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Mr William DUNCAN
Deputy Secretary-General of
The Hague Conference on
Private International Law
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Dear Mr Duncan,

On 30 November 2010 the Permanent Bureau of the Hague Conference on Private International Law sent States Parties and Members a questionnaire concerning the practical operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Hague 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 European Union thanks the Permanent Bureau for the opportunity to send its suggestions and would like to comment on question No 23 relating to the priorities and recommendations for the Special Commission. The replies to the other questions of the questionnaire have been or will be provided by the individual Member States of the European Union.

The European Union believes that a priority issue for the Special Commission should be to explore how best to ensure the efficient application of the 1980 Convention and to promote a better understanding of the Convention among judges.

The Special Commission should also devote time to discussing the following issues:

- (1) the cooperation and exchange of information between the Central Authorities involved in a given case,
- (2) the contact between the child and either parent during and after the resolution of the dispute, including the aspect of prohibitive costs,

- (3) the speedy determination of cases relating to the return of a child,
- (4) the lawful relocation of a child with the primary caretaker or guardian with possible supervision by the courts of the State of the child's former habitual residence or the courts of the State of the child's new habitual residence,
- (5) the possibility of alleviating public law measures, in particular criminal charges against the abducting parent and visa requirements, for instance by way of safe conduct, so as to preserve the effective exercise by a parent of contact with the child,
- (6) the lack of legal aid and legal advice to parents involved in custody, contact or return cases in some States,
- (7) the fair determination of a custody case in the State of the child's habitual residence in the wake of an abduction of the child by one parent,
- (8) the impact of allegations of domestic violence on the application of the Conventions,
- (9) the practical meaning of "recognition by operation of law" (Article 23 of the 1996 Convention).

Given that The European Union considers mediation important as a means to further the amicable resolution of abduction cases, it fully supports that the Special Commission will consider the draft Guide to Good Practice on Mediation under the 1980 Convention and the Principles for the Establishment of Mediation Structures in the context of the Malta Process as indicated in Information Document No 1 circulated in November 2010.

The European Union also endorses the indication in the same document that the Special Commission will consider the draft Practical Handbook on the Operation of the 1996 Convention. The Union provided detailed comments on the first draft and looks forward to having the opportunity to examine the revised version.

The European Union believes that the Special Commission should also devote time to discussing how to promote further accessions to the 1980 and 1996 Hague Conventions. Indeed, a clear legal framework at worldwide level such as the one provided by the two Hague Conventions is of paramount importance for the resolution of cases involving child abduction and parental responsibility. All potential acceding States should however be made aware of the need to put in place the necessary implementation legislation beforehand and to designate a Central Authority capable of operating from the very beginning.

In this respect, it might be useful for the Special Commission to discuss which countries should be considered as target countries for accession and to explore possible ways of co-financing actions aimed at raising the awareness of the advantages of the two Conventions.

Finally, the European Union is of the opinion that the Special Commission should discuss the impact of the recent case-law of the European Court of Human Rights of relevance for the application of the 1980 Convention.

Yours sincerely,



Paraskevi MICHOU

Director

European Commission



György GÁTOS

Chairman

Working Party on Civil Law Matters

of the Council of the European Union