

**ÉTUDE DE FAISABILITÉ SUR L'ADMINISTRATION DU DROIT ÉTRANGER  
NORMES RELATIVES À L'ADMINISTRATION DU DROIT ÉTRANGER**

*Compilation préparée par le Bureau Permanent*

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**FEASIBILITY STUDY ON THE TREATMENT OF FOREIGN LAW  
LEGAL NORMS IN RELATION TO THE TREATMENT OF FOREIGN LAW**

*Collection drawn up by the Permanent Bureau*

*Document préliminaire No 21 C de mars 2007  
à l'intention du Conseil d'avril 2007  
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## **1. EUROPEAN CONVENTION OF 7 JUNE 1968 ON INFORMATION ON FOREIGN LAW (THE "LONDON CONVENTION")<sup>1</sup>**

### **Preamble**

The member States of the Council of Europe, signatories hereto,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members;

Convinced that the creation of a system of international mutual assistance in order to facilitate the task of judicial authorities in obtaining information on foreign law, will contribute to the attainment of this aim,

Have agreed as follows:

### **Article 1 – Scope of the Convention**

1. The Contracting Parties undertake to supply one another, in accordance with the provisions of the present Convention, with information on their law and procedure in civil and commercial fields as well as on their judicial organisation.

2. However, two or more Contracting Parties may decide to extend as between themselves the scope of the present Convention to fields other than those mentioned in the preceding paragraph. The text of such agreements shall be communicated to the Secretary General of the Council of Europe.

### **Article 2 – National liaison bodies**

1. In order to carry out the provisions of the present Convention each Contracting Party shall set up or appoint a single body (hereinafter referred to as the "receiving agency"):

*a)* to receive requests for the information referred to in Article 1, paragraph 1, of the present Convention from another Contracting Party;

*b)* to take action on these requests in accordance with Article 6.

The receiving agency may be either a ministerial department or other State body.

2. Each Contracting Party may set up or appoint one or more bodies (hereinafter referred to as "transmitting agency") to receive requests for information from its judicial authorities and to transmit them to the competent foreign receiving agency. The receiving agency may be appointed as a transmitting agency.

3. Each Contracting Party shall communicate to the Secretary General of the Council of Europe the name and address of its receiving agency and, where appropriate, of its transmitting agency or agencies.

### **Article 3 – Authorities entitled to make a request for information**

1. A request for information shall always emanate from a judicial authority, even when it has not been drawn up by that authority. The request may be made only where proceedings have actually been instituted.

2. Any Contracting Party may, if it has not set up or appointed a transmitting agency, indicate, by a declaration addressed to the Secretary General of the Council of Europe, which of its authorities it will deem a judicial authority within the meaning of the preceding paragraph.

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<sup>1</sup> The Additional Protocol of 15 March 1978 to the European Convention on Information on Foreign Law (the "London Convention") extends the system of international mutual assistance established by the European Convention on Information on Foreign Law to the field of criminal law and procedure in a multilateral framework open to all the Contracting Parties to the London Convention.

3. Two or more Contracting Parties may decide to extend as between themselves the present Convention to requests from authorities other than judicial authorities. The text of such agreements shall be communicated to the Secretary General of the Council of Europe.

#### **Article 4 – Contents of a request for information**

1. A request for information shall state the judicial authority from which it emanates as well as the nature of the case. It shall specify as exactly as possible the questions on which information concerning the law of the requested State is desired, and where there is more than one legal system in the requested State, the system of the law on which information is requested.

2. The request shall also state the facts necessary both for its proper understanding and for the formulation of an exact and precise reply. Copies of documents may be attached where necessary to clarify the scope of the request.

3. The request may include questions in fields other than those referred to in Article 1, paragraph 1, where they relate to the principal questions specified in the request.

4. Where a request is not drawn up by a judicial authority it shall be accompanied by the decision of that authority authorising it.

#### **Article 5 – Transmission of a request for information**

A request for information shall be transmitted directly to the receiving agency of the requested State by a transmitting agency or, in the absence of such an agency, by the judicial authority from which it emanates.

#### **Article 6 – Authorities empowered to reply**

1. The receiving agency which has received a request for information may either draw up the reply itself or transmit the request to another State or official body to draw up the reply.

2. The receiving agency may, in appropriate cases or for reasons of administrative organisation, transmit the request to a private body or to a qualified lawyer to draw up the reply.

3. Where the application of the preceding paragraph is likely to involve costs, the receiving agency shall, before making the transmission referred to in the said paragraph, indicate to the authority from which the request emanated the private body or lawyer to whom the request will be transmitted, inform the said authority as accurately as possible of the probable cost, and request its consent.

#### **Article 7 – Content of the reply**

The object of the reply shall be to give information in an objective and impartial manner on the law of the requested State to the judicial authority from which the request emanated. The reply shall contain, as appropriate, relevant legal texts and relevant judicial decisions. It shall be accompanied, to the extent deemed necessary for the proper information of the requesting authority, by any additional documents, such as extracts from doctrinal works and *travaux préparatoires*. It may also be accompanied by explanatory commentaries.

#### **Article 8 – Effects of the reply**

The information given in the reply shall not bind the judicial authority from which the request emanated.

### **Article 9 – Communication of the reply**

The reply shall be addressed by the receiving agency to the transmitting agency, if the request had been transmitted by this agency, or to the judicial authority, if the request was sent directly by the latter.

### **Article 10 – Duty to reply**

1. The receiving agency to whom a request for information has been sent shall, subject to the provisions of Article 11, take action on the request in accordance with Article 6.
2. Where the reply is not drawn up by the receiving agency, the latter shall be bound to ensure that a reply is sent subject to the conditions specified in Article 12.

### **Article 11 – Exceptions to the obligation to reply**

The requested State may refuse to take action on the request for information if its interests are affected by the case giving rise to the request or if it considers that the reply might prejudice its sovereignty or security.

### **Article 12 – Time-limit for the reply**

The reply to a request for information shall be furnished as rapidly as possible. However, if the preparation of the reply requires a long time, the receiving agency shall so inform the requesting foreign authority and shall, if possible, indicate at the same time the probable date on which the reply will be communicated.

### **Article 13 – Additional information**

1. The receiving agency, as well as the body or the person whom it has instructed to reply, in accordance with Article 6, may request the authority from which the request emanates to provide any additional information it deems necessary to draw up the reply.
2. The request for additional information shall be transmitted by the receiving agency in the same way as is provided by Article 9 for the communication of the reply.

### **Article 14 – Languages**

1. The request for information and annexes shall be in the language or in one of the official languages of the requested State or be accompanied by a translation into that language. The reply shall be in the language of the requested State.
2. However, two or more Contracting Parties may decide to derogate, as between themselves, from the provisions of the preceding paragraph.

### **Article 15 – Costs**

1. The reply shall not entail payment of any charges or expenses except those referred to in Article 6, paragraph 3, which shall be borne by the State from which the request emanates.
2. However, two or more Contracting Parties may decide to derogate, as between themselves, from the provisions of the preceding paragraph.

### **Article 16 – Federal States**

In Federal States, the functions of the receiving agency other than those exercised under Article 2, paragraph (1) a) may, for constitutional reasons, be conferred on other State bodies.

**Article 17 – Entry into force of the Convention**

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

**Article 18 – Accession of a State not a member of the Council of Europe**

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

**Article 19 – Territorial scope of the Convention**

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 20 of this Convention.

**Article 20 – Duration of the Convention and denunciation**

1. This Convention shall remain in force indefinitely.
2. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

**Article 21 – Functions of the Secretary General of the Council of Europe**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

- a) any signature;
- b) any deposit of an instrument of ratification, acceptance or accession;
- c) any date of entry into force of this Convention in accordance with Article 17 thereof;
- d) any declaration received in pursuance of the provisions of paragraph 2 of Article 1, paragraph 3 of Article 2, paragraph 2 of Article 3 and paragraphs 2 and 3 of Article 19;
- e) any notification received in pursuance of the provisions of Article 20 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at London, this 7th June 1968, in French and English, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.



## **2. INTER-AMERICAN CONVENTION OF 8 MAY 1979 ON PROOF OF AND INFORMATION ON FOREIGN LAW**

The Governments of the Member States of the Organization of American States, desirous of concluding a Convention on proof of and information on foreign law, have agreed as follows:

### **Article 1**

The purpose of this Convention is to establish rules governing international cooperation between the States Parties for obtaining elements of proof of and information on the laws of each of them.

### **Article 2**

Subject to the provisions of this Convention, the authorities of each of the States Parties shall provide the authorities of the other States Parties that so request, with elements of proof of and reports on the text, validity, meaning, and legal scope of their law.

### **Article 3**

International cooperation in the matter to which this Convention applies shall be provided through any of the suitable means of proof contemplated in both the law of the State of origin and the law of the State of destination.

- a)* For the purposes of this Convention, suitable means shall include the following:
- b)* Documentary proof consisting of certified copies of legal texts together with an indication of their validity, or judicial precedents;
- c)* Expert testimony, consisting of opinions of attorneys or experts on the matter;

The reports of the State of destination on the text, validity, meaning and scope of its law on specific points.

### **Article 4**

The judges or courts of the States Parties to this Convention may request the reports referred to in Article 3 *c*).

The States Parties may extend the application of this Convention to requests for information from other authorities.

Without prejudice to the foregoing, requests from other authorities concerning the elements of proof specified in items *a*) and *b*) of Article 3 may also be answered.

### **Article 5**

The requests to which this Convention relates shall contain the following:

- a)* The name of the authority from which the request comes and the nature of the matter;
- b)* Precise statement of the elements of proof being requested, and
- c)* Specification of each of the points to which the request relates, together with an indication of its meaning and scope, and a statement of the pertinent facts for a proper understanding thereof.

The authority addressed shall answer each of the points contained in the request and as completely as possible.

The requests shall be prepared in the official language of the State of destination or shall be accompanied by a translation into that language. The reply shall be prepared in the language of the State of destination.

#### **Article 6**

In accordance with this Convention, each State Party shall reply to the requests from the other States Parties through its Central Authority, which may transmit such requests to other authorities of the same State.

The State that provides the reports referred to in Article 3 *c*) shall not be held responsible for the opinion expressed nor shall it be required to apply the law, or cause it to be applied, in accordance with the content of the reply provided.

The State that receives the reports referred to in Article 3 *c*) shall not be required to apply the law, or cause it to be applied, in accordance with the content of the reply received.

#### **Article 7**

The requests to which this Convention refers may be forwarded directly through the judges or courts or through the Central Authority of the State of origin, to the corresponding Central Authority of the State of destination, and legalization shall not be required.

The Central Authority of each State Party shall receive the requests made by the authorities of its State and forward them to the Central Authority of the State of destination.

#### **Article 8**

This Convention shall not limit any provisions regarding proof of and information on foreign law in bilateral or multilateral conventions that may have been signed or may be signed in the future by the States Parties or preclude the continuation of more favorable practices that may be followed by those States.

#### **Article 9**

For the purpose of this Convention, each State Party shall designate a central authority.

The General Secretariat of the Organization of American States shall be informed of the designation at the time of deposit of the instrument of ratification or accession, so that it may inform the other States Parties of such designation.

A State Party may change the designation of its Central Authority at any time.

#### **Article 10**

A State Party shall not be required to reply to a request from another State Party when its interests would be impaired by the question that gave rise to the request for information or when the reply could impair its security or sovereignty.

#### **Article 11**

This Convention shall be open for signature by the Member States of the Organization of American States.

#### **Article 12**

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

**Article 13**

This Convention shall remain open for accession by any other State. The instrument of accession shall be deposited with the General Secretariat of the Organization of American States.

**Article 14**

Each State may, at the time of signature, ratification or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the object and purpose of the Convention.

**Article 15**

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

**Article 16**

If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

**Article 17**

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other States Parties.

**Article 18**

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which will forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of that Organization and the States that have acceded to the Convention, of the signatures, deposits of instruments of ratification, accession, and denunciation, as well as of reservations, if any. It shall also transmit the information mentioned in Article 9 and the declarations referred to in Article 16 of this Convention.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Done at Montevideo, Republic of Uruguay, this eighth day of May, one thousand nine hundred and seventy-nine.

### **3. COUNCIL DECISION OF 28 MAY 2001 ESTABLISHING A EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS (2001/470/EC)**

#### **EUROPEAN JUDICIAL NETWORK WELCOME PAGE SUMMARY**

In the autumn of 1999, the Council held a special meeting at Tampere in Finland, devoted to the establishment of an area of freedom, security and justice in the European Union.

The Heads of State or Government wished the European Commission to take a number of initiatives to improve access to justice for individuals and firms in Europe, one of which was the establishment of a network of national authorities with responsibility for civil and commercial law.

In September 2000, the Commission presented a proposal for a decision establishing the network which the Council then adopted in May 2001.

The network consists of representatives of the Member States' judicial and administrative authorities and meets several times each year to exchange information and experience and boost cooperation between the Member States as regards civil and commercial law.

The main objective is to make life easier for people facing litigation of whatever kind where there is a transnational element - *i.e.* where it involves more than one Member State.

The European Union currently has a wide variety of national legal systems, and this diversity often creates problems when litigation transcends national borders.

Individuals and firms, and even more so the legal professions, will find it very useful to have access to knowledge about the various national systems of civil and commercial law and the legislative instruments of the European Union and other international organisations including the United Nations, the Hague Conference and the Council of Europe.

The Council Decision establishing the network consequently provided for the establishment of the website and determined the main points of its operation. The main purpose of the network's website is to outline various national systems of civil and commercial law.

It does not set out to answer questions in practical matters or to provide legal advice about a specific situation.

#### **COUNCIL DECISION OF 28 MAY 2001**

The Council of the European Union,

Having regard to the Treaty establishing the European Community, and in particular Articles 61 *c)* and *d)*, 66 and 67(1) thereof,

Having regard to the proposal from the Commission,<sup>1</sup>

Having regard to the opinion of the European Parliament,<sup>2</sup>

Having regard to the opinion of the Economic and Social Committee,<sup>3</sup>

Whereas:

(1) The European Union has set itself the objective of maintaining and developing the European Union as an area of freedom, security and justice, in which the free movement of persons is assured.

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<sup>1</sup> OJ C 29 E, 30.1.2001, p. 281.

<sup>2</sup> Opinion delivered on 5 April 2001 (not yet published in the Official Journal).

<sup>3</sup> OJ C 139, 11.5.2001, p. 6.

- (2) The gradual establishment of this area and the sound operation of the internal market entails the need to improve, simplify and expedite effective judicial cooperation between the Member States in civil and commercial matters.
- (3) The action plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice<sup>4</sup> which was adopted by the Council on 3 December 1998 and approved by the European Council on 11 and 12 December 1998 acknowledges that reinforcement of judicial cooperation in civil matters represents a fundamental stage in the creation of a European judicial area which will bring tangible benefits for every European Union citizen.
- (4) One of the measures provided for in paragraph 40 of the action plan is to examine the possibility of extending the concept of the European Judicial Network in criminal matters to embrace civil proceedings.
- (5) The conclusions of the special European Council held at Tampere on 15 and 16 October 1999 recommend the establishment of an easily accessible information system, to be maintained and updated by a Network of competent national authorities.
- (6) In order to improve, simplify and expedite effective judicial cooperation between the Member States in civil and commercial matters, it is necessary to establish at Community level a network cooperation structure - the European Judicial Network in civil and commercial matters.
- (7) This is a subject falling within the ambit of Articles 65 and 66 of the Treaty, and the measures are to be adopted in accordance with Article 67.
- (8) To ensure the attainment of the objectives of the European Judicial Network in civil and commercial matters, the rules governing its establishment should be laid down in a mandatory instrument of Community law.
- (9) The objectives of the proposed action, namely to improve effective judicial cooperation between the Member States and effective access to justice for persons engaging in cross-border litigation cannot be sufficiently achieved by the Member States and can therefore by reason of the scale or effects of the action be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (10) The European Judicial Network in civil and commercial matters established by this Decision seeks to facilitate judicial cooperation between the Member States in civil and commercial matters both in areas to which existing instruments apply and in those where no instrument is currently applicable.
- (11) In certain specific areas, Community or international instruments relating to judicial cooperation in civil and commercial matters already provide for cooperation mechanisms. The European Judicial Network in civil and commercial matters does not set out to replace these mechanisms, and it must operate in full compliance with them. This Decision will consequently be without prejudice to Community or international instruments relating to judicial cooperation in civil or commercial matters.
- (12) The European Judicial Network in civil and commercial matters should be established in stages on the basis of the closest cooperation between the Commission and the Member States. It should be able to take advantage of modern communication and information technologies.

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<sup>4</sup> OJ C 19, 23.1.1999, p. 1.

(13) To attain its objectives, the European Judicial Network in civil and commercial matters needs to be supported by contact points designated by the Member States and to be sure of the participation of their authorities with specific responsibilities for judicial cooperation in civil and commercial matters. Contacts between them and periodic meetings are essential to the operation of the Network.

(14) It is essential that efforts to establish an area of freedom, security and justice produce tangible benefits for persons engaging in cross-border litigation. It is accordingly necessary for the European Judicial Network in civil and commercial matters to promote access to justice. To this end, using the information supplied and updated by the contact points, the Network should progressively establish an information system that is accessible to the public, both the general public and specialists.

(15) This Decision does not preclude the provision of other information than that which is provided for herein, within the European Judicial Network in civil and commercial matters and to the public. The enumeration in Title III is accordingly not to be regarded as exhaustive.

(16) Processing of information and data should take place in compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and of the free movement of such data<sup>5</sup> and Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector.<sup>6</sup>

(17) To ensure that the European Judicial Network in civil and commercial matters remains an effective instrument, incorporates the best practice in judicial cooperation and internal operation and meets the public's expectations, provision should be made for periodic evaluations and for proposals for such changes as may be found necessary.

(18) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Decision.

(19) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, is not participating in the adoption of this Decision and is therefore not bound by it nor subject to its application,

has adopted this decision:

## **TITLE I**

### **PRINCIPLES OF THE EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS**

#### **Article 1**

##### *Establishment*

1. A European Judicial Network in civil and commercial matters ("the Network") is hereby established among the Member States.
2. In this Decision, the term "Member State" shall mean Member States with the exception of Denmark.

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<sup>5</sup> OJ L 281, 23.11.1995, p. 31.

<sup>6</sup> OJ L 24, 30.1.1998, p. 1.

## Article 2

### *Composition*

1. The Network shall be composed of:
  - a) contact points designated by the Member States, in accordance with paragraph 2;
  - b) central bodies and central authorities provided for in Community instruments, instruments of international law to which the Member States are parties or rules of domestic law in the area of judicial cooperation in civil and commercial matters;
  - c) the liaison magistrates to whom Joint Action 96/277/JAI of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union<sup>7</sup> applies, where they have responsibilities in cooperation in civil and commercial matters;
  - d) any other appropriate judicial or administrative authority with responsibilities for judicial cooperation in civil and commercial matters whose membership of the Network is considered to be useful by the Member State to which it belongs.
2. Each Member State shall designate a contact point. Each Member State may, however, designate a limited number of other contact points if they consider this necessary on the basis of the existence of separate legal systems, the domestic distribution of jurisdiction, the tasks to be entrusted to the contact points or in order to associate judicial bodies that frequently deal with cross-border litigation directly with the activities of the contact points.

Where a Member State designates several contact points, it shall ensure that appropriate coordination mechanisms apply between them.

3. The Member States shall identify the authorities mentioned at points *b)* and *c)* of paragraph 1.
4. The Member States shall designate the authorities mentioned at point *d)* of paragraph 1.

The Member States shall notify the Commission, in accordance with Article 20, of the names and full addresses of the authorities referred to in paragraph 1, specifying:

- a) the communication facilities available to them;
- b) their knowledge of languages; and
- c) where appropriate, their specific functions in the Network.

## Article 3

### *Tasks and activities of the Network*

1. The Network shall be responsible for:
  - a) facilitating judicial cooperation between the Member States in civil and commercial matters, including devising, progressively establishing and updating an information system for the members of the Network;
  - b) devising, progressively establishing and updating an information system that is accessible to the public.

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<sup>7</sup> OJ L 105, 27.4.1996, p. 1.

2. Without prejudice to other Community or international instruments relating to judicial cooperation in civil or commercial matters, the Network shall develop its activities for the following purposes in particular:

- a) the smooth operation of procedures having a cross-border impact and the facilitation of requests for judicial cooperation between the Member States, in particular where no Community or international instrument is applicable;
- b) the effective and practical application of Community instruments or conventions in force between two or more Member States;
- c) the establishment and maintenance of an information system for the public on judicial cooperation in civil and commercial matters in the European Union, relevant Community and international instruments and the domestic law of the Member States, with particular reference to access to justice.

#### **Article 4**

##### *Modus operandi of the Network*

The Network shall accomplish its tasks in particular by the following means:

1. it shall facilitate appropriate contacts between the authorities of the Member States mentioned in Article 2(1) for the accomplishment of the tasks provided for by Article 3;
2. it shall organise periodic meetings of the contact points and of the members of the Network in accordance with the rules laid down in Title II;
3. it shall draw up and keep updated the information on judicial cooperation in civil and commercial matters and the legal systems of the Member States referred to in Title III, in accordance with the rules laid down in that Title.

#### **Article 5**

##### *Contact points*

1. The contact points shall be at the disposal of the authorities referred to in Article 2(1) *b)* to *d)* for the accomplishment of the tasks provided for by Article 3.

The contact points shall also be at the disposal of the local judicial authorities in their own Member State for the same purposes, in accordance with rules to be determined by each Member State.

2. In particular, the contact points shall:

- a) supply the other contact points, the authorities mentioned in Article 2(1) *b)* to *d)* and the local judicial authorities in their own Member State with all the information needed for sound judicial cooperation between the Member States in accordance with Article 3, in order to assist them in preparing operable requests for judicial cooperation and in establishing the most appropriate direct contacts;
- b) seek solutions to difficulties arising on the occasion of a request for judicial cooperation, without prejudice to paragraph 4 of this Article and to Article 6;
- c) facilitate coordination of the processing of requests for judicial cooperation in the relevant Member State, in particular where several requests from the judicial authorities in that Member State fall to be executed in another Member State;
- d) collaborate in the organisation of, and participate in, the meetings referred to in Article 9;
- e) assist with the preparation and updating of the information referred to in Title III, and in particular with the information system for the public, in accordance with the rules laid down in that Title.



3. Where a contact point receives a request for information from another member of the Network to which it is unable to respond, it shall forward it to the contact point or the member of the Network which is best able to respond to it. The contact point shall remain available for any such assistance as may be useful for subsequent contacts.

4. In areas where Community or international instruments governing judicial cooperation already provide for the designation of authorities responsible for facilitating judicial cooperation, contact points shall address requesters to such authorities.

### **Article 6**

Relevant authorities for the purposes of Community or international instruments relating to judicial cooperation in civil and commercial matters

1. The involvement of relevant authorities provided for by Community or international instruments relating to judicial cooperation in civil and commercial matters in the Network shall be without prejudice to the powers conferred on them by the instrument providing for their designation.

Contacts within the Network shall be without prejudice to regular or occasional contacts between these authorities.

2. In each Member State the authorities provided for by Community or international instruments relating to judicial cooperation in civil and commercial matters and the contact points of the Network shall engage in regular exchanges of views and contacts to ensure that their respective experience is disseminated as widely as possible.

3. The contact points of the Network shall be at the disposal of the authorities provided for by Community or international instruments relating to judicial cooperation in civil and commercial matters and shall assist them in all practicable ways.

### **Article 7**

#### *Language knowledge of the contact points*

To facilitate the practical operation of the Network, each Member State shall ensure that the contact points have adequate knowledge of an official language of the institutions of the European Community other than their own, given that they need to be able to communicate with the contact points in other Member States.

Member States shall facilitate and encourage specialised language training for contact point staff and promote exchanges of staff between contact points in the Member States.

### **Article 8**

#### *Communication facilities*

The contact points shall use the most appropriate technological facilities in order to reply as efficiently and as swiftly as possible to requests made to them.

## **TITLE II**

### **MEETINGS WITHIN THE NETWORK**

#### **Article 9**

##### *Meetings of the contact points*

1. The contact points of the Network shall meet no less of ten than once each half year, in accordance with Article 12.

2. Each Member State shall be represented at these meetings by one or more contact points, who may be accompanied by other members of the Network, but there shall be no more than four representatives per Member State.

3. The first meeting of the contact points shall be held no later than 1 March 2003 without prejudice to the possibility of prior preparatory meetings.

#### **Article 10**

##### *Purpose of periodic meetings of contact points*

1. The purpose of the periodic meetings of contact points shall be to:

a) enable the contact points to get to know each other and exchange experience, in particular as regards the operation of the Network;

b) provide a platform for discussion of practical and legal problems encountered by the Member States in the course of judicial cooperation, with particular reference to the application of measures adopted by the European Community;

c) identify best practices in judicial cooperation in civil and commercial matters and ensure that relevant information is disseminated within the Network;

d) exchange data and views, in particular on the structure, organisation and content of and access to the available information mentioned in Title III;

e) draw up guidelines for progressively establishing the practical information sheets provided for by Article 15, in particular as regards the subject matter to be covered and the form of such information sheets;

f) identify specific initiatives other than those referred to in Title III which pursue comparable objectives.

2. The Member States shall ensure that experience in the operation of specific cooperation mechanisms provided for by Community or international instruments is shared at meetings of the contact points.

#### **Article 11**

##### *Meetings of members of the Network*

1. Meetings open to all members of the Network shall be held to enable them to get to know each other and exchange experience, to provide a platform for discussion of practical and legal problems met and to deal with specific questions.

Meetings can also be held on specific issues.

2. Meetings shall be convened, where appropriate, in accordance with Article 12.

3. The Commission, in close cooperation with the Presidency of the Council and with the Member States, shall fix for each meeting the maximum number of participants.

#### **Article 12**

##### *Organisation and proceedings of meetings of the Network*

1. The Commission, in close cooperation with the Presidency of the Council and with the Member States, shall convene the meetings provided for by Articles 9 and 11. It shall chair them and provide secretarial services.

2. Before each meeting the Commission shall prepare the draft agenda in agreement with the Presidency of the Council and in consultation with the Member States via their respective contact points.

3. The contact points shall be notified of the agenda prior to the meeting. They may ask for changes to be made or for additional items to be entered.
4. After each meeting the Commission shall prepare a record, which shall be notified to the contact points.
5. Meetings of the contact points and of members of the Network may take place in any Member State.

### **TITLE III**

#### **INFORMATION AVAILABLE WITHIN THE NETWORK, AND INFORMATION SYSTEM FOR THE PUBLIC**

##### **Article 13**

###### *Information disseminated within the Network*

1. The information disseminated within the network shall include:
  - a) the information referred to in Article 2(5);
  - b) any further information deemed useful by the contact points for the proper functioning of the Network.
2. For the purpose of paragraph 1, the Commission shall progressively establish a secure limited-access electronic information exchange-system in consultation with the contact points.

##### **Article 14**

###### *Information system for the public*

1. An Internet-based information system for the public, including the dedicated website for the Network, shall be progressively established in accordance with Articles 17 and 18.
2. The information system shall comprise the following elements:
  - a) Community instruments in force or in preparation relating to judicial cooperation in civil and commercial matters;
  - b) national measures for the domestic implementation of the instruments in force referred to in point a);
  - c) international instruments in force relating to judicial cooperation in civil and commercial matters to which the Member States are parties, and declarations and reservations made in connection with such instruments;
  - d) the relevant elements of Community case-law in the area of judicial cooperation in civil and commercial matters;
  - e) the information sheets provided for by Article 15.
3. For the purposes of access to the information mentioned in paragraph 2 a) to d), the Network should, where appropriate, in its site, make use of links to other sites where the original information is to be found.
4. The site dedicated to the Network shall likewise facilitate access to comparable public information initiatives in related matters and to sites containing information relating to the legal systems of the Member States.

## **Article 15**

### *Information sheets*

1. The information sheets shall be devoted by way of priority to questions relating to access to justice in the Member States and shall include information on the procedures for bringing cases in the courts and for obtaining legal aid, without prejudice to other Community initiatives, to which the Network shall have the fullest regard.
2. Information sheets shall be of a practical and concise nature. They shall be written in easily comprehensible language and contain practical information for the public. They shall progressively be produced on at least the following subjects:
  - a) principles of the legal system and judicial organisation of the Member States;
  - b) procedures for bringing cases to court, with particular reference to small claims, and subsequent court procedures, including appeal possibilities and procedures;
  - c) conditions and procedures for obtaining legal aid, including descriptions of the tasks of non-governmental organisations active in this field, account being taken of work already done in the Dialogue with Citizens;
  - d) national rules governing the service of documents;
  - e) rules and procedures for the enforcement of judgments given in other Member States;
  - f) possibilities and procedures for obtaining interim relief measures, with particular reference to seizures of assets for the purposes of enforcement;
  - g) alternative dispute-settlement possibilities, with an indication of the national information and advice centres of the Community-wide Network for the Extra-Judicial Settlement of Consumer Disputes;
  - h) organisation and operation of the legal professions.
3. The information sheets shall, where appropriate, include elements of the relevant case-law of the Member States.
4. The information sheets may provide more detailed information for the specialists.

## **Article 16**

### *Updating of information*

All information distributed within the Network and to the public under Articles 13 to 15 shall be updated regularly.

## **Article 17**

### *Role of the Commission in the public information system*

The Commission shall:

1. be responsible for managing the information system for the public;
2. construct, in consultation with the contact points, a dedicated website for the Network on its Internet site;
3. provide information on relevant aspects of Community law and procedures, including Community case-law, in accordance with Article 14;

4. a) ensure that the format of the information sheets is consistent and that they include all information considered necessary by the Network;
- b) thereafter arrange for them to be translated into the other official languages of the Institutions of the Community, and install them on the site dedicated to the Network.

### **Article 18**

#### *Role of contact points in the public information system*

Contact points shall ensure that

1. the appropriate information needed to create and operate the information system is supplied to the Commission;
2. the information installed in the system is accurate;
3. the Commission is notified forthwith of any updates as soon as an item of information requires changing;
4. the information sheets relating to their respective Member States are progressively established, according to the guidelines referred to in Article 10(1) e);
5. the broadest possible dissemination of the information sheets installed on the site dedicated to the Network is arranged in their Member State.

## **TITLE IV**

### **FINAL PROVISIONS**

### **Article 19**

#### *Review*

1. No later than 1 December 2005, and at least every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Decision on the basis of information supplied by the contact points. The report shall be accompanied if need be by proposals for adaptations.
2. The report shall consider, among other relevant matters, the question of possible direct public access to the contact points of the Network, access to and involvement of the legal professions in its activities, and synergy with the Community-wide Network for the Extra-Judicial Settlement of Consumer Disputes. It shall also consider the relationship between the contact points of the Network and the competent authorities provided for in Community or international instruments relating to judicial cooperation in civil and commercial matters.

### **Article 20**

#### *Establishment of the basic components of the Network*

No later than 1 June 2002, the Member States shall notify the Commission of the information required by Article 2(5).

### **Article 21**

#### *Date of application*

This Decision shall apply from 1 December 2002, except for Articles 2 and 20 which shall apply from the date of notification of the Decision to the Member States to which it is addressed.

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 28 May 2001.

For the Council

The President

T. Bodström

**4. CONVENTION OF 22 JANUARY 1993 ON LEGAL ASSISTANCE AND LEGAL RELATIONS IN CIVIL, FAMILY, AND CRIMINAL MATTERS ("Minsk"), ARTICLE 15**

**Article 15**

*Legal Information*

The central judicial authorities of the Contracting States shall provide one another upon request with information about the internal legislation in effect or which was in effect on their territories and about the practices of its application by the judicial authorities.

**5. HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS, ARTICLE 1**

**Article 1**

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression "other judicial act" does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.



**6. HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, ARTICLE 14**

**Article 14**

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

**7. 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, ARTICLE 35**

**Article 35**

1. The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.
2. The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.
3. An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.
4. Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

**8. HAGUE CONVENTION OF 13 JANUARY 2000 ON THE INTERNATIONAL PROTECTION OF ADULTS, ARTICLE 29**

**Article 29**

1. Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

2. They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of adults.

## 9. UNCITRAL MODEL LAW OF 30 MAY 1997 ON CROSS-BORDER INSOLVENCY, ARTICLES 25-27

### Article 25

*Cooperation and direct communication between a court of this State and foreign courts or foreign representatives*

1. In matters referred to in article 1, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a *[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]*.
2. The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

### Article 26

*Cooperation and direct communication between the [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] and foreign courts or foreign representatives*

1. In matters referred to in article 1, a *[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]* shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.
2. The *[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]* is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

### Article 27

*Forms of cooperation*

Cooperation referred to in articles 25 and 26 may be implemented by any appropriate means, including:

- a) Appointment of a person or body to act at the direction of the court;
- b) Communication of information by any means considered appropriate by the court;
- c) Coordination of the administration and supervision of the debtor's assets and affairs;
- d) Approval or implementation by courts of agreements concerning the coordination of proceedings;
- e) Coordination of concurrent proceedings regarding the same debtor;
- f) *[The enacting State may wish to list additional forms or examples of cooperation].*

**10. EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION ON THE COUNCIL COMMON POSITION WITH A VIEW TO THE ADOPTION OF A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS ("ROME II") (9751/7/2006 – C6-0317/2006 – 2003/0168(COD))**

(Codecision procedure: second reading)

*The European Parliament,*

- having regard to the Council common position (9751/7/2006 – C6-0317/2006),
  - having regard to its position at first reading on the Commission proposal to Parliament and the Council (COM(2003)0427),
  - having regard to the amended Commission proposal (COM(2006)0083),
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 62 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Legal Affairs (A6-0481/2006),
1. Approves the common position as amended;
  2. Instructs its President to forward its position to the Council and the Commission.

Council common position

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Amendment 13 – Recital 30a  
(new)

Amendments by Parliament

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***(30a) As in the Rome Convention, the principle of "iura novit curia" applies. The court itself should of its own motion establish the foreign law. For the purposes of establishing the foreign law the parties should be permitted to assist the court and the court should also be able to ask the parties to provide assistance.***

Amendment 26 – Article 30

*Not later than ..., the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation. **In particular, the report shall consider non-contractual obligations arising out of traffic accidents and out of violations of privacy and rights relating to personality, including defamation.***

*Not later than ..., the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation.*

*In making its report, the Commission shall pay particular attention to the effects of the way in which foreign law is treated in the different jurisdictions and the question of damages, including the possibility of awarding exemplary or punitive damages in certain jurisdictions.*

*The report shall also include an analytical study of the extent to which courts in the Member States apply foreign law in practice, including recommendations as to the desirability of a common approach to the application of foreign law.*

*Not later than ..., the Commission, after extensive consultation with the interested parties, including the Hague Conference on Private International Law, shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the situation with regard to the law applicable to road traffic accidents. The report shall be accompanied by an extensive study of the scale of the phenomenon, the problems and an extended impact assessment. If appropriate, the report shall propose amendments to this Regulation and/or the adoption of specific legislation*