Council of the
European Union

Brussels, 10 January 2019
(OR. en)

14947/18

Interinstitutional File:
2018/0277 (NLE)

JUSTCIV 299
COLAC 104
COEST 240

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DECISION authorising Austria to accept, in the interest of the European Union, the accession of Ecuador and Ukraine to the 1980 Hague Convention on the Civil Aspects of International Child Abduction

COUNCIL DECISION (EU) 2019/…

of …

authorising Austria to accept,
in the interest of the European Union,
the accession of Ecuador and Ukraine 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 point (b) of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament[1],

[1] Opinion of … (not yet published in the Official Journal).

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[1] ('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 at ensuring the prompt return of wrongfully removed or retained children.

(4) All Member States of the Union are party to the 1980 Hague Convention.

[1] 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).

(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 for sensitive cases of international child abduction.

(7) The 1980 Hague Convention stipulates that it applies between the acceding state and contracting states that 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 accede to that Convention, nor can it deposit a declaration of acceptance of an acceding state.

(9) Pursuant to Opinion 1/13 of the Court of Justice of the European Union[1], declarations of acceptance under the 1980 Hague Convention fall within the exclusive external competence of the Union.

(10) Ecuador deposited its instrument of accession to the 1980 Hague Convention on 22 January 1992. The 1980 Hague Convention entered into force for Ecuador on 1 April 1992.

[1] ECLI:EU:C:2014:2303.

(11) All Member States concerned, with the exception of Austria and Denmark, have already accepted the accession of Ecuador to the 1980 Hague Convention. Ecuador has accepted the accession of Bulgaria, Cyprus, Estonia, Latvia, Lithuania, Malta, Poland, Slovenia and Romania to the 1980 Hague Convention. An assessment of the situation in Ecuador has led to the conclusion that Austria is in a position to accept, in the interest of the Union, the accession of Ecuador under the terms of the 1980 Hague Convention.

(12) Ukraine deposited its instrument of accession to the 1980 Hague Convention on 2 June 2006. The 1980 Hague Convention entered into force for Ukraine on 1 September 2006.

(13) All Member States, with the exception of Austria and Denmark, have already accepted the accession of Ukraine to the 1980 Hague Convention. An assessment of the situation in Ukraine has led to the conclusion that Austria is in a position to accept, in the interest of the Union, the accession of Ukraine under the terms of the 1980 Hague Convention.

(14) Austria should therefore be authorised to deposit its declarations of acceptance of the accession of Ecuador and Ukraine to the 1980 Hague Convention in the interest of the Union in accordance with the terms set out in this Decision. The other Member States of the Union which have already accepted the accession of Ecuador and Ukraine to the 1980 Hague Convention should not deposit new declarations of acceptance as the existing declarations remain valid under public international law.

(15) The United Kingdom and Ireland are bound by the Brussels IIa Regulation and are taking part in the adoption and application of this Decision.

(16) 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. Austria is hereby authorised to accept the accession of Ecuador and Ukraine to the 1980 Hague Convention in the interest of the Union.

2. Austria shall, no later than … [twelve months after the date of adoption of this Decision], deposit a declaration of acceptance of the accession of Ecuador and Ukraine 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 Ecuador and Ukraine to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, in accordance with Council Decision (EU) 2019/…[+]'.

3. Austria shall inform the Council and the Commission of the deposit of its declaration of acceptance of the accession of Ecuador and Ukraine to the 1980 Hague Convention and shall communicate the text of that declaration within two months of its deposit to the Commission.

Article 2

This Decision shall take effect on the date of its notification.

[+] OJ: insert please the number of this Decision.

Article 3

This Decision is addressed to Austria.

Done at Brussels,

For the Council
The President