



3.5.2011

NOTICE TO MEMBERS

(34/2011)

Subject: Outcome of the meeting of the Council on General Affairs and Policy of the Hague Conference held on 5-7 April 2011.

In preparation for the meeting with Mr Van Loon, Secretary General of the Hague Conference on Private International Law, that will take place on 24 May 2011, please find below a note which Ms Salla Saastamoinen, Head of Unit of the Judicial Cooperation in Civil Matters Unit of DG Justice of the European Commission, kindly sent to Diana Wallis, as the European Parliament's observer at the Hague Conference.

Dear Ms Wallis,

I would like to inform you about the outcome of the meeting of the Council on General Affairs and Policy ("HcCH Council") of the Hague Conference that took place on 5-7 April 2011 in the Hague.

This outcome is overall satisfactory for the EU. You will find the summary of most important agenda points below. Please note that the conclusions and recommendations adopted by the Council on General Affairs and Policy are available on the website of the Hague Conference at the following address:

http://www.hcch.net/upload/wop/genaff_concl2011e.pdf

1) **The future work programme** of the Hague Conference was the most important topic of the meeting.

In this context, the EU managed to keep on the agenda the **project on accessing the content of foreign law** that is the EU's initiative in the Hague framework. The EU reported that the study on the access to foreign law and treatment of foreign law in the EU is ongoing and the joint conference with the Hague Conference is foreseen in February 2012. Nevertheless it must be mentioned that several doubts were raised by the other Delegations, in particular as to the Prototype Portal facilitating access to law created by the Permanent Bureau. It was decided that the Permanent Bureau should continue monitoring developments but not at this point take any further steps in this area (including on the Prototype Portal).

Concerning the resumption of the exploratory work on the so-called **Judgment project** (a global multilateral convention dealing with jurisdiction, recognition and enforcement of judgments in civil and commercial matters), the US surprisingly expressed its willingness to re-launch work in this area resuming the project that was abandoned 10 years ago just because of, in particular, the US opposition. However, the US expressed doubts on the possibility to have a "double" convention including both jurisdiction and recognition and enforcement. A positive result could be better achieved by limiting work to recognition and enforcement ("single convention"). Other Delegations echoed the US (New Zealand, Australia, Argentina, Switzerland, Brazil) supporting the establishment of a Working Group. The EU position was open but cautious and linked the future work incl. the establishment of the Working Group to the prior entry into force of the 2005 Choice of Court Convention. The EU was able to join to the compromise on the establishment of a small Working/Expert Group with a limited mandate to assess the history/background of the project, recent developments in the area and the possible merits of resuming the Judgments project, while stressing that this should not disturb the ratifications of the Choice of Court Convention. The Group will have to report at the next HccH Council in 2012.

There were no major problems regarding the other possible future projects: the exploratory work on international private law issues surrounding the status of children, including **international surrogacy arrangements** will continue; on the other hand the issue of **property law aspects of moveable assets** was withdrawn from the agenda. At the request of **Canada**, a new item was added to the agenda: the **recognition of foreign civil protection orders** made, for instance, in the context of domestic violence cases. The Permanent Bureau will prepare a short note on the subject to be discussed at the next HccH Council meeting in 2012.

2) With regard to the **current work projects** of the Hague Conference (i.e. choice of law in international contracts, project of mediation in the context of Malta Project, Protocol to the 1980 Convention), the preparatory work will continue along the agreed lines. No decisions on any binding instruments were taken.

3) Concerning the discussions on the **governance of the Hague Conference**, positions diverged and no consensus was found in the HccH Council. Therefore, the issue will be re-discussed again at the General Affairs Council of 2012. The EU expressed its coordinated position, namely that the HccH rules of procedure could be revised with the aim of having 1 Chair and 1 Vice-Chair in the General Affairs Council. Other States expressed the willingness

to have more Vice-Chairs, possibly representing the different geographic regions. There was also emphasis from a number of Delegations that having Vice Chair(s) does not address the problem at issue, i.e. the engagement of State parties in the Hague Conference work. Opinions remained different, even if the discussions were close to reaching consensus. Canada, Japan, Switzerland, China stated that in this situation discussions should be resumed next year. The above EU positions were supported by several Delegations such as Russia, USA, and Israel.

The HcCH Council agreed that an open-ended **Working Group on the technical assistance** will be established.

4) The ceremony of **signature of the 2007 Maintenance Convention by the EU** took place. **Norway** deposited its instrument of **ratification** for the same Convention. Andorra acceded to the 1973 Convention on recognition and enforcement of Maintenance Obligations and to the 1993 Convention on Inter-country adoption; Costa Rica acceded to the 1961 Apostille Convention.

With kind regards,

Salla Saastamoinen

Members might also wish to consult the following documents of the Hague Conference:

- **Preliminary Document No 4:** Revised draft Practical Handbook on the *Hague 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* – April 2011;
- **Preliminary Document No 5:** Draft Guide to Good Practice on Mediation under the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* – Part V – Mediation – April 2011.

French versions are available at:

- **Document préliminaire No 4 :** Projet révisé du Manuel pratique sur la *Convention de La Haye du 19 octobre 1996 concernant la compétence, la loi applicable, la reconnaissance, l'exécution et la coopération en matière de responsabilité parentale et de mesures de protection des enfants* – avril 2011 ;
- **Document préliminaire No 5 :** Projet de Guide de bonnes pratiques en vertu de la *Convention de La Haye du 25 octobre 1980 sur les aspects civils de l'enlèvement international d'enfants* – cinquième partie – médiation – avril 2011.

