



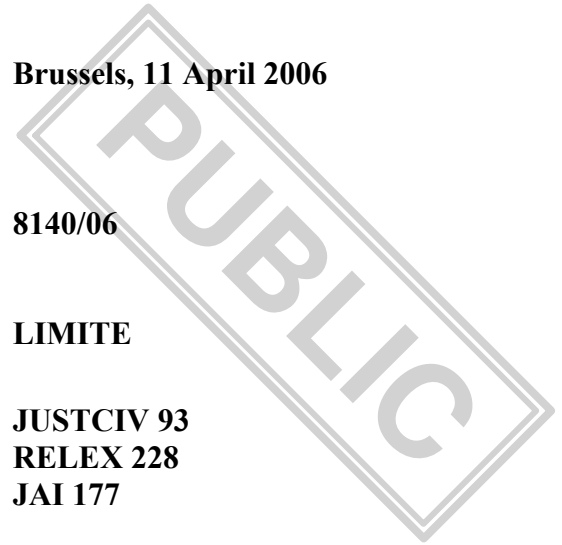
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NOTE

from : the Presidency
to : Coreper/Council

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Subject : Aspects of judicial cooperation in civil matters in the framework of the Strategy for the External Dimension of JHA: Global freedom, Security and Justice

I. INTRODUCTION

1. In the Hague Programme¹ the European Council considered the development of a coherent external dimension of the Union policy of freedom, security and justice as a growing priority and called for the development of a strategy reflecting the Union's special relations with third countries, groups of countries and regions, and focusing on the specific needs for JHA cooperation with them.

¹ The Hague Programme: strengthening freedom, security and justice in the European Union, doc. 16054/04 JAI 559.

2. As indicated in the Strategy for the External Dimension of the JHA,¹ the development of an area of freedom, security and justice can only be successful if it is underpinned by a partnership with third countries on these issues, which includes strengthening the rule of law, and promoting the respect for human rights and international obligations.
3. With regard to judicial cooperation in civil matters, the Hague Programme aims to ensure coherence between the EU and the international legal order. The Council and Commission Action Plan implementing the Hague Programme² calls for the conclusion of a number of specific international agreements to that effect.
4. The external dimension of judicial cooperation in civil matters has growing significance. On the one hand, international agreements with third countries are indispensable for the purpose of providing legal certainty and foreseeability for European citizens on a global scale. On the other hand, it is also important to safeguard the uniform application of Community law in international negotiations.
5. The current document aims to set forth the general framework for the future strategy of the external dimension in the field of judicial cooperation in civil matters. It is not a strict legal framework but rather an evolving process of defining and achieving policy objectives in full conformity with the provisions of the EC Treaty.

¹ A Strategy for the External Dimension of JHA: Global Freedom, Security and Justice, doc. 5003/1/06 REV 1 JAI 1 RELEX 1

² Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union, doc. 9778/2/05 REV 2 JAI 207.

II. COOPERATION WITH THIRD COUNTRIES IN THE FIELD OF JUDICIAL COOPERATION IN CIVIL MATTERS

1. Areas of cooperation

6. Cooperation with third countries in the field of judicial cooperation in civil matters should focus on the areas covered by EC legislation.
7. In particular jurisdiction, recognition and enforcement of decisions, applicable law, cross-border transmission of judicial and extra-judicial documents, taking of evidence and administrative cooperation between authorities involved in international legal aid could be identified as possible fields of cooperation (see Article 65 of the EC Treaty).

2. Method of work

a) Principles

8. To the greatest extent possible, cooperation in the field of judicial cooperation in civil law matters with third countries should follow the general framework for the relations between the EU and a particular third country. Account should be taken of the existing level of cooperation, of the legal framework and of reciprocal interest in deepening cooperation in the field of judicial cooperation in civil matters.
9. It should also be noted that, depending on the status of the country with respect to the European Union (e.g. a possible candidate country or close economic ties), the objectives and the level of detail of such cooperation could vary significantly.

10. Cooperation with third countries in the field of judicial cooperation in civil matters should also be undertaken where necessary, based on the mutual assessment of actual needs and shortcomings in practice.
11. This general framework will be updated on a regular basis, depending on the work undertaken, progress achieved and the discussions held.

b) Means of cooperation

12. Accordingly, the means of cooperation employed with each particular country or a group of countries depend on the particular situation in question. Therefore there is no hierarchy between the means highlighted below and none of them should be excluded from the outset.
13. Cooperation in the field of civil law could be carried out in at least three different manners:
 - in international negotiations at multilateral level;
 - in the form of bilateral agreements;
 - by exchange of best practices.

(i) Multilateral cooperation

14. Having regard to the great number of international conventions in the fields outlined in para 7, it is clear that ensuring that the same legal framework applies to a large number of countries of different legal backgrounds as regards a specific field offers considerable benefits.
15. Therefore, as far as appropriate and necessary, it would be useful to cooperate with third countries in the negotiations over multilateral conventions and in the implementation phase of these agreements.

16. In particular, the work undertaken within the Hague Conference on Private International Law has provided for useful exchanges with third countries. With more than 60 member countries representing all continents and different legal traditions, the Hague Conference on Private International Law is an international organisation reinforcing legal certainty and security on a global scale in the area of judicial cooperation in civil matters.
17. In addition, similar approach should be taken as regards other forums such as the Council of Europe, UNIDROIT, UNCITRAL, and others

(ii) *Bilateral cooperation*

18. In certain fields and with respect to some partners, it may be useful to proceed by way of concluding bilateral agreements between the EU and a respective third country in the field of judicial cooperation in civil matters.
19. This method offers more flexibility and enables tailor-made solutions in relations with some third countries as regards certain areas.

(iii) *Exchange of best practices*

20. Cooperation should in all cases, as appropriate, be supported by exchanges at a less formalised level, such as exchange of information, common training events, exchange of legal practitioners.
21. In particular, importance should be attached to electronic and web-based tools for developing cooperation in international legal cooperation. The success of the European Judicial Network in civil and commercial matters proves the viability of such solutions in the contemporary world.

3. Target countries

a) *Acceding and candidate countries*

22. The accession of Bulgaria and Romania is scheduled for 2007 or, at the latest by 2008. To facilitate the smooth integration of those countries into the European area of justice in civil matters, it is important to continue the ongoing dialogue and exchange of information within the existing forums at EU level as well as at international level.
23. Openness, information exchange and cooperation in international negotiations should be considered with regard to the current and future candidate countries on the basis of the Association Agreements, Accession Partnerships and other relevant instruments in the pre-accession phase with regard to the objective of fully integrating the candidate countries into the area of justice from the moment of accession.

b) *Lugano States*

24. Considering the particularly close relationship with the Lugano Member States (Iceland, Norway and Switzerland), judicial cooperation in civil matters with those countries should be reinforced. In particular, the following aspects should be taken into account in the planning of future work:
- (i) The first priority with regard to the Lugano States would be to conclude the new Lugano Convention. In view of the fact that the European Court of Justice has delivered an opinion defining the external competence of the EC in this field, this objective could be attained in the course of 2006.

- (ii) Preparatory work could be undertaken to consider extending the current Lugano system to other aspects of the area of justice. This would result in the creation of a parallel area of justice to that created by the EC rules in certain fields and would bring along benefits for the citizens in both EC and Lugano States.

c) *European Neighbourhood Policy countries*¹

- 25. Considering the objectives of the European Neighbourhood Policy and the existing framework of cooperation the EU has established with each of these countries, closer cooperation in the field of judicial cooperation in civil matters should be envisaged with the countries falling under the European Neighbourhood Policy.
- 26. Having regard to the close ties of certain Member States with some of the EPN countries, co-operation should be reinforced, especially in the field of parental responsibility and child abduction. Attention should be given to the possibility of ratifying the existing Hague Conventions in this field. Regard should also be had to the facilitation of practical cooperation and contacts between legal practitioners, for example in the framework of the Malta process. If need be, co-operation could take the form of bilateral (mixed) agreements.

¹ In alphabetical order: a) in Europe: Belarus, Moldova, Ukraine; b) in Asia: Armenia, Azerbaijan, Georgia, Israel, Jordan, Lebanon, the Palestinian Authority, Syria; c) in Africa: Algeria, Egypt, Libya, Morocco, Tunisia.

d) USA and Canada

27. The United States of America and Canada should be considered as privileged partners of the European Union. Cooperation in judicial co-operation in civil matters should take account of the following priorities:

- (i) reinforced dialogue in international negotiations, in particular in the framework of the Hague Conference on Private International Law;
- (ii) closer contacts at the level of practitioners (judges, lawyers).

e) Russia

28. The bilateral basis for EU relations with Russia is the Partnership and Co-operation Agreement which came into force on 1 December 1997. In addition, a number of sectoral agreements exist.

29. Cooperation in the field of JHA was taken further by the long-term objective of establishing the Common Space on Freedom, Security and Justice between EU and Russia. To implement this objective, a Road Map has been prepared.

30. Cooperation with Russia in the field of judicial cooperation in civil matters should take into account the objectives defined in the Roadmap for the Common Space of Freedom, Security and Justice and the outcome of discussions of the Committee on Civil Law Matters (General questions) on this issue ¹.

¹ See 6115/06 JUSTCIV 20.

f) Other countries

31. In the longer term, cooperation frameworks in the field of judicial cooperation in civil law could be envisaged with other countries respecting the rule of law, independence of judiciary and other principles essential for the application of the principle of mutual recognition. In particular, such cooperation could be set up with countries which have close commercial ties with EU countries that should be reinforced by an appropriate legal framework.
32. As a first priority, cooperation should focus on the possibility of those countries acceding to certain key instruments of the Hague Conference on Private International Law.

4. International forums

a) The Hague Conference¹

33. As indicated above, the Hague Conference on Private International Law will continue to be an important forum for concluding agreements with third countries. The priorities of the EC in the immediate future in relations with the Hague Conference should be the following:
 - (i) to finalise the process for the accession of the EC to the Hague Conference;
 - (ii) to examine whether it is in the interest of the EC to join those Hague Conventions in respect of which there is Community competence.

¹ See information on the Hague Conference
website: <http://www.hcch.net/e/members/members.html>.

b) Other forums

34. Existing contacts and cooperation in areas where there is exclusive EC external competence should be reinforced in other international forums, such as the Council of Europe, UNIDROIT, UNCITRAL, and others.
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