Policy; the Standing Government Committee would have a consultative and advisory role.
- Article 4 (possibly): adapt numbers of "Secretaries"; provide that they should not all have the nationality of one REIO.
- Articles 5 and 7: adapt to new Article 3.
- Article 12 (possibly and to the extent necessary): put beyond doubt that the Statute may be amended by a two-thirds majority decision of the Special Commission on General Affairs and Policy.

The predominant view of the Informal Advisory Group was that a revision of the Statute should go slightly beyond what would be strictly necessary to include REIO's, and should be used to replace some obviously outdated rules with more modern ones. However, this should not be a process that should unduly delay EC admission and the additional changes should be "minimalistic".

(3) Procedure for the amendment

25. The history of Article 12 of the Statute, dealing with modifications of the Statute, shows that the drafters had a relatively simple procedure in mind: a decision, by a two-thirds majority, in a Diplomatic Session or even in a written procedure (see *Actes et documents de la Septième session*, p. 339, Annex B) would be enough to cause the amendment to come into force.

> *The discussion in the Informal Advisory Group revealed different views on whether parliamentary approval of any amendments of the Statute would be needed; for some, this might depend on the nature and scope of the amendments.*

Further discussion is needed.

B. Amendment of the Rules of Procedure for Plenary Meetings

Consensus

26. The RP should reflect the practice which has recently grown in the HCCH meetings and which is that of operating by consensus. The RP should make clear that voting is the exception, that the normal procedure is based upon consensus, and that the Chair will make every effort to achieve consensus; in such a system, voting, by simple or qualified majority, may be maintained as a last resort.

Some examples of such a system may be found in **Annex D, Possible precedents providing for decision making by consensus**.

Quorum and voting

27. As regards quorum and voting arrangements, Article II(10) FAO Constitution Rule, Article XLIV of the FAO General Rules of Procedure and Rule II(3) Codex may serve as models.

Declaration of competence

28. The RP should probably contain some rules about declaration of competences of REIO's and their Member States or declarations concerning the respective capacities in which the REIO and its Member States are speaking, but not necessarily of the level of detail of Rule II(5) (in particular its first sentence) of the Codex, or of the FAO provisional guidelines.

> *In the Informal Advisory Group several suggestions were made including the following: prior to any formal declaration, expert discussions would proceed in an informal way for a significant length of time which would then be followed by a formal discussion on the basis of a formal declaration of competences; or a loose declaration would be made at the beginning of the process, and a more detailed declaration once final decisions were to be taken.*

Participation and eligibility

29. The RP might include rules such as Article 9(II) FAO Constitution and Rule II(2) and (4) Codex.

C. Amendment of Budgetary Regulations

30. A decision will have to be taken on the issue mentioned *supra* paragraph 11. If the EC were to contribute to the Budget as a Member, the RB should be amended accordingly. Otherwise, if Article XVIII(6) FAO Constitution were to be followed, a decision could be taken by the Council of Diplomatic Representatives.

III NEXT STEPS

31. It is proposed that, on the basis of the decision of the Special Commission on any of the aforementioned conditions and modalities, the Secretary General, assisted by the Informal Advisory Group and in consultation with the EC organs, should draw up a complete proposal, including a draft agreement between HCCH and the EC as referred to *supra* paragraph 19, and the necessary modifications of the Statute, the RP and the RB. This proposal should be submitted for approval, if possible, to the next meeting of the (Special) Commission on General Affairs and Policy of the Conference.

32. The future meeting of the (Special) Commission on General Affairs and Policy should also decide how the procedure for amendment of the Statute (*supra* paragraph 25), of the RP and the RB will be implemented.

Annex 2

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HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

Second meeting of the
Informal Advisory Group on the Admission
of the European Community to the Hague Conference

16-17 December 2004

*** * ***

Deuxième réunion du groupe consultatif informel sur l'admission
de la Communauté européenne à la Conférence de La Haye

16-17 décembre 2004

List of Participants / Liste des participants

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Mr Julio Diego GONZALEZ CAMPOS, Former Judge at the Constitutional Court of Spain, Professor at the Autonomous University of Madrid, Spain / Ancien Juge à la Cour constitutionnelle d'Espagne, Professeur à l'Université Autonome de Madrid, Espagne

Mr Yasuhito INOUE, First Secretary (Legal Matters), Embassy of Japan / Premier secrétaire (Affaires juridiques), Ambassade du Japon

Mr Jeffrey KOVAR, Assistant Legal Adviser for PIL, Department of State, United States of America / Conseiller juridique adjoint de DIP, Département d'Etat, Etats-Unis d'Amérique

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Mr L. Göran T. LAMBERTZ, Chancellor of Justice, Sweden / Chancelier de Justice, Suède

Mr Alexander MATVEEV, Deputy Director, Legal Department, Ministry of Foreign Affairs, Russian Federation / Directeur adjoint, Service juridique, Ministère des affaires étrangères, Fédération de Russie, assisted by / assisté de:

Mr Konstantin KOSORUKOV, Attaché, Legal Department, Ministry of Foreign Affairs, Russian Federation / Attaché, Service juridique, Ministère des affaires étrangères, Fédération de Russie

Mrs Kathryn SABO, General Counsel, Private International Law Team, Department of Justice, Public Law Policy Section, Ottawa, Canada / Conseiller général, équipe de droit international privé, Ministère de la Justice, Ottawa, Canada

Mr Rolf WAGNER, Head of Section for Private International Law, Ministry of Justice, Germany / Directeur du Département de droit international privé, Ministère de la Justice, Allemagne

H.E. Mrs XUE HANQIN, Ambassador of the People's Republic of China to the Kingdom of the Netherlands, **Chair of the Informal Advisory Group** / Ambassadeur de la République populaire de Chine au Royaume des Pays-Bas, **Présidente du groupe consultatif informel**

Representing the European Community / Représentants de la Communauté européenne :

Mr Mário P. TENREIRO, Head of the Unit "Judicial co-operation in civil law matters" DG "Justice, Liberty and Security" / Chef d'Unité « Coopération judiciaire civile » DG , « Justice, Liberté et Sécurité »
Mr José ALEGRE-SEOANE, Legal Officer / Collaborateur juridique
Ms Katja LENZING, Legal Officer / Collaboratrice juridique
Mr Bernd MARTENCZUK, Member of the Legal Service / Service juridique

The meeting was also attended by / Etaient également présents à la réunion :

Professor A. (Teun) V.M. STRUYCKEN, President of the Netherlands Standing Government Committee on Private International Law / Président de la Commission d'état néerlandaise de droit international privé

Ms Susanna TERSTAL, Head of the Civil Law Department, Netherlands Ministry of Foreign Affairs / Directrice du département de droit civil, Ministère des Affaires Etrangères des Pays Bas

Professor Niels BLOKKER, Legal Adviser of the Netherlands Ministry of Foreign Affairs / Conseiller juridique du Ministère des Affaires Etrangères des Pays Bas

and the Members of the Permanent Bureau / et les membres du Bureau Permanent:

Mr Hans VAN LOON, Secretary General / Secrétaire général
Mr William DUNCAN, Deputy Secretary General / Secrétaire général adjoint
Mr Christophe BERNASCONI, First Secretary / Premier secrétaire
Mr Philippe LORTIE, First Secretary / Premier secrétaire
Ms Andrea SCHULZ, First Secretary / Premier secrétaire
Ms Sarah ARMSTRONG, Legal Officer (Recording Secretary) / Collaboratrice juridique (secrétaire rédacteur)
Ms Ivana RADIC, Intern (Recording Secretary) / stagiaire (secrétaire rédacteur)

Unable to attend / Excusés :

Ms Jennifer DEGELING, Attorney-General's Department, Family Law Branch, Canberra, Australia / Ministère du Procureur-général, Secteur du droit de la famille, Canberra, Australie

H.E. Mr Kirill G. GEVORGIAN, Ambassador of the Russian Federation to the Kingdom of the Netherlands / Ambassadeur de la Fédération de Russie au Royaume des Pays-Bas

Mr Ahmed GHANEM, Counsellor, member of the Technical Office, General Department for Cultural and International Co-operation, Ministry of Justice, Egypt / Conseiller, membre du Bureau Technique, Département général pour la culture et la coopération internationale, Ministère de la Justice, Egypte

H.E. Mr Fausto POCAR, Vice President of the International Criminal Tribunal for the former Yugoslavia (ICTY), Italy / Vice-président du Tribunal Pénal International pour l'Ex-Yougoslavie (TPIY), Italie

Mr Bruno STURLESE, Deputy Director for International Negotiations, Ministry of Justice, France / Sous-directeur des négociations internationales, Ministère de la Justice, France

Ms Mieke THEWESSEN-EELTINK, Senior Lawyer, Department of Civil Law, Netherlands Ministry of Foreign Affairs / Juriste principale, département de droit civil, Ministère des Affaires Etrangères des Pays Bas

H.E. Mr Gilberto VERGNE SABOIA, Ambassador of Brazil to the Kingdom of the Netherlands / Ambassadeur du Brésil au Royaume des Pays-Bas

Professor Joe VERHOEVEN, Secretary General of the International Law Institute, Professor at the University Paris-II, Belgium / Secrétaire Général de l'Institut de droit international, Professeur à l'Université Paris-II, Belgique