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

EXAMINATION BY THE EUROPEAN COMMUNITY OF EXISTING HAGUE CONVENTIONS

Note drawn up by the Secretary General of the Hague Conference on Private International Law

Introduction

1. According to the Final Act of the Twentieth Session of the Hague Conference on Private International Law (hereinafter HCCH) of 30 June 2005, under C5, the Session:

> *"[took] note with satisfaction, of the assurance given by the European Community that it will, on the occasion of its acceptance of the Statute, deposit a written declaration to the following effect –*
>
> *a) The European Community endeavours to examine whether it is in the interest of the Community to join existing Hague Conventions in respect of which there is Community competence. Where this interest exists, the European Community, in co-operation with the Hague Conference, 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 these Conventions.*
>
> *b) The European Community endeavours to make participation possible of representatives of the Permanent Bureau of the Conference in meetings of experts organised by the European Commission where matters of interest to the Conference are being discussed."*

2. This Note seeks to assist the European Community in its examination of the question, referred to under *a)* above, **which of the existing Hague Conventions it would be in the interest of the Community to join**. To this end, the Hague Conventions have been grouped under three headings: **(I.)** Conventions which have been listed under "Conventions in the Area of the EU Acquis"; **(II.)** Conventions, not now included in this list, on matters also covered by Community legislation (existing or under preparation); and **(III.)** other Conventions in respect of which Community competence has not been exercised, but which may well be considered in the broader context of concerted action to be taken by EU Member States in their common interest.

Preliminary observations on working methods of the Hague Conference, and on the current status of Hague Conventions in the European Union

3. Before shortly discussing the Hague Conventions individually, a few preliminary observations may be helpful.

4. The HCCH has developed a characteristic method of work, which combines rigour and flexibility. The rigour appears in the careful **scientific** analysis of the data, laws and needs that form the basis of its negotiations as well of its unique "post-Convention" services. Each of the 36 multilateral treaties or Conventions adopted since 1951 has been drawn up on the basis of careful preparation: an extensive scientific study, full **expert** discussions and several rounds of negotiations. Each Convention is accompanied by a detailed Explanatory Report, drawn up by one or more expert delegates, which provides courts, authorities, practitioners and indeed the public with a clear explanation of the instrument, its purpose and structure, as well as article-by-article comments.[1]

The flexibility appears, firstly, in the adaptation of the working methods according to specific needs for specific instruments.[2] More generally, the negotiation procedures have been flexible in so far as international organisations, both governmental and non-governmental, **representing the private and business interests at the international level**, have always been given space to **participate actively** in the negotiations.

The result has been that each of the Conventions negotiated since 1951 has a firm basis in scientific methodology and research, careful negotiations by governmental experts, and input from representatives of those whose interests the Convention in question seeks to serve. Moreover, extensive follow-up work, including research, is carried out to ensure that the Conventions meet their purpose.

5. Since at the global level, contrary to the situation within the European Community, there is no central judicial body available to ensure the uniform interpretation of Hague Conventions[3] by domestic authorities, the drafting of the Conventions is carried out with great **precision** so as to allow for maximum certainty, predictability and uniformity. All Hague Conventions are, from the standpoint of public international law, generally self-executing or directly applicable (with exceptions, such as the designation of authorities). The extensive and authoritative Explanatory Reports provide widely used guidance to courts and other authorities applying the Conventions. Practical Handbooks, Good Practice Guides, freely accessible electronic databases provide further guidance in respect of certain Conventions. Intensive post-Convention monitoring, review and adaptation by the Permanent Bureau in close co-operation with the States Parties, contributes to consistency of interpretation. The result of these various techniques has been a relatively large degree of **consistency** in the application of the Hague Conventions.

6. Community legislative competence in the field of private international law only arose following the adoption of the Amsterdam Treaty. Therefore, a **specific clause** allowing for the signing, acceptance, approval or accession of a Convention by a Regional Economic Integration Organisation, such as the European Community (in addition to its Member States), was included **only** in Hague Conventions adopted after 1999, *i.e.* in the **Securities Convention** adopted in 2002, and the **Choice of Court Convention**

---

[1] For each Convention there is a volume in the series of *Actes et documents / Proceedings* which gives its full history (38 volumes (40 tomes) published since 1951).

[2] Recent examples include the Securities Convention, which, on the request of the Member States was negotiated in a fast track procedure (30 months altogether), or the Choice of Court Convention, the negotiations on which started on a broader basis so as to cover jurisdiction and enforcement of judgments in civil or commercial matters generally, and ended with a Convention focused on commercial agreements on choice of court.

[3] It may be noted that for the Hague Conventions adopted before the Second World War, a *Protocol of 27 March 1931* (in force for Belgium, Denmark, Estonia, Finland, Hungary, the Netherlands, Portugal, Sweden, and Norway) confers upon the Permanent Court of International Justice (now International Court of Justice) jurisdiction in respect of disputes concerning the interpretation of Hague Conventions on private international law.

adopted in 2005. The Choice of Court Convention, moreover, contains a clause providing for the REIO alone to join the Convention and thereby bind its Member States (case of exclusive external competence).

7. For Conventions adopted in 1999 or before, to the extent that legislative competence has accrued to the Community, EU Member States **may sign, ratify, accept, approve or accede "in the interest of the Community"** in accordance with an agreed procedure – as was the case when the EU Member States signed the **1996 Convention on Protection of Children** on 1 April 2003.

8. The attached overview – **Annex A –** indicates for each of the 36 Hague Conventions adopted since 1951[4] its status (signature, ratification or accession, or denunciation) *vis à vis* the EU Member States, or (for the Securities and Choice of Court Conventions) the European Community. **Annex B** provides the overall situation for the Member States of the Hague Conference as well as the non-Member States that are Parties to one or more Conventions.

9. In addition to the Statute (as amended since 1 January 2007), there are two Hague Conventions to which ***all*** EU Member States are a Party: the **Apostille** Convention[5] and the **Child Abduction Convention**.[6] For other Conventions, the numbers vary considerably. However, the influence of Hague Conventions has been far larger than the overview suggests, since many EU Member States have borrowed principles, concepts and rules embodied in the Hague Conventions, and incorporated these in domestic legislation. More recently, this has also been the case for Community legislation in the field of private international law, which has often been inspired by Hague Conventions.

I. Hague Conventions which have been listed under "Conventions in the Area of the EU Acquis"

10. The following Conventions have been listed, for States acceding to the EU, under "Conventions in the Area of the EU Acquis under Titles IV and VI":[7]

Convention du premier mars 1954 relative à la procédure civile (**1954 Convention**): in force for 21 EU Member States;[8]

---

[4] The overview also includes the status concerning the Hague Conventions adopted before the Second World War, all of which are still in force for a certain number of EU Member States while other EU Member States denounced or never joined them. Each of these Conventions was reviewed after 1951, and replaced by more modern Conventions. The denunciation of the "old" Conventions might be considered following the adoption by all the States Parties of the more modern ones.

[5] In respect of the **Apostille Convention** it should be noted that in 2006 the e-Apostille Pilot Program **(e-APP)** was launched with the aim of actively supporting the development of an effective, low-cost and secure model for the issuance and use of electronic Apostilles (e-Apostilles) and the operation of electronic Registers of Apostille (e-Registers), without any necessity for a modification of the 1961 Convention. The EU Member States will draw substantial benefits from joining this programme, in particular in their relations with non-EU States.

[6] It may be noted that even where all EU Member States are Parties to a Convention, the Convention may permit reservations or declarations, and practice may vary, and indeed varies, as between EU Member States in respect of such reservations or declarations.

[7] See, *e.g.*,
< http://ec.europa.eu/justice_home/doc_centre/enlargement/bulgaria/doc_enlarge_bulgaria_en.htm > and
< http://ec.europa.eu/justice_home/doc_centre/enlargement/romania/doc_enlarge_romania_en.htm >.

[8] Bulgaria, Estonia, Greece, Ireland, Malta and the United Kingdom are not bound by this Convention.

Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (**Service Convention**): in force for 25 EU Member States;[9]

Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (**Evidence Convention**): in force for 23 EU Member States;[10]

Convention of 25 October 1980 on International Access to Justice (**Access to Justice Convention**): in force for 16 EU Member States, and signed by 3 EU Member States;[11]

Convention of 25 October on the Civil Aspects of International Child Abduction (**Child Abduction Convention**): in force for all EU Member States;

Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (**1996 Child Protection Convention**): in force for 8 EU Member States,[12] and signed by 18 EU Member States.[13]

Comments:

The Service, Evidence and Access to Justice Conventions

11. It will be recalled that the 1954 Convention was revised in three stages so as to make its provisions acceptable to a wider range of States. This revision led to the **Service Convention** (revision of Chapter I of the 1954 Convention), **Evidence Convention** (revision of Chapter II), and **Access to Justice Convention** (revision of Chapters III-VI). Together, these three Conventions form a coherent set of basic global instruments for cross-border legal co-operation.[14]

12. The EU-wide ratification of, or accession to, the Service, Evidence, and Access to Justice Conventions would have significant advantages. It would:

(1) ensure uniformity of procedures in the relations between the EU Member States and third States, in parallel with the EU instruments[15] in this area;

---

[9] Austria and Malta have neither signed, nor ratified or acceded to this Convention.

[10] Austria, Belgium, Ireland and Malta have neither signed, nor ratified or acceded to this Convention.

[11] Germany, Greece and Italy signed the Convention; Austria, Belgium, Denmark, Hungary, Ireland, Malta, Portugal and the United Kingdom have neither signed, nor ratified or acceded to this Convention.

[12] *I.e.*, Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, Slovenia.

[13] All other EU Member States except Malta.

[14] It may be noted that on 10 November 2006, the Ministers of Justice of the Member States of **Mercosur** (Argentina, Brazil, Paraguay, Uruguay and Venezuela), as well as of the Associate States Chile and Bolivia, signed a declaration encouraging States of the region which have not already done so to ratify or accede to these three Conventions (as well as the Apostille Convention), see < www.hcch.net > under "News & Events", 2006.

[15] Council Regulation on the service in Member States of judicial and extrajudicial documents in civil or commercial matters; Council Regulation on cooperation between the courts of Member States in the taking of evidence in civil or commercial matters; European Legal Aid Directive.

(2) provide uniformity of procedures also within the EU to the extent that these instruments include areas not covered by existing EU instruments; and

(3) encourage third States to follow the EU example.

13. Ultimately, it would then be possible, for those EU Member States that are Parties to the 1954 Convention, together with third States Party to the 1954 Convention, to denounce this Convention (as well as its predecessor, the *Convention du 17 juillet 1905 relative à la procedure civile*[16]).

14. In parallel with EU-wide adoption of these three key Hague Conventions, consideration might be given to harmonising implementation by the EU Member States of recommendations of the Hague Conference concerning the application of these Conventions.[17]

The 1996 Child Protection Convention

15. EU-wide ratification by the remaining 18 EU Member States that have signed but not yet ratified the **1996 Child Protection Convention**, and by Malta, is awaiting the resolution of the Gibraltar problem. It is hoped that all EU Member States concerned will be ready for *prompt ratification* of the Convention following the resolution of this political issue. Immediate ratification should not be problematic, since the "Brussels II *bis*" Regulation, which is largely inspired by the 1996 Convention, is already in force among EU Member States. Immediate ratification is *urgent,* in particular, in order to establish treaty relations with the non-EU Member States that are already Parties to the Convention (including Morocco). It will also set an example for other States, and stimulate States that are already considering ratification of, or accession to, the Convention (several States South and East of the Mediterranean in the context of the Malta Process, in the Asian Pacific area, in South-East Africa, in Latin America, the United States and Canada) to join the Convention.

16. Ultimately, it would then be possible for those EU Member States, and the few third States, that are Party to the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors,*[18] to denounce this Convention (as well as its predecessor, the *Convention du 12 juin 1902 pour régler la tutelle des mineurs*.)[19]

---

[16] The *Convention du 17 juillet 1905 relative à la procédure civile* is still in force for 19 EU Member States: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Spain and Sweden.

[17] For the Recommandations of the Special Commissions of 1978, 1985, 1989 and 2003 on the Service and Evidence Conventions, see the Rapports published on < www.hcch.net > for each of the Convention.

[18] The Convention of 5 October 1961 on the Protection of Minors is in force for 11 EU Member States: Austria, France, Germany, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal and Spain. In addition, China (SAR of Macao only), Switzerland and Turkey are a Party to the Convention

[19] The *Convention du 12 juin 1902 pour régler la tutelle des mineurs* is still in force for 8 EU Member States: Belgium, Germany, Italy, Luxembourg, Poland, Portugal, Romania, and Spain. No other State is bound by this Convention.

II. Other Hague Conventions on matters also covered by Community legislation (existing or under preparation)

17. In addition to the Service, Evidence, Access to Justice and 1996 Child Protection Conventions, the following Conventions also deserve to be considered:

A. In the field of legal co-operation and litigation

Convention of 5 July 2005 on Choice of Court Agreements (**Choice of Court Convention**): not yet signed.

Comments:

18. This important instrument has the potential to accomplish for court judgments what the *United Nations Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards* does for arbitral awards. It is crucial for European business to have this strategic alternative rapidly in place.

B. In the field of international commercial and finance law

Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary (**Securities Convention**)

Convention of 4 May 1971 on the Law Applicable to Traffic Accidents (**Traffic Accidents Convention**)

Convention of 2 October 1973 on the Law Applicable to Products Liability (**Products Liability Convention**)

Convention of 14 March 1978 on the Law Applicable to Agency (**Agency Convention**)

Comments:

The Securities Convention

19. The **Securities Convention** provides certainty as to the law applicable to clearance, settlement and secured credit transactions that cross national borders, improves transactional efficiency in global securities markets, reduces systemic risk in cross-border transactions and intermediary holdings, and facilitates cross-border capital flows. The Convention was signed by the United States and Switzerland on 5 July 2006. On the same day, the European Commission released the results of its "[l]egal assessment of certain aspects" of the Convention.[20] A comprehensive Explanatory Report

[20] The Commission concludes, in particular: *"adoption of the Convention would be in the best interest of the Community"* and recommends that the Convention *"be signed after or with at least two of its main trading partners, the United States included."* In a press release issued on that day, Internal Market and Services Commissioner McCreevy commented as follows: *"In today's global financial markets we can no longer afford uncertainty about which law is applicable to indirectly held securities. The 'location of the account formula' has worked fine in Europe's transition to a fully integrated single securities market, but now that European citizens are able to reap the benefits of participation in global financial markets, we need legal rules that are sustainable world-wide. Therefore, we need to change. The USA and Switzerland are about to sign the Convention and the EU should not lag behind."*

provides guidance both to the procedure for acceptance of the Convention and its application in practice.[21]

The Traffic Accidents Convention

20. With a view to facilitating easy and speedy handling of traffic accidents both inside and outside the courts – traffic accidents are dealt with to a very large extent by the insurance industry – the detailed rules of the **Traffic Accidents Convention** provide a high degree of predictability and certainty.[22] The Convention has proven its utility during

the thirty years since it came into force[23] and has continued to attract new States Parties - 12 of which are Members of the EU.[24] In addition to the EU Members, the following neighbouring countries are Parties to the Convention: Belarus, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia, and Switzerland. The uniformity of regime with these neighbouring countries is important in the light of transit movements, including those to and from the Eastern and Southern Mediterranean regions.

The Products Liability Convention

21. Similar comments apply to the **Products Liability Convention** the structure of which follows that of the Traffic Accidents Convention. This Convention also provides a high degree of predictability of the applicable law. Studies and discussions within the Hague Conference have shown that those States that are Parties to the Convention – including 6 EU Member States[25] – are satisfied with the results it provides.[26] This is also the view of the European insurance industry.[27]

The Agency Convention

22. The **Agency Convention** has had an impact on several provisions of the *Rome Convention on the law applicable to contractual obligations,*[28] and supplements the Rome Convention, for those EU Member States that are Parties to the Agency Convention,[29] with precise rules on the relations between principal and agent, and on the relations with

---

[21] See *Explanatory Report on the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary*, by Roy Goode, Hideki Kanda and Karl Kreuzer, with the assistance of Christophe Bernasconi.

[22] See also the detailed Explanatory Report by Judge Essén (Sweden) *Actes et documents de la Onzième session*, Tome III, pp. 200-220 (English translation available with the Permanent Bureau).

[23] See *Comité européen des Assurances*, Position Paper, 2 May 2006, "*... the 1971 Hague Convention on the law applicable to traffic accidents has proven its utility over the past thirty years and provides a high degree of predictability with its rules and established practice and case law. At a time when the procedure for the accession of the EC to the Hague [Conference] seems to be at an advanced stage, it would not be logical and politically acceptable to now challenge the 1971 Hague Convention since the accession of the European Community to the Hague Conference on [private] international law means above all the promotion of the progressive unification within the EU of private international law applicable in particular to international road accidents*" (at p. 3).

[24] Austria, Belgium, the Czech Republic, France, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Slovakia, Slovenia, Spain. Portugal has signed the Convention.

[25] Finland – which ratified following these studies and discussions – France, Luxembourg, the Netherlands, Slovenia and Spain are Parties to the Convention, while Belgium, Italy and Portugal have signed but not ratified.

[26] See, in particular, Hague Conference on Private International Law, *Proceedings of the Seventeenth Session*, Tome I, p. 215, and pp. 249-251, reflecting the conclusion of the Special Commission that the Convention, despite its apparent complexity, had "*not given rise to any real difficulties of application*".

[27] See the Position paper referred to in footnote 21 *supra*, at p. 5.

[28] See Report on the Convention by M. Giuliano and P. Lagarde, OJ C 282, of 31 October 1980, *passim* (in particular comments on Articles 2, 3, 7, 19 and 21).

[29] France, the Netherlands and Portugal.

the third party (the latter being excluded by the Rome Convention – Art. 1(2) *f).* The European Community may wish to give further consideration to this Convention and its renowned Explanatory Report[30] in the context of the preparation of the "Rome I" Regulation on the law applicable to contractual obligations.

C. In the fields of protection of children, international family law, and family property relations, wills and succession

Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations (**Divorce Convention**)

Convention of 5 October 1961 on the Conflict of Laws Relating to the Form of Testamentary Dispositions (**Forms of Wills Convention**)

Comments:

The Divorce Convention

23. The **Divorce Convention** ensures the recognition of divorces and legal separations validly obtained in other Contracting States. It deals with the legal status of the (ex-) spouses only, and neither with findings of fault nor with matters relating to children or money[31]. The Convention also provides a framework for the recognition of unilateral divorces and separations, such as practised in countries neighbouring the European Union, provided they follow judicial or other proceedings officially recognised in the State where they are obtained and provided they are legally effective there. The Convention provides safeguards against migratory divorces and forum shopping. The Divorce Convention reserves the right of Contracting States not to recognise a divorce or legal separation if such recognition would be, in a concrete case, manifestly in conflict with their public policy.

The Forms of Wills Convention

24. The formal requirements for wills and other testamentary dispositions vary considerably from country to country, and testators and their heirs and legatees are usually not aware of these differences. The **Forms of Wills Convention** protects a will, validly made in accordance with the formal requirements of the law of a State with which the testator has a reasonable link, against the risk of being considered invalid in any Contracting State only because of its form. The Convention has helped significantly to reduce litigation concerning issues relating to the formal validity of wills. EU-wide acceptance of this instrument – so far 16 EU Member States[32] are Parties to the Convention, while 2 more have signed it[33] – would facilitate and reinforce the efforts of the European Community to deal with the cross-border aspects of successions.

---

[30] Explanatory Report by Judge Ian Karsten QC (UK), *Actes et documents de la Treizième session*, Tome IV, pp. 378-432.

[31] 13 EU Member States are bound by this Convention: Cyprus, Czech Republic, Denmark, Estonia, Finland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Sweden, the United Kingdom.

[32] Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Luxembourg, the Netherlands, Poland, Slovenia, Spain, Sweden, the United Kingdom.

[33] Italy and Portugal.

III. Other Hague Conventions of common interest to EU Member States

25. In respect of the following Hague Conventions Community competence has not been exercised at this point. In the context of an overall review of the Hague Conventions by the European Community, however, particular attention may be given to these instruments, which EU Member States that are not yet bound by them may well wish to join in a concerted action in their common interest:

Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition (**Trusts Convention**)

Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages (**Marriage Convention**)

Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption of Children (**Intercountry Adoption Convention**)

Convention of 12 January 2000 on the International Protection of Adults (**Protection of Adults Convention**)

Comments:

The Trusts Convention

26. The **Trusts Convention** unifies the conflict of law rules for, and provides recognition of, trusts established in accordance with the laws of legal systems (mostly of the common law tradition) that provide for trusts; it does not aim at introducing the trust device into systems of the continental (civil law) traditions where this device is generally unknown. It provides the basic elements of the trust concept and lists those characteristics that must be recognised in order not to distort trust arrangements. On the other hand, it takes care to enable the recognising (civil law) State to protect the integrity of its legal system while giving effect to a trust to the extent compatible with mandatory provisions of the normally applicable laws. The Convention supplements the "Brussels I" Regulation on jurisdiction and enforcement of judgments in civil and commercial matters, as well as the Lugano Convention. Both these instruments include special grounds of jurisdiction for trusts, based on the "domicile" of trusts – the Trusts Convention makes it possible to determine this domicile. EU-wide ratification of this Convention, which is currently in force for 5 EU Member States,[34] would bring significant benefits to the European Community which, at this point, does not dispose of a common framework to deal with trusts in their many cross-border applications both within the European Union and in the relations with third States. The Convention is relevant in the context of commercial dealings (trusts for security purposes) as well as in the context of family property relations (the law of succession). EU-wide acceptance of this Convention will reduce transaction costs and reinforce the efforts of the European Community to deal with the cross-border aspects of the law of succession (*cf.* the comments on the Forms of Wills Convention, *supra,* paragraph 24).

[34] Italy, Luxembourg, Malta, the Netherlands and the United Kingdom; Belgium has incorporated several of its provisions into its new Code on Private International Law. Cyprus and France have signed but not ratified.

The Marriage Convention

27. While the European Community has unified its rules for the recognition of divorces (Brussels II *bis* Regulation), it does not have a uniform regime neither for the recognition of the validity of marriages, nor for the celebration of marriages. The **Marriage Convention** is a basic multilateral instrument that provides certainty both in respect of the recognition of a marriage validly concluded according to the laws of the State of celebration and as regards the conditions under which foreign nationals should be entitled to marry. By eliminating doubts on both accounts, this forward-looking Convention – so far ratified by 2 EU Member States[35] and signed by 2 more[36] – serves the interests of both citizens and governments and administrations.

The Convention provides the necessary safeguards allowing States to refuse to recognise the validity of marriages where minimum requirements relating to age, bigamy, prohibited relations and free consent have not been observed. Moreover, the Convention reserves the right of Contracting States not to celebrate or not to recognise a marriage when this would be, in a concrete case, manifestly in conflict with their public policy.

The Intercountry Adoption Convention

28. **The Intercountry Adoption Convention** places safeguards around inter-country adoption to prevent profiteering and other abuses, to ensure that the international system protects the rights of the child and places his or her interests first, and to provide for the recognition of adoptions internationally. It follows the principle supported by the *United Nations Convention of 1989 on the Rights of the Child* that intercountry adoption should only occur when other possibilities for a family life are not available in the child's country of origin. The Convention is in force for 25 EU Member States.[37]

The Protection of Adults Convention

29. The objective of the **Protection of Adults Convention**[38] is to do for vulnerable adults what the 1996 Child Protection Convention does for children. The increased lifespan in many countries is accompanied by a corresponding increase in the incidence of illnesses linked to old age. Many people reaching the age of retirement decide to spend the last part of their lives abroad. Private international law issues concerning, for example, the management or sale of goods belonging to persons suffering from or an insufficiency in their personal faculties are arising with ever greater frequency. Where adults themselves have organised in advance their protection for the time when they will not be in a position to look after their own interests, the question arises whether such powers of representation will be respected abroad. For all these issues the Convention provides a complete private international law regime and one that ensures continuity with the 1996 Convention that applies to children until they reach the age of 18 years.

---

[35] Luxembourg and the Netherlands.

[36] Finland and Portugal.

[37] All EU Member States with the exception of Greece and Ireland. Ireland has signed the Convention.

[38] So far the only EU Member State to have ratified this Convention is the United Kingdom (for Scotland). Germany, France and the Netherlands have signed it and are preparing for its ratification.

EU-wide acceptance of this Convention would enable the EU Member States to provide adequate legal protection for a steadily increasing percentage of its population.[39]

Other Hague Conventions

30. Several other Hague Conventions are potentially of interest to the European Community, including the *Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes* and the *Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons*, which instruments – as well as the extensive comparative research that surrounded their negotiation – might benefit the European Community in its efforts to deal with the cross-border aspects of marital property relations and successions.

The Permanent Bureau of the Hague Conference on Private International Law is always willing to assist the European Community in this as well in other regards.

[39] This would then also offer an opportunity for those EU Member States that are Parties to the predecessor of this Convention, the *Convention du 17 juillet 1905 concernant l'interdiction et les mesures de protections analogues* (Italy, Poland, Portugal and Romania), to denounce the latter instrument.