EUROPEAN
COMMISSION

Brussels, 6.7.2021
COM(2021) 371 final

Proposal for a

COUNCIL DECISION

authorising the Member States to accept, in the interest of the European Union, the accession of Tunisia 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 Hague Convention"), to date ratified by 101 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 Hague Convention and encourages third States to accede it.

Tunisia deposited the accession instrument to the 1980 Hague Convention on 10 July 2017. The Convention entered into force in Tunisia on 1st October 2017.

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

The existence of the EU exclusive competence in the matter of the acceptance of the accession of a third State to the 1980 Hague Convention was confirmed by the Court of Justice of the European Union, which was consulted at the Commission's initiative.

On 14 October 2014, Opinion 1/13 of the Court of Justice of the European Union stated 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 *géométrie variable* 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 Tunisia 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 Tunisia 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 Tunisia 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 2201/2003 (known as the Brussels IIa Regulation) 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 IIa Regulation incorporates in its Article 11 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. It also introduces provisions governing conflicting return and non-return orders issued in different Member States.

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

18 Council Decisions have been already adopted between June 2015 and February 2019 in order to accept the accession to the 1980 Hague Convention on International Child Abduction of 26 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 and Ukraine)[1].

- **Consistency with other Union policies**

The present proposal is evidently linked to the general objective enshrined in Article 3 of the 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[2] also applies to family law within the common European judicial area. The 1980 Hague Convention also 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

[1] 18 Council Decisions have been already adopted, authorizing Member States to accept the accession to the 1980 Hague 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).

[2] 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);

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[3].

The EU has also promoted cooperation at regional level, particularly in the field of the family law, by financing several activities under the EuroMed Justice Project. The component of the Project called "resolution of cross-border family conflicts" has paid particular attention to mixed marriages with a focus on the resolution of conflicts concerning custody and visiting rights through mediation and facilitation of the rights of access (through for instance conciliation commissions and contact centres). Tunisia, together with other Mediterranean countries, has been beneficiary of the various editions of the Project.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 38 of the 1980 Hague Convention provides that "[t]he accession [of acceding States] will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession". Given the fact that the decision regards the express acceptance of the accession of an acceding State to the 1980 Hague Convention, by the Member States in the interest of the Union, the applicable legal basis is Article 218(6) of the Treaty on the Functioning of the European Union. The substantive legal basis is Article 81 (3) TFEU, therefore the Council shall act unanimously after consulting the European Parliament.

Ireland is bound by Regulation (EC) No 2201/2003 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 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.

• 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 is necessary to achieve the objective 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 Tunisia to the 1980 Hague Convention within a given time frame.

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

• Stakeholder consultations

The overwhelming majority of the Member States of the European Union, consulted by the Commission on their willingness to accept the accession of Tunisia to the 1980 Hague Convention, gave a favourable opinion.

[3] https://www.hcch.net/en/publications-and-studies/details4/?pid=5568&dtid=3

The discussions held at the Experts' meeting of 2 July 2019 showed that, with one exception, there were no objections from the Member States to the acceptance of the accession of Tunisia to the 1980 Hague Convention.

The Commission trusts that further discussions at technical level in the Council Working Party on Civil Law Matters will lead to the required unanimity for the adoption of the Council Decision.

- **Collection and use of expertise**

As preparation for the Experts' meeting of 2 July 2019 and during its follow-up, the Commission was in close contact with The Hague Conference on Private International Law, the EU Delegation in Tunisia and the Advocate General at the Ministry of Justice, responsible for judicial cooperation in civil matters and appointed contact person in the Central Authority.

- **Impact assessment**

As for the 18 Council Decisions already adopted between 2015 and 2019 concerning the acceptance of the accession of several third States to the 1980 Hague Convention, no specific impact assessment has been carried out given the nature of this legislative act. However, the level of implementation of the Convention by Tunisia was examined at the Experts' meeting of 2 July 2019 in which all EU Member States were represented**.** As follow-up to the meeting, the Commission has closely followed further developments in Tunisia.

Initially, the Tunisian Authorities expressed the view that an implementing legislation to apply the 1980 Hague Convention was not strictly needed, as international conventions are directly applicable in the Tunisian judicial system. However, the several training actions and seminars which were carried out, also in the context of the EuroMed Justice Project and IRZ (Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit - The German Foundation for International Legal Cooperation) showed that, in the opinion of officials and judges, the national legislation currently in force is not sufficient to meet the requirements of the Hague Convention**.**

In particular, the return procedure of the child to his/her place of habitual residence after a parental abduction should be clearly inserted in the Tunisian legal system. To this end, a commission has been established in the Tunisian Ministry of Justice tasked to prepare the implementation law to be submitted to the Government. Afterwards, the law should be adopted by the Parliament.

UNICEF (Bureau Soutien Système Justice des Enfants) will support the new Unit « Justice pour les enfants » in the Ministry of Justice tasked to review the legislation and propose policies in line with the international conventions on the rights of the child and the training of legal practitioners. The *Bureau Soutien Système Justice des Enfants* will organize with *l'Ecole Nationale de la Magistrature* a specific training addressed to the judges who will have to apply the Convention.

Even if it is evident that Tunisia still has to put in place appropriate implementing legislation, experiences of some Member States (for instance France) are positive to the extent that a legal framework is in place. Indeed, relying on Treaty relationships with EU Member States is considered very important by Tunisian authorities, who have referred to preexistent bilateral agreements (so-called mixed commissions) in force with France, Belgium, Sweden and Norway. A common legal framework with all EU Member States, represented by the 1980

Hague Convention, would help the handling and resolution of cross-border cases, even pending the adoption of implementing legislation.

Tunisia has also expressed the wish of further training actions to be carried out in EU Member States, possibly French speaking. A seminar of this kind was already held in November 2018 by the French Central Authority.

The accession of Tunisia to the 1980 Hague Convention has been accepted by 11 Contracting Parties, including Switzerland.

4. BUDGETARY IMPLICATIONS

The proposed decision has no budgetary implications.

5. OTHER ELEMENTS

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

As the proposal only concerns the authorization to the Member States of the European Union to accept the accession of Tunisia to the 1980 Hague Convention, the monitoring of its implementation is limited to the respect by the Member States of the wording of the declaration, the timeframe to deposit it and the communication of its deposit to the Commission, as established in the Council Decision.

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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) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament[4],

Whereas:

(1) The European 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) The Council adopted Regulation (EC) No 2201/2003[5] ('Brussels IIa Regulation'), which 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) The Brussels IIa Regulation 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 aims to ensure the prompt return of wrongfully removed or retained children.

(4) All Member States of the Union 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 of the Union and third States could be the best solution to 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.

(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

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[4] OJ C , , p. .

[5] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ L 338, 23.12.2003, p. 1).

accede to that 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, declarations of acceptance under the 1980 Hague Convention fall within the exclusive external competence of the Union.

(10) Tunisia deposited its instrument of accession to the 1980 Hague Convention on 10 July 2017. The Convention entered into force in Tunisia on 1st October 2017.

(11) An assessment of the situation in Tunisia has led to the conclusion that the Member States of the European Union are in a position to accept, in the interest of the Union, the accession of Tunisia under the terms of the 1980 Hague Convention.

(12) The Member States of the European Union should therefore be authorised to deposit their declaration of acceptance of the accession of Tunisia in the interest of the Union in accordance with the terms set out in this Decision.

(13) Ireland is bound by the Brussels IIa Regulation 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

The Member States of the European Union are hereby authorised to accept the accession of Tunisia to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention') in the interest of the Union.

The Member States of the European Union shall, no later than … [twelve months after the date of adoption of this Decision], deposit a declaration of acceptance of the accession of Tunisia to the 1980 Hague Convention in the interest of the Union worded as follows:

'[Full name of MEMBER STATE] declares that it accepts the accession of Tunisia to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, in accordance with Council Decision (EU) 2021/…'

The Member States of the European Union shall inform the Council and the Commission of the deposit of its declaration of acceptance of the accession of Tunisia and shall communicate the text of that declaration within two months of its deposit to the Commission.

Article 2

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

Article 3

This Decision is addressed to the Member States.

Done at Brussels,

For the Council
The President