



Reports of Cases

OPINION 1/13 OF THE COURT (Grand Chamber)
14 October 2014

(Opinion pursuant to Article 218(11) TFEU — Convention on the civil aspects of international child abduction — Accession of third States — Regulation (EC) No 2201/2003 — Exclusive external competence of the European Union — Risk of undermining the uniform and consistent application of EU rules and the proper functioning of the system which they establish)

In Opinion 1/13,

REQUEST to the Court for an opinion pursuant to Article 218(11) TFEU, made on 21 June 2013 by the European Commission,

THE COURT (Grand Chamber)

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, M. Ilešič and J.-C. Bonichot, Presidents of Chambers, A. Rosas, J. Malenovský (Rapporteur), A. Arabadjiev, M. Safjan, D. Šváby, M. Berger and A. Prechal, Judges,

Advocate General: N. Jääskinen,

Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 1 April 2014,

after considering the observations submitted on behalf of:

- the European Commission, by F. Castillo de la Torre and A.-M. Rouchaud-Joët, acting as Agents,
- the Belgian Government, by C. Pochet, J.-C. Halleux and T. Materne, acting as Agents,
- the Czech Government, by M. Smolek and E. Ruffer, acting as Agents,
- the Danish Government, by C. Thorning, acting as Agent,
- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the Estonian Government, by K. Kraavi-Käerdi, acting as Agent,
- Ireland, by T. Joyce and E. McPhillips, acting as Agents,
- the Greek Government, by T. Papadopoulou, acting as Agent,
- the Spanish Government, by M. Sampol Pucurull and N. Díaz Abad, acting as Agents,
- the French Government, by E. Belliard, N. Rouam, G. de Bergues and D. Colas, acting as Agents,

- the Italian Government, by G. Palmieri, acting as Agent, assisted by M. Fiorilli and P. Garofoli, avvocati dello Stato,
 - the Cypriot Government, by I. Neophytou and D. Kalli, acting as Agents,
 - the Latvian Government, by I. Kalniņš and D. Pelše, acting as Agents,
 - the Lithuanian Government, by K. Dieninis and A. Svinkūnaitė, acting as Agents,
 - the Austrian Government, by C. Pesendorfer, acting as Agent,
 - the Polish Government, by M. Arciszewski, B. Majczyna and A. Miłkowska, acting as Agents,
 - the Portuguese Government, by L. Fernandes and S. Nunes de Almeida, acting as Agents,
 - the Romanian Government, by R.-H. Radu, A.-G. Vacaru and A. Voicu, acting as Agents,
 - the Slovak Government, by B. Ricziová, acting as Agent,
 - the Finnish Government, by J. Heliskoski, acting as Agent,
 - the Swedish Government, by A. Falk and U. Persson, acting as Agents,
 - the United Kingdom Government, by M. Holt, acting as Agent, and by J. Holmes and R. Palmer, Barristers,
 - the European Parliament, by A. Caiola and A. Pospíšilová Padowska, acting as Agents,
 - the Council of the European Union, by J. Monteiro and A. De Elera, acting as Agents,
- after hearing the Advocate General,

gives the following

Opinion

1. 1.The request submitted for the opinion of the Court by the European Commission is worded as follows:

‘Does the exclusive competence of the [European] Union encompass the acceptance of the accession of a non-Union country to the Convention on the civil aspects of international child abduction [concluded in the Hague on] 25 October 1980 [(“the 1980 Hague Convention” or “the Convention”)]?’

Legal context

International law

2. 2.All the Member States are parties to the 1980 Hague Convention. The European Union (‘the EU’) is not a party thereto.

3. 3. Under Article 1 of the 1980 Hague Convention: 'The objects of the present Convention are:
 - (a) (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and;
 - (b) (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.'
4. 4. Article 3 of the Convention states: 'The removal or the retention of a child is to be considered wrongful where:
 - (a) (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention;
 - (b) (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

...'

5. 5. Chapter II of the 1980 Hague Convention concerns the central authorities. Under Article 6, which falls within Chapter II, each Contracting State is to designate a central authority to discharge the duties which are imposed upon it by the Convention. Pursuant to Article 7 of the Convention, central authorities are required to cooperate with each other and promote cooperation amongst the competent authorities in their respective States. In particular, they must take all appropriate measures to discover the whereabouts of a child who has been wrongfully removed to or retained in a State other than that of the child's habitual residence ('the wrongfully removed child') and to secure the voluntary return of that child or to bring about an amicable resolution of the issues. They must also take or cause to be taken provisional measures in order to prevent further harm to such a child. They are to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access, that is to say, of the right to take the child for a limited period of time to a place other than the child's habitual residence ('rights of access'). They are to secure, with such administrative arrangements as may be necessary, the safe return of the child.
6. 6. Chapter III of the 1980 Hague Convention, entitled 'Return of Children', comprises Articles 8 to 20.
7. 7. The first paragraph of Article 8 of the Convention provides:

'Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.'
8. 8. Article 12 of the 1980 Hague Convention provides:

'Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.'

9. 9. Article 13 of the 1980 Hague Convention states: 'Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:
 - (a) (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
 - (b) (b) there is a grave risk that return would expose the child to physical or psychological harm or otherwise place him or her in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.'

10. 10. Under Article 16 of the Convention:

'After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under the Convention is not lodged within a reasonable time following receipt of the notice.'

11. 11. Chapter IV of the 1980 Hague Convention, entitled 'Rights of access', comprises Article 21, the first paragraph of which states:

'An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.'

12. 12. Chapter V of the Convention, entitled 'General Provisions', comprises Articles 22 to 36, which set out inter alia the common procedural provisions relating to the return of children who have been wrongfully removed and to safeguards for ensuring the exercise of rights of access.

13. 13. Chapter VI of the Convention is entitled 'Final clauses' and contains Article 38, which provides:

'Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.'

EU law

14. 14. According to recital 17 in the preamble to 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 2003 L 338, p. 1):

'In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. ...'

15. 15. Article 8 of Regulation No 2201/2003 provides: '1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised. 2. Paragraph 1 shall apply subject to Articles 9, 10 and 12.'
16. 16. Article 10 of the regulation governs the jurisdiction of the courts of the Member States in cases of child abduction. It provides that in the event of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention are to retain their jurisdiction until the child has acquired a habitual residence in another Member State where the additional conditions set out in point (a) or point (b) of Article 10 are met.
17. 17. Article 11 of the regulation is worded as follows: '1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of [the 1980 Hague Convention], in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply. 2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity. 3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged. 4. A court cannot refuse to return a child on the basis of Article 13(b) of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return. 5. A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard. 6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately[,] either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or

central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.⁷ Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.⁸ Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.’

18. 18.The first subparagraph of Article 41(1) of Regulation No 2201/2003 provides:

‘The rights of access ... granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin ...’

19. 19.The first subparagraph of Article 42(1) of that regulation states:

‘The return of a child [in accordance with Article 11(8) of Regulation No 2201/2003] entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin ...’

20. 20.Articles 53 to 58 make up Chapter IV of the regulation, which is entitled ‘Cooperation between central authorities in matters of parental responsibility’.

21. 21.Under Article 55 of Regulation No 2201/2003, the central authorities are to take all appropriate steps, inter alia, to provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions on their territory, in particular concerning rights of access and the return of the child.

22. 22.Article 57 of Regulation No 2201/2003 provides:‘1. Any holder of parental responsibility may submit, to the central authority of the Member State of his or her habitual residence or to the central authority of the Member State where the child is habitually resident or present, a request for assistance as mentioned in Article 55. In general, the request shall include all available information of relevance to its enforcement. Where the request for assistance concerns the recognition or enforcement of a judgment on parental responsibility that falls within the scope of this Regulation, the holder of parental responsibility shall attach the relevant certificates provided for in Articles 39, 41(1) or 42(1).2. Member States shall communicate to the Commission the official language or languages of the

[European Union] institutions other than their own in which communications to the central authorities can be accepted.³ The assistance provided by the central authorities pursuant to Article 55 shall be free of charge.⁴ Each central authority shall bear its own costs.’

23. 23. Article 60 of Regulation No 2201/2003 provides: ‘In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

...

- (e) (e) the [1980 Hague Convention].’

24. 24. Article 62 of that regulation is worded as follows: ‘1. The agreements and conventions referred to in Articles ... 60 and 61 shall continue to have effect in relation to matters not governed by this Regulation. 2. The conventions mentioned in Article 60, in particular the 1980 Hague Convention, continue to produce effects between the Member States which are party thereto, in compliance with Article 60.’

The background to the request for an Opinion

25. 25. On different dates, the Republic of Armenia, the Republic of Albania, the Republic of Seychelles, the Kingdom of Morocco, the Republic of Singapore, the Gabonese Republic, the Principality of Andorra and the Russian Federation successively deposited instruments of accession to the 1980 Hague Convention.
26. 26. Taking the view that the question of the international abduction of children fell within the exclusive external competence of the EU, the Commission adopted, on 21 December 2011, eight proposals for decisions of the Council of the European Union concerning the declarations of acceptance by the Member States, in the interest of the EU, of the accession of those eight third States to the 1980 Hague Convention.
27. 27. Within the Council most of the representatives of the Member States considered the Council to be under no legal obligation to adopt those proposals, since the EU did not, in their view, have exclusive competence in the area concerned. As a result, the Council did not adopt the proposals.
28. 28. In those circumstances the Commission considered it appropriate to submit the present request for an opinion to the Court pursuant to Article 218(11) TFEU.

Admissibility

Observations submitted to the Court

29. 29. The Czech, German, Estonian, Greek, French, Cypriot, Latvian, Lithuanian, Austrian, Polish and Romanian Governments and the Council are of the view that the request for an Opinion is inadmissible since it does not meet the conditions for an EU institution to initiate the procedure provided for in Article 218(11) TFEU.
30. 30. It is submitted in the first place that the request does not concern the conclusion of an ‘agreement’ as referred to in that provision, since the subject-matter of the request is the deposit of declarations of acceptance of accession under the fourth paragraph of Article 38 of the 1980 Hague Convention (‘the declarations of acceptance of accession’).

31. 31.It is argued in that regard that, given that such declarations constitute acts implementing the Convention, the request for an opinion concerns not the conclusion of an international agreement but rather the division of areas of competence between the EU and the Member States with regard to implementation of the Convention.
32. 32.Furthermore, an ‘agreement’ in the literal sense of the word always designates an act of accordance, a concept requiring there to be two corresponding expressions of intent. It is submitted that the accession of a third State to the 1980 Hague Convention and the acceptance of that accession by a Contracting State do not represent two corresponding expressions of intent since they do not form part of a reciprocal contractual relationship. They involve neither corresponding declarations in the context of an accession Treaty nor an amendment to a Treaty. The declaration concerned is merely an instrument internal to the 1980 Hague Convention intended to extend the territorial scope thereof.
33. 33.It is argued in the second place that the request for an opinion does not concern an agreement between the EU and third States within the meaning of paragraphs 1 and 11 of Article 218 TFEU. The EU cannot accede to the 1980 Hague Convention since under Article 38 thereof it is States alone that may do so. Nor does the EU have competence to deposit declarations of acceptance of accession.
34. 34.It is argued in the third place that, in refusing to adopt the proposals for decisions referred to in paragraph 26 of this Opinion, the Council decided not to approve, in relation to the States in question, the declarations of acceptance of accession forming the subject-matter of those proposals; consequently no agreement with those States was ‘envisaged’ for the purposes of Article 218(11) TFEU.
35. 35.In the fourth place, the Commission, using its request for an opinion as a pretext, is in reality, so it is argued, seeking to put an end to the current practice of certain Member States of individually accepting the accession of certain acceding States. In such a situation, the Commission should have brought Treaty infringement proceedings against those States under Article 258 TFEU.
36. 36.The European Parliament and the Commission contend that the request for an opinion is admissible.

Position of the Court

The classification of the declaration of acceptance of accession as a constituent part of an ‘agreement’

37. 37.Under Article 2(1)(a) of the Vienna Convention on the Law of Treaties of 23 May 1969, an international agreement may be embodied in a single instrument or in two or more related instruments. Those instruments may thus be the expression of the ‘convergence of intent’ on the part of two or more subjects of international law, which those instruments establish formally.
38. 38.In this instance Article 38 of the 1980 Hague Convention provides for two related instruments, namely the instrument of accession and the declaration of acceptance of accession.
39. 39.The expressions of intent in those two instruments correspond as regards the objective which is pursued by both the State acceding to the Convention and the State accepting the accession, namely that each of them should undertake under international law to apply the Convention in their bilateral relations.

40. 40. Furthermore, those instruments, taken together, produce the effect envisaged by the States concerned. The 1980 Hague Convention, under the fifth paragraph of Article 38 thereof, is to enter into force as between the acceding State and the State accepting the accession on the first day of the third calendar month after the deposit of the declaration of acceptance of accession.
41. 41. Thus, the act of accession and the declaration of acceptance of such an accession, although each is effected by means of a separate instrument, give expression, overall, to the 'convergence of intent' of the States concerned and thus amount to an international agreement.
42. 42. Since the declaration of acceptance of accession deposited by a Member State is a constituent part of an international agreement concluded with a third State, it is encompassed by the concept of 'agreement' as referred to in paragraphs 1 and 11 of Article 218 TFEU, provided that it is an agreement 'envisaged' by the EU for the purpose of those provisions.

The fact that the EU cannot accede to the 1980 Hague Convention or deposit declarations of acceptance of accession to the Convention

43. 43. As regards the argument based on the fact that the EU cannot accede to the 1980 Hague Convention, it should be observed that, according to the settled interpretation of the Court, its opinion may be obtained, *inter alia*, on questions concerning the division, between the EU and the Member States, of competence to conclude a given agreement with third States. Article 196(2) of the Rules of Procedure supports that interpretation (see, *inter alia*, Opinion 1/03, EU:C:2006:81, paragraph 112, and Opinion 1/08, EU:C:2009:739, paragraph 109). In this instance, the request for an opinion concerns the question of the competence of the EU, judged solely by reference to the rules of EU law, to conclude international agreements by means of declarations of acceptance of accession. It does not concern the obstacles which the EU may encounter in the exercise of its competence because of international rules relating to the conclusion of such agreements.
44. 44. In any event, the question whether it may not be possible for the EU formally to become a party to an international agreement is irrelevant. In a situation where the conditions for being a party to such an agreement preclude the EU itself from concluding the agreement, although the latter falls within the EU's external competence, that competence may be exercised through the intermediary of the Member States acting in the EU's interest (see, to that effect, Opinion 2/91, EU:C:1993:106, paragraph 5).

The classification of the declaration of acceptance of accession as a constituent part of an agreement 'envisaged' at the time the request for an opinion is made

45. 45. First, under Article 218(1) and (11) TFEU, a request for an Opinion may be submitted to the Court when an agreement is envisaged by the EU, which implies that it is envisaged by one or more EU institutions on which powers are conferred for the purposes of the procedure provided for in Article 218 TFEU. The Commission is one of those institutions.
46. 46. Next, it follows from the Court's case-law that a request for an opinion is admissible, in particular, when a Commission proposal concerning an agreement has been submitted to the Council and has not been withdrawn at the time when the request is made to the Court. However, it is not necessary that the Council should, at that point, have already made clear an intention to conclude such an agreement. That being so, a request for an opinion is in fact prompted by a legitimate concern on the part of the institutions concerned to know the extent of the respective powers of the EU and the Member States before a decision relating to the agreement concerned is taken (see, to that effect, Opinion 2/94, EU:C:1996:140, paragraphs 11 to 18).

47. 47. Furthermore, the objective of the opinion procedure under Article 218(11) TFEU is, as the Advocate General has stated in point 44 of his View, to forestall the legal complications caused by situations in which the Member States enter into international commitments without the requisite authorisation when, under EU law, they no longer have the necessary legislative competence to put those commitments into effect.
48. 48. Indeed, were a decision of the Court to find, after the conclusion of an international agreement binding upon the Member States, that such an agreement is incompatible with the division of competences between the EU and those States, that would be liable to provoke, not only in the internal EU context but also in the area of international relations, serious difficulties and might give rise to adverse consequences for all interested parties, including third States (see, by analogy, Opinion 3/94, EU:C:1995:436, paragraph 17, and Opinion 1/09, EU:C:2011:123, paragraph 48).
49. 49. Lastly, the Court observes that the right to submit a request for an opinion is not conditional upon the EU institutions having reached final agreement on whether the exercise of the EU's external competence is possible or appropriate. The right accorded to the Parliament, the Council, the Commission and the Member States to ask the Court for its opinion can be exercised individually, without any coordinated action (see Opinion 1/09, EU:C:2011:123, paragraph 55).
50. 50. In this instance, the Commission submitted to the Council proposals for decisions that enable the Member States to deposit declarations of acceptance of accession in respect of eight third States. In doing so, the Commission thus envisaged the agreements concerned being concluded by the EU through the intermediary of the Member States acting in the interest of the EU. It has not been maintained before the Court that those proposals have been withdrawn. Moreover, whilst the Council has opposed the proposals, its opposition is based not on the appropriateness of actually concluding the agreements in question but solely on its conviction that the matter under consideration does not fall within the EU's exclusive external competence. In those circumstances, the international agreements of which those declarations are a constituent part may be classified as agreements 'envisaged' at the time the request for an opinion was made.
51. 51. That conclusion is not invalidated merely because, at the time the Court gives its opinion in response to the present request, certain Member States have already deposited declarations of acceptance of accession with the depository of the 1980 Hague Convention. Although it follows from the objective of the opinion procedure referred to in paragraph 47 above that the agreement concerned — in order to be classified as 'envisaged' — must not be concluded before the Court gives the opinion requested, the abovementioned circumstance alone is not such as to render the request redundant.

Misuse of the opinion procedure

52. 52. As regards the argument put forward by the Council and certain Member States concerning the alleged misuse of the opinion procedure, it should be noted that the Commission considers in this case that the EU acquired, on the date of the entry into force of Regulation No 2201/2003 (1 August 2004), an exclusive external competence to deposit declarations of acceptance of accession with the depository of the 1980 Hague Convention and that, since then, the Member States have no longer been able to deposit those declarations without being authorised to do so by the EU. Between 1 August 2004 and 21 December 2011, the date on which the Commission adopted the proposals mentioned in paragraph 26 above, the different Member States deposited a total of more than 300 declarations of acceptance of accession.

53. 53. Whilst it is true that the Commission has not brought Treaty infringement proceedings against those Member States in respect of the many acts which are implicitly called into question by the request for an Opinion, the Court does not, however, have any specific and objective evidence which could lead it to conclude that, in making this request, the Commission has acted exclusively, or at the least primarily, with the aim of circumventing the procedure laid down in Article 258 TFEU.
54. 54. In any event, the fact that certain questions raised in the context of this request for an opinion may be addressed in the context of Treaty infringement proceedings under Article 258 TFEU does not preclude the Court from being asked for an opinion on those questions under Article 218(11) TFEU. The procedure for obtaining an opinion must permit any question capable of submission for judicial consideration to be settled provided that such questions are consonant with the purpose of that procedure (see, to that effect, Opinion 2/92, EU:C:1995:83, paragraph 14).
55. 55. In view of all the foregoing, the Commission's request for an opinion should be declared admissible.

Substance

Observations submitted to the Court

56. 56. The Parliament and the Commission maintain that the adoption of the declarations of acceptance of accession falls within the exclusive external competence of the EU. They argue, first of all, that the 1980 Hague Convention and Regulation No 2201/2003 cover the same area since they both deal with questions relating to the procedure for returning children who have been wrongfully removed, rights of access and cooperation between the central authorities in respect of parental responsibility.
57. 57. They go on to submit that those rules form a body of rules that are inextricably linked. They acknowledge that it is true that the EU legislature did not consider it necessary to copy out the provisions of the Convention in that regulation. However, in complementing and strengthening those provisions it did in fact incorporate them. Thus, in their view, both Article 11 of Regulation No 2201/2003 and the other articles of the regulation concerning the return of wrongfully removed children have the same scope as the Convention. They may be applied only in conjunction with the corresponding provisions of the Convention.
58. 58. Finally, they submit that the EU's exclusive external competence extends to the entirety of the 1980 Hague Convention. Even supposing that certain rules were dissociable from the Convention, the principle stated by the Court in Opinion 2/91 (EU:C:1993:106) would apply, namely that where an area is already covered to a large extent by EU rules, external competence must be exclusive. It is maintained that that is the case here.
59. 59. The Italian Government shares the view of the Parliament and the Commission that all the conditions for establishing that the declarations of acceptance of accession fall within the exclusive external competence of the EU are met.
60. 60. By contrast, the Belgian, Czech, German and Estonian Governments, Ireland, the Greek, Spanish, French, Cypriot, Latvian, Lithuanian, Austrian, Polish, Portuguese, Romanian, Slovak, Finnish, Swedish and United Kingdom Governments and the Council all maintain that the EU does not have exclusive external competence in this regard. In addition, the Greek, French and Polish Governments maintain that the EU has no competence at all in this area.
61. 61. It is argued in the first place that, in the request for an opinion, the Commission wrongly puts the emphasis on alleged similarities between Regulation No 2201/2003 and the 1980 Hague Convention instead of considering the commitment which the present request concerns, namely the declaration of

acceptance of accession. That commitment is alleged not to be capable of undermining the uniform and consistent application of Regulation No 2201/2003 because the objective of the declaration is different, the declaration relating to cooperation with the central authorities of third States, whilst the regulation governs only cooperation between the central authorities of the Member States.

62. 62. It is further submitted that the central authorities established under the Convention cooperate with each other independently and thus the fact that a central authority of a Member State cooperates with other central authorities of third States in no way affects the cooperation between the central authorities of two Member States. Accordingly, the unilateral acceptance by a Member State of the accession of certain third States to the Convention is said to have no effect on the uniform and consistent application of EU law in the sphere of cooperation between the central authorities of the Member States.
63. 63. It is argued in the second place that, even assuming that the request for an Opinion has to be examined from the viewpoint of the 1980 Hague Convention, an exclusive external competence cannot arise merely because the area in which the Convention applies is covered to a large extent by equivalent rules of EU law. First of all, that criterion is irrelevant since it was not included in Article 3(2) TFEU, which codified the Court's case-law concerning the circumstances in which the EU has exclusive competence to conclude an international agreement. Next, it is argued that there is only a partial overlap between the scope of the Convention and that of Regulation No 2201/2003, both with regard to the nature of the relations governed and in relation to the persons to whom those instruments are applicable. Finally, it is claimed that the overlaps which do exist between the Convention and Regulation No 2201/2003 are not such as to establish exclusive competence on the part of the EU since they are abstract and do not demonstrate that the Convention has any effect on the regulation.
64. 64. It is submitted in the third place that even though the fact that certain Member States accept the accession of an acceding State whilst others do not may produce unwelcome situations and mean that the enforceability of the 1980 Hague Convention as against the States that accede to it varies from one Member State to another, that is inherent in the very nature of the Convention and is not an obstacle to the proper application of Regulation No 2201/2003.

Opinion of the Court

The subject-matter of the Court's examination

65. 65. A preliminary point to note is that the declaration of acceptance of accession and, accordingly, the international agreement of which it is a constituent part are ancillary to the 1980 Hague Convention, which determines their existence and their effects and from which that declaration and agreement cannot therefore be detached. As has been stated in paragraph 39 of this Opinion, the agreement in question is intended to ensure that the Convention applies in its entirety in bilateral relations between the two States concerned.
66. 66. Consideration must therefore be given, when examining this request for an opinion, to all the rights and obligations laid down by the Convention.

The existence of EU competence

67. 67. The competence of the EU to conclude international agreements may arise not only from an express conferment by the Treaties but may equally flow implicitly from other provisions of the Treaties and from measures adopted, within the framework of those provisions, by the EU institutions. In particular, whenever EU law creates for those institutions powers within its internal

system for the purpose of attaining a specific objective, the EU has authority to undertake international commitments necessary for the attainment of that objective even in the absence of an express provision to that effect (Opinion 1/03, EU:C:2006:81, paragraph 114 and the case-law cited). The last-mentioned possibility is also referred to in Article 216(1) TFEU.

68. 68. In the matter in issue, the 1980 Hague Convention concerns civil cooperation where children are moved across borders. The Convention thus falls within the area of family law with cross-border implications in which the EU has internal competence under Article 81(3) TFEU. Moreover, the EU has exercised that competence by adopting Regulation No 2201/2003. In those circumstances, the EU has external competence in the area which forms the subject-matter of the Convention.

The nature of the competence

69. 69. The FEU Treaty specifies, in particular in Article 3(2), the circumstances in which the EU has exclusive external competence.
70. 70. In that regard, it is common ground that acceptance of the accession of a third State to the 1980 Hague Convention is not provided for in any legislative act of the EU and that such acceptance is not necessary to enable the EU to exercise its internal competence. Consequently, the request for an opinion must be considered in the light of the third condition referred to in Article 3(2) TFEU, namely that the EU has exclusive competence for the conclusion of an international agreement in so far as its conclusion 'may affect common rules or alter their scope'.
71. 71. The question as to whether that condition is met must be examined in the light of the Court's case-law according to which there is a risk that common EU rules may be adversely affected by international commitments undertaken by the Member States, or that the scope of those rules may be altered, which is such as to justify an exclusive external competence of the EU, where those commitments fall within the scope of those rules (see, to that effect, judgments in *Commission v Council ('ERTA')*, 22/70, EU:C:1971:32, paragraph 30; *Commission v Denmark*, C-467/98, EU:C:2002:625, paragraph 82; and *Commission v Council*, C-114/12, EU:C:2014:2151, paragraphs 66 to 68).
72. 72. A finding that there is such a risk does not presuppose that the areas covered by the international commitments and those covered by the EU rules coincide fully (see Opinion 1/03, EU:C:2006:81, paragraph 126, and judgment in *Commission v Council*, EU:C:2014:2151, paragraph 69).
73. 73. In particular, the scope of EU rules may be affected or altered by international commitments where such commitments are concerned with an area which is already covered to a large extent by such rules (see, to that effect, Opinion 2/91, EU:C:1993:106, paragraphs 25 and 26). As the Court has already held and contrary to what has been maintained by the Council and certain governments that have submitted observations, that circumstance remains relevant, in the context of Article 3(2) TFEU, for the purpose of ascertaining whether the condition pertaining to the risk of EU common rules being affected, or of their scope being altered, is met (judgment in *Commission v Council*, EU:C:2014:2151, paragraphs 70, 72 and 73).
74. 74. That said, since the EU has only conferred powers, any competence, especially where it is exclusive, must have its basis in conclusions drawn from a comprehensive and detailed analysis of the relationship between the envisaged international agreement and the EU law in force. That analysis must take into account the areas covered by the EU rules and by the provisions of the agreement envisaged, their foreseeable future development and the nature and content of those rules and those provisions, in order to determine whether the agreement is capable of undermining the uniform and

consistent application of the EU rules and the proper functioning of the system which they establish (see Opinion 1/03, EU:C:2006:81, paragraphs 126, 128 and 133, and judgment in Commission v Council, EU:C:2014:2151, paragraph 74).

- – The extent to which the areas concerned coincide
75. 75.The 1980 Hague Convention provides, more specifically, for two procedures: on the one hand, the procedure for returning wrongfully removed children and, on the other, the procedure for securing the exercise of rights of access.
76. 76.As regards, first, the procedure for returning wrongfully removed children, Articles 8 to 11 of the Convention govern the initial application to the central authority of a Contracting State for the child's return, the transmission of that application to the central authority of the Contracting State where the child is located and the processing of that application by the judicial or administrative authorities of that State. Article 12 of the Convention lays down the circumstances in which the judicial or administrative authorities are to order the return of the child to the Contracting State in which it was habitually resident immediately before the removal or retention. Articles 13 and 20 of the Convention set out the cases in which those authorities may refuse to return the child and adopt a decision to that effect.
77. 77.Regulation No 2201/2003 complements and clarifies, in particular in Article 11, those rules of the Convention. Thus, Article 11(2) of the regulation lays down the principle that the child concerned should be heard during the proceedings provided for in Articles 12 and 13 of the Convention. Similarly, Article 11(3) of the regulation lays down a specific period within which a decision on the return of a child who has been wrongfully removed must be taken. Furthermore, paragraphs 4 to 6 of Article 11 of the regulation circumscribe the power of a court of a Member State to refuse to return a child on the basis of the Convention, making the exercise of that power subject to additional conditions. Article 11(8) of Regulation No 2201/2003, in conjunction with Article 42 thereof, establishes a procedure that facilitates the return of wrongfully removed children, which is additional to the procedure provided for by the 1980 Hague Convention. Under those provisions the court having jurisdiction under Regulation No 2201/2003 may, notwithstanding a judgment of non-return pursuant to Article 13 of the Convention, give a subsequent judgment which requires the return of the child; such a judgment is recognised as enforceable in the Member State in which the child is staying and the authorities of that State have no possibility of opposing that recognition.
78. 78.It is clear from the content of all the provisions of Regulation No 2201/2003 referred to in the preceding paragraph that those provisions either (i) are based on the rules of the 1980 Hague Convention or (ii) establish the consequences that are to follow when those rules are applied. Those two categories of provisions thus form a unitary body of rules which applies to the procedures for returning children who have been wrongfully removed within the EU.
79. 79.As regards, second, the procedure for securing the exercise of rights of access, that matter is specifically addressed only in Article 21 of the Convention, which merely provides for the possibility of presenting applications concerning the exercise of those rights to the central authorities of the Contracting States and imposes on the latter obligations which seek to promote the peaceful enjoyment of those rights.
80. 80.Regulation No 2201/2003 lays down similar basic rules so far as the exercise of rights of access is concerned. In particular, under Articles 55 and 57 of the regulation, any holder of parental responsibility may submit, to the central authority of the Member State of his or her habitual residence or to the central authority of the Member State where the child concerned is habitually resident or present, a request for assistance in exercising access rights.

81. 81.Finally, the 1980 Hague Convention lays down some general provisions which are common to proceedings relating to the return of a wrongfully removed child and proceedings relating to the exercise of rights of access. Thus, it is clear from Articles 22 and 26 of the Convention that the competent authorities may not, subject to certain exceptions, require payment of costs, or of a security or bond, in connection with those proceedings. Under Article 23 of the Convention, no legalisation or similar formality may be required in the context of those proceedings. Article 24 of the Convention specifies the languages in which applications in matters concerned with the application of the Convention may be sent to the central authority of the requested State. In addition, under Article 25 of the Convention, a person who is resident in a Contracting State who makes such an application will be entitled to legal aid and advice in any other Contracting State on the same conditions as if he or she was a national of and habitually resident in that State.
82. 82.Regulation No 2201/2003 lays down similar rules which apply to proceedings for the return of the child and proceedings to secure the exercise of access rights. In particular, under Article 57(3) of the regulation, assistance provided by the central authorities is to be free of charge. In accordance with Article 41 of the regulation, the rights of access granted in an enforceable judgment given in a Member State are to be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition. Article 42 of Regulation No 2201/2003 provides for similar recognition in respect of judgments requiring the return of the child which are mentioned in Article 11(8) of the regulation. Under Article 57(2) of the regulation, provision is made for the possibility of sending communications to the central authorities of the Member States in a language other than their own. Finally, Article 50 of the regulation states that an applicant who has benefited in the Member State of origin from complete or partial legal aid or exemption from costs or expenses is to be entitled, in the procedures concerning the return of wrongfully removed children and the exercise of access rights provided for in Articles 41, 42 and 48 of the regulation, to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement.
83. 83.In view of the foregoing, the Court finds that the provisions of Regulation No 2201/2003 cover to a large extent the two procedures governed by the 1980 Hague Convention, namely the procedure concerning the return of children who have been wrongfully removed and the procedure for securing the exercise of access rights. Thus, the whole of the Convention must be regarded as covered by the EU rules.
- – The risk that common rules may be affected
84. 84.As regards the risk that, in view of the nature and content of the provisions of the 1980 Hague Convention and the declarations of acceptance respectively, the EU rules may be affected by them, it must first be observed that Regulation No 2201/2003 lays down uniform rules which are binding on the authorities of the Member States.
85. 85.Moreover, because of the overlap and the close connection between the provisions of Regulation 2201/2003 and those of the Convention, in particular between Article 11 of the regulation and Chapter III of the Convention, the provisions of the Convention may have an effect on the meaning, scope and effectiveness of the rules laid down in Regulation No 2201/2003.
86. 86.That conclusion is not undermined by the fact that many provisions of Regulation No 2201/2003 may appear to be consonant with those of the Convention. As the Court has already held, EU rules may be affected by international commitments even if there is no possible contradiction between those commitments and the EU rules (see, to that effect, Opinion 2/91, EU:C:1993:106, paragraphs 25 and 26, and judgment in *Commission v Council*, EU:C:2014:2151, paragraph 71).

87. 87. More specifically, the relationship between the 1980 Hague Convention and Regulation No 2201/2003 is made clear by, in particular, Article 60 of the regulation, which provides that the regulation is to take precedence over the Convention in so far as the matters governed by the two instruments overlap.
88. 88. Despite the precedence afforded to Regulation No 2201/2003, the scope and effectiveness of the common rules laid down by the regulation are likely to be affected when the Member States individually make separate declarations accepting third-State accessions to the 1980 Hague Convention.
89. 89. In that regard, as the Parliament and the Commission have submitted, if the Member States, rather than the EU, had competence to decide whether or not to accept the accession of a new third State to the 1980 Hague Convention, there would be a risk of undermining the uniform and consistent application of Regulation No 2201/2003 and, in particular, the rules concerning cooperation between the authorities of the Member States, whenever a situation involving international child abduction involved a third State and two Member States, one of which had accepted the accession of that third State to the Convention whilst the other had not.
90. 90. In view of the foregoing, the exclusive competence of the EU encompasses the acceptance of the accession of a third State to the 1980 Hague Convention.

Consequently, the Court (Grand Chamber) gives the following Opinion:

The exclusive competence of the European Union encompasses the acceptance of the accession of a third State to the Convention on the civil aspects of international child abduction concluded in The Hague on 25 October 1980.

[Signatures]