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Directorate A: Civil Justice
The Director

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Mr William DUNCAN
Deputy Secretary-General of
The Hague Conference on
Private International Law
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Dear Mr Duncan,

On 21 December 2010 the Permanent Bureau of the Hague Conference on Private International Law sent States Parties and Members a questionnaire inviting them to submit comments on the desirability and feasibility of a protocol to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Convention').

The European Union thanks the Permanent Bureau for the opportunity to submit comments and fully supports the objective of the consultation, i.e. to ask States Parties and Members whether they consider a protocol to be desirable and feasible and, if so, to seek their views on specific matters which might form part of a protocol. In this context, the European Union would like to point out that already in its comments on the proposal by Switzerland for a protocol to the 1980 Convention it stressed the importance it attached to a prior feasibility study of the need and support for a protocol as well as of the precise scope of such an international agreement. The present consultation is an integral part of the feasibility study to be drawn up by the Permanent Bureau and submitted to States Parties and Members for consideration by the forthcoming Special Commission. The European Union would not like to prejudge the outcome and wishes to reserve its final position on the feasibility of a protocol to the 1980 Convention until the results of the study are known.

As far as the desirability of a protocol to the Convention is concerned the European Union would like to highlight the following points.

As already stated in its comments on the proposal by Switzerland for a protocol to the 1980 Convention, the EU believes that the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children ('the 1996 Convention') already remedies some of the perceived shortcomings of the 1980 Convention. This has also been acknowledged by the Council on General Affairs and Policy of the Hague Conference, which, in the conclusions and recommendations it adopted at its meeting of 7 to 9 April 2010, stated that the feasibility study should also take into account the extent to which the provisions of the 1996 Convention supplement those of the 1980 Convention.

Almost half of the currently 30 Contracting States to the 1996 Convention have been applying this instrument only since 2010 or will be applying it as from this year. The European Union is therefore of the opinion that there is not yet sufficient experience to evaluate the practical operation of the 1996 Convention and its interplay with the 1980 Convention and believes that this will be borne out by the answers to part III of the questionnaire on the practical operation of the 1980 and 1996 Conventions circulated by the Permanent Bureau in November 2010. In its view, it would be desirable to have more extensive practical experience of the operation of the 1996 Convention in a critical mass of Contracting States before deciding whether any additional rules need to be set out in a protocol to the 1980 Convention.

Furthermore, the European Union believes that careful consideration should be given to whether the objectives of a possible protocol could not be achieved equally well by 'soft law' measures, such as Special Commission recommendations or good practice guides. In this context, the European Union notes that the Permanent Bureau is already in the process of establishing a draft Guide to Good Practice on Mediation under the 1980 Convention and Principles for the Establishment of Mediation Structures in the context of the Malta Process, and draft General Principles for Judicial Communication to be considered by the forthcoming Special Commission. In the view of the European Union the practical impact of such 'soft law' measures and the improvement that they may bring in the operation of the 1980 Convention should be evaluated when considering any additional rules in the form of a protocol.

The European Union would like to reiterate that possible future negotiations on a protocol to the 1980 Convention must not substantially alter the interpretation of existing key Convention articles, as that would risk undermining the carefully balanced consensus among the Contracting States in the area of parental child abduction, which also forms the basis of Council Regulation (EC) No 2201/2003, the key Union instrument in this area.

The European Union does not wish to make any proposal for possible components of a protocol or comment on their order of priority at this stage. However, it will give careful consideration to any recommendation to embark on the process of drawing up a protocol emanating from the Special Commission. In any event, such a decision could only be taken by the Council on General Affairs and Policy of The Hague Conference.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. MICHOU', written in a cursive style.

Paraskevi MICHOU
Director