



Assessment at EU level of new accessions to the HCCH's Children Conventions

Legal Framework and Practise

*Patrizia De Luca
Senior Expert/Team leader
European Commission
DG Justice and Consumers
Unit A.2. Civil Justice*

Outline

- I. EU family law instruments → EU external competence

- II. The acceptance of new accessions to the 1980 Child Abduction Convention

- III. The silence-no objection procedure for the 1996 Child Protection Convention and the 2007 Child Support Conventions

EU family law instruments and HCCH Conventions

- Since 2003, the EU has adopted several Regulations in the field of the protection of children. Some of them overlap partially with the corresponding Conventions adopted by the HCCH in the same fields, namely child protection, child abduction and child support.
- The EU Regulations apply among the EU Member States with the exception of Denmark. The relationship with third countries in respect to the same matters is regulated by the HCCH Conventions or by preexisting bilateral agreements of the EU Member States.
- **All EU Member States** are Party to the **1980 Child Abduction Convention** and to the **1996 Child Protection Convention**.
- The **European Union** as such is a Party to the **2007 Child Support Convention** binding all EU Member States except Denmark.

EU family law instruments

- Council Regulation (EC) No 2201/2003, Brussels IIa Regulation
 - Became applicable 1.03.2005
- Council Regulation (EC) No 4/2009, Maintenance Regulation
 - Became applicable 18.06.2011
- Council Regulation (EU) 2019/1111, Brussels IIb Regulation
 - Became applicable 01.09.2022 (replacing the Brussels IIa Regulation)

EU policy in relation to judicial cooperation in civil matters

- **The EU policy is to deal with judicial cooperation in civil matters with third countries on the basis of the HCCH Conventions.**
- This ensures that a common legal framework is in place between the EU Member States and the other countries which are Party to the HCCH Conventions.
- The CGAP and the periodical Special Commissions organized by the Permanent Bureau contribute to common understanding and exchange of good practices.
- The EU promotes in all fora the accession of other countries to the core HCCH Conventions, in particular those related to family law.

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 (Opinion 1/03 of the Court of Justice of the European Union “*Lugano*”).
- No bilateral agreements EU MS/third States in matters covered by the EU exclusive external competence are allowed anymore without specific authorisation by the EU.
- The acceptance of new Contracting Parties to HCCH Conventions is now decided at EU level, following Opinion 1/13 of the Court of Justice of the European Union.

The procedure: Explicit acceptance /silence-no objection

- Article 38(4) of the **1980 Abduction 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.
- In relation to the **1996 Child Protection** and the **2007 Child Support** Conventions, a simpler procedure is in place, meaning that the Conventions will enter into force between the new acceding State and those Contracting States which have not raised an **objection** to its accession in the six or twelve months after the receipt of the notification from the Depository.

The assessment at EU level (1)

- Family law matters are decided at **unanimity** (26 EU Member States except Denmark)
- The Commission prepares an assessment of the situation of the new acceding countries to be shared with the EU Member States. The modalities are different depending on the Conventions, but the substance is the same.
- The analysis of the Commission takes into consideration general issues such as rule of law, organisation of the judiciary, upholding of fundamental rights and more specific issues concerning the implementation of the Conventions as such (**appointment of a Central Authority** with exhaustive contact details, implementation of the Convention in the national legal order, training of judges and legal practitioners etc...)

The assessment at EU level (2)

- The purpose of the assessment is to identify whether there are **systematic shortcomings** that cannot be properly addressed through the mechanisms of the Conventions.
- Information is sought through various sources, in particular the Permanent Bureau, the EU Delegation in the country concerned and *ad hoc* experts' meeting with the EU MS.
- Following the assessment, all EU Member States will establish (or not) legal relationships with the new acceding country within a deadline of one year from the adoption of the decision, therefore putting an end to the so-called “variable geometry” identified by the Court of Justice.
- The downside is that for family law matters unanimity is required, and sometimes an agreement is not easily found.

The assessment at EU level (3)

- However, this has not prevented the EU from adopting the relevant decisions and accepting (through its MS) since 2015 the following new Contracting Parties to the 1980 Abduction Convention: **Andorra, Seychelles, Russia, Albania, Singapore, Morocco, Armenia, Republic of Korea, Kazakhstan, Peru, Georgia, South Africa, Chile, Iceland, The Bahamas, Panama, Uruguay, Colombia, El Salvador, San Marino, The Dominican Republic, Ecuador, Ukraine, Honduras, Belarus, Uzbekistan, Bolivia, Jamaica, Philippines** and **Tunisia**.
- Several other accessions to the 1980 Abduction Convention will have to be considered at EU level in the following years with a view to accept them.

The assessment at EU level (4)

- For the accessions to the 1996 and 2007 Conventions, where the deadline to raise objection is six or twelve months, the assessment is the same with the peculiarity that there is a fixed time to carry out the analysis and therefore only early stages of the implementation can be considered.
- Even here the EU assessment has successfully led to the establishment of Treaty relationships:
- For the 1996 Child Protection Convention between the EU Member States and **Nicaragua, Barbados, Paraguay, Guyana, Costa Rica, Cabo Verde.**
- For the 2007 Child Support Convention between the European Union and **Nicaragua, Guyana, Honduras, Kazakhstan, Botswana, Azerbaijan.**
- The assessments of **Kyrgystan, Cabo Verde, Dominican Republic** (2007 Convention) and **El Salvador** (1996 Convention) are on-going.

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