European Commission

The Hague Conventions on family law

Judicial cooperation in civil matters

Directorate-General Justice
Unit A.1 Civil justice policy

Disclaimer: These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

External aspects of EU policies in Family law matters

1980 Hague Convention on International **Child Abduction**

1996 Hague Convention on **Child Protection**

2007 Hague Convention on **Child Support** and other forms of family maintenance and its Protocol on the law applicable to maintenance obligations

The 1980 Hague Convention

Concluded 25 October 1980

Entered into Force 1 December 1983

99 States Parties (on 12.11.2018)

All EU Member States are Parties to this Convention

The 1980 Hague Convention

Objectives:

To ensure the **prompt return** of the child to the State of his/her habitual residence.

To secure protection for **rights of access**/Child maintains contacts with both parents.

To **deter abductions** and wrongful retentions: it deprives the wrongful parent of procedural advantages that might otherwise result from the abduction.

To ensure that decisions concerning custody / access are made by the **appropriate court.**

EU external competence

The development of the acquis in judicial cooperation in civil and commercial matters, including family law, has consequences also from the point of view of the EU competence to negotiate and conclude international agreements.

EU external competence

- EJC Opinion 1/03 of 7 February 2006 “Lugano”
- EU has acquired the exclusive competence to conclude international agreements in matters affecting the provisions of the EU instruments in civil and commercial matters
- In short, the **EU is competent externally to the extent that it has adopted legislation internally on the same/similar subject matter.**
- Multilateral or bilateral international agreements concluded by the EU become part of EU law.
- Member States can also be authorized to sign/ratify/accede to an agreement in the interest of the EU (old agreements without REIO clause)

EU external competence

- The prevention of child abduction is an essential part of the EU policy to promote the rights of the child.
- Because of the fact that the provisions of the 1980 Hague Convention on child abduction are incorporated in the Brussels IIa Regulation and all Member States are parties to it, the matter of international child abduction falls into the EU exclusive competence.

Promoting accession of third States to the 1980 Convention

One of the practical consequence of the EU exclusive external competence on these matters is that **promoting accession of third States** to the 1980 Convention and to the 1996 Convention is a **EU policy.**

Accepting accession of third States to the 1980 Convention

- Article 38(4) of the 1980 Convention stipulates that the Convention applies between the acceding country and other countries that are parties to the Convention once these countries make a **declaration of acceptance** concerning the accession.
- By consequence, it is only the declaration of acceptance that creates the **legal relationship** between the acceding country and the already Contracting Party making the Convention entering into force.

Accepting accession of third States to the 1980 Convention

- It is therefore for the EU to decide, after the confirmation by the Court of Justice of the European Union of the EU exclusive competence, if the accession of third countries should be accepted or not.

Accepting accession of third States to the 1980 Convention

Opinion 1/13 of 14.101.2014 of the Court of Justice of the European Union confirmed that *the 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.*

Accepting accession of third States to the 1980 Convention

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

As a consequence of the Court's Opinion, EU Member States are not anymore in the position to accept the accession of third States to the 1980 Hague Convention without the Union's authorisation.

Accepting accession of third States to the 1980 Convention

After the Court Opinion, 7 Council Decisions have been adopted in December 2015 accepting the accession of **Russia** as well as of **Albania, Andorra, Armenia, Morocco, Seychelles** and **Singapore.**

3 Council Decisions have been adopted in December 2016 accepting the accession of **Kazakhstan, the Republic of Korea** and **Peru.**

4 Council Decisions concerning to acceptance by some EU Member States of **Georgia** and **South Africa, Chile, Iceland** and **the Bahamas, Panama, Uruguay, Colombia a**nd **El Salvador** and **San Marino** have been adopted in December 2017.

4 more Council Decisions are in the pipeline for adoption beginning 2019.

1996 HAGUE CHILD PROTECTION CONVENTION

Concluded 19 October 1996

Entered into Force 1 January 2002

49 States Parties (on 12.11.2018)

All EU Member States are Contracting Parties

Albania acceded on 18.5.2006

1996 HAGUE CHILD PROTECTION CONVENTION: Objectives

a) to determine the State whose authorities have **jurisdiction** to take measures directed to the protection of the person or property of the child;
b) to determine which law is to be applied by such authorities in exercising their jurisdiction;
c) to determine the **law applicable to parental responsibility;**
d) to provide for the **recognition** and **enforcement** of such measures of protection in all Contracting States;
e) to establish such **co-operation** between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

1996 HAGUE CHILD PROTECTION CONVENTION

- 1996 Convention operates **alongside** the 1980 Convention. It **complements** the operation of the 1980 Convention but does not alter its application.
- **Article 50:**
  - ***This Convention shall not affect the application of the 1980 Convention, as between Parties to both Conventions.***
  - ***Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.***

2007 Hague Convention on Child Support and other forms of family maintenance

The object of the Convention is "*to ensure the effective international recovery of child support and other forms of family maintenance*"

- system of co-operation between Contracting States in the processing of international applications

- ensuring effective access to cross-border maintenance procedures

- recognition and enforcement of maintenance decisions in Contracting States.

2007 Hague Convention on Child Support and other forms of family maintenance

Signed by the EU on 6 April 2011

Entered into force on 1 January 2013

EU accession 9 April 2014

Entered into force 1st August 2014

All EU Member States are bound by the EU accession

2007 Hague Convention on Child Support and other forms of family maintenance

Albania signed the Convention on 21.10.2011

Ratification on 13.9.2012

Other Contracting Parties are: **Belarus, Bosnia and Herzegovina, Brazil, Honduras, Kazakhstan, Montenegro, Norway, Turkey, Ukraine and USA.**

Protocol on the law applicable to maintenance obligations

Concluded by the EU on 8 April 2010

Entered into force on 1st August 2013

Applicable in the EU from 18 June 2011 (because of the link with the Maintenance Regulation)

All EU Member States are bound by the EU conclusion (except Denmark and United Kingdom)

Ratified by **Serbia** on 10 April 2013

Ratified by **Brazil** on 17 July 2017