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REPORT

on the Commission 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 Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention)
(COM(2003) 348 – C5-0302/2003 – 2003/0127(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Marie-Thérèse Hermange

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 3 July 2003 the Council consulted Parliament, pursuant to Article 67(1) and Article 300(3), first paragraph of the EC Treaty, on the 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 Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention) (COM(2003) 348 – 2003/0127(CNS)).

At the sitting of 3 July 2003 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0302/2003).

The committee appointed Marie-Thérèse Hermange rapporteur at its meeting of 9 July 2003.

It considered the Commission proposal and draft report at its meetings of 9 September, 22 September and 30 September 2003.

At the last meeting it adopted the draft legislative resolution by 29 votes to 1, with 2 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Johanna L.A. Boogerd-Quaak (vice-chairman), Giacomo Santini (vice-chairman), Marie-Thérèse Hermange (rapporteur), Roberta Angelilli, Marco Cappato (for Mario Borghezio), Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Marcello Dell'Utri pursuant to Rule 153(2)), Marie-Thérèse Hermange (for Charlotte Cederschiöld), Margot Keßler, Timothy Kirkhope, Eva Klamt, Ole Krarup, Alain Krivine (for Fodé Sylla), Jean Lambert (for Alima Boumediene-Thiery), Baroness Ludford, Lucio Manisco (for Ilka Schröder), Manuel Medina Ortega (for Adeline Hazan), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Paolo Pastorelli (for Bernd Posselt), Hubert Pirker, Martine Roure, Patsy Sörensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Christian Ulrik von Boetticher and Christos Zacharakis (for Mary Elizabeth Banotti).

The Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities decided on 2 October 2003 not to deliver an opinion.

The report was tabled on 2 October 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 Cooperation in respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention)

(COM(2003) 348 – C5-0302/2003 – 2003/0127(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2003) 348)¹,
 - having regard to Article 61(c), Article 65 and Article 300(2), first paragraph, of the EC Treaty,
 - having regard to Article 67 and Article 300(3), first paragraph, of the EC Treaty pursuant to which the Council consulted Parliament (C5-0302/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0319/2003),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
Citation 5 (new)

Having regard to Article 24 of the Charter of Fundamental Rights,

¹ Not yet published in OJ..

Amendment 2
Citation 6 (new)

Having regard to the proceedings of the European Convention, which led to the draft Treaty establishing a Constitution for Europe, as submitted to the European Council meeting in Thessaloniki on 20 June 2003,

Amendment 3
Recital 1

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

The Community is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions ***and is seeking to ensure that, in all judicial decisions relating to children, the child's best interests are a primary consideration.***

Amendment 4
Recital 2

(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.

(Does not affect English version.)

Amendment 5
Recital 3

(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

(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. In addition, the Convention deals with matters covered by the future Council Regulation on matters of parental responsibility. The Member States retain their competence in the areas covered by the Convention which do not affect *existing or future* Community law. The Community and the Member States thus share competence to conclude the Convention.

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. In addition, the Convention deals with matters covered by the future Council Regulation on matters of parental responsibility. 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.

Amendment 6
Recital 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.

The Council should therefore authorise the Member States, by way of exception, to ratify or accede to the Convention *as soon as possible* in the interest of the Community, under the conditions set out in this Decision.

Justification

The procedure chosen by the Commission may be justified since the text could rapidly enter into force. It is therefore important to urge Member States to ratify the Convention as soon as possible.

Amendment 7
Article 1, paragraph 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.

1. The Council hereby authorises, *on an exceptional basis*, 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.

Justification

The exceptional nature of the procedure chosen in this case should be emphasised.

Amendment 8
Article 3, paragraph 1

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**.

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 **30 June 2004**.

Justification

This procedure is intended to ensure that the Convention enters into force as early as possible.

Amendment 9
Article 3, paragraph 2

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.

Member States shall agree before **1 February 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.

Justification

This procedure is intended to ensure that the Convention enters into force as early as possible.

EXPLANATORY STATEMENT

The Commission proposal for a Council decision which is the subject of this consultation is aimed at authorising Member States to ratify or accede to the Hague Convention in the European Community's interest.

The Hague Convention was concluded on 19 October 1996 under the aegis of the Conference on Private International Law and concerns jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children.

The Hague Convention stipulates that only sovereign states may be parties to this treaty. The Council must therefore, on an exceptional basis, authorise Member States to ratify or accede to the Convention in the interest of the European Community.

It should be stressed that this procedure is a very special exception to the rule laid down in Article 300 of the EC Treaty on the exercise of Community powers in relation to the conclusion of international agreements. The derogation is based solely on the fact that it is impossible for the European Community to become a party to the Hague Convention. It is therefore incumbent on the Member States to take the necessary steps to enable the Community to become a member of the Hague Conference.

The rapporteur welcomes this initiative since the future regulation on parental responsibility, currently being discussed by the Council, is in fact based to a large extent on the Hague Convention, and this should facilitate the parallel implementation of these two instruments.

Many, if not most, problems relating to child abduction and rights of access arise in countries outside the European Union. The incorporation of the Hague Convention into EU law will therefore make a real contribution to strengthening Community law on child protection.

The rapporteur would nevertheless have wished the European Parliament to be consulted first at the time of the initial Commission proposal authorising Member States to sign the Convention and then to be given a reasonable amount of time to consider the matter. In this connection, the rapporteur would draw attention to the fact that Article 10 of the EC Treaty imposes a duty of cooperation on Community institutions and that the Court of Justice of the European Communities has established that the institutions have a such an obligation in all cases where institutions or bodies are called upon.

The establishment of a harmonised and standardised judicial area is a vitally important element in the advancement of European integration in such an important sphere as that of parental responsibility for children. With this in mind, the rapporteur warmly welcomes the fact that a political agreement¹ was recently reached by the Council on a draft regulation on recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, based on common rules on jurisdiction, especially with regard to issues relating to the return of the child, which is a key aspect of the regulation.

¹ JHA Council meeting of 5 and 6 June 2003, Doc. 9845/03, p. 24.

It is now important to ensure, in accordance with Article 24(2) of the Charter of Fundamental Rights of the EU and the draft future Constitutional Treaty, that, in all judicial decisions relating to children, the child's best interests remain a primary consideration.