

CJEU to Issue a New Opinion on the External Competence of the EU

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The European Commission has recently asked the Court of Justice of the European Union (CJEU) to render an opinion pursuant to Article 218(11) of the TFEU concerning the Union's competence to entertain "external" relations in the area of judicial cooperation in civil matters (Opinion 1/13: see the announcement in the *Official Journal* of 3 August 2013). The proceeding comes almost ten years after the request (then submitted by the Council) that eventually resulted in the Lugano Opinion of 7 February 2006.

The new question reads as follows: "Does the acceptance of the accession of a third country to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction fall within the exclusive competence of the Union?".

Although little is known of the background of the request, the latter seems to refer to the proposals presented by the Commission, back in 2011, contemplating the adoption of Council decisions requiring Member States to "deposit simultaneously", "in the interest of the Union", a declaration aimed to accept the accession of various States (Gabon, Andorra, Seychelles, the Russian Federation, Albania, Singapore, Morocco and Armenia) to the Hague Child Abduction Convention.

It is worth recalling that, under Article 38(4) of the Convention, the accession of a State "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".

In the Commission's view, as stated in the explanatory memorandum accompanying the proposals mentioned above, international child abduction falls - in consonance with the Lugano Opinion - "into the exclusive external competence of the European Union, because of the adoption of internal Union

legislation by means of 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". As a matter of fact, the Regulation "introduces even stricter rules than the 1980 Hague Convention on parental child abduction", "refers directly to the Hague Convention and upholds its principles in European Union law".

In these circumstances, since the Convention does not contain any provisions allowing the accession of international organizations, like the European Union, it is for the Member States to ratify or accede to the Convention in the interest of the Union. According to the Commission, this implies that the Member States should likewise declare that they accept, in the interest of the Union, the accession of new States to the Convention, whenever a decision to that effect has been taken by the Union.

None of the proposals has been adopted so far. Various countries have acceded to the Convention after the accession of the States indicated above, but none of the new accessions has been followed by a Commission proposal envisaging an acceptance "in the interest of the Union": reference is made to the accession of Guinea (7 November 2011), Lesotho (18 June 2012), Korea (13 December 2012) and Kazakhstan (3 June 2013).

In the meanwhile, some Member States have "individually" declared their acceptance of some of the accessions in question. Belgium, for example, accepted the accession of Armenia, Seychelles, Morocco, Singapore and Andorra, while Spain did the same in respect of all of the States mentioned above, as well as Guinea (for more information, see the Spreadsheet showing acceptances of accessions to the Child Abduction Convention at the website of the Hague Conference on Private International Law).

It is beyond the scope of this post to outline the arguments that could in principle be put forward by the European institutions and the Member States in favour, or against, the Commission's claim regarding the Union's external competence in respect of these acceptances.

Rather, it is worth observing that the implications of the Court's opinion - were this to uphold the Commission's view - would not be limited to the situation from which the request originated.

On the one hand, the Child Abduction Convention is not the only international convention in the field of private international law providing for an acceptance procedure similar to the one illustrated above (see, for example, Article 39 of the Hague Convention of 1970 on the Taking of Evidence Abroad in Civil and Commercial Matters).

On the other hand, and more importantly, declarations of acceptance such as those considered in the Commission's request are but one of the several acts that may be performed in connection with an international treaty, once the latter has been concluded. Should the Court decide that, in principle, it is for the Union to accept the accession of a third country to a convention to which a Member State is a party (provided that the accession affects the operation and effects of the internal legislation of the Union), this would probably pave the way to the Union becoming solely responsible for a number of other initiatives regarding the conventions concluded by Member States in the area of private international law, such as the withdrawal of reservations or the denunciation of the relevant treaties.