EUROPEAN PARLIAMENT

Directorate-General Internal Policies

Policy Department C

Citizens Rights and Constitutional Affairs

THE IMPLICATIONS OF THE ACCESSION OF THE EUROPEAN COMMUNITY TO THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH)

BRIEFING PAPER

Résumé:

In order to accede to the HCCH the Community should fulfil some obligations, including the notification of a formal declaration on the matters, covered by the HCCH's field of activity, that have been transferred from the Member States to the Community. The declaration is expected to cover mainly measures adopted in the field of judicial cooperation in civil matters as specified in Article 61(c) and 65 TEC, but general reference will be made also to the provisions on private internal law which can be found in other EC legislation. In order to facilitate the participation of the Community and Member States in the areas of respective competence the "alternative vote" method has been specifically introduced. The more sensitive issue concerns the joining by the Community of existing conventions affecting EC instruments and the compatibility of new conventions with EC legislation, and vice versa. Such issue is relevant both for its impact on EC acts, and for the possible consequences of infringements of Hague conventions provisions by the Community and its Member States.

P/C/LIBE/FWC/2005-xx

This note was requested by: The European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

This paper is published in the following languages: EN, FR.

Authors: **Prof. Stefania Bariatti, University of Milan**
Dr. Carola Ricci, University of Milan

Manuscript completed in July 2006

Copies can be obtained through: Tel: 32105
Fax: 2832365
E-mail: japap@europarl.europa.eu

Informations on DG Ipol publications:
http://www.ipolnet.ep.parl.union.eu/ipolnet/cms

Brussels, European Parliament

INTRODUCTION

LEGAL BASIS OF THE EC TREATY-MAKING POWER IN THE FIELD OF ACTIVITY OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

In order to ascertain the extent of the EC treaty-making power in the field of activity of the Hague Conference on Private International Law (hereinafter the "HCCH" or "Conference") and to assess the consequences of the accession of the Community to it, a brief overview of the relevant provisions of the EC Treaty, as well as of the case-law of the European Court of Justice thereon - from the *AETR* judgment to the *Lugano Convention* opinion - is necessary.

Relevant EC Treaty Provisions

The power to enter into international treaties

Article 300 EC is the general provision on the capacity of the European Community to enter into international agreements, establishing the applicable procedures and identifying the competent institutions. This provision applies also for the accession to treaties instituting international organisations.

Upon *ad hoc* authorisation by the Council, negotiations are conducted by the Commission, in consultation with special committees and in contact with the Parliament[1]. As a general rule, under Article 300(2)(1) EC the qualified majority for the adoption of the Council decision to sign an agreement is required, except for conventions dealing with matters for which unanimity is required internally by the Treaty (for example, measures regarding family law under title IV EC). Assent of the European Parliament is needed when the agreement concerns a matter for which the co-decision or the co-operation procedure are applied internally, and specifically for agreements that involve amendments to EC acts adopted according to the co-decision procedure[2].

The Council, the Commission and the Parliament may request the Court of Justice to issue an opinion as to whether an agreement to be concluded is compatible with the Treaty. Thus, an advisory opinion could touch both accession to the HCCH and the conclusion of future Hague conventions. It is questionable whether after the Community accession it will still be possible to request an opinion concerning the extent of Community competence in the subject matter of any future Hague convention since the Community shall deposit a declaration "specifying matters in respect of which competence has been transferred to it by its Member States" before accession (see below).

The effects of EC membership on previous treaties

Article 307 EC provides that Member States should "eliminate the incompatibilities" between Treaty obligations and obligations arising from any bilateral or multilateral agreements concluded with third countries before 1 January 1958 or, for acceding States, before the date of their accession, through "all appropriate steps". To this extent negotiations are preferred to denunciation of incompatible previous agreements.

In case competence on the subject matter covered by the international agreement has been meanwhile transferred exclusively to the Community, the Court of Justice has declared that the Community acquires the same obligations towards the original contracting States.[3]

---

[1] Cf. the Framework agreement Commission/Parliament of 5 July 2000, *O.J.* C 121/2001, Annex II, p. 128.
[2] This may happen in case of HCCH Conventions which have an impact on EC acts based on Title IV EC.
[3] Court of Justice, joint cases 21 to 24/72, *International Fruit Company*, *E.C.R.*, 1972, 1219, § 18.

The ECJ case-law on the extent of Community competence: exclusive vs. shared competence

According to the Court of Justice, Community's external powers coincide in principle not only with the internal powers expressly conferred to it by the Treaty, but also with those which may derive implicitly from other Treaty provisions and from "measures adopted, within the framework of those provisions, by the Community institutions" (*AETR* judgment)[4]. Where the Community's internal powers are exclusive, its external powers are also exclusive, thus restricting the correspondent powers of the Member States in the international sphere (opinions 1/75 and 9/91). Moreover, when the Community and Member States share competence in a given field, the Community may acquire exclusive competence through the adoption by the Community of "provisions laying down common rules, whatever form this may take" with the scope of implementing a common policy envisaged in the Treaty.[5] Finally, even before the adoption of such EC provisions, the Community competence may become exclusive when "the conclusion of an international agreement is necessary in order to achieve Treaty objectives which cannot be attained by the adoption of autonomous rules" (opinions 1/94 and 2/92).

An international agreement can fall entirely or only partially within exclusive Community competence. In the latter case the Community shares joint competence with Member States.

The extent of the Community external competence in the field of activity of the HCCH

HCCH was instituted at the end of the XIX century with the aim of working for the progressive unification of private international law. Within its framework a number of international conventions have been adopted in different fields of private international law, i.e. choice-of-law, jurisdiction, recognition and enforcement of foreign decision, judicial assistance, cooperation among authorities and courts. These conventions cover matters related to international business and commercial law, family law, and procedural law.

The Community competence in the field of private international law is presently based on Articles 61(c) and 65 EC - introduced by the Amsterdam Treaty - which provide that the Community is empowered to adopt measures in the field of judicial cooperation in civil matters "having cross-border implications insofar as necessary for the proper functioning of the internal market". Since 1999 the Community has adopted a number of instruments, many of which coincide, partially or fully, with the scope of existing Hague conventions. Some proposals are pending both in Brussels and in The Hague, that may lead to the adoption of instruments which might reciprocally be affected [6].

---

[4] Cf. Court of Justice, case 22/70, *Commission* v. *Council* (*AETR*). in *E.C.R.*, 1971, 263, opinion 1/75, in *E.C.R.*, 1975, 1355; joined cases 3/76, 4/76 and 6/76, *Kramer*, in *E.C.R.*, 1976, 1279; opinion 1/76, in *E.C.R.*, 1977, 741; opinion 1/78, in *E.C.R.*, 1979, 2871; opinion 1/92, in *E.C.R.*, 1992, I-2821; opinion 2/91, in *E.C.R.*, 1993, I-1061; opinion 1/94, in *E.C.R.*, I-5267, opinion 2/92, in *E.C.R.*, 1995, I-521; opinion 2/94, in *E.C.R.*, 1996, I-1759; case-C-467/98, *Commission* v. *Denmark (Open Skies)*, in *E.C.R.*, 2002, p. I-9519; opinion 1/03, *Lugano Convention*, n.y.r..

[5] Cf. again Court of Justice, case 22/70, *ERTA* cit., and case-C-467/98, *Open Skies* cit.

[6] See, for example, the 1965 Convention on the service abroad of judicial and extrajudicial documents vs. Regulation No 1348/2000 on the service in the Member States of judicial and extra-judicial documents; the 1970 Convention on the taking of evidence vs. Regulation No 1206/2001 on the same subject matter; the 1980 Convention on international child abduction and the 1996 Convention on the protection of children vs. Regulation No 2201/2003 on jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility; the 2005 Convention on choice of court agreements vs. Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; the 1971 Convention on the law applicable to traffic accidents and the 1973 Convention on the law applicable to products liability vs. the future "Rome II" Regulation; the 1973 Convention on the law applicable to maintenance obligations and the draft Convention on cooperation in the field of maintenance, as well as the 1978 Convention on the law applicable to matrimonial property regimes vs. the future EC instruments on these matters.

It is important to point out that Denmark is not bound by Title IV EC, thus it should be considered a third State in respect to this field.

The Court of Justice has recently rendered an opinion on the respective competence of the Community and Member States for the conclusion of the new Lugano Convention, which will update the 1988 Lugano Convention in order to align it with the Brussels I Regulation[7]. The Court expressed the view that the adoption of this Convention, which aims at instituting a unified and coherent system of rules on jurisdiction and recognition of judgments, falls entirely within the sphere of exclusive competence of the European Community, since the conclusion of such agreement is capable of affecting Community rules (§ 124), which include both existing acts and "future developments, insofar as it is *foreseeable* at the time of that analysis" (§ 126). Thus, as it had been noticed with criticism[8], even a proposal of the Commission (like the one on maintenance obligations) or a Green paper (like that on successions) might allow an extensive interpretation of exclusive external competence of the Community. Furthermore, the Court affirmed that "disconnection clauses" do not guarantee that Community rules are not affected by the provisions of an agreement. Thus "the question of determining the existence of the exclusive Community competence to conclude the Convention must be established before the agreement is concluded" (§§ 130 and 154).

The full implications of this opinion are still unclear. While it should be restricted to the competence to conclude the Lugano Convention, which has very specific features and is strictly connected to Regulation No 44/2001, the general wording and the reasoning of the Court suggest a more extensive approach to the assessment of the Community exclusive competence in external relations in private international law as they might apply to all conventions on jurisdiction and enforcement of judgments with third States. However, it seems difficult to export such extensive approach to conventions with third States that include only few rules on jurisdiction and/or recognition of judgments, which are not so closely related to the Brussels I Regulation or which cover matters to which this Regulation does not apply. Actually, several decisions concerning the signature and ratification of conventions of this type and admitting shared competence have already been adopted by the Council.

Some further considerations may be put forward. Although the Community has adopted internal measures falling in particular within the scope of Articles 61(c) and 65 TEC, it is undisputed that those measures do not cover all the fields of activity of the HCCH and the scope of its conventions. Moreover, the opinion is limited to jurisdiction and recognition/enforcement of judgments, but it did not touch the issue of external competence in respect to choice-of-law conventions. At present only few EC provisions in secondary legislation are in force, which were adopted under Articles 95 and 153 EC[9]. Some proposals based on Article 65 are on the table (Rome I, Rome II, Rome III), which may lead to the establishment of the exclusive competence to the Community with respect to this part of private international law too, specially if they provide for *erga omnes* choice-of-law rules.

[7] Opinion 1/03. It should be pointed out that the convention extending the "Brussels I" Regulation to Denmark will be concluded by the Community.

[8] Cf. BORRÁS, *Institutional framework: adequate instruments and the external dimension*, in MEEUSEN, PERTEGÁS, STRAETMANS, SWENNEN (eds.), *International Family Law for the EU*, Antwerp, 2006, § 40.

[9] A clear and recent example is given by Directive No 98/26/EC on settlement finality in payment and securities settlement systems and Directive No 2002/47/EC on financial collateral arrangements in respect to the 2006 Hague Securities Convention. It should be pointed out that acts based on Articles 95 and 153 are binding for all EU Member States.

INSTITUTIONAL FRAMEWORK OF THE ACCESSION OF THE COMMUNITY TO THE HCCH

THE PROCEDURE FOR THE ADMISSION OF THE COMMUNITY

The admission of the Community to HCCH required a modification of the Statute, of the Rules of Procedure for Plenary Meetings and of Regulations on Budgetary Matters of the Hague Conference. The necessary amendments were adopted by the Twentieth Session of the Conference in 2005[10] in order to allow the admission of any Regional Economic Integration Organisation (REIO) to which its members have transferred competence on matters of private international law (i.e., "over a range of matters within the purview of the Conference, including the authority to make decisions binding on its Member States"; cf. Article 2A(2) of the Statute)[11]. Pursuant to a procedure adopted at the same time, the Secretary General invited the Member States of the Hague Conference to cast their votes on the amendments, if possible within a period of nine months following the Session, by notification to the Permanent Bureau. Once the required two-thirds majority for amending the Statute is reached, the Secretary General will draw up a *procès-verbal* declaring that the amendments have been approved. Finally, a meeting on general affairs and policy to be convened shortly after the entry into force of the amendments (i.e. the first day of the month following the expiration of three months after the date of the *procès-verbal*) will decide upon the admission of the European Community in accordance with the amended Statute.

THE DEFINITION OF RESPECTIVE COMPETENCE OF THE EC AND OF ITS MEMBER STATES AS A PRE-REQUISITE FOR ACCESSION TO THE HCCH

According to the newly inserted Article 2A(3) of the HCCH Statute, at the time of application for membership the EC shall submit "a declaration of competence specifying the matters in respect of which competence has been transferred to it by its Member States"[12].

This general declaration, first informally submitted by the Commission in July 2003 in order to discuss the possibility to amend the HCCH Statute in view of admitting the Community, has been recently elaborated by the Council[13]. Formal unilateral declarations by United Kingdom and Ireland based on Article 3 of the Protocol on their respective position were sent in, stating that these States will take part to the adoption of the decision of accession. On the contrary, since Denmark does not take part in any act based on Title IV, it retains its competence to act individually at HCCH, but it is still subject to the obligation to co-operate imposed to all EC Member States by Article 10 CE.

The general statement of the division of competence as between the EC and its Member States must be updated in case of any subsequent shifting of competence through a communication to the Secretary General of the Conference. The failure to notify such changes implies that all the other Members of the Conference may legitimately consider that EU Member States retain competence over matters which are not covered by the declaration and are individually bound by the relevant Hague convention[14], with the further consequence that they are responsible for any infringement thereof (Article 2A(4) and (5)). Since the United Kingdom and Ireland may decide to participate in measures adopted under Article 65 on a

[10] *Twentieth Session – Final Act*, The Hague, 30 June 2005, part. C.1, pp. 25-31 and C.6, p. 31; *Strategic Plan Update submitted by the Permanent Bureau - Preliminary Document No 1 of February 2006 for the attention of the Special Commission of April 2006 on General Affairs and Policy of the Conference*, pp. 3-4.

[11] The new Article 2A of the Hague Statute follows the model provided for the accession of REIOs in the FAO Constitution (Article II(3) and (4)) and by its General Rules of Organisations relevant to REIOs (Rule XLI). The Member States of the Hague Conference did not include the specific FAO requirement that the majority of the Member States of the REIO be Members of the Conference. Cf. for a similar approach, Rule II of the amended Rules of Procedure of the Codex Alimentarius Commission.

[12] The same declaration is provided for by the FAO Constitution (Article II(5)).

[13] Annex II to Council Decision on the accession of the Community to the Hague Conference on Private International Law, OR 7591/06 - JUSTCIV 71.

[14] As in Article II(6) and (7) of the FAO Constitution.

case-by-case basis, it is questionable whether they will have to make specific declarations informing that they have transferred their competence to the Community in the field covered by any future Hague convention.

Following admission of the Community to the HCCH, any Member of the Conference has the right to obtain - upon request - from the EC Member States and the Community information concerning the respective competence on any specific question before the Conference, i.e. even before or during each single negotiation process (Article 2A(6))[15]. Therefore, the Community and its Member States will have to co-ordinate their positions on issues of competence in order to comply with these obligations since such a clarification is considered to be crucial by the other Members of the HCCH.

THE RIGHT TO VOTE OF THE EC AS MEMBER OF THE HCCH

Following the example given by Article II(8) of the FAO Constitution, the amended Hague Statute introduces the "alternative vote" method for REIOs: the Community shall exercise its membership rights on an alternative basis with its Member States "in the area of their respective competences" (Article 2A(7) of the HCCH Statute). It will have a "number of votes equal to the number of its Member States which have transferred the competence… in respect of the matter in question" to the Community and which are entitled to vote in and have registered for such meetings (Article 2A(8) of the HCCH Statute and Article 2(2) of its Rules of Procedure). This implies that no actual physical presence of the Member States at the moment of the vote is necessary and that according to the principle of "non-additionality", based on the model of Article II(10) of the FAO Constitution, whenever the EC exercises its vote, the Member States shall not exercise their own, and *vice versa*.

It is worth pointing out that in recent times decisions within the HCCH have been taken by consensus to the fullest extent possible. A vote will only be called in exceptional cases where it is not possible to reach consensus.[16]

FINANCIAL ASPECTS OF THE ACCESSION

As to financial obligations, the Community, being a "Member Organisation", shall not be required to contribute to the annual budget of the HCCH, but will cover only administrative expenses arising out of its membership, the amount of which will be decided by the Conference "in consultation" with the Community (Article 8(2) of the HCCH Statute)[17].

Therefore, unlike its Member States, which are also Member States of HCCH, the Community will not participate in budgetary decisions of the annual meetings of the Council of Diplomatic Representatives, even if it might be admitted to meetings where the amount covering administrative expenses arising out of its membership are discussed or decided (Article 9 of the HCCH Statute).

This regime may be completed in the future by a further amendment of the Regulations on Budgetary Matters to include a procedure to determine bilaterally an annual amount to be paid to the HCCH by all REIOs.[18]

---

[15] Similarly to what is provided for in the FAO General Rules of Organisation (Rule XLI).

[16] Voting has been consistently avoided in meetings of the Conference starting with the negotiation on the preliminary 1999 Draft Convention on jurisdiction, recognition and enforcement of judgments in civil and commercial matters. The consensus procedure was constantly followed during the negotiations on the Hague Securities Convention and on the Convention on exclusive choice of court agreements.

[17] This provision is based on Article XVIII(6) of the FAO Constitution. Such additional costs include those for personnel, telecommunications, paper, representation and meeting facilities (as indicated in Prel. Doc. No 21B of February 2005): their amount is not expected to have "important budgetary implications for the Community" in the meaning of Article 300(3)(2), as interpreted by the Court of Justice.

[18] The methodology chosen in the FAO system is that of a lump-sum payment due by the EC every two years.

THE OBLIGATION TO FACILITATE COMMUNICATION WITH THE PERMANENT BUREAU

In order to create an effective liaison office which can easily communicate with the Permanent Bureau the Community shall designate a "contact organ" (Article 6(1) of the HCCH Statute). The Commission is expected to be designated to this purpose, given the specific role attributed to it under Article 302(2) EC.

Moreover, co-operation between Community, its Member States and the Conference will be promoted as a result of the Community's formal promise to guarantee the participation of representatives of the Permanent Bureau of HCCH "in meetings of experts organised by the European Commission where matters of interest to the Conference are being discussed"[19]. Such co-operation may be developed through a future bilateral agreement or memorandum, which could refer to the Eurocontrol/Commission relationship[20].

THE PARTICIPATION OF THE COMMUNITY AND ITS MEMBER STATES TO THE HAGUE CONVENTIONS

FUTURE HAGUE CONVENTIONS (ADOPTED AFTER COMMUNITY ADMISSION)

When it is "in the best interest" of the Community to negotiate and become part of a future Hague convention, a distinction must be drawn depending on the nature of the competence on the matters covered by the envisaged convention.

The leading role of the Community in case of its exclusive competence

Where the subject matter of the proposed Hague convention falls within the exclusive competence of the Community, the Community will be the sole negotiating and contracting party to such convention. The involvement of the EC Member States[21] should be limited to participation to the Council committee assisting the Commission in negotiations.

The participation of the Community and its Member States in case of shared competence

In case of shared competence, the Community and its Member States may exercise their voting rights on the basis of the respective competences as declared to the HCCH. The alternative vote method applies.

Both the Community and its member States will then become parties to the convention. The model clause adopted in Article 18 of the 2002 Hague Securities Convention should apply[22].

Possible effects of future Hague conventions on EC legislation

Both in case of exclusive Community competence and in case of shared competence, the conclusion of Hague conventions may require amendments to EC legislation in order to assure the respect and proper implementation of international law obligations in the Community legal order. A recent and useful example - which relates to a pre-EC accession Hague convention - is given by the study made by the Commission on the consequences of the signature and ratification of the Hague Securities Convention. The "*Legal assessment on the Hague Securities Convention*", dated 5 July 2006[23], shows that participation to the Convention "would be in the best interest of the Community" even if it would affect Article

[19] Cf. Final Act cit., Recommendation No 5, litt. *b*, p. 31.
[20] See Prel. Doc. No 21B of February 2005, p. 10.
[21] Which exclude Denmark where the Community competence is based on Article 65 EC.
[22] "*Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States*".
[23] Available at http://ec.europa.eu/internal_market/financial-markets/hague/index_en.htm.

9(2) of Directive No 98/26/EC on settlement finality, Article 24 of Directive No 2001/24/EC on the reorganisation and winding up of credit institutions, and Article 9(1) of Directive No 2002/47/EC on financial collateral arrangements. The Commission suggests that the proposed amendments to such provisions be brought after the signing of the Convention and before its ratification.

The effect of evolving Community competences on future Hague conventions

As mentioned above, under Article 2A of the HCCH Statute, EC Member States shall notify HCCH of any changes in the respective competence of the Community and Member States. Article 2A *de facto* supersedes Article 18 of the Hague Securities Convention - which was adopted before the modifications to the HCCH Statute.

CONVENTIONS ADOPTED AFTER 2000 (BUT PRIOR TO COMMUNITY ADMISSION)

Conventions adopted after 2000 and prior to Community admission (i.e., at present, the 2006 Securities Convention and the 2005 Choice of Court Convention) where negotiated in part or fully after the entry into force of the Amsterdam Treaty. Since the Community did take active part in negotiations, these Conventions contain specific rules concerning the participation of REIOs, which correspond to Article 2A of the HCCH Statute. These Conventions have not been signed nor ratified by any EC Member State so far.

As far as the extent of Community competence in the respective field is concerned, while the Securities Convention affects EC legislation based on Article 95 EC and competence is shared between the Community and its Member States, the Choice of Court Convention might be considered to affect the Brussels I Regulation. An extensive approach, as the one adopted by the Court of Justice in the *Lugano Convention* opinion mentioned above, may lead to conclude for the exclusive Community competence to ratify this Convention.

As to the possible effects of such Conventions on EC legislation and of changes in Community competences please see above, under the previous heading.

CONVENTIONS NEGOTIATED AND ADOPTED BEFORE 2000

The European Community has already given the assurance to the HCCH Members that it will, at the time of its acceptance of the Statute, deposit a written declaration to the following effect: "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".[24]

It is not clear yet which internationally binding instrument would have to be concluded to this end, since the insertion of such clause in "old" Hague conventions would imply re-negotiation and ratification of such modification by all contracting parties to each convention.

It seems appropriate to consider separately the implications of Community accession to HCCH in respect to previous Hague conventions concerning matters already regulated by EC legislation from those concerning matters not yet covered by EC acts. A line could be further drawn between Hague Convention in force (at least for some EC Member States) and Hague Conventions not yet in force.

If one considers some Hague Conventions in force, such as the 1965 Convention on the service abroad of judicial and extrajudicial documents, the 1970 Convention on the taking of evidence and the 1980 Hague Convention on international child abduction, it is clear that the adoption of subsequent EC Regulations concerning the same matters did not supersede them,

[24] Cf. Final Act cit., Recommendation No 5, litt. *a*, p. 31.

but rather created an *inter se* regional environment which aims at facilitating and enhancing strict co-operation among EC Member States. This solution grants full implementation and respect of international obligations by EC Member states vis-à-vis third States which are party to those Hague conventions.

It the Community acquires exclusive competence (which will have to be duly notified in accordance to Article 2A of the HCCH Statute) over the matters covered by such an existing convention, according to the Court of Justice's case law, it will be directly bound by the original obligations towards third countries.[25] The validity of EC acts will not be affected by the incompatible provisions of the convention if these are not "capable of conferring rights of citizens of the Community which they can invoke before the (national) courts".[26]

It may be that a clearcut position has not been taken yet on Hague conventions which are not yet in force for all EC Member States, but which the are considered important for the EC, like the 1996 Convention. The 15 States that were then members of the EU did sign it on 1 April 2003 upon authorisation of the Council but did not ratify it yet, while some new Member States are already bound by it (i.e. Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, Slovenia). Some of them signed and ratified before acceding to the EU, but other States did it afterwards, and even in very recent times. The basic approach, however, seems to favour the establishment and primacy of international obligations and the qualification of the European system as a regional, *inter se* system pursuant to the 1969 Vienna Convention on the law of treaties.

Finally, in respect to the relationship between existing Hague conventions and future EC legislation not yet in force, it should be mentioned that the Community act can provide for an explicit rule aimed at granting the application of EC law while excluding international liability for infringement of international obligations. For example, Article 24(2) of the amended proposal for a Rome II Regulation provides that "*where, at the time of conclusion of the contract, all the material aspects of the situation are located in one or more Member States, this Regulation shall take precedence" over the 1971 Hague Convention on the law applicable to traffic accidents and the 1973 Hague Convention on the law applicable to products liability*".[27] With respect to jurisdiction and recognition of judgments, a "disconnection clause" could be introduced like the one which appears in Articles 61 and 62 of the Brussels II-*bis* Regulation.

THE BONA FIDE PRINCIPLE

It is a general principle of international law that signing an international agreement has the effect of imposing upon signatory States the obligation to avoid any such behaviour which could endanger the entry into force of the agreement. Therefore, the Community and its Member States should refrain from adopting internal acts which could deprive Hague conventions - which it/they have signed - of its object and scope, even before its entry into force.

[25] Court of Justice, joint cases 21 to 24/72, *International Fruit Company*, cited above.
[26] See again *International Fruit Company* judgment in the previous note.
[27] Amended proposal for a European Parliament and Council Regulation on the law applicable to non contractual obligations ("Rome II") presented by the Commission pursuant to Article 250 (2) of the EC Treaty (COM (2006) 83).