



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.6.2003
COM(2003) 348 final

2003/0127 (CNS)

Proposal for a

COUNCIL DECISION

authorising the Member States to ratify, or accede to, in the interest of the European Community the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention)

(presented by the Commission)

EXPLANATORY MEMORANDUM

Objective of the present proposal

1. The Commission is hereby proposing that the Council exceptionally authorise the Member States to ratify or accede to the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (“the Convention”).

The development of a common judicial area within the Community

2. The European Community is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions. To this end, the Council and the Commission adopted in December 2000 a Programme of measures for the progressive abolition of exequatur in four areas of work.¹ As regards decisions on parental responsibility, which fall within area II of the Programme of mutual recognition, Council Regulation No. 1347/2000 (“the Brussels II Regulation”) currently provides for the mutual recognition of decisions on parental responsibility that are issued on the occasion of matrimonial proceedings and which concern children common to both spouses.² The Commission presented on 3 May 2002 a Proposal for a Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility³ The draft Regulation extends the principle of mutual recognition to all decisions on parental responsibility and will, once adopted, repeal and replace Council Regulation No. 1347/2000.

The 1996 Hague Convention

3. The Convention was concluded on 19 October 1996 within the framework of the Hague Conference of Private International Law and entered into force on 1 January 2002. It contains rules on jurisdiction, applicable law, recognition and enforcement of measures on parental responsibility and protection of children. The fact that the scope of application of the Convention is very similar to that of the future Council Regulation on matters of parental responsibility will facilitate the parallel application of the two instruments.

¹ Programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, OJ 2001 C 12 of 15.1.2001, p. 1.

² Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, OJ L160 of 30.6.2000, p. 19.

³ Proposal for a Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility repealing Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance, 3.5.2002, COM(2002) 222 final.

4. The Community is not a member of the Hague Conference for the time being, and did not participate in the negotiations for the Convention. The Convention only allows for accession by States. The Member States that negotiated the Convention considered that it would make a valuable contribution to the protection of children in situations that transcend the boundaries of the Community and thus usefully complement existing and future Community rules in this area. The Member States therefore urged for Community action that would allow its entry into force without delay.

Member States' signature and ratification of the Convention in the interest of the Community

5. In accordance with the AETR case law⁴ of the Court of Justice on external competence, Member States are no longer free to conclude on their own the Convention, since its provisions on jurisdiction, recognition and enforcement affect Community rules, as currently laid down in Council Regulation No. 1347/2000. Moreover, the Convention deals with matters covered by the future Regulation on matters of parental responsibility. It follows that competence to conclude the Convention is shared between the Community and the Member States.
6. The Commission presented on 20 November 2001 a proposal for a Council Decision to authorise Member States bound by Community rules in this area to sign the Convention in the interest of the Community. The proposal stated that the derogation to the normal ways of exercising Community competence under Article 300 of the Treaty could be exceptionally justified in the specific case on the basis of the value of the Convention for the protection of children and the need to ensure its swift entry into force.
7. On 19 December 2002, the Council decided to authorise Member States to sign the Convention in the interest of the Community. The decision was part of an overall political agreement on the issue of child abduction in the context of the future Council Regulation on matters of parental responsibility. The Council and the Commission agreed at this occasion that the decision would be followed by a Commission proposal for a Council Decision authorising the Member States to ratify or to accede to the Convention in the interest of the Community at the appropriate time, and at the latest within six months from the adoption of the decision authorising signature.
8. The creation of a common judicial area based on the principle of mutual recognition of judgments requires that all judgments issued by the courts in a Member State will be recognised and enforced in another Member State on the basis of a common set of rules. For this reason, Article 2 of the Council Decision of 19 December 2002 required the Member States to make a declaration at the time of the signature stipulating that judgments given in a court of a Member State in respect of a matter relating to the Convention shall be recognised and enforced in another Member States by application of the relevant internal rules of Community law. The same declaration shall be made at the time of the conclusion of the Convention.

⁴ Commission v. Council, Case 22/70, ("AETR"), [1971] ECR 263.

9. The Member States, with the exception of the Netherlands, signed the Convention jointly in the Hague, Netherlands, on 1 April 2003 . The Netherlands had previously signed the Convention on 1 September 1997, i.e. before the entry into force of the Treaty of Amsterdam. At the time of the signature, the Member States made the declaration mentioned under paragraph 8.
10. The present decision will allow Member States to ratify or accede to the Convention in the interest of the Community.
11. In accordance with the Protocol on the position of Denmark annexed to the Treaty on the European Union and to the Treaty establishing the European Community, Denmark is not bound by Regulation 1347/2000 nor subject to its application. As a result, Denmark is free to decide whether to approve the 1996 Hague Convention. However, the duty of co-operation enshrined in Article 10 of the Treaty establishing the European Community translates into a duty to consult on this matter with the other Member States in the Council.

Proposal for a

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authorising the Member States to ratify, or accede to, in the interest of the European Community the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61 point c), 65, 67 paragraph 1 and 300 paragraph 2, subparagraph 1 and paragraph 3, subparagraph 1 thereof,

Having regard to the proposal from the Commission⁵,

Having regard to the opinion of the European Parliament⁶,

Whereas:

- (1) The Community is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions.
- (2) The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation 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 makes a valuable contribution to the protection of children at the international level, and is therefore desirable that its provisions be applied as soon as possible.
- (3) Certain articles of the Convention affect Community secondary legislation on jurisdiction and the recognition and enforcement of judgments, in particular Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses.⁷ In addition, the Convention deals with matters covered by the future Council Regulation on matters of parental responsibility.⁸ The Member States retain their competence in the areas covered by the

⁵ OJ L [...], [...], p. [...].

⁶ OJ L [...], [...], p. [...].

⁷ Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, OJ L 160 of 30.6.2000, p. 19.

⁸ Proposal for a Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility repealing Regulation (EC)

Convention which do not affect existing or future Community law. The Community and the Member States thus share competence to conclude the Convention.

- (4) Pursuant to the Convention, only sovereign States may be part of it. For that reason, the Community may not at present ratify or accede to it.
- (5) 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.
- (6) This Decision follows the Council Decision of 19 December 2002 authorising the Member States to sign the Convention in the interest of the Community. At this occasion, 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 to accede to the Convention in the interest of the Community at the appropriate time, and at the latest within six months from the adoption of the decision authorising signature.
- (7) In order to safeguard the application of Community rules on recognition and enforcement within the Community, Article 2 of the Council Decision of 19 December 2002 required the Member States to make the declaration set out in Annex at the time of the signature of the Convention.
- (8) The Member States, with the exception of the Netherlands, signed the Convention in the Hague on 1 April 2003. The Netherlands had previously signed the Convention on 1 September 1997, i.e. before the entry into force of the Treaty of Amsterdam. The Member States made at this occasion the declaration set out in Annex.
- (9) The Member States shall make the declaration set out in Annex also at the time of the conclusion of the Convention.
- (10) Member States shall simultaneously ratify or accede to the Convention. Member States should exchange information on the state of their ratification procedures in order to prepare the deposit of their instruments of ratification of the Convention.
- (11) The United Kingdom and Ireland are taking part in the adoption and application of this Decision.
- (12) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is not bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Council hereby authorises the Member States to ratify or accede to the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, concluded on 19 October 1996, in the interest of the Community, subject to the conditions set out in the following Articles.
2. The text of the Convention is attached to this Decision.
3. In this Decision, the term “Member State” shall mean all Member States with the exception of Denmark.

Article 2

When ratifying or acceding to the Convention, Member States shall make the declaration set out in Annex.

Article 3

1. Member States shall take the necessary steps to deposit the instruments of ratification of, or accession to, the Convention simultaneously with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, before 1 January 2005.
2. Member States shall agree before 1 July 2004 with the Council and the Commission on the prospective date of the deposit of the instruments of ratification. On this basis, the date and modalities of the simultaneous deposit shall be determined.

Done at Brussels, [...]

*For the Council
The President*

ANNEX

Declaration to be made by the Member States at the time of the ratification of or accession to the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children

“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 in⁹ by application of the relevant internal rules of Community law¹⁰.”

⁹ Member State making the declaration.

¹⁰ Regulation (EC) No 1347/2000 plays a special role in this field since it relates to jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility of both spouses.