

Amendments to the Statute of the Hague Conference on Private International Law

Introduction

- 2.1 The *Amendments to the Statute of the Hague Conference on Private International Law* (the Amendments) provide for a number of procedural amendments. The Amendments allow Regional Economic Integration Organisations (REIOs) to seek membership to the *Statute of the Hague Conference on Private International Law* (the Statute), change the procedure for amending the Statute, and provides for the equal authenticity of the French and English versions of the Statute.

Background

- 2.2 The Hague Conference is designed to work towards the progressive unification of the rules of private international law.¹ The Committee was informed by representatives from the Attorney-General's Department that:

1 National Interest Analysis (NIA), para. 7.

By working cooperatively, member states of the Hague Conference seek to reduce uncertainty, costs and delays in international private legal matters.²

- 2.3 The Committee was further informed that the work of the Hague Conference falls into three main areas:
- international legal cooperation and litigation
 - international protection of children, family law and property relations
 - international commercial and finance law.³
- 2.4 Member States of the Hague Conference develop and produce conventions reflecting an agreed approach to an area of private international law. For instance, the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters
- establishes methods for taking of evidence abroad in civil or commercial matters and provides an effective means of overcoming the differences between civil law and common law systems with respect to the taking of evidence.⁴
- 2.5 The Committee was informed that there are currently 36 conventions that have been negotiated through the Hague Conference, with some receiving more acceptance than others.⁵ Conventions relating to family law have received more support from States, whereas conventions relating to civil and commercial matters have received less.⁶
- 2.6 Non-Member States are able to accede to conventions developed by the Conference.⁷
- 2.7 The Statute of the Hague Conference is essentially its constitution.⁸ The Amendments represent the first changes made to the Statute since it entered into force in 1945.

2 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 11.

3 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 11.

4 Hague Conference on Private International Law website, accessed 18 January 2006: <www.hcch.net>

5 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 14.

6 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 14.

7 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 11.

8 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 12.

The Amendments

- 2.8 The Committee was informed that the Amendments consist of two groups of changes.⁹ The first relate to the REIOs and the second relate to the procedure for future amendments to the Statute.
- 2.9 Article 2 of the Statute is amended to allow certain REIOs which are constituted solely by sovereign states to seek membership of the Hague Conference. The admission of REIOs will not lead to additional voting or procedural rights.¹⁰
- 2.10 In order to be eligible for membership, the Member States of the REIO must have transferred to the REIO competence over a range of matters within the purview of the Hague Conference.¹¹
- 2.11 At present, the European Community (EC) is the only REIO seeking membership.¹² In 2002, the EC first sought membership after EC Member States transferred competence in relation to a number of Hague Conference issues to the EC.¹³ The National Interest Analysis (NIA) notes that this Amendment is in Australia's interest, as previously non-EC States have had difficulty determining which circumstances require negotiation with EC Member States and which require negotiation with the EC.¹⁴
- 2.12 The Committee was informed that the second group of amendments improves procedures for amending the Statute in the future.¹⁵ Article 12 requires future amendments to the Statute to be adopted by consensus. The amendments would enter into force three months after approval by two-thirds of the Members but not before nine months from the date of adoption of those changes.¹⁶
- 2.13 Article 15 of the Statute is amended to provide for the equal authenticity of the French and English versions of the Statute.

9 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 12.

10 NIA, para. 8.

11 National Interest Analysis (NIA), para. 4.

12 NIA, para. 10; Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 12.

13 NIA, para. 10.

14 NIA, para. 11.

15 Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 13.

16 Article 12 of the Statute; NIA, para. 14; Angela Davies, *Transcript of Evidence*, 5 December 2005, p. 13.

Implementation

- 2.14 Implementation of the Amendments requires no change to domestic law or policy.¹⁷

Costs

- 2.15 Australia's contribution to the 2005-2006 Budget of the Conference was A\$154 625. The Amendments are not expected to result in any additional costs for Australia.¹⁸

Conclusion and recommendation

- 2.16 The Committee recognises that the Amendments are essentially procedural in nature and do not result in any changes to Australia's obligations under the Hague Conference.
- 2.17 The Committee supports the Amendments as steps towards greater certainty and the simplification of private international law negotiations.

Recommendation 1

The Committee supports the Amendments, adopted on 30 June 2005, to the Statute of the Hague Conference on Private International Law and recommends that binding treaty action be taken.

17 NIA, para. 16.

18 NIA, para. 17.