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2017/0148 (NLE)

Proposal for a

COUNCIL DECISION

authorising Luxembourg and Romania to accept, in the interest of the European Union, the accession of Georgia and South Africa to the 1980 Hague Convention on the Civil Aspects of International Child Abduction

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives 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 97 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.

Georgia deposited the accession instrument to the 1980 Convention on 24 July 1997. The Convention entered into force in Georgia on 1st October 1997.

The 1980 Convention is already into force between Georgia and 25 EU Member States. Only Luxembourg, Denmark and Romania have not yet accepted the accession of Georgia to the Convention.

South Africa deposited the accession instrument to the 1980 Convention on 8 July 1997. The Convention entered into force in South Africa on 1st October 1997.

The 1980 Convention is into force between South Africa and 26 Member States. Only Luxembourg and Romania have not yet accepted the accession of South Africa to the Convention.

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.

The existence of the EU exclusive competence in the matter of the acceptance of the accession of a third State to the 1980 Convention was confirmed by the Court of Justice of the European Union, which was consulted at the Commission's initiative.

On 14 October 2014, Opinion 1/13 of the Court of Justice of the European Union stated that *the exclusive competence of the European Union encompasses the acceptance of the accession of a third state to the 1980 Hague Convention on the Civil Aspects of International Child Abduction*.

The Court insisted on the need for uniformity on the matter at EU level, avoiding a *géométrie variable* among Member States.

As the matter of international child abduction falls within the exclusive external competence of the European Union, the decision whether to accept the accession of Georgia and South Africa has to be taken at EU level by means of a Council Decision. Luxembourg and Romania should thus make the declaration of acceptance concerning the accession of Georgia and South Africa in the interest of the European Union.

The acceptance of Luxembourg and Romania would render the 1980 Convention applicable between Georgia and all EU Member States except Denmark. In relation to South Africa the 1980 Convention will become applicable with all EU Member States.

- **Consistency with existing policy provisions in the policy area**

As far as parental child abduction is concerned, the 1980 Hague Convention is the international counterpart of Council Regulation No 2201/2003 (known as the Brussels IIa Regulation) which is the cornerstone of EU judicial cooperation in matrimonial matters and matters of parental responsibility[1].

One of the main objectives of the Regulation is to deter child abduction between Member States by establishing procedures to ensure the child's prompt return to the Member State of his/her habitual residence. To this end, the Brussels IIa Regulation incorporates in its Article 11 the procedure laid down in the 1980 Hague Convention and complements it by clarifying some of its aspects, in particular the hearing of the child, the time period to render a decision after an application for return has been lodged and the grounds for not returning the child. It also introduces provisions governing conflicting return and non-return orders issued in different Member States.

At the international level, the European Union supports the accession of third States to the 1980 Convention in order for its Member States to rely upon a common legal framework to deal with international child abductions.

Ten Council Decisions have been already adopted between June 2015 and December 2016 in order to accept the accession to the 1980 Hague Convention on International Child Abduction of 10 third countries (Morocco, Singapore, the Russian Federation, Albania, Andorra, the Seychelles, Armenia, the Republic of Korea, Kazakhstan and Peru)[2].

- **Consistency with other Union policies**

The present proposal is evidently linked to the general objective enshrined in Article 3 of the Treaty on the European Union to protect the rights of the child. The 1980 Hague Convention system is designed to protect the child from the harmful effects of a parental abduction and ensure that the child is able to maintain contact with both parents, for instance by securing the effective exercise of access rights.

It is worth mentioning also the link to the promotion of the use of mediation in the settlement of cross-border family disputes. The Directive on certain aspects of mediation in civil and commercial matters[3] also applies to family law within the common European judicial area. The 1980 Hague Convention also encourages the amicable resolution of family disputes. One

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1 OJ L 338, 23.12.2003, p.31.

2 Ten Council Decisions have been already adopted, authorizing Member States to accept the accession to the 1980 Convention of **Andorra** (Council Decision 2015/1023 adopted on 15 June 2015); **Seychelles** (Council Decision 2015/2354 adopted on 10 December 2015); **Russia** (Council Decision 2015/2355 adopted on 10 December 2015); **Albania** (Council Decision 2015/2356 adopted on 10 December 2015); **Singapore** (Council Decision 2015/1024 adopted on 15 June 2015); **Morocco** (Council Decision 2015/2357 adopted on 10 December 2015); **Armenia** (Council Decision 2015/2358 adopted on 10 December 2015); **Republic of Korea (**Council Decision 2016/2313 adopted on 8 December 2016 **)** , **Kazakhstan (**Council Decision 2016/2311 adopted on 8.12.2016 **)** and **Peru (**Council Decision 2016/2312 adopted on 8.12.2016**)**.

3 Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136 of 24 May 2008,p. 3);

of the Guides to Good Practise under the 1980 Hague Convention published by the Hague Conference on Private International Law is devoted to the use of mediation for the resolution of international family disputes concerning children which fall within the scope of the Convention. At the initiative of the European Commission, this Guide has been translated in all EU languages other than English and French and also in Arabic to support the dialogue with States which have not yet ratified the Convention and help finding concrete ways to tackle the problems posed by international child abduction with non-ratification countries[4].

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

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.

The United Kingdom and Ireland are bound by Regulation (EC) No 2201/2003 and are therefore taking part in the adoption and application of this Decision.

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.

• Proportionality

The present proposal is drafted along the lines of the already adopted Council Decisions on the same subject matter and does not go beyond what is necessary to achieve the objective of a coherent EU action in the matter of international child abduction by ensuring that Luxembourg and Romania accept the accession of Georgia and South Africa to the 1980 Hague Convention within a given time frame.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

Luxembourg and Romania, consulted by the Commission on their willingness to accept the accession of Georgia and South Africa to the 1980 Convention, gave a favourable opinion.

The discussions held at the expert meeting of 24 April 2017 showed that -at this stage- there are no objections from the Member States to the acceptance by Luxembourg and Romania of the accession of Georgia and South Africa to the 1980 Convention.

• Collection and use of expertise

Given that the Convention is already into force with 25 Member States in relation to Georgia and with 26 Member States in relation to South Africa, it was the opinion of the Commission and of the Member States' experts that, in such cases, there is no need of a specific assessment of the situation of the third country.

[4] https://www.hcch.net/en/publications-and-studies/details4/?pid=5568&dtid=3

The Member States' experts did not report any problems in the application of the 1980 Convention with respect to Georgia and South Africa.

- **Impact assessment**

As for the ten Council Decisions already adopted between 2015 and 2016 concerning the acceptance of the accession of several third States to the 1980 Hague Convention, no specific impact assessment has been carried out given the nature of this legislative act. In any case, a specific assessment of the situation of Georgia and South Africa was deemed superfluous taking into account both the fact that the Convention is already into force with, respectively, 25 and 26 EU Member States and the willingness of Luxembourg and Romania to accept the accession of Georgia and South Africa.

4. BUDGETARY IMPLICATIONS

The proposed decision has no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

As the proposal concerns only the authorization to Luxembourg and Romania to accept the accession of Georgia and South Africa to the 1980 Convention, the monitoring of its implementation is limited to the respect by Luxembourg and Romania of the wording of the declaration and the timeframe to deposit it and communicate its deposit to the Commission as established in the Council Decision.

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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 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[5],

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[6] ('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.

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5 OJ C , , p. .

6 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).

(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 Opinion1/13 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.

(10) Georgia deposited the accession instrument to the 1980 Convention on 24 July 1997. The Convention entered into force in Georgia on 1 October 1997.

(11) All concerned Member States, with the exception of Denmark, Luxembourg and Romania, have already accepted the accession of Georgia to the 1980 Hague Convention. Georgia has accepted Bulgaria, Estonia, Latvia, Lithuania and Malta. An assessment of the situation in Georgia has led to the conclusion that Luxembourg and Romania are in a position to accept, in the interest of the Union, the accession of Georgia under the terms of the 1980 Hague Convention.

(12) South Africa deposited the accession instrument to the 1980 Convention on 8 July 1997. The Convention entered into force in South Africa on 1st October 1997.

(13) All concerned Member States, with the exception of Luxembourg and Romania, have already accepted the accession of South Africa to the 1980 Hague Convention. South Africa has accepted Bulgaria, Estonia, Latvia, Lithuania and Malta. An assessment of the situation in South Africa has led to the conclusion that Luxembourg and Romania are in a position to accept, in the interest of the Union, the accession of South Africa under the terms of the 1980 Hague Convention.

(14) Luxembourg and Romania should therefore be authorised to deposit their declarations of acceptance of the accession of Georgia and South Africa in the interest of the Union in accordance with the terms set out in this Decision. The other Member States of the Union which have already accepted the accession of Georgia and South Africa to the 1980 Hague Convention should not deposit new declarations of acceptance as the existing declarations remain valid under public international law.

(15) The United Kingdom and Ireland are bound by the Brussels IIa Regulation and are taking part in the adoption and application of this Decision.

(16) 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. Luxembourg and Romania are hereby authorised to accept the accession of Georgia and South Africa 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 … [twelve months after the date of adoption of this Decision], deposit a declaration of acceptance of the accession of Georgia and South Africa 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 Georgia and South Africa to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, in accordance with Council Decision (EU) 2017/...*'.*

3. Both Member States shall inform the Council and the Commission of the deposit of its declaration of acceptance of the accession of Georgia and South Africa and communicate to the Commission the text of the declaration within two months of its deposit.

Article 2

Those Member States which deposited their declarations of acceptance of the accession of Georgia and South Africa to the 1980 Hague Convention prior to the date of adoption of this Decision, shall not deposit new declarations.

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 Luxembourg and Romania.

Done at Brussels…,

For the Council

The President

* OJ: please insert the number of this Decision.