



## **Serbia Screening Chapter 24**

# **The Hague Conventions on family law Judicial cooperation in civil matters**

Directorate-General Justice  
Unit A.1 Civil justice policy



## External aspects of EU policies in Family law matters

1980 Hague Convention on International  
**Child Abduction**

1996 Hague Convention on **Child Protection**

2007 Hague Convention on **Child Support** and other forms of family maintenance and its Protocol on the law applicable to maintenance obligations



# **The 1980 Hague Convention**

Concluded 25 October 1980

Entered into Force 1 December 1983

90 States Parties

All EU Member States are Parties to this Convention

- Serbia has acceded in 2001, by way of succession to the former Socialist Federal Republic of Yugoslavia

# The 1980 Hague Convention

## Objectives:

To ensure the **prompt return** of the child to the State of his/her habitual residence.

To secure protection for **rights of access**/Child maintains contacts with both parents.

To **deter abductions** and wrongful retentions: it deprives the wrongful parent of procedural advantages that might otherwise result from the abduction.

To ensure that decisions concerning custody / access are made by the **appropriate court**.



## **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

## EU external competence

- EJC Opinion 1/03 of 7 February 2006 “Lugano”
- EU has acquired the exclusive competence to conclude international agreements in matters affecting the provisions of the EU instruments in civil and commercial matters
- In short, the **EU is competent externally to the extent that it has adopted legislation internally on the same/similar subject matter.**
- Multilateral or bilateral international agreements concluded by the EU become part of EU law.
- Member States can also be authorized to sign/ratify/accede to an agreement in the interest of the EU (old agreements without REIO clause)



## EU external competence

- The prevention of child abduction is an essential part of the EU policy to promote the rights of the child.
- Because of the fact that the provisions of the 1980 Hague Convention on child abduction are incorporated in the Brussels IIa Regulation and all Member States are parties to it, the matter of international child abduction falls into the EU exclusive competence



## Promoting accession of third States to the 1980 Convention

One of the practical consequence of the EU exclusive external competence on these matters is that **promoting accession of third States** to the 1980 Convention and to the 1996 Convention is a **EU policy**



# Accepting accession of third States to the 1980 Convention

- Article 38(4) of the 1980 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

## **Accepting accession of third States to the 1980 Convention**

- It is therefore for the EU to decide, after establishment by the ECJ of the EU exclusive competence, if the accession of third countries (i.e. of Russia as well as of Albania, Andorra, Armenia, Gabon, Morocco, Seychelles and Singapore) should be accepted or not.



# Accepting accession of third States to the 1980 Convention

Unfortunately, the Member States believe that they are basically free to decide autonomously whether to accept or not the accession of new Contracting Parties to the Child Abduction Convention , without taking into account the EU general interest.

In order to solve this dispute, the Commission has deposited a request for an Opinion of the Court of Justice of the European Union on 21 June 2013.



# **1996 HAGUE CHILD PROTECTION CONVENTION**

Concluded 19 October 1996

Entered into Force 1 January 2002

39 States Parties

All EU Member States should have acceded by June 2010

However, 2 EU MSs have not yet completed their internal procedures for accession

Serbia is encouraged to access this Convention

## 1996 HAGUE CHILD PROTECTION CONVENTION: Objectives

- a) to determine the State whose authorities have **jurisdiction** to take measures directed to the protection of the person or property of the child;
- b) to determine which law is to be applied by such authorities in exercising their jurisdiction;
- c) to determine the **law applicable to parental responsibility**;
- d) to provide for the **recognition** and **enforcement** of such measures of protection in all Contracting States;
- e) to establish such **co-operation** between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention

## 1996 HAGUE CHILD PROTECTION CONVENTION

- 1996 Convention operates **alongside** the 1980 Convention. It **complements** the operation of the 1980 Convention but does not alter its application.
- **Article 50:**
  - ***This Convention shall not affect the application of the 1980 Convention, as between Parties to both Conventions.***
  - ***Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.***



## **2007 Hague Convention on Child Support and other forms of family maintenance**

The object of the Convention is *"to ensure the effective international recovery of child support and other forms of family maintenance"*

- system of co-operation between Contracting States in the processing of international applications
- ensuring effective access to cross-border maintenance procedures
- recognition and enforcement of maintenance decisions in Contracting States



## **2007 Hague Convention on Child Support and other forms of family maintenance**

Signed by the EU on 6 April 2011

Entered into force on 1 January 2013

EU accession expected by 2013





# **Protocol on the law applicable to maintenance obligations**

Concluded by the EU on 8 April 2010

Ratified by Serbia on 10 April 2013

Entered into force on 1 August 2013 between EU and Serbia

Applicable in the EU from 18 June 2011 ( because of the link with the Maintenance Regulation)



# **Thank you for your attention!**