



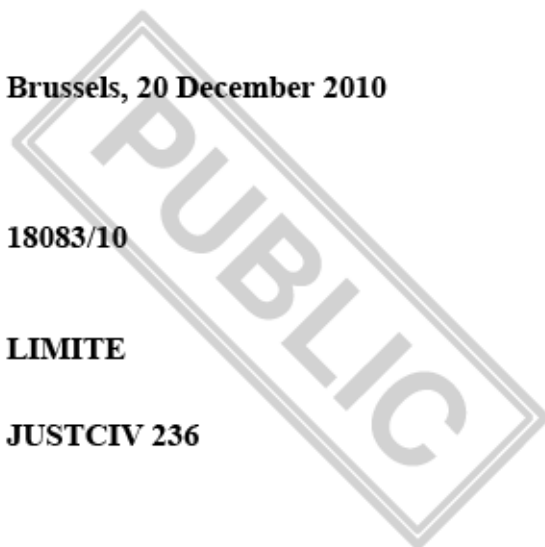
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 December 2010

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LIMITE

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NOTE

from : the General Secretariat of the Council
to : Working Party on Civil Law Matters (General Questions)

Subject : The Hague Convention of 13 January 2000 on the International Protection of Adults
- Compilation of comments from delegations concerning respectively ratification of or accession to the Convention and application thereof as of November 2010

At its meeting on 10 November 2010 the Working Party on Civil Law Matters (General Questions) discussed briefly as an AOB item at the request of the Czech delegation the situation in the Member States with regard to respectively the ratification of or accession to the 2000 Hague Convention on the International Protection of Adults and the application thereof.

At the end of the discussion delegations were invited to provide comments in writing to the Council Secretariat. A compilation of the written comments and of the comments made during the meeting on 10 November 2010 can be found in the Annex.

THE CZECH REPUBLIC

The Czech Republic is currently preparing for the ratification of the Convention – the proposal is still under intergovernmental discussion, some important questions concerning the implementation of the Convention into Czech law and the cooperation at national level between concerned authorities have been raised.

The Czech Republic would like to join the statement made by the Slovak delegation regarding the problems related to the application of Article 33 of the Convention (see the comments from Slovakia below). In this regard Czech law is similar to Slovak legislation and does not allow an obligatory placement of an adult into a health care establishment.

DENMARK

Denmark has not signed the 2000 Hague Convention as the considerations whether to sign the Convention are ongoing. Unfortunately, the timeframe for these considerations can at present not be indicated.

GERMANY

Germany deposited its instrument of ratification concerning the 2000 Hague Convention in April 2007. Given that the Convention entered into force only on 1 January 2009 and that it applies only between few States, Germany has not yet acquired much experience. According to the German Central Authority there have been about 10 outgoing requests. It should be noted, though, that not all cases necessarily go through the Central Authority.

ESTONIA

Estonia ratified the 2000 Hague Convention at the end of November 2010.

IRELAND

Relevant legislation will be published before the end of the year, but additional internal procedures are required. Ratification can be expected towards the end of 2011 or beginning of 2012.¹

GREECE

Greece signed the 2000 Hague Convention on 18 September 2008, but has not yet ratified it. A draft law for the ratification of the Convention is being elaborated by a Special Law Drafting Committee, which was set up in the Greek Ministry of Justice, Transparency and Human Rights for this purpose.

¹ Information given orally during the meeting on 10 November 2010.

SPAIN

Spain has not signed the 2000 Hague Convention due mainly to problems relating to the internal differences between the autonomous regions and to the budgetary costs likely to be incurred under Article 36.¹

CYPRUS

The Republic of Cyprus has signed but has not yet ratified the Convention. The problem is that we are in the stage of internal deliberations regarding the designation of the central authority.

LATVIA

Domestic consultations among the responsible authorities concerning the possible signature and ratification of 2000 Hague Convention have been held. Although currently the signature and ratification of the Convention is not a priority of the agenda, Latvia conceives its added value and might proceed with relevant procedures of signature and ratification in future.

AUSTRIA

Austria has not signed and ratified the 2000 Hague Convention yet, but has already started the preparatory works. We cannot give an exact timetable, but in the year 2011 seems realistic.

POLAND

Poland signed the 2000 Convention on 18 September 2008. Due to the limited number of ratifications the decision on ratification by Poland has not yet been taken. Therefore, supplementary information on the operation of the Convention (including competent authorities) in other States, intentions to ratify, encountered problems would be helpful.

PORTUGAL

Portugal is included in the group of Member States in which the signature of the 2000 Hague Convention is being considered.

An inter-ministerial working group (including the Ministry of Justice, the Ministry of Health, the Ministry of Labour and Social Solidarity and the Ministry of Foreign Affairs) has been set up to analyse the compatibility between the 2000 Hague Convention and the Portuguese legal system and to determine whether legislative amendments are needed in order to proceed with its ratification.

It is still not possible to indicate a provisional date for the conclusion of the work being undertaken by that group but we hope to be able to update this information during the first trimester of 2011.

¹ Information given orally during the meeting on 10 November 2010.

SLOVENIA

In Slovenia the subject matter of the 2000 Hague Convention falls within the competence of two ministries - the Ministry of Labour, Family and Social Affairs and the Ministry of Justice. According to the information received from the Ministry of Labour, Family and Social Affairs in the last 4 years they have only dealt with approximately 5 international cases where such protective measures were used, and in all 5 cases they encountered no problems or complications.

Therefore for the time being the Republic of Slovenia has no plans to sign the Convention.

THE SLOVAK REPUBLIC

Slovakia is contemplating the signature and ratification of the Convention, however, it has not resolved yet one crucial problem and that is the application of Article 33 of the Convention.

Under Slovak law it is not the tasks of the court (or any authority) to place an adult in an establishment or other place where protection may be offered; it is the responsibility of the guardian of the person and the court cannot „force“ an establishment to receive a person. Consequently, Slovakia would not be capable of giving consent for a placement of an adult into an establishment in Slovakia as it has no legal mechanisms to ascertain the enforcement of such a decision in Slovakia. Since Article 33 does not allow for reservations, we are still undecided how to go about this problem. We have asked the Permanent Bureau of the Hague Conference to assist us in our deliberations, but so far we have not received any response.

This is the last major obstacle to the ratification of the Convention by Slovakia.

FINLAND

Finland deposited its instrument of ratification in relation to the 2000 Hague Convention on 18 November 2010.

SWEDEN

Sweden has not yet signed or ratified the 2000 Hague Convention. However, we will, when appropriate, appoint an investigation to consider which changes in Swedish law a ratification implies.

UNITED KINGDOM

The Convention has been ratified by the UK in respect of Scotland only (as enabled by Article 55 of the 2000 Hague Convention) because they had domestic legislation (Adults with Incapacity (Scotland) Act 2000) in place to enable them to do so. England, Wales and Northern Ireland did not.

Work has been done to identify what is required to enable UK ratification to be extended to cover England and Wales. Detailed option analysis and development is ongoing. We are aiming to ratify, in respect of England and Wales, within the year. We have not been able to complete the options analysis as quickly as we would have liked due to other priorities but the extra time has enabled us to liaise with other jurisdictions to learn from their experiences of implementation.

Northern Ireland is currently considering domestic legislation that, subject to approval, will enable the convention to have effect in Northern Ireland, within three years.

As yet, only five countries have ratified the Convention, and we believe there have been only 10 cases since it came into force in January 2009. This means that the scope is, as yet, fairly limited and the impact will not be fully realised for some time to come. Scotland has only had one enquiry.
