NOTE

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Subject: Analysis of material on judicial cooperation in civil matters in Hungary, Poland and Romania (revised document)\(^{(1)}\)

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\(^{(1)}\) Bold print indicates revised text.
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Part 1. Introduction

1. The General Secretariat was invited by the Working Group to prepare a factual note on the basis of the documents collected so far, including the background information given by Member States, the Commission, the Council of Europe.

The document is structured in a general overview (part 1), the acquis of the EU (part 2), and the factual situation in the respective applicant countries (part 3).

2. Concerning the acquis of the EU in the field of judicial cooperation in civil matters a distinction has to be made between those conventions which are limited to Member States of the EU and those which are open for non-EU Member States.

3. Of the latter the Lugano Convention is the one closest related to the EU, since it is a parallel convention to the Brussels Convention. Its Articles 62 and 63 provide that it is open for accession by non-EU Member States. Acceding to the Lugano Convention is the most important step for non-EU Member States to implement the acquis of the EU, since it implies in particular to have a legal system compatible to the ones in EU Member States and to have as well a functioning judiciary. The Lugano Convention is a double convention in which also rules on jurisdiction are included. For that reason special attention is drawn to the state of ratification of this convention.

4. The reports received by the General Secretariat of the Council deal mainly with the question of an efficient judiciary or the fulfilment of the rule of law principle. Nearly all contributions received by Member States deal with the question, whether in practical terms there are any problems in the judicial cooperation with the respective candidate countries. Only little information was received by Member States after the meeting of 14 December 1998. New information included in the present document originates from the bilateral screening of the Commission with the accession candidate countries in March 1999 and from the replies to the questionnaire of the Working Group received from the Member States' Embassies and Commission Delegations in the candidate countries.
5. The analysis of the different reports received follows the structure given by the Presidency's document 5322/99/2 REV 2 EVAL 5 ELARG 5, taking into account the questions raised in that document. Several of those questions remain, however, still unanswered. Further inquiry and more detailed information by Member States seems therefore necessary for making an overall evaluation of the situation in the applicant countries.
Part 2. Acquis of the EU in the field of judicial cooperation in civil matters

Three main aspects of the acquis of the EU concerning judicial cooperation in civil matters have to be distinguished and taken into consideration when evaluating new candidates:

A. Implementation of legal acts and ratification of international Conventions relevant to the third pillar.

Concerning international conventions three categories of instruments can be distinguished:

1. Instruments adopted between Member States (Conventions based in particular on Art 220 EEC or K1 (6) and K3 (2) TEU):

   - Brussels Convention of 27.9.1968 on jurisdiction and enforcement of judgements in civil and commercial matters as amended by accessions and the Protocol on its interpretation of 3.6.1971
   - Rome Convention of 19.6.1980 on the law applicable to contractual obligations as amended by accessions and Protocols thereto
   - Convention of 26.5.1997 on service of judicial and extrajudicial documents in civil or commercial matters
   - Brussels II Convention of 29.5.1998 on jurisdiction and recognition and enforcement of judgements in matrimonial matters

2. Joint Actions and Joint Positions

   - Joint Action of 22.11.1996 concerning measures protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom

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(1) The elements of the acquis listed below are not all in the same way obligatory to accede by candidate countries (cf. doc. 6473/3/98 REV 3 JAI 7 ELARG 51).
3. Conventions adopted in the framework of the European Political Cooperation and in other fora, namely the Council of Europe, the Hague Conference or the UN:

- Hague Convention of 1.3.1954 on Civil Procedure
- Hague Convention of 15.11.1965 on Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters
- Hague Convention of 18.3.1970 on the Taking of Evidence Abroad in Civil or Commercial Matters
- Council of Europe Convention of 20.5.1980 on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody
- Convention of 25.5.1987 abolishing the Legalisation of Documents in the Member States of the European Communities

4. Human Rights related instruments:

- European Convention for the Protection of Human Rights and Fundamental Freedoms of 4.11.1950 (this Convention is directly linked with the EU instruments (Art F2 and K2(1) TEU))
- UN Convention of 7.3.1966 on the elimination of all forms of racial discrimination
- European Convention of 26.11.1987 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UN Convention of 20.11.1989 on the Rights of the Child
B. The functioning of the judiciary

Candidate countries do not only have to have implemented the respective legal instruments which are based on the international conventions mentioned above, but it is also necessary that their institutions, management systems and administrative arrangements meet the Union standards. This too has to be observed in any evaluation process.

C. The fulfilment of the rule of law principle and human rights

Finally, all candidate countries must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms as included in the "Copenhagen criteria" (cf. also point A. 4. above).
I. HUNGARY

A. Ratification of international conventions and judicial cooperation:

1. The Lugano Convention:

Hungary has already applied to adhere to the Lugano Convention, its accession is presently examined. Generally speaking, the reports received show that the Hungarian legislation and practice seem to meet the requirements of the Lugano Convention.

If Hungary accedes to the Lugano Convention, it will improve to a very large extent the necessary alignments to become in the future also a member of the Brussels Convention. Certain Member States have already expressed their acceptance for Hungary becoming a member of the Lugano Convention.

2. Mutual Assistance in Civil Law:

Hungary is party to the 1954 Hague Convention on Civil Procedure but not yet to the 1965 Hague Convention on the Service Abroad, which it intends to ratify. For the time being many bilateral agreements provide provisions on the service of documents.

3. Other international conventions:

Hungary is party to the following international Conventions:

- Hague Convention on the Civil Aspects of International Child Abduction of 1980,
- Council of Europe Convention on Information on Foreign law of 1968,
- The UN Convention on the Recognition and Enforcement of foreign decisions in arbitration awards of 1958,

The JHA-Mission Report under the PHARE Programme saw no shortcomings in as much as the fulfilment of international obligations under the relevant Conventions is concerned.

There is no intention to ratify the 1965 Hague Convention on Service Abroad, since, it is likely that after accession to the EU Hungary would be party to the EU Convention on the service of documents, which is a more advanced legal instrument on the same subject.\(^1\)

The accession to the Hague Convention on the taking of Evidence Abroad in Civil of Commercial Matters of 18 March 1970 is being prepared on the experts’ level.

4. Bilateral Agreements:

Concerning judicial cooperation in civil matters Hungary has entered a number of bilateral agreements with EU Member States and non-Member States, of which many provide also provisions on the service of documents. A detailed list of all bilateral agreements with EU Member States cannot be given yet, further information from the Member States is required.

\(^1\) Official answer of the Hungarian Ministry of Foreign Affairs to the EU Embassies in Hungary.
Different opinions were given by some Member States concerning the functioning of bilateral legal assistance. Some saw no problems with the bilateral legal assistance intercourse and even stated that it works very well.

One Member State stressed, however, that the service of documents is a problem, since Hungary has not ratified the 1965 Hague Service Convention. Further, delays were reported in returning certificates of service when legal documents have been served, and omissions from files when forwarding maintenance is requested.

Clarification and further information on Member States' practical experience in this field seem to be necessary.

B. Functioning of the Judiciary:

Concerning the question of an efficient judiciary, the reports received (e.g. PHARE JHA-Mission Report, Commission Opinion on the application of Hungary for membership to the EU) show the following main problems:

- The independence of the judiciary (judges and prosecutors) has to be further ensured and the functioning of the judiciary still improved. To a certain extent institutional reforms seem therefore necessary.

- There is a number of young judges who took over their function after the change of the regime. They appear to be professional and dedicated to their work, but still need further training, especially concerning the relevant initiatives of different European fora.

- Experienced judges often get better paid jobs as private consultants. Therefore it might be necessary to implement a coherent wages policy for the judiciary.

- Courts are very overburdened, which is one cause for slowness of civil court procedures. Therefore a revision of the procedural law could be envisaged in order to alleviate heavy procedures. Hungary seems, however, not prepared to undergo deep structural reforms, but is just increasing the number of staff in first instance courts.
- One Member State reports that judges often take the maximum time allowed by the law between trials, and instead of forcing witnesses who do not appear voluntarily, trials are postponed. This all leads to lengthy court proceedings.

- There is still necessity of a full computerisation of the court system (including online networks).

- The issue of corruption has to be taken into account.

- An increased cooperation between the Hungarian and the judiciary in EU Member States would be desirable.

From the answers to the questionnaire (doc. 5430/99 EVAL 8 ELARG 8) received from the EU Embassies in Hungary follows:

- The Hungarian judiciary meets in general at least the standards of some Member States of the EU. Procedures tend to be too long. In administrative cases and in cases of judicial reviews (2-3 years). In 75% of civil or commercial cases, procedures tend up to one year, 65% out of them in first instance.

- The Constitutional Court is highly respected in public, People trust also in the Budapest High Courts. Mixed feelings are shown to the district and county courts. Especially in the Eastern parts of Hungary it seems that small communities favour the climate of collusion in which nobody would hurt another whom he might need at some stage. There are sometimes fruitful attempts by interested parties of influencing investigations and proceedings either by force or by money etc.

- Concerning the practice in the day to day work of judicial cooperation with Hungary (e.g. service of documents, taking of evidence, recognition and enforcement), enforcement procedures seems to be difficult to be adequately applied.
While the service of documents works in general quite well, the cooperation in the taking of evidence can still be improved (long procedures, more cooperativeness).

C. Rule of Law Principle and Human Rights:

Generally speaking the Commission Reports and the reports by some delegations show that the Hungarian judicial system complies to a very large extent to the rule of law principle and the European Convention on Human Rights.

As Hungary has acceded to the Council of Europe, this proves that Hungary seems to be able to accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. Hungary has ratified the European Convention on the Protection of Human Rights and all Additional Protocols (except Protocol n. 10) thereto.

By law the rule of law principle and the protection of human rights is generally respected in all proceedings of the judiciary. In practice deficiencies might occur, like e.g. some single special cases (not professional „judge” judging, missing or bad interpreters, negligence in fact/evidence findings).

Hungary has a general law on protection of personal data, which is in harmony with the Council of Europe Data Protection Convention. Detailed rules of data protection have been enacted in a number of national statutes.
II. Poland

A. Ratification of international conventions and judicial cooperation:

Concerning the acquis of the EU, the reports received show that Poland has been working hard to put large parts of the civil-law acquis into its national statutes.

1. The Lugano Convention:

Poland is very much interested in acceding to the Lugano Convention. In 1991 Poland was formally invited by one EU Member State to accede to the Convention. All EU Member States have already agreed to this accession. Poland’s accession to the Lugano Convention is expected by mid-1999 after the ratification by the Polish Parliament.

2. Mutual Assistance in Civil Law:

In 1996 Poland acceded to the 1970 Hague Convention on the Taking of Evidence Abroad and to the 1965 Hague Convention on Service Abroad; Poland is party to the 1905 and 1954 Hague Conventions on Civil Procedure.


3. Other international conventions:

Concerning international recognition and enforcement Poland is - besides a number of bilateral agreements - party to:
- the UN Convention on recognition and enforcement of foreign arbitral decisions of 1958,
- the Hague Convention on the Recognition of Divorces and Legal Separations of 1970,
Poland acceded to the Hague Convention of 1973 on the Law Applicable to Maintenance Obligations and has concluded several bilateral agreements which contain among others provisions on the law applicable to contractual obligations.

Finally Poland is party to
- the 1961 Hague Convention on the Competence of Authorities and Applicable Law relating to the Protection of Minors,
- the 1980 Council of Europe Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children,

Poland intends also to ratify the 1996 Hague Convention on Competence, Applicable Law, Recognition, Enforcement and Cooperation relating to Parental Responsibility and Measures of Child Protection.

4. Bilateral Agreements:

A detailed list of all bilateral agreements which Poland has concluded in the field of civil law cooperation with EU Member States can only be given after having received full information on that by all Member States. Although Poland is party to the 1965 Hague Convention on Service Abroad, many of the bilateral agreements provide provisions on the service of documents.

Taking into account the practical efficiency of the judicial cooperation with Poland, those Member States which have submitted their reports to the Working Group have had different experiences:

Some Member States state that the judicial cooperation in civil matters - which is based on the 1954 Hague Convention on Civil Procedure and the 1965 Hague Convention on the Service Abroad - works very well, while one Member State reports problems in the bilateral judicial assistance, namely delays in returning certificates of service and omissions from files when forwarding maintenance requests; the usual omission is the proof of summons on the defendant.
Also the PHARE Report criticises problems which are linked to insufficient specialised staff and lack of linguistic skills.

B. Functioning of the Judiciary:

Pursuant to different reports received, the Polish judiciary seems to need still some reforms which have already started, mainly to fully comply with the rule of law principle.

Reforms would also be welcome because it takes an average of several years until a judgement is rendered, although the number of judges per capita seems no lower than the European average. Some argue that the upsurge in litigation is linked to the fact that the private business sector has increased very much since 1989 and that disputes which used to be settled administratively now go to court. Others see a reason for the lengthy procedures in the changes in the law which have also slowed down the settlement of cases, and that many tasks which judges are performing are not strictly judicial. Therefore an administrative reform of the functioning of courts seems as well necessary.

A further aim, should be a complete computerization of the courts and improvement of equipment.

Two thirds of today’s judges have taken over their function as judges after the change in the regime, which means that most judges are young and sometimes lack full practical experience. The PHARE Report suggests therefore for example training in the courts, including the administrative level.

The income of judges is relatively low, this being a reason for many judges - especially in the major cities - for leaving their profession for better paid jobs elsewhere in the legal profession.

Pursuant to the PHARE Report corruption does not seem a significant problem in the judiciary.

An increased cooperation between the Polish and the judiciary in EU Member States would be desirable.
From the answers to the questionnaire sent to the Embassies in Poland follows:

- The Polish judicial system respects formally speaking the principal standards of EU Member States (three levels of courts, independence of judges, professional formation of judges).

- First instance courts are 228 cantonal courts and 44 "voivodian" courts (for cases above 100,000 zł (app. 4,000 euro).

- The Supreme Court is the last instance of judicial control of the decisions of lower courts, and has also the authority to give a binding interpretation of a legal provision.

- Civil cases are usually handled by one single judge, in special cases by a panel of one professional judge and two citizens (obligatory in family matters).

- Judges are appointed for lifetime and are guaranteed all rights and independence as in EU Member States.

- Judges are paid low salaries. However, there has been established a coherent wages policy. The number of judges has thus increased from 5,165 in 1989 to 7,633 in 1997. The ratio of judges to the overall population is not lower than the European average.

- The effectiveness of the judicial system is hindered by the length of procedures and insufficient staff and material.

C. Rule of Law Principle and Human Rights:

Poland's new Constitution of October 1997 appears to guarantee its status as a rule of law state and giving good grounds to fulfil the first Copenhagen condition. The independent institutions of the executive and legislative powers have acquired the authority they need to act as guardians of the rule of law.
Poland has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as Protocols 1-5 and 8-11 thereto in December 1992. The principle of the freedom of press seems to be enacted well in the Polish legislation.

The new law on personal data protection takes into account the provisions of Directive 95/46/EEC of 24.10.1995 on the protection of individuals with regard to processing of personal data and on the free movement of such data. **Poland has not yet ratified the Council of Europe Convention on Data Protection.**
III. ROMANIA

A. Ratification of international conventions and judicial cooperation:

1. The Lugano Convention:

Romania is interested in joining the Lugano Convention, whereby the Romanian authorities consider their national legislation already in compliance with the requirements for joining the Lugano Convention. Romania is in contact with some Member States to see to which extent they sponsor its accession to the Lugano Convention.

Romania has not yet been invited to join the Convention, but it seems that there are important parts of the Romanian legal system and judiciary which still need to be brought into line. It is difficult to predict when these legislative changes are likely to take place. According to informal information received it is likely that certain developments in the legal system and judiciary will take place in the near future.

2. Mutual Assistance in Civil Law:

Romania is party to the 1954 Hague Convention on Civil Proceedings, however, it is not party to the 1965 Hague Convention on Service Abroad. The answer to the questionnaire by the EU Member States' Embassies states that the procedure of ratification of that Convention is done under the responsibility of the Ministry of Justice. Ratification is on its way and should be completed still this year.

3. Other international conventions:

Romania is party to the following international Conventions:
- the Hague Convention on the Civil Aspects of International Child Abduction of 1980,
- the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitration Awards,
- the 1965 Washington Convention governing Disputes concerning Investments between States and Individuals of other States,
- the 1957 Council of Europe Convention on Adoption of Children,
- the 1956 UN Convention on Enforcement of Maintenance Claims Abroad,
- the 1993 Convention on Protection of Children and Cooperation concerning International Adoption,

Romania intends to ratify in 1999 the Hague Convention on the recognition of judgements in civil and commercial matters.

4. Bilateral Agreements:

Romania has concluded a number of bilateral agreements on civil law with EU Member States. Detailed information cannot be given at this stage. Many of these agreements contain provisions on the law applicable, on rules on international jurisdiction, recognition and enforcement, on service of documents and on taking of evidence.

The reports received by Member States on bilateral judicial cooperation vary. One Member State reports that judicial cooperation with Romania in civil matters works almost as well as with some EU Member States. Another report states that there are problems in the bilateral judicial cooperation like delays and omissions.

The answers to questionnaire of the Working Group which was given by the EU Member States’ Embassies in Bucharest lists a number of bilateral agreements concluded by Romania with EU Member States. Reference thereto is made.
B. Functioning of the Judiciary:

The main problems reported are:

- Romanian courts are given independence, but there are reports on corruption.
- Slowness of the reform of the judicial system, although such reforms seem very urgently necessary.
- Very long delays until court decisions are rendered.
- Inadequate logistics and staffing.
- It would be of great importance to increase training in languages, computers and Community Law.
- An increased cooperation between the Romanian and the judiciary in EU Member States would be desirable.

From the replies to the questionnaire of the Working Group given by the EU Member States' embassies in Romania follows:

- Formally speaking the judicial system complies to the EU standards. The Constitution guarantees the independence of the judiciary, judges are independent and cannot be removed, and also the equipment of the courts has improved very much during the last two years. Nonetheless there are major problems in the judiciary like the presence of corruption in the public sector but also deficient organisational structures and lack of financial means. Further, court proceedings are lengthy, and the code of civil procedure has undergone frequent amendments.

- The Romanian citizens have very little confidence in their judicial system. They think that their judges are politically influenced and corrupted. They also consider the judiciary as too slow. All these negative thinking is supported by the media.

- The service of documents seems to work correctly. It is very difficult to enforce a foreign court decision in Romania, the competent authorities lack very often knowledge about the respective provisions and conventions.
C. Rule of Law Principle and Human Rights:

Romania is member of the Council of Europe and has ratified in 1995 the European Convention on the Protection of Human Rights and Fundamental Freedoms and Protocols No. 1, 2, 4, 6, 7, 9, 10 and 11 thereto.

National minorities have the right to follow court proceedings in their mother tongue.

From informal information received by the General Secretariat of the Council there are doubts about the full compliance with the principles of human rights and rule of law in Romania. No written report on this has been submitted to the Working Group, though. Further information on this issue is therefore needed.

Despite signing the Council of Europe Convention on Data Protection, Romania has not yet ratified this Convention.
| International conventions of the JHA acquis on judicial cooperation in civil matters (for ratification for non-EU Member States) |
|---|---|---|
| Hague Convention of 1.3.1954 on Civil Procedure | x | x | x |
| Hague Convention of 15.11.1965 on Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters |  | x |  |
| Hague Convention of 18.3.1970 on the Taking of Evidence Abroad in Civil or Commercial Matters |  |  | x |
| Council of Europe Convention of 20.5.1980 on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody |  |  | x |
| Hague Convention of 25.10.1980 on International Access to Justice |  |  | x |
| Hague Convention of 25.10.1980 on the Civil Aspects of International Child Abduction | x | x | x |

x: ratified (pursuant to information received)