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Proposal for a

**COUNCIL DECISION**

**on the declaration of acceptance by the Member States, in the interest of the European Union, of the accession of Russian Federation to the 1980 Hague Convention on the Civil Aspects of International Child Abduction**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

The aim of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereafter: "the 1980 Convention"), to date ratified by 86 countries, including all EU Member States, is to restore the status quo by mean of the prompt return of wrongfully removed or retained children through a system of cooperation among central authorities appointed by its Contracting Parties.

As the prevention of child abduction is an essential part of the EU policy to promote the rights of the child, the European Union is active at international level to improve the application of the 1980 Convention and encourages third States to accede it. In particular, the Commission has always stressed the need for the Russian Federation to accede to the 1980 Hague Convention in order to rely on a common legal framework EU-Russia to deal with cases of child abduction.

The issue was discussed for several years at different levels, namely in the context of the EU-Russia Permanent Partnership Council on Justice, Freedom and Security, and finally Russia decided to deposit the accession instrument to the 1980 Convention on 28 July 2011. The Convention entered into force in Russia on 1 October 2011.

Article 38(4) of the 1980 Convention stipulates that the Convention applies between the acceding country and such Contracting States as will have declared their acceptance of the accession. Therefore, the European Union has to decide whether to accept the accession of Russia, and when affirmative, the Member States should make the declaration of acceptance concerning Russia's accession in the interest of the European Union.

As the matter of international child abduction fall into the exclusive external competence of the European Union, the decision whether the Member States should accept Russia's accession to the 1980 Convention, has to be taken by means of a Council Decision.

### **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES**

Russia's accession to the 1980 Convention was long awaited by the European Union and its Member States, which have, on various occasions, invited the Commission to stress firmly, in the context of the meetings with the Russian counterparts, the need to take concrete steps towards the accession to this Convention.

The expert meeting organised in November 2009 by the European Commission to discuss the cooperation between Russia and the EU showed general consensus from Member States in supporting cooperation with Russia by the way of multilateral agreements, especially in the field of family law. In this context the importance of the legal framework represented by the Hague Conventions was stressed.

The lack of a common legal framework with Russia aimed at solving sensitive cases of child abductions was demonstrated also by the fact that the first Commission's decision<sup>1</sup> authorising

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<sup>1</sup> COM (2010)8577 final

a Member State to open formal negotiations with a third State on the basis of procedure established by Council Regulation (EC) No 664/2009<sup>2</sup> concerned, indeed, an envisaged bilateral agreement with Russia on the matter of child abduction.

The joint cooperation project - “Application of the Hague Conventions on the protection of children’s rights in the Russian Federation“- launched on 9 February 2011 by the European Union and the Russian Federation was also welcomed by the Members States. It aims at facilitating Russia's accession to the Hague Conventions regarding family law, including the 1980 Convention.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

In accordance with the jurisprudence<sup>3</sup> of the Court of Justice, the matter of international child abduction fall into the exclusive external competence of the European Union, because of the adoption of internal Union legislation by means of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility ("the Brussels IIa Regulation")<sup>4</sup>, which applies between Member States from 1 March 2005. The Regulation introduces even stricter rules than the 1980 Hague Convention on parental child abduction, in particular in Article 11 of the Regulation. It refers directly to the Hague Convention and upholds its principles in European Union law.

The 1980 Convention was adopted more than 20 years before the Brussels IIa Regulation and thus, it does not contain any provisions allowing the accession of International Organisations, like the European Union (the so-called REIO clause). In such situation, the Member States have to ratify or accede to the Convention in the interest of the European Union.

Therefore, the Member States should declare, in the interest of the European Union, the acceptance regarding Russia's accession to the 1980 Hague Convention. For the sake of coherence and uniformity of EU law, this declaration of acceptance should be made simultaneously by the Member States within a time frame established by the Council Decision. The Commission proposes that the declaration should be deposited by the Member States no later than 2 months after the adoption of the Council Decision.

It is crucial for the practical application of the 1980 Convention that a Contracting Party designates a Central Authority required by its Article 6 to discharge the duties which are imposed by the Convention upon such authorities. All Member States have designated Central Authorities under the 1980 Convention. To date, the Russian Federation has not yet designated the Central Authority that is needed to assist the European citizens in cases of wrongful removal of children to Russia. Therefore, it is desirable that the declaration of acceptance of the accession of the Russian Federation to the 1980 Convention takes effect upon the designation of the Central Authority by the Russian Federation.

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<sup>2</sup> OJ L 200, 31.7.2009, pp. 46-51

<sup>3</sup> Opinion 1/03 of the Court of 7 February 2006 on the competence of the Community to conclude the new Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

<sup>4</sup> OJ L 338, 23.12.2001.

Given the fact that the decision regards an international agreement, the applicable legal basis is Article 218 of the Treaty on the Functioning of the European Union together with Article 81 (3). The Council shall act unanimously after consulting the European Parliament.

#### **4. BUDGETARY IMPLICATION**

The proposal has no implication for the European Union budget.

Proposal for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218 and 81(3) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament<sup>5</sup>,

Whereas:

- (1) The European Union has set up as a priority the protection and the promotion of children's rights, as stated in Article 3 of the Treaty on European Union, and considers the prevention of child abduction an essential part of this policy.
- (2) The European Union has adopted Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (so-called "Brussels IIa" Regulation), which aims to protect children from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access and custody.
- (3) The Brussels IIa Regulation complements and reinforces the provisions of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereafter: "the 1980 Convention") which establishes, at the international level, a system of cooperation among central authorities aimed at ensuring the prompt return of wrongfully removed or retained children. In particular, Article 11 of the Brussels IIa Regulation takes over the rules and principles of the 1980 Convention.
- (4) All Member States of the European Union are Party to the 1980 Convention.
- (5) The European Union encourages third States to accede to the 1980 Convention and supports its correct implementation by participating, inter alia, to the Special Commissions organized on a regular basis by the Hague Conference on Private International Law.

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<sup>5</sup> OJ C , , p . .

- (6) The European Union stresses that a common legal framework applicable between EU Member States and third countries may offer the best solution of sensitive cases of international child abduction cases, where diplomatic channels and mediation fail.
- (7) To this end, the European Union has urged the accession of the Russian Federation to the 1980 Convention since a long time, this issue being an important part of discussions relating to judicial cooperation in civil matters between the European Union and the Russian Federation in the context of the EU-Russia Permanent Partnership Council on Justice, Freedom and Security and also at ministerial level.
- (8) The Russian Federation has deposited its instrument of accession to the 1980 Convention on 28 July 2011. The entry into force of the 1980 Convention took place on 1 October 2011.
- (9) Article 38(4) of the 1980 Convention stipulates that the Convention applies between the acceding country and such Contracting States as will have declared their acceptance of the accession.
- (10) Pursuant to the case-law of the Court of Justice of the European Union, namely the Opinion 1/03 of 7 February 2006 relating to the conclusion of the new Lugano Convention, the provisions of the 1980 Convention affect secondary European Union legislation on international child abduction and parental responsibility, in particular Council Regulation (EC) No 2201/2003 of 27 November concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and matters of parental responsibility. The matters dealt by the 1980 Convention fall therefore into the exclusive external competence of the European Union.
- (11) Pursuant to the 1980 Convention, only sovereign States may be party to it. Therefore, the European Union cannot accede to it, neither deposit its declaration of acceptance of the Russia's accession.
- (12) Member States should therefore deposit their declaration of acceptance of the Russia's accession in the interest of the European Union.
- (13) By declaration, Member States should accept, in the interest of the European Union, Russia's accession in order to make the 1980 Convention applicable between the European Union and the Russian Federation. It is desirable that its provisions be applied without delay, having considered the valuable contribution of the 1980 Convention to the protection of the child at the international level.
- (14) Taking into account that the provisions of the 1980 Convention can be however only fully applied when a Contracting State has designated a Central Authority under Article 6 of the 1980 Convention, the declaration of acceptance should take effect once the Russian Federation has designated such Central Authority.
- (15) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

HAS ADOPTED THIS DECISION:

*Article 1*

The Member States of the European Union shall deposit simultaneously, and no later than [ADD DATE: Two months from the adoption] a declaration of acceptance of the accession of the Russian Federation to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction in the interest of the European Union as follows:

*"[MEMBER STATE] declares that it accepts, in the interest of the European Union, the accession of the Russian Federation to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction from the moment of designation of a Central Authority requested under Article 6 of the Convention by the Russian Federation.*

*The Convention will come into force on the first day of the third calendar month after the designation of a Central Authority by the Russian Federation".*

*Article 2*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

*Article 3*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*