

COUNCIL

COUNCIL DECISION

of 5 June 2008

authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children and authorising certain Member States to make a declaration on the application of the relevant internal rules of Community law

(2008/431/EC)

THE COUNCIL OF THE EUROPEAN UNION,

the Community on 1 April 2003 have also signed the Convention.

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(1) in conjunction with the first subparagraph of Article 300(2), and the first subparagraph of Article 300(3), thereof,

(4) Upon the adoption of Decision 2003/93/EC the Council and the Commission agreed that the Decision would be followed by a Commission proposal for a Council Decision authorising the Member States to ratify, or accede to, the Convention in the interest of the Community at the appropriate time.

Having regard to the proposal from the Commission,

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

(5) Some Member States have already ratified, or acceded to, the Convention.

Whereas:

(1) The Community is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions.

(6) Certain Articles of the Convention affect secondary Community legislation on jurisdiction and recognition and enforcement of judgments, in particular 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 ⁽³⁾. The Member States retain their competence in the areas covered by the Convention which do not affect Community law. The Community and the Member States thus share competence to conclude the Convention.

(2) The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children concluded on 19 October 1996 within the Hague Conference on Private International Law (hereinafter referred to as the Convention) makes a valuable contribution to the protection of children at the international level. It is therefore desirable that its provisions be applied as soon as possible.

(7) Pursuant to the Convention, only sovereign States may be party to it. For that reason, the Community may not ratify, or accede to, the Convention.

(3) Council Decision 2003/93/EC of 19 December 2002 ⁽²⁾ authorised the Member States to sign the Convention in the interest of the Community. Those States which were Member States of the Community at that time signed the Convention on 1 April 2003, with the exception of the Netherlands which had already signed the Convention. Other Member States which were not Member States of

(8) The Council should therefore authorise the Member States, by way of exception, to ratify, or accede to, the Convention in the interest of the Community, under the conditions set out in this Decision, however not those Member States which have already ratified, or acceded to, the Convention.

⁽¹⁾ OJ C 82 E, 1.4.2004, p. 307.

⁽²⁾ OJ L 48, 21.2.2003, p. 3.

⁽³⁾ OJ L 338, 23.12.2003, p. 1. Regulation as last amended by Regulation (EC) No 2116/2004 (OJ L 367, 14.12.2004, p. 1).

(9) In order to safeguard the application of Community rules on recognition and enforcement of judgments within the Community, Article 2 of Decision 2003/93/EC required the Member States to make a declaration when signing the Convention.

(10) The Member States which signed the Convention on 1 April 2003 made the declaration set out in Article 2 of Decision 2003/93/EC on that occasion. Other Member States which did not sign the Convention pursuant to Decision 2003/93/EC made the declaration after their accession to the European Union. Some Member States have, however, not made the declaration and should therefore now make the declaration set out in Article 2 of this Decision.

(11) The Member States which are authorised to ratify, or accede to, the Convention by this Decision, should do so simultaneously. Those Member States should therefore exchange information on the state of their ratification or accession procedures in order to prepare the simultaneous deposit of their instruments of ratification or accession.

(12) The United Kingdom and Ireland are taking part in the adoption and application of this Decision.

(13) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take 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 Council hereby authorises Belgium, Germany, Ireland, Greece, Spain, France, Italy, Cyprus, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Finland, Sweden and the United Kingdom to ratify, or accede to, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (hereinafter referred to as the Convention), in the interest of the Community, subject to the conditions set out in Articles 3 and 4.

2. The text of the Convention is attached to this Decision.

Article 2

The Council hereby authorises Bulgaria, Cyprus, Latvia, Malta, the Netherlands and Poland to make the following declaration:

'Articles 23, 26 and 52 of the Convention allow Contracting Parties a degree of flexibility in order to apply a simple and rapid regime for the recognition and enforcement of judgments. The Community rules provide for a system of recognition and enforcement which is at least as favourable as the rules laid down in the Convention. Accordingly, a judgment given in a court of a Member State of the European Union, in respect of a matter relating to the Convention, shall be recognised and enforced in ...⁽¹⁾ by application of the relevant internal rules of Community law⁽²⁾.

⁽¹⁾ Member State making the declaration.

⁽²⁾ Council Regulation (EC) No 2201/2003 plays a special role in this field since it relates to jurisdiction and recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.'

Article 3

1. The Member States mentioned in Article 1(1) shall take the necessary steps to deposit simultaneously their instruments of ratification or accession with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, if possible before 5 June 2010.

2. The Member States referred to in paragraph 1 shall exchange information with the Commission within the Council, before 5 December 2009, on the prospective date of completion of their parliamentary procedures required for ratification or accession. On this basis, the date and modalities of the simultaneous deposit shall be determined.

Article 4

The Member States mentioned in Article 1(1) shall inform the Ministry of Foreign Affairs of the Kingdom of the Netherlands in writing when their parliamentary procedures required for ratification or accession have been carried out indicating that their instruments of ratification or accession will be deposited at a later stage in accordance with this Decision.

Article 5

Decision shall apply from the day of its publication in the *Official Journal of the European Union*.

Article 6

This Decision is addressed to all Member States with the exception of Denmark, the Czech Republic, Estonia, Lithuania, Hungary, Slovenia and Slovakia.

Done at Luxembourg, 5 June 2008.

For the Council

The President

D. MATE
