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Proposal for a

COUNCIL DECISION

**authorising the Member States to accept, in the interest of the European Union, the
accession of Cabo Verde to the 1980 Hague Convention on the Civil Aspects of
International Child Abduction**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The aim of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereafter: "the 1980 Convention"), to date ratified by 103 countries, including all EU Member States, is to restore the status quo by means of the prompt return of wrongfully removed or retained children through a system of cooperation among central authorities appointed by its Contracting Parties.

As the prevention of child abduction is an essential part of the EU policy to promote the rights of the child, the European Union is active at international level to improve the application of the 1980 Convention and encourages third States to accede it.

Cabo Verde deposited the accession instrument to the 1980 Hague Convention on 4 October 2022. The Convention entered into force in Cabo Verde on 1 January 2023.

Article 38(4) of the 1980 Convention stipulates that the Convention applies between the acceding country and such Contracting States as will have declared their acceptance of the accession.

In Opinion 1/13⁽¹⁾, the Court of Justice of the European Union decided that the exclusive competence of the European Union encompasses the acceptance of the accession of a third state to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

The Court insisted on the need for uniformity on the matter at EU level, avoiding a variable geometry among Member States.

As the matter of international child abduction falls within the exclusive external competence of the European Union, the decision whether to accept the accession of Cabo Verde has to be taken at EU level by means of a Council Decision. The Member States of the European Union should thus deposit the declaration of acceptance concerning the accession of Cabo Verde in the interest of the European Union.

The acceptance of the Member States of the European Union would render the 1980 Hague Convention applicable between Cabo Verde and the EU Member States except Denmark.

• Consistency with existing policy provisions in the policy area

As far as parental child abduction is concerned, the 1980 Hague Convention is the international counterpart of Council Regulation No 2019/1111 (known as the Brussels IIb Regulation) ⁽²⁾ which is the cornerstone of EU judicial cooperation in matrimonial matters and matters of parental responsibility.

One of the main objectives of the Regulation is to deter child abduction between Member States by establishing procedures to ensure the child's prompt return to the Member State of his/her habitual residence. To this end, the Brussels IIb Regulation incorporates in Chapter III the procedure laid down in the 1980 Hague Convention and complements it by clarifying some of its aspects, in particular the hearing of the child, the time period to render a decision after an application for return has been lodged and the grounds for not returning the child.

⁽¹⁾ Opinion 1/13 (Accession of third States to the 1980 Hague Convention) of 14 October 2014, ECLI:EU:C:2014:2303.

⁽²⁾ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), OJ L 178, 2.7.2019, pp. 1–115.

At the international level, the European Union supports the accession of third States to the 1980 Convention in order for its Member States to rely upon a common legal framework to deal with international child abductions.

22 Council Decisions have been already adopted between June 2015 and December 2022 in order to accept the accession to the 1980 Hague Convention on International Child Abduction of 30 third countries (Morocco, Singapore, the Russian Federation, Albania, Andorra, the Seychelles, Armenia, the Republic of Korea, Kazakhstan, Peru, Georgia, South Africa, Chile, Iceland, the Bahamas, Panama, Uruguay, Colombia, El Salvador and San Marino, the Dominican Republic, Belarus, Uzbekistan, Honduras, Ecuador, Ukraine, Jamaica, Bolivia, Philippines and Tunisia⁽³⁾).

- **Consistency with other Union policies**

The present proposal is evidently linked to the general objective enshrined in Article 3 of Treaty on the European Union to protect the rights of the child. The 1980 Hague Convention system is designed to protect the child from the harmful effects of a parental abduction and ensure that the child is able to maintain contact with both parents, for instance by securing the effective exercise of access rights. It is worth mentioning also the link to the promotion of the use of mediation in the settlement of cross-border family disputes.

The Directive on certain aspects of mediation in civil and commercial matters⁽⁴⁾ also applies to family law within the common European judicial area. The 1980 Hague Convention encourages the amicable resolution of family disputes. One of the Guides to Good Practise under the 1980 Hague Convention published by the Hague Conference on Private International Law is devoted to the use of mediation for the resolution of international family disputes concerning children which fall within the scope of the Convention. At the initiative of the European Commission, this Guide has been translated in all EU languages other than English and French and also in Arabic to support the dialogue with States which have not yet ratified/acceded to the Convention and help finding concrete ways to tackle the problems posed by international child abductions⁽⁵⁾.

⁽³⁾ 22 Council Decisions have been already adopted, authorizing Member States to accept the accession to the 1980 Convention of Andorra (Council Decision 2015/1023 adopted on 15 June 2015); Seychelles (Council Decision 2015/2354 adopted on 10 December 2015); Russia (Council Decision 2015/2355 adopted on 10 December 2015); Albania (Council Decision 2015/2356 adopted on 10 December 2015); Singapore (Council Decision 2015/1024 adopted on 15 June 2015); Morocco (Council Decision 2015/2357 adopted on 10 December 2015); Armenia (Council Decision 2015/2358 adopted on 10 December 2015); Republic of Korea (Council Decision 2016/2313 adopted on 8 December 2016), Kazakhstan (Council Decision 2016/2311 adopted on 8.12.2016), Peru (Council Decision 2016/2312 adopted on 8.12.2016); Georgia and South Africa (Council Decision (EU) 2017/2462 of 18 December 2017); Chile, Iceland and the Bahamas (Council Decision (EU) 2017/2424 of 18 December 2017); Panama, Uruguay, Colombia and El Salvador (Council Decision (EU) 2017/2464 of 18 December 2017); San Marino (Council Decision (EU) 2017/2463 of 18 December 2017); The Dominican Republic (Council Decision (EU) 2019/305 of 18 February 2019); Ecuador and Ukraine (Council Decision (EU) 2019/306 of 18 February 2019); Honduras (Council Decision (EU) 2019/307 of 18 February 2019); Belarus and Uzbekistan (Council Decision (EU) 2019/308 of 18 February 2019); Jamaica (Council Decision (EU) 2021/2206 of 9 December 2021); Bolivia (Council Decision (EU) 2021/2207 of 9 December 2021); Philippines (Council Decision (EU) 2022/2439 of 8 December 2022); Tunisia (Council Decision (EU) 2022/2450 of 8 December 2022).

⁽⁴⁾ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136 of 24 May 2008, p. 3).

⁽⁵⁾ <https://www.hcch.net/en/publications-and-studies/details4/?pid=6561&dtid=3>

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

In accordance with Article 38 of the 1980 Hague Convention, the declaration of acceptance of accession is a constituent part of an international agreement concluded with the acceding State.

The substantive legal basis for a decision under Article 218(6) TFEU depends primarily on the objective and content of an international agreement to be concluded. Given the fact that the main objective and content of the 1980 Hague Convention is to deter parental child abduction, and therefore the subject matter is family law, the substantive legal basis is Article 81(3) TFEU. Article 81(3) TFEU provides that measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.

Given that Article 81 TFEU is the substantive legal basis, the Council is to adopt the decision authorising the Member States to accept, in the interest of the Union, the accession of a third country to the 1980 Convention after consulting the European Parliament, in accordance with Article 218(6), point (b), TFEU.

Pursuant to Article 218(8), second subparagraph, TFEU, the Council acts by unanimity when the agreement covers a field for which unanimity is required for the adoption of a Union act.

Therefore, the procedural legal basis for the proposed decision is Article 218(6), second subparagraph, point (b), and Article 218(8), second subparagraph, TFEU.

Ireland is bound by Regulation(EU) 2019/1111 (Brussels IIb Regulation) and is therefore taking part in the adoption and application of this decision.

In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

• Subsidiarity (for non-exclusive competence)

Not Applicable

• Proportionality

The present proposal is drafted along the lines of the already adopted Council Decisions on the same subject matter and does not go beyond what it is necessary to achieve of a coherent EU action in the matter of international child abduction by ensuring that the Member States of the European Union accept the accession of Cabo Verde to the 1980 Hague Convention within a given time frame.

• Choice of the instrument

This proposal for a Council decision is submitted in accordance with Article 218(6) TFEU, which envisages the adoption by the Council of a decision concluding the agreement. There exists no other legal instrument that could be used in order to achieve the objective pursued by this proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

All Member States of the European Union, consulted by the Commission in the framework of the Council Working Party on Civil Law Matters on their willingness to accept the accession of Cabo Verde to the 1980 Hague Convention, gave a favourable opinion.

- **Collection and use of expertise**

The Commission has gathered relevant information on the implementation of the Convention from The Hague Conference on Private International Law, the EU Delegation in Cabo Verde and the Prosecutor General's Office, Central Department of Cooperation and Comparative Law designated as Central Authority under the 1980 Hague Convention.

- **Impact assessment**

As for the 22 Council Decisions already adopted between 2015 and 2022 concerning the acceptance of the accession of several third States to the 1980 Hague Convention, no specific impact assessment has been carried out.

However, the level of implementation of the Convention was examined through the answers given by Cabo Verde to the EU questionnaire and the completion of the questionnaire for newly acceding countries developed by the Hague Conference on Private International Law.

During discussions at the Working Party on Civil Law Matters, it emerged that experiences of some Member States (for instance Portugal) with the legal system of Cabo Verde are positive. Indeed, relying on Treaty relationships with EU Member States is considered very important by the authorities in Cabo Verde. A common legal framework with all EU Member States, represented by the 1980 Hague Convention, would help the handling and resolution of cross-border abduction cases.

Training actions are planned in cooperation with Portuguese-speaking countries, Parties to the Convention (Portugal and Brazil). UNICEF will be also involved in the implementation of the Hague Children Conventions.

Cabo Verde has also recently acceded to the 1996 Child Protection and 2007 Child Support Conventions and its legal system, respect of rule of law and fundamental rights have been examined in the context of the no objection procedures dealing with the accessions to these Conventions. The assessment led to the conclusion that no objection should be raised against the accession of Cabo Verde to 1996 Child Protection and 2007 Child Support Conventions.

- **Regulatory fitness and simplification**

Not applicable

- **Fundamental rights**

Parental abduction directly conflicts with children's rights, in particular the right to be protected and the right to maintain contact with both parents. By establishing a legal framework which seeks to deter parental child abduction and gives the child the opportunity to be heard, the 1980 Convention upheld children's rights, which are fundamental human rights recognised by the United Nations Convention on the Rights of the Child (UNCRC). The present proposal is aimed at establishing this legal framework between Cabo Verde and the EU Member States.

4. BUDGETARY IMPLICATIONS

The proposed Council Decision has no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

Not applicable

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authorising the Member States to accept, in the interest of the European Union, the accession of Cabo Verde to the 1980 Hague Convention on the Civil Aspects of International Child Abduction

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) in conjunction with Article 218(6), second subparagraph, point (b), and Article 218(8), second subparagraph, thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas:

- (1) The Union has set as one of its aims the promotion of the protection of the rights of the child, as stated in Article 3 of the Treaty on European Union. Measures for the protection of children against wrongful removal or retention are an essential part of that policy.
- (2) Council Regulation (EU) 2019/1111⁽²⁾ aims to protect children from the harmful effects of wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure the protection of rights of access and rights of custody.
- (3) Regulation (EU) 2019/1111 complements and reinforces the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention') which establishes, at international level, a system of obligations and cooperation among Contracting States and between central authorities and has the aim of ensuring the prompt return of wrongfully removed or retained children.
- (4) All Member States are party to the 1980 Hague Convention.
- (5) The Union encourages third states to accede to the 1980 Hague Convention and supports the correct implementation of the 1980 Hague Convention by participating, along with the Member States, inter alia, in the special commissions organised on a regular basis by the Hague Conference on Private International Law.
- (6) A common legal framework applicable between Member States and third states could be the best solution for sensitive cases of international child abduction.
- (7) The 1980 Hague Convention stipulates that it applies between the acceding State and such Contracting States as have declared their acceptance of the accession.

⁽¹⁾ OJ C [...], [...], p. [...]

⁽²⁾ Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast), OJ L 178, 2.7.2019, pp. 1–15, ELI:<http://data.europa.eu/eli/reg/2019/1111/oj>

- (8) The 1980 Hague Convention does not allow regional economic integration organisations such as the Union to become party to it. Therefore, the Union cannot accede to the 1980 Hague Convention, nor can it deposit a declaration of acceptance of an acceding State.
- (9) According to Opinion 1/13 of the Court of Justice of the European Union⁽³⁾, declarations of acceptance under the 1980 Hague Convention fall within the exclusive external competence of the Union.
- (10) Cabo Verde deposited its instrument of accession to the 1980 Hague Convention on 4 October 2022. The 1980 Hague Convention entered into force for Cabo Verde on 1 January 2023.
- (11) An assessment of the situation in Cabo Verde has led to the conclusion that the Member States are in a position to accept, in the interest of the Union, the accession of Cabo Verde under the terms of the 1980 Hague Convention.
- (12) The Member States should therefore be authorised to deposit their declaration of acceptance of the accession of Cabo Verde in the interest of the Union in accordance with the terms set out in this Decision.
- (13) Ireland is bound by Regulation (EU) 2019/1111 and is therefore taking part in the adoption and application of this Decision.
- (14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

- 1. The Member States are hereby authorised to accept the accession of Cabo Verde to the 1980 Hague Convention in the interest of the Union.
- 2. The Member States shall, no later than ... [twelve months after the date of adoption of this Decision] deposit a declaration of acceptance of the accession of Cabo Verde to the 1980 Hague Convention in the interest of the Union, to be worded as follows: '[Full name of MEMBER STATE] declares that it accepts the accession of Cabo Verde to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, in accordance with Council Decision (EU)...
- 3. The Member States shall inform the Council and the Commission of the deposit of their declarations of acceptance of the accession of Cabo Verde and shall communicate the text of those declarations within two months of their deposit to the Commission.

⁽³⁾ Opinion 1/13 of the Court of Justice of 14 October 2014, ECLI:EU:C:2014:2303

Article 2

This Decision shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Done at Brussels,

*For the Council
The President*

[...]

LEGISLATIVE FINANCIAL AND DIGITAL STATEMENT

(1) FRAMEWORK OF THE PROPOSAL/INITIATIVE

Title of the proposal/initiative

Proposal for a Council Decision authorising the Member States to accept, in the interest of the European Union, the accession of Cabo Verde to the 1980 Hague Convention on the Civil Aspects of International Child Abduction

Policy area(s) concerned

Justice

Objective(s)

General objective(s)

The present proposal has the objective to authorise Member States to accept, in the interest of the European Union, the accession of Cabo Verde to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, in line with Opinion 1/13 of the CJEU to ensure legal certainty and predictability at international and European level.

Specific objective(s)

Authorising EU Member States to accept the accession of Cabo Verde to the 1980 Hague Convention on International Child Abduction.

Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The 1980 Hague Convention on International Child Abduction will be applicable between all Member States (with the exception of Denmark) and Cabo Verde.

Indicators of performance

Specify the indicators for monitoring progress and achievements.

N/A

The proposal/initiative relates to:

- ☒ **a new action**
- ☐ **a new action following a pilot project/preparatory action** ⁽¹⁾
- ☐ **the extension of an existing action**
- ☐ **a merger or redirection of one or more actions towards another/a new action**

Grounds for the proposal/initiative

Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

N/A

Added value of EU involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this section

⁽¹⁾ As referred to in Article 58(2), point (a) or (b) of the Financial Regulation.

'added value of EU involvement' is the value resulting from EU action, that is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at EU level (ex-ante)

The authorisation to EU Member State complies with precedent initiatives of the same kind following Opinion 1/13 of the Court of Justice of the European Union. It falls within the EU exclusive external competence under Article 3(2) TFEU. The authorisation can be given only by the Council on a proposal from the Commission and is thus an exclusive competence by nature, which is not subject to the principle of subsidiarity.

Expected generated EU added value (ex-post)

Respect of EU Treaties and case-law of the Court of Justice of the European Union is ensured.

Lessons learned from similar experiences in the past

It is the 23rd proposal of the same kind.

Compatibility with the multiannual financial framework and possible synergies with other appropriate instruments

This proposal has no budgetary implications.

Assessment of the different available financing options, including scope for redeployment

This proposal has no budgetary implications.

Duration of the proposal/initiative and of its financial impact

☐ **limited duration**

☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

☐ financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☐ **unlimited duration**

Implementation with a start-up period from YYYY to YYYY,
followed by full-scale operation.

Method(s) of budget implementation planned⁽²⁾

☐ **Direct management** by the Commission

☐ by its departments, including by its staff in the Union delegations;

☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

☐ third countries or the bodies they have designated;

☐ international organisations and their agencies (to be specified);

☐ the European Investment Bank and the European Investment Fund;

⁽²⁾ Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: <https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx>.

- ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;
- ☐ public law bodies;
- ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;
- ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;
- ☐ bodies or persons entrusted with the implementation of specific actions in the common foreign and security policy pursuant to Title V of the Treaty on European Union, and identified in the relevant basic act
- ☐ bodies established in a Member State, governed by the private law of a Member State or Union law and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, to the extent that such bodies are controlled by public law bodies or by bodies governed by private law with a public service mission, and are provided with adequate financial guarantees in the form of joint and several liability by the controlling bodies or equivalent financial guarantees and which may be, for each action, limited to the maximum amount of the Union support.

Comments

[...]

MANAGEMENT MEASURES

Monitoring and reporting rules

N/A

Management and control system(s)

Justification of the budget implementation method(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

N/A

Information concerning the risks identified and the internal control system(s) set up to mitigate them

N/A

Estimation and justification of the cost-effectiveness of the controls (ratio between the control costs and the value of the related funds managed), and assessment of the expected levels of risk of error (at payment & at closure)

Measures to prevent fraud and irregularities

[...]