

Informal meeting of Justice and Home Affairs Ministers, 18-19 July 2019, Helsinki
Working lunch of Justice Ministers on 19 July 2019

EU CIVIL JUSTICE AND MULTILATERALISM

According to the new **Strategic Agenda 2019-2024**, adopted by the June European Council, the EU will remain a driving force behind multilateralism and the global rules-based international order, ensuring openness, fairness and the necessary reforms. The EU will support the UN and key multilateral organisations.

Cooperation with third countries and international organisations is a key element of the EU's **justice policy**. The growth in international trade and foreign investment and the mobility of citizens around the world increases opportunities, but also legal risks as well as an economic and administrative burden for citizens and companies. It is essential that **legal certainty and access to justice** are ensured in civil and commercial disputes involving citizens and companies in third countries.

The **multilateral framework** established in the global rules-based order allows countries representing different legal orders and judicial cultures to cooperate and contribute to mutual trust at international level. Multilateral agreements with third countries are indispensable for providing legal certainty and predictability for EU businesses and citizens on a global scale. In order for the multilateral framework to function smoothly and efficiently, it is essential that the framework is sufficiently developed, wide-reaching, properly implemented and respected by countries party to multilateral arrangements. Enhancing this framework will allow countries to make the most of new trading opportunities and tackle global issues.

In its civil judicial cooperation with third states, the EU relies broadly on the existing framework created through **multilateral cooperation** under the auspices of the three international organisations most relevant to civil justice: the **Hague Conference on Private International Law (HCCH)**, **United Nations Commission on International Trade Law (UNCITRAL)** and **Institute for the Unification of Private Law (UNIDROIT)**. Cooperation with these organisations gives the EU a platform to actively participate in creating and enhancing a truly global framework for the benefit of citizens and businesses, as well as coherence between the EU's legal order and the international legal order. Furthermore, an active role in these organisations promotes an EU-compatible approach and EU values in international forums.

The EU has the closest ties with the HCCH, having been a member of the organisation since 2007. The EU is also increasingly involved in work carried out under the auspices of UNCITRAL and, in certain instances, UNIDROIT. This involvement is motivated partly by the need to preserve the coherence of the EU

framework, but importantly also by the wish to influence the international civil justice field more actively, taking into account the extension of the internal EU civil legal order. It has, in fact, been considered whether the EU should pave the way to becoming a member of UNIDROIT, thus further facilitating the EU's role on the international stage. At the UN, the EU has a status of an enhanced observer¹.

As to **concrete results of multilateral cooperation**, there are too many to mention. Important and widely applicable HCCH Conventions with EU relevance include, for example, those dealing with protection and maintenance of children, child abduction and choice of court.

It is the Hague Conventions and the corresponding EU regulations that, for instance, make swift international cooperation possible in cases of child abduction, aiming at the prompt return of children who have been wrongfully removed or kept away from their home country. Uniform rules also greatly enhance efficient child protection by establishing a framework for collaboration and exchange of information between child protection authorities as well as determining which country's authorities are competent and which law is to be applied in each individual case. Furthermore, measures taken in one country are in principle recognised and enforced in other Contracting States.

There is also a very recent example of concrete results. After lengthy negotiations and active participation by the EU and its Member States in the HCCH the so-called **Judgments Convention** was successfully completed earlier this month in the Hague. It is expected that the Judgments Convention will enhance access to justice for EU businesses and citizens through the recognition and enforcement of judgments, facilitate trade and investment and contribute to economic growth by enhancing legal certainty and reducing costs in cross-border dealings and cross-border resolution of disputes. The EU will now focus on adopting the Convention.

Multilateral cooperation is not only about developing new international instruments such the Judgments Convention. It is also important to work on expanding the global coverage and promoting the proper implementation of existing instruments. Consequently, the EU should continue its efforts to **promote the accession of our partner states to relevant international conventions in the civil justice area**, such as the 1980 Hague Convention on International Child Abduction, the 1996 Convention on Child Protection, the 2007 Maintenance Convention and its Protocol on applicable law and the 2005 Choice of Court Convention; as well as effective implementation of these conventions.

Insofar as adequate multilateral instruments exist, cooperation in civil and commercial matters with third states should be based on existing international instruments. In this context, cooperation with the EU's neighbouring countries is crucial. Furthermore, the EU could increase its efforts in order to **enhance capacity building of states, in particular in certain areas such as Africa and Latin**

¹ Resolution adopted by the General Assembly 65/276, Participation of the European Union in the work of the United Nations.

America, to ensure adherence to treaty obligations and consequently a well-functioning multilateral framework which also benefits EU interests.

Another avenue for the EU to consider is the possibility of concluding – insofar as Member States so agree - **international agreements also in areas where the Union does not yet possess exclusive competence**. In practice, instead of legislating on a certain subject not yet covered by EU law, it could be more efficient to have all Member States, or the EU when possible in terms of each treaty, ratify a given international agreement. The value-added in this approach would be that **all Member States would thus apply the same legal framework both in their mutual relations and in relations with third-country parties to the agreement**. A possible candidate to explore the feasibility of this approach could be the 2000 Hague Convention on the Protection of Adults. For the time being, the process of ratification by the Member States is very slow in terms of responding to the challenges we are facing on the cross-border protection of vulnerable adults. With increasing life expectancy and related illnesses, there may be more and more cases where legal uncertainty might arise on the recognition of various national measures protecting vulnerable adults in another state.

The Presidency has invited the Secretary-General of the Hague Conference on Private International Law, Mr Christophe Bernasconi, to attend the working lunch of the Justice Ministers as a Guest Speaker.

Questions:

In light of the above, Ministers are kindly invited to debate the following questions:

- *Bearing in mind the new Strategic Agenda, do you agree that the multilateral approach in civil and commercial justice is the preferred way to improve the EU's global influence in this area?*
- *What further action could the EU take to promote a global multilateral framework for civil and commercial justice which is in the interest of EU citizens and businesses?*
- *How could the EU promote the capacity building of less-developed states to enable the establishment of treaty-based relations with them in the area of civil justice?*