Hague Convention (1980) on the Civil Aspects of International Child Abduction: accession of Russia

2011/0447(NLE) - 21/12/2011 - Legislative proposal

PURPOSE: to adopt, in the interest of the EU, a declaration of acceptance by the Member States, of the accession of **Russia** to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

PROPOSED ACT: Council Decision.

BACKGROUND: the aim of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, to date ratified by 86 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. In particular, the Commission has always stressed the need for the Russian Federation to accede to the 1980 Hague Convention in order to rely on a common legal framework EU-Russia to deal with cases of child abduction.

The issue was discussed for several years at different levels, namely in the context of the EU-Russia Permanent Partnership Council on Justice, Freedom and Security, and finally Russia decided to deposit the accession instrument to the 1980 Convention on 28 July 2011. The Convention entered into force in Russia on 1 October 2011.

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. Therefore, **the European Union has to decide whether to accept the accession of Russia**, and when affirmative, the Member States should make the declaration of acceptance concerning Russia's accession in the interest of the European Union.

This is the purpose of the proposal.

The decision whether the Member States should accept Russia's accession to the 1980 Convention has to be taken by means of a Council Decision, adopted unanimously after consulting the European Parliament.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASIS: Article 218 and 81(3) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the Commission proposes that Member States deposit simultaneously, and no later than two months from the date of adoption, a declaration of acceptance of the accession of Russia to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction in the interest of the European Union.

Exclusive external competence of the EU: in accordance with the jurisprudence of the Court of Justice, the matter of international child abduction falls into the **exclusive external competence of the EU**,

because of the adoption of internal Union legislation by means of Council Regulation (EC) No 2201/2003 of concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (the Brussels IIa Regulation), which applies between Member States from 1 March 2005. The Regulation introduces even stricter rules than the 1980 Hague Convention on parental child abduction, particularly in Article 11 of the Regulation. It refers directly to the Hague Convention and upholds its principles in European Union law.

Simultaneous adoption: the 1980 Convention was adopted more than 20 years before the Brussels IIa Regulation and thus **does not contain any provision allowing the accession of International Organisations like the European Union**. Member States have to ratify or accede to the Convention in the interest of the European Union.

Therefore, the Member States should declare, in the interest of the European Union, the acceptance regarding Russia's accession to the 1980 Hague Convention. For the sake of coherence and uniformity of Union law, Member States, within a time frame established by the Council Decision, should make this declaration of acceptance simultaneously. The Commission proposes **no later than 2 months after the adoption of the Council Decision.**

Central Authority: it is crucial for the practical application of the 1980 Convention that a Contracting Party designates a Central Authority to discharge the duties which are imposed by the Convention upon such authorities. All Member States have designated Central Authorities under the 1980 Convention. To date, Russia has not yet designated the Central Authority that is needed to assist the European citizens in cases of wrongful removal of children to Russia. Therefore, it is desirable that the **declaration of acceptance of the accession of Russia to the 1980 Convention takes effect upon the designation of the Central Authority by Russia**.

Territorial provisions: in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

BUDGETARY IMPLICATION: the proposal has no implication for the EU budget.