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MEMORANDUM

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RE: Status of EU Member States' Ratification of International Conventions on Adoption Policies

This memorandum and the attached tables provide an overview of the status of EU Member States' participation in the two principal international conventions on adoption, the European Convention on the Adoption of Children ("European Convention")¹ and the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption ("Hague Convention").²

The Conventions

The European Convention entered into force in 1968 and to date has been ratified by nine of the 15 Member States of the European Union. The Convention seeks to harmonize the adoption laws of the Member States and to avoid a conflict of law in intercountry adoptions. The Convention introduces a core group of "essential provisions" governing adoption which are to be incorporated into each ratifying Member State's national law. These include provisions concerning, for example: the minimum age for adopters; the consent of the child's biological

¹ ETS 58 – Adoption of Children, 24.IV.1967, 634 U.N.T.S. 256. The full text of the European Convention is available on the website of the Council of Europe's Treaty office (<http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm>).

² Hague Conference on Private International Law: Final Act of the 17th Session, Including the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, Convention No. 33, May 29, 1993, reprinted in 32 I.L.M. 1134 (1993), reprinted in 28 FAM. L.Q. 76 (1994). The full text of the Hague Convention is available on the website of the Hague Conference on Private International Law (<http://www.hcch.net/e/conventions/menu33e.html>).

parent(s) to the adoption; the appointment of a judicial or administrative authority to ensure that the adoption is in the child's best interests; the rights and obligations of adopters; and the right of the child to acquire his or her adopters' surname and nationality. The Convention also provides several supplementary provisions which Member States are required to consider, but are not obliged to incorporate into their national legislation.

Adopted on May 29, 1993, the Hague Convention has been ratified by some 42 Contracting States around the world, with an additional seven having signed but not yet ratified it and another 15 having acceded to it. The Hague Convention addresses many of the same procedural and substantive issues as the European Convention, although the two conventions have slightly different emphases. While the European Convention focuses in some detail on the procedural and substantive content of Member States' national laws, the Hague Convention places more emphasis on the broader objectives of preventing the abduction of, sale of, or traffic in children; ensuring that intercountry adoption takes place in the best interests of the child and with respect for his or her fundamental rights; and ensuring that Contracting States recognize as legal all adoptions made in accordance with the Convention. As a result, the Convention contains provisions prohibiting the inducement of adoption by payment or compensation, ensuring where possible the free and informed consent of all parties to an adoption, and preventing any improper financial or other gain from activities related to adoption.

Member State Ratification of the Conventions

As the attached tables illustrate, a number of Member States have ratified both conventions (Austria, Denmark, Germany, Italy, Sweden and UK). One Member State (Belgium) has ratified neither of them. The remaining Member States have signed and ratified one of the two conventions (Finland, France, Luxembourg, the Netherlands and Spain have ratified the Hague Convention; Greece, Ireland and Portugal have ratified the European Convention).

Some Member States have signed but not yet ratified one of the conventions. In particular, France has signed, but not ratified, the European Convention, and Belgium, Ireland and Portugal have signed, but not ratified, the Hague Convention. As a result, the conventions have not entered into force for these Member States. The mere signing of the Conventions -- while an indication of a State's intent to ratify -- is not sufficient to bind the signatories. Article 46(2)(a) of the Hague Convention states that the instrument shall enter into force for each Contracting State only after ratification, acceptance, approval or accession. Likewise, Article 21(3) of the European Convention stipulates that signatory States must ratify or accept the Convention before it shall come into force.

Some Member States are seemingly uninterested in changing their current status with respect to the Conventions. For example, the Government of Luxembourg appears never formally to have considered ratifying the European Convention. Having ratified the Hague Convention, Luxembourg appears to have lost interest in ratification of the European Convention, perhaps because ratification would require certain changes in the Luxembourg Civil Code which traditionally are made only if absolutely necessary.

On the other hand, the Irish Department of Health and Children recently has introduced legislative proposals to ratify the Hague Convention. In so doing, Ireland would incorporate procedures for the recognition of “simple adoptions” into the existing legislation. Unlike ordinary adoptions, simple adoptions do not have the effect of terminating a pre-existing legal parent-child relationship. The proposed legislation would also ensure that intercountry adoption will take place only provided that (a) the same safeguards have been applied as for Irish domestic adoptions; (b) the adopters have completed the proper assessment and approval procedures; and (c) the adoption is in the child’s best interests. The legislative proposal is currently under consideration.³

Sweden had ratified the European Convention, but then decided in July 2002 to withdraw from the Convention following changes in its national adoption laws allowing for adoption by homosexual couples in a registered partnership. Sweden determined that this aspect of its new national adoption laws conflicts with Article 6(1) of the European Convention, which states that Member States’ national adoption laws “shall not permit a child to be adopted except by either two persons married to each other, whether they adopt simultaneously or successively, or by one person.”⁴ Accordingly, Sweden formally “denounced” the Convention effective 4 January 2003,⁵ since which date Sweden no longer has been bound by the Convention.

* * *

The attached tables illustrate which Member States have signed and/or adopted the two conventions and the dates on which signing and/or adoption took place.

³ The legislative proposals to ratify the *Hague Convention* are available on the Irish Department of Health and Children’s website, www.doh.ie.

⁴ *European Convention*, at Article 6(2).

⁵ Under Article 27(2) of the European Convention, any Contracting Party may denounce the Convention by means of a notification addressed to the Secretary General of the Council. Sweden notified its denunciation on 3 July 2002. Article 27(3) of the Convention states that such denunciation takes effect six months after receipt by the Secretary General of the Notification, in this case, January 4, 2003.

EUROPEAN CONVENTION ON THE ADOPTION OF CHILDREN
ETS 58 – Adoption of Children, 24.IV.1967

Member State	Date of Signature	Date of Ratification	Date of Entry Into Force
Austria	05/07/79	28/05/80	29/08/80
Belgium	-	-	-
Denmark	24/04/67	12/10/78	13/01/79
Finland	-	-	-
France	24/04/67	-	-
Germany	24/04/67	10/11/80	11/02/81
Greece	19/05/67	23/07/80	24/10/80
Ireland	25/01/68	25/01/68	26/04/68
Italy	24/04/67	25/05/76	26/08/76
Luxembourg	24/04/67	-	-
Netherlands	-	-	-
Portugal	04/07/78	23/04/90	24/07/90
Spain	-	-	-
Sweden⁶	24/04/67	26/06/68	02/10/68
UK	24/04/67	21/12/67	26/04/68

⁶ As mentioned above, Sweden denounced the Convention on July 3, 2002 and that denunciation took effect on January 4, 2003.

HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

Convention No. 33

Member State	Date of signature	Date of ratification	Date of Entry into Force
Austria		19/05/99	01/09/99
Belgium	27/01/99	-	-
Denmark		02/07/97	01/11/97
Finland		27/03/97	01/07/97
France		30/06/98	01/10/98
Germany		22/11/01	01/03/02
Greece	-	-	-
Ireland	19/06/96	-	-
Italy		18/01/00	01/05/00
Luxembourg		05/07/02	01/11/02
Netherlands		26/06/98	01/10/98
Portugal	26/08/99	-	-
Spain		11/07/95	01/11/95
Sweden		28/05/97	01/09/97
UK <i>(extension to the Isle of Man)</i>		27/02/03 <i>(01/07/03)</i>	01/06/03 <i>(01/11/03)</i>