



*The Secretary General*

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THE HAGUE, 14 February 2003

No 21373(03)VL/WZ

**Draft Letter to the National Organs of the Czech Republic, Cyprus,  
Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia**

Dear Madam/Sir,

I take the liberty of addressing the National Organ of the Hague Conference on Private international Law of your Country in the following matter.

It now looks likely that the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, and Slovakia will be joining the European Union by 1 May 2004. This will be a major historical event, which will have, among many other effects, an impact on the position of your Country in respect of certain Hague Conventions on private international law.

1. In preparation of the admission of your Country to the European Union, the EU has itself identified a certain number of Hague Conventions (listed in Annex 1) as belonging to the “*Acquis* of the European Union”. These are indeed some of the basic Hague instruments, which would be very useful to your Country, and, to the extent that they have not yet entered into force for your Country, I hope that that this will soon be the case.

2. Since the entry into force of the Treaty of Amsterdam on 1 May 1999, the European Union has also drawn up several instruments (Regulations and Directives) of its own in the field of private international law. Some of these instruments cover areas which are also the subject matter of already existing Hague Conventions (see Annex 2), including some which have not, or not yet, been identified as being part of the “*Acquis* of the European Union”.

Presumably such instruments will come into force for your Country on 1 May 2004. The effect will be that, in principle, these instruments, according to their terms, *in the relations as between EU Member States, in whole, or in part, will prevail over the Hague Conventions in question. Of course, the Hague Conventions will continue to apply in the relations to non-EU States Parties to those Conventions.*

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Fortunately, since many of the EU instruments follow to a large extent the basic principles and rules of existing Hague Conventions, the resulting changes in the relations as between EU Member States are limited. This is also important because it will mean that the intra-European regime – in principle, governed by the Regulations and Directives – and the external regime – the relations between individual EU Member States and non-EU Member States under the Hague Conventions – will be essentially in harmony.

It follows, that it would be in the common interest of all – EU and non-EU – Member States of the Hague Conference, if the ten candidate EU Member States would, in addition to the Hague Conventions listed in Annex 1, also join the other Conventions listed in Annex 2.

3. I therefore strongly recommend that your Country give consideration to joining, *before 1 May 2004*, the following Hague Conventions:

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4. The reason why it is strongly recommended that your Country become a Party to these Conventions before 1 May 2004 is the following. Although case law of the European Court of Justice in the precise field of private international law is still lacking, it may be argued, and has in fact been argued, that the entry into force of a Community Regulation (or Directive) in the field of private international law has an external effect, which would make it more difficult, if not impossible, for a Member State of the European Union to join, without a prior common decision of the Council, a Hague Convention in a field covered by the Regulation in question.

The Permanent Bureau will do its best, in co-operation with the European Commission and the other competent organs of the European Community, to further common EU positions with regard to pertinent Hague Conventions, including the Conventions mentioned in Annex 2, but so far no arrangements have been made, and the experience with the common EU position taken 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*, illustrates that the development of such a common position may take time. That would mean that your Country might, after 1 May 2004, for an unforeseeable period, not be in a position to join any of the Conventions referred to above.

5. We have consulted the European Commission on this matter, and the Commission supports our recommendation. I should point out that, in respect of the latest Hague Convention, the *Hague Convention on the Law Applicable to Certain Rights in respect of Securities held with an Intermediary*, consultations are now well advanced between the Commission and the Permanent Bureau with a view to promoting a signature by the European Community of this Convention in the near future. The Hague Securities Convention, unlike certain Hague Conventions, contains provisions which makes it possible for the European Community to join the Convention.

6. As always, the Permanent Bureau would be very pleased to assist its National Organs in any possible way in resolving difficulties that might arise in the implementation of this recommendation. In view of the urgency of the matter, special arrangements have been made at the Permanent Bureau so as to enable the staff to respond rapidly to any questions you might have with regard to this letter.

I avail myself of this opportunity to renew to the National Organs assurances of my highest consideration and esteem.

Hans van Loon

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Attachments mentioned.

## Annex 1

Hague Conventions on private international law identified<sup>1</sup> as belonging to the “*Acquis* of the European Union”:

- *Hague Convention of 1 March 1954 on Civil Procedure;*
- *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;*
- *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters;*
- *Hague Convention of 25 October 1980 on International Access to Justice;*
- *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction;*
- *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;*

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<sup>1</sup> European Commission, DG JAI, *Acquis* of the European Union under Title IV of the TEC, and Title VI of the TEU, November 2002.

## Annex 2

Community instruments which may affect Hague Conventions on private international law:

1. 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.
2. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
3. 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.
4. Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses.
5. Council Directive 2002/8/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.

Hague Conventions which may be affected by the aforementioned Community instruments:

1. – *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.*
  - *Hague Convention of 1 March 1954 on Civil Procedure.*
2. – *Hague Convention of 15 April 1958 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children;*<sup>2</sup>
  - *Hague Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters;*
  - *Supplementary Protocol of 1 February 1971 to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters;*
  - *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations;*<sup>3</sup>
3. – *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.*

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<sup>2</sup> Under Article 29 of the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*, this Convention replaces as regards the States who are Parties to it, the *Hague Convention of 15 April 1958 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children*.

<sup>3</sup> See footnote 2 above.

4. – *Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Minors*;<sup>4</sup>
- *Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations*;
- *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*.<sup>5</sup>

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<sup>4</sup> Under Article 51 of 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* in relations between the Contracting States this Convention replaces the *Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, and the *Hague Convention of 12 June 1902 governing the guardianship of minors*, without prejudice to the recognition of measures taken under the abovementioned Convention of 5 October 1961.

<sup>5</sup> See footnote 4 above.