

COUNCIL DECISION (EU) 2016/2311**of 8 December 2016****authorising certain Member States to accept, in the interest of the European Union, the accession of Kazakhstan to the 1980 Hague Convention on the Civil Aspects of International Child Abduction**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The European Union has set as one of its aims the promotion of the protection of the rights of the child, as stated in Article 3 of the Treaty on European Union. Measures for the protection of children against wrongful removal or retention are an essential part of that policy.
- (2) The Council adopted Regulation (EC) No 2201/2003 ⁽²⁾ ('Brussels Iia Regulation'), which aims to protect children from the harmful effects of 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 the protection of rights of access and rights of custody.
- (3) The Brussels Iia Regulation complements and reinforces the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention') which establishes, at international level, a system of obligations and cooperation among contracting states and between central authorities and aims to ensure the prompt return of wrongfully removed or retained children.
- (4) All Member States of the Union are party to the 1980 Hague Convention.
- (5) The Union encourages third states to accede to the 1980 Hague Convention and supports the correct implementation of the 1980 Hague Convention by participating, along with the Member States, inter alia, in the special commissions organised on a regular basis by the Hague Conference on private international law.
- (6) A common legal framework applicable between Member States of the Union and third states could be the best solution to sensitive cases of international child abduction.
- (7) The 1980 Hague Convention stipulates that it applies between the acceding state and such contracting states as have declared their acceptance of the accession.
- (8) The 1980 Hague Convention does not allow regional economic integration organisations such as the Union to become party to it. Therefore, the Union cannot accede to that Convention, nor can it deposit a declaration of acceptance of an acceding state.
- (9) Pursuant to Opinion 1/13 of the Court of Justice of the European Union, declarations of acceptance under the 1980 Hague Convention fall within the exclusive external competence of the Union.

⁽¹⁾ Opinion of the European Parliament of 5 October 2016 (not yet published in the Official Journal).

⁽²⁾ 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, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1).

- (10) Kazakhstan deposited its instrument of accession to the 1980 Hague Convention on 3 June 2013. The 1980 Hague Convention entered into force for Kazakhstan on 1 September 2013.
- (11) Only the Kingdom of the Netherlands has already accepted the accession of Kazakhstan to the 1980 Hague Convention. An assessment of the situation in Kazakhstan has led to the conclusion that those Member States that have not yet accepted the accession of Kazakhstan, are in a position to accept, in the interest of the Union, the accession of Kazakhstan under the terms of the 1980 Hague Convention.
- (12) The Member States that have not yet accepted the accession of the Kazakhstan should therefore be authorised to deposit their declarations of acceptance of accession of Kazakhstan in the interest of the Union in accordance with the terms set out in this Decision. The Kingdom of the Netherlands which has already accepted the accession of Kazakhstan to the 1980 Hague Convention should not deposit a new declaration of acceptance as the existing declaration remains valid under public international law.
- (13) The United Kingdom and Ireland are bound by the Brussels IIa Regulation and are taking part in the adoption and application of this Decision.
- (14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, 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

1. The Member States that have not yet done so are hereby authorised to accept the accession of Kazakhstan to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention') in the interest of the Union.
2. Member States referred to in paragraph 1 shall, no later than 9 December 2017, deposit a declaration of acceptance of the accession of Kazakhstan to the 1980 Hague Convention in the interest of the Union worded as follows:

 '[Full name of MEMBER STATE] declares that it accepts the accession of Kazakhstan to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, in accordance with Council Decision (EU) 2016/2311'.
3. Each Member State shall inform the Council and the Commission of the deposit of its declaration of acceptance of the accession of Kazakhstan and communicate to the Commission the text of the declaration within 2 months of its deposit.

Article 2

The Member State which deposited its declaration of acceptance of the accession of Kazakhstan to the 1980 Hague Convention prior to the date of adoption of this Decision, shall not deposit a new declaration.

Article 3

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

Article 4

This Decision is addressed to all Member States with the exception of the Kingdom of the Netherlands and the Kingdom of Denmark.

Done at Brussels, 8 December 2016.

For the Council
The President
L. ŽITŇANSKÁ
