



TEXTS ADOPTED

P8_TA(2018)0017

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility, and international child abduction *

European Parliament legislative resolution of 18 January 2018 on the proposal for a Council regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility, and on international child abduction (recast) (COM(2016)0411 – C8-0322/2016 – 2016/0190(CNS))

(Special legislative procedure – consultation – recast)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2016)0411),
 - having regard to Article 81(3) of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0322/2016),
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,
 - having regard to Rules 104 and 78c of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Petitions (A8-0388/2017),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;

¹ OJ C 77, 28.3.2002, p. 1.

2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Council Regulation (EC) No 2201/2003³⁴ has been substantially amended³⁵. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

³⁴ 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).

³⁵ See Annex V.

Amendment 2

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) The smooth and correct functioning of a Union area of justice with respect for the Member States' different legal systems and traditions is vital for the Union. In that regard, mutual trust in one another's justice systems should be further enhanced. The Union has set itself the objective of creating, maintaining and developing an

Amendment

(1) Council Regulation (EC) No 2201/2003³⁴ has been substantially amended³⁵. Since further ***indispensable*** amendments are to be made, that Regulation should be recast in the interests of clarity. ***Such amendments of the Regulation will help to strengthen legal certainty and increase flexibility, will help to ensure that access to court proceedings is improved, and that such proceedings are made more efficient. At the same time, the changes to this Regulation will help to ensure that Member States retain full sovereignty with regard to substantive law on parental responsibility.***

³⁴ 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).

³⁵ See Annex V.

Amendment

(3) The smooth and correct functioning of a Union area of justice with respect for the Member States' different legal systems and traditions is vital for the Union. In that regard, mutual trust in one another's justice systems should be further enhanced. The Union has set itself the objective of creating, maintaining and developing an

area of freedom, security and justice, in which the free movement of persons and access to justice are ensured. With a view to implementing those objectives, the rights of persons, notably children, in legal proceedings *should* be reinforced in order to facilitate the cooperation of judicial and administrative authorities and the enforcement of decisions in family law matters with cross-border implications. The mutual recognition of decisions in civil matters should be enhanced, access to justice should be simplified and exchanges of information between the authorities of the Member States should be improved upon.

area of freedom, security and justice, in which the free movement of persons and access to justice are ensured. With a view to implementing those objectives, *it is essential that* the rights of persons, notably children, in legal proceedings be reinforced in order to facilitate the cooperation of judicial and administrative authorities and the enforcement of decisions in family law matters with cross-border implications. The mutual recognition of decisions in civil matters should be enhanced, access to justice should be simplified and exchanges of information between the authorities of the Member States should be improved upon, *by ensuring that there is an accurate check of the non-discriminatory nature of the procedures and practices used by the competent authorities of the Member States to protect the best interests of the child and the related fundamental rights.*

Amendment 3

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) To this end, the Union is to adopt, among others, measures in the field of judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

Amendment

(4) To this end, the Union is to adopt, among others, measures in the field of judicial cooperation in civil matters having cross-border implications, particularly when necessary for the *free movement of persons and for the* proper functioning of the internal market.

Amendment 4

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) In order to enhance judicial cooperation in civil matters having cross-border implications, judicial training, especially in cross-border family law, is needed. Training activities, such as

seminars and exchanges, are required at both Union and national level, in order to raise awareness of this Regulation, its content and consequences, as well as to build mutual trust among Member States as regards their judicial systems.

Amendment 5

Proposal for a regulation

Recital 6

Text proposed by the Commission

(6) In order to ensure equality for all children, this Regulation should cover all decisions on parental responsibility, including measures for the protection of children, independent of any link with a matrimonial proceeding *or other proceedings*.

Amendment

(6) In order to ensure equality for all children, this Regulation should cover all decisions on parental responsibility, including measures for the protection of children, independent of any link with a matrimonial proceeding.

Amendment 6

Proposal for a regulation

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Under this Regulation jurisdiction rules should also be applicable to all children who are present on Union territory and whose habitual residence cannot be established with certainty. The scope of such rules should extend in particular to cover refugee children and children who have been internationally displaced either for socioeconomic reasons or because of disturbances occurring in their country.

Amendment 7

Proposal for a regulation

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) This Regulation should fully respect the rights set out in the Charter of Fundamental Rights of the European Union ('the Charter'), and especially the right to an effective remedy and to a fair trial, laid down in Article 47 of the Charter, as well as the right to respect for private and family life, laid down in Article 7 of the Charter, and the rights of the child laid down in Article 24 of the Charter.

Amendment 8

Proposal for a regulation Recital 13

Text proposed by the Commission

Amendment

(13) The grounds of jurisdiction in matters of parental responsibility ***are*** shaped in the light of the best interests of the child and should be applied ***in accordance with them***. Any reference to the best interests of the child should be interpreted in light of ***Article 24*** of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child of 20 November 1989.

(13) The grounds of jurisdiction in matters of parental responsibility ***should always be*** shaped in the light of the best interests of the child and should be applied ***with those interests in mind***. Any reference to the best interests of the child should be interpreted in light of ***Articles 7, 14, 22 and 24*** of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child of 20 November 1989. ***It is imperative that the Member State whose authorities are competent under this Regulation in relation to the substance of a matter of parental responsibility, after taking a final decision providing for the return of a child, ensure that the best interests and the fundamental rights of the child are protected once the child has been returned, in particular when he or she has contact with both parents.***

Amendment 9

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) *The meaning of the term 'habitual residence' should be interpreted on the basis of definitions by the authorities on a case-by-case basis, in the light of the specific circumstances of the case.*

Amendment 10

Proposal for a regulation

Recital 15

Text proposed by the Commission

Amendment

(15) Where the child's habitual residence changes following a lawful relocation, jurisdiction should follow the child in order to maintain the proximity. ***This should apply where no proceedings are yet pending, and also in pending proceedings.*** In pending proceedings, however, parties may agree in the interests of the efficiency of justice that the courts of the Member State where proceedings are pending retain jurisdiction until a final decision has been given, provided that this is in the best interests of the child. ***This possibility is of particular importance where proceedings are nearing conclusion and one parent wishes to relocate to another Member State with the child.***

(15) Where the child's habitual residence changes following a lawful relocation, jurisdiction should follow the child in order to maintain the proximity. In pending proceedings, however, parties may agree in the interests of the efficiency of justice that the courts of the Member State where proceedings are pending retain jurisdiction until a final decision has been given, provided that this is in the best interests of the child. ***On the other hand, pending proceedings relating to custody and access rights should be concluded by means of a final decision so that persons entitled to custody do not remove a child to another country in order thereby to avoid an unfavourable decision by an authority, unless the parties agree that the pending proceedings should be brought to an end.***

Amendment 11

Proposal for a regulation

Recital 17

Text proposed by the Commission

Amendment

(17) This Regulation should not prevent the authorities of a Member State not having jurisdiction over the substance of the matter from taking provisional, including protective measures, in urgent cases, with regard to the person or property of a child present in that Member

(17) This Regulation should not prevent the authorities of a Member State not having jurisdiction over the substance of the matter from taking provisional, including protective measures, in urgent cases, ***for instance in cases of domestic or gender-based violence,*** with regard to the

State. Those measures should be recognised and enforced in all other Member States including the Member States having jurisdiction under this Regulation until a competent authority of such a Member State has taken the measures it considers appropriate. Measures taken by a court in one Member State should however only be amended or replaced by measures also taken by a court in the Member State having jurisdiction over the substance of the matter. An authority only having jurisdiction for provisional, including protective measures should, if seised with an application concerning the substance of the matter, declare of its own motion that it has no jurisdiction. Insofar as the protection of the best interests of the child so requires, the authority should inform, directly or through the Central Authority, the authority of the Member State having jurisdiction over the substance of the matter under this Regulation about the measures taken. The failure to inform the authority of another Member State should however not as such be a ground for the non-recognition of the measure.

Amendment 12

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) In exceptional cases, the authorities of the Member State of habitual residence of the child may not be the most appropriate authorities to deal with the case. ***In the best interests of the child***, as an exception and under certain conditions, the authority having jurisdiction may transfer its jurisdiction in a specific case to an authority of another Member State if this authority is better placed to hear the case. However, in this case the second authority ***not be allowed to*** transfer jurisdiction to a third authority .

person or property of a child present in that Member State. Those measures should be recognised and enforced in all other Member States including the Member States having jurisdiction under this Regulation until a competent authority of such a Member State has taken the measures it considers appropriate. Measures taken by a court in one Member State should however only be amended or replaced by measures also taken by a court in the Member State having jurisdiction over the substance of the matter. An authority having jurisdiction ***only*** for provisional, including protective measures should, if seised with an application concerning the substance of the matter, declare of its own motion that it has no jurisdiction. Insofar as the protection of the best interests of the child so requires, the authority should inform, directly or through the Central Authority ***and without undue delay***, the authority of the Member State having jurisdiction over the substance of the matter under this Regulation about the measures taken. The failure to inform the authority of another Member State should however not as such be a ground for the non-recognition of the measure.

Amendment

(18) ***Particular attention should be paid to the fact that***, in exceptional cases, ***such as in cases of domestic or gender-based violence*** the authorities of the Member State of habitual residence of the child may not be the most appropriate authorities to deal with the case. As an exception and under certain conditions, the authority having jurisdiction may transfer its jurisdiction in a specific case to an authority of another Member State if this authority is better placed to hear the case. However, in this case the ***agreement***

of the second authority should be obtained first, since once it has accepted the case it cannot transfer jurisdiction to a third authority. Prior to any transfer of competence, it is essential that the best interests of the child be considered and fully taken into account.

Amendment 13

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) Proceedings in matters of parental responsibility under this Regulation as well as return proceedings under the 1980 Hague Convention should respect the child's right to express his or her views freely, and when assessing the child's best interests, due weight should be given to those views. The hearing of the child in accordance with Article 24(1) of the Charter of Fundamental Rights of the European Union *and* Article 12 of the United Nations Convention on the Rights of the Child plays an important role in the application of this Regulation. This Regulation is however not intended to set out *how* to hear the child, for instance, whether the child *is* heard by the judge in person or by a specially trained expert reporting to the court afterwards, or whether the child *is* heard in the courtroom or in another place.

Amendment

(23) Proceedings in matters of parental responsibility under this Regulation as well as return proceedings under the 1980 Hague Convention should respect the child's right to express his or her views freely, and when assessing the child's best interests, due weight should be given to those views. The hearing of the child in accordance with Article 24(1) of the Charter of Fundamental Rights of the European Union, Article 12 of the United Nations Convention on the Rights of the Child *and the Council of Europe Recommendation on the participation of children and young people under the age of 18^{1a}* plays an important role in the application of this Regulation. This Regulation is however not intended to set out *common minimum standards regarding the procedure* to hear the child, *which is still governed by Member States' national provisions.*

^{1a} CM/Rec(2012)2 of 28 March 2012.

Amendment 14

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) In order to conclude the return proceedings under the 1980 Hague

Amendment

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Convention as quickly as possible, Member States should concentrate jurisdiction for those proceedings upon *one or more* courts, taking into account their internal structures for the administration of justice as appropriate. The concentration of jurisdiction upon a limited number of courts within a Member State is an essential and effective tool for speeding up the handling of child abduction cases in several Member States because the judges hearing a larger number of these cases develop particular expertise. Depending on the structure of the legal system, jurisdiction for child abduction cases could be concentrated in *one single court for the whole country or in* a limited number of courts, using, for example, the number of appellate courts as point of departure and concentrating jurisdiction for international child abduction cases upon one court of first instance within each district of a court of appeal. Every instance should give its decision no later than six weeks after the application or appeal has been lodged with it. Member States should limit the number of appeals possible against a decision granting or refusing the return of a child under the 1980 Hague Child Abduction Convention to one.

Convention as quickly as possible, Member States should concentrate jurisdiction for those proceedings upon *a limited number of* courts, taking into account their internal structures for the administration of justice as appropriate. The concentration of jurisdiction upon a limited number of courts within a Member State is an essential and effective tool for speeding up the handling of child abduction cases in several Member States because the judges hearing a larger number of these cases develop particular expertise. Depending on the structure of the legal system, jurisdiction for child abduction cases could be concentrated in a limited number of courts, using, for example, the number of appellate courts as point of departure and concentrating jurisdiction for international child abduction cases upon one court of first instance within each district of a court of appeal, *without, however, undermining parties' right of access to justice and the timeliness of the return proceedings*. Every instance should give its decision no later than six weeks after the application or appeal has been lodged with it. Member States should limit the number of appeals possible against a decision granting or refusing the return of a child under the 1980 Hague Child Abduction Convention to one. *Measures should also be taken to ensure that court judgments handed down in one Member State are recognised in another Member State. When a court judgment has been handed down, it is essential that it also be recognised throughout the European Union, especially in the interests of children.*

Amendment 15

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) In all cases concerning children, and in particular in cases of international

Amendment

(28) *The use of mediation can play a very important role in ending conflicts, in*

child abduction, judicial and administrative authorities should consider the possibility of achieving amicable solutions through mediation and other appropriate means, assisted, where appropriate, by existing networks and support structures for mediation in cross-border parental responsibility disputes. Such efforts should not, however, unduly prolong the return proceedings under the 1980 Hague Convention.

all cases concerning children *and especially in the case of cross-border parental conflicts about the custody of and right of access to a child* and in cases of international child abduction. *In addition, given the increase in cross-border custody disputes across the European Union, where no international framework is available, as a result of the recent migration inflows, mediation has often proven to be the only legal means to help families reach an amicable and prompt solution on family disputes. In order to promote mediation in such cases, the* judicial and administrative authorities, assisted, where appropriate, by existing networks and support structures for mediation in cross-border parental responsibility disputes, *should assist the parties, before or during the judicial proceedings, in the selection of appropriate mediators and in the organisation of the mediation. The parties should be provided with financial assistance to carry out the mediation at least to the extent to which they have been granted or would have been granted legal aid.* Such efforts should not, however, unduly prolong the return proceedings under the 1980 Hague Convention *and should not result in mandatory participation of victims of any form of violence, including domestic violence, in mediation proceedings.*

Amendment 16

Proposal for a regulation Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) In order to offer an effective alternative to court proceedings in national or international matters of family disputes, it is crucial that the mediators involved have undergone appropriate specialised training. The training should cover, in particular, the legal framework of cross-border family disputes,

intercultural competence and tools to manage high conflict situations, while at all times having regard to the best interests of the child. Training for judges, as a potential key source of referrals to mediation, should also address how to encourage parties to engage in mediation as early as possible and how to incorporate mediation into court proceedings and the set timeframe of Hague Convention Child Abduction proceedings without causing unnecessary delay.

Amendment 17

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) Where the court of the Member State to or in which the child has been wrongfully removed or retained decides to refuse the child's return under the 1980 Hague Convention, in its decision it should refer explicitly to the relevant articles of the 1980 Hague Convention on which the refusal was based. Such a decision may be replaced, however, by a subsequent decision, given in custody proceedings after a thorough examination of the child's best interests, by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. Should that decision entail the return of the child, the return should take place without any special procedure being required for the recognition and enforcement of that decision in the Member State to or in which the child has been removed or retained.

Amendment

(30) Where the court of the Member State to or in which the child has been wrongfully removed or retained decides to refuse the child's return under the 1980 Hague Convention, in its decision it should refer explicitly to the relevant articles of the 1980 Hague Convention on which the refusal was based ***and state the grounds therefor***. Such a decision may be replaced, however, by a subsequent decision, given in custody proceedings after a thorough examination of the child's best interests, by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. Should that decision entail the return of the child, the return should take place without any special procedure being required for the recognition and enforcement of that decision in the Member State to or in which the child has been removed or retained.

Amendment 18

Proposal for a regulation Recital 33

Text proposed by the Commission

(33) In addition, the aim of ***making cross-border litigation concerning children less time consuming and costly*** justifies the abolition of the declaration of enforceability prior to enforcement in the Member State of enforcement for all decisions on parental responsibility ***matters***. While Regulation (EC) No 2201/2003 only abolished this requirement for decisions granting access and certain decisions ordering the return of a child, this Regulation now provides for a single procedure for the cross-border enforcement of all decisions in matters of parental responsibility. As a result, subject to the provisions of this Regulation, a decision given by the authorities of a Member State should be treated as if it had been given in the Member State of enforcement.

Amendment 19

**Proposal for a regulation
Recital 37 a (new)**

Text proposed by the Commission

Amendment 20

**Proposal for a regulation
Recital 42**

Text proposed by the Commission

(42) In specific cases in matters of parental responsibility which fall within the

Amendment

(33) In addition, the aim of ***facilitating the free movement of European citizens*** justifies the abolition of the declaration of enforceability prior to enforcement in the Member State of enforcement for all decisions on parental responsibility ***falling within the scope of this Regulation. That will, in particular, make cross-border litigation concerning children less time-consuming and costly***. While Regulation (EC) No 2201/2003 only abolished this requirement for decisions granting access and certain decisions ordering the return of a child, this Regulation now provides for a single procedure for the cross-border enforcement of all decisions in matters of parental responsibility ***falling within the scope of this Regulation***. As a result, subject to the provisions of this Regulation, a decision given by the authorities of a Member State should be treated as if it had been given in the Member State of enforcement.

Amendment

(37a) Any refusal to recognise a decision as defined in this Regulation on the ground that recognition would be manifestly contrary to the public policy of the Member State concerned should be in accordance with Article 21 of the Charter.

Amendment

(42) In specific cases in matters of parental responsibility which fall within the

scope of this Regulation, Central Authorities should cooperate with each other in providing assistance to national authorities as well as to holders of parental responsibility. Such assistance should in particular include locating the child, either directly or through other competent authorities, where this is necessary for carrying out a request under this Regulation, and providing child-related information required for the purpose of proceedings.

scope of this Regulation, Central Authorities should cooperate with each other in providing assistance to national authorities as well as to holders of parental responsibility. Such assistance should in particular include locating the child, either directly or through other competent authorities, where this is necessary for carrying out a request under this Regulation, and providing child-related information required for the purpose of proceedings. ***In cases where the jurisdiction is in a Member State other than the Member State of which the child is a national, the central authorities of the Member State with jurisdiction should inform, without undue delay, the central authorities of the Member State of which the child is a national.***

Amendment 21

Proposal for a regulation Recital 44

Text proposed by the Commission

(44) Without prejudice to any requirements under its national procedural law, a requesting authority should have the discretion to choose freely between the different channels available to it for obtaining the necessary information, for example, in case of courts by applying Council Regulation (EC) No 1206/2001, by using the European Judicial Network in civil and commercial matters, in particular the Central Authorities established under this Regulation, Network judges and contact points, or in case of judicial and administrative authorities by requesting information through a specialised non-governmental organisation in this field.

Amendment

(44) Without prejudice to any requirements under its national procedural law, a requesting authority should have the discretion to choose freely between the different channels available to it for obtaining the necessary information, for example, in case of courts by applying Council Regulation (EC) No 1206/2001, by using the European Judicial Network in civil and commercial matters, in particular the Central Authorities established under this Regulation, Network judges and contact points, or in case of judicial and administrative authorities by requesting information through a specialised non-governmental organisation in this field. ***International judicial cooperation and communication should be initiated and/or facilitated by specially designated network or liaison judges in each Member State. The role of the European Judicial Network should be differentiated from that of central authorities.***

Amendment 22

Proposal for a regulation

Recital 46

Text proposed by the Commission

(46) An authority of a Member State contemplating a decision on parental responsibility should be ***entitled to request*** the communication of information relevant to the protection of the child from the authorities of another Member State if the best interests of the child so require. Depending on the circumstances, this may include information on proceedings and decisions concerning a parent or siblings of the child, or on the capacity of a parent to care for a child or to have access to the child.

Amendment

(46) An authority of a Member State contemplating a decision on parental responsibility should be ***obliged to require*** the communication of information relevant to the protection of the child from the authorities of another Member State if the best interests of the child so require. Depending on the circumstances, this may include information on proceedings and decisions concerning a parent or siblings of the child, or on the capacity of a parent ***or family*** to care for a child or to have access to the child. ***The nationality, economic and social situation or cultural and religious background of a parent should not be considered as determining elements when deciding on the capacity to care for a child.***

Amendment 23

Proposal for a regulation

Recital 46 a (new)

Text proposed by the Commission

Amendment

(46a) Communication between judges, public authorities, central authorities, professionals assisting the parents and between the parents themselves should be promoted by all means, taking into account, inter alia, that a decision that the child should not be returned may violate the basic rights of the child to the same extent as a decision to return him or her.

Amendment 24

Proposal for a regulation

Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) Where the interests of the child so require, judges should communicate directly with central authorities or competent courts in other Member States.

Amendment 25

Proposal for a regulation

Recital 49

Text proposed by the Commission

Amendment

(49) Where an authority of a Member State has already given a decision in matters of parental responsibility or is contemplating such a decision and the implementation is to take place in another Member State, the authority *may* request that the authorities of that other Member State assist in the implementation of the decision. This should apply, for instance, to decisions granting supervised access to be exercised in a Member State other than the Member State where the authority ordering access is located or involving any other accompanying measures of the competent authorities in the Member State where the decision is to be implemented.

(49) Where an authority of a Member State has already given a decision in matters of parental responsibility or is contemplating such a decision and the implementation is to take place in another Member State, the authority *should* request that the authorities of that other Member State assist in the implementation of the decision. This should apply, for instance, to decisions granting supervised access to be exercised in a Member State other than the Member State where the authority ordering access is located or involving any other accompanying measures of the competent authorities in the Member State where the decision is to be implemented.

Amendment 26

Proposal for a regulation

Recital 50

Text proposed by the Commission

Amendment

(50) Where an authority of a Member State considers the placement of a child in a foster family or in an institution in another Member State, a consultation procedure through the Central Authorities of both Member States concerned should be carried out prior to the placement. The authority considering the placement should obtain the consent of the competent authority of the Member State in which the child should be placed before ordering the

(50) Where an authority of a Member State considers the placement of a child ***with family members***, in a foster family or in an institution in another Member State, a consultation procedure through the Central Authorities of both Member States concerned should be carried out prior to the placement. The authority considering the placement should obtain the consent of the competent authority of the Member State in which the child should be placed before

placement. As the placements are most often urgent measures required to remove a child from a situation which puts his or her best interests at risk, time is of the essence for such decisions. In order to speed up the consultation procedure, this Regulation therefore exhaustively establishes the requirements for the request and a time limit for the response from the Member State where the child should be placed. The conditions for granting or refusing consent, however, continue to be governed by the national law of the requested Member State.

Amendment 27

Proposal for a regulation

Recital 51

Text proposed by the Commission

(51) *Any long-term* placement of a child **abroad** should **be** in accordance with Article 24(3) of the Charter of Fundamental Rights of the EU (right to maintain personal contact with parents) and with the provisions of the United Nations Convention on the Rights of the Child, notably Articles 8, 9 and 20. In particular, when considering solutions, due regard should be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

ordering the placement. As the placements are most often urgent measures required to remove a child from a situation which puts his or her best interests at risk, time is of the essence for such decisions. In order to speed up the consultation procedure, this Regulation therefore exhaustively establishes the requirements for the request and a time limit for the response from the Member State where the child should be placed. The conditions for granting or refusing consent, however, continue to be governed by the national law of the requested Member State.

Amendment

(51) *State authorities considering the* placement of a child should **act** in accordance with Article 24(3) of the Charter of Fundamental Rights of the EU (right to maintain personal contact with parents) and with the provisions of the United Nations Convention on the Rights of the Child, notably Articles 8, 9 and 20. In particular, when considering solutions, due regard should be paid to the **possibility of placing siblings in the same host family or establishment and to the** desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. **In the case, in particular, of long-term placement of a child abroad, the relevant authorities should always consider the possibility of placing the child with relatives living in another country, if the child has established a relationship with those members of the family, and following an individual assessment of the child's best interests. Such long-term placements should be subject to periodic review with regard to the child's needs and best interests.**

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – introductory part

Text proposed by the Commission

1. This Regulation applies, whatever the nature of the judicial or administrative authority, in civil matters relating to:

Amendment

1. This Regulation applies, whatever the nature of the judicial or administrative authority ***or other authority with jurisdiction in the matters falling within the scope of this Regulation***, in civil matters relating to:

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) international child abduction;

Amendment 30

Proposal for a regulation

Article 1 – paragraph 2 – point d

Text proposed by the Commission

(d) the placement of the child in a foster family or in institutional care;

Amendment

(d) the placement of the child ***with family members***, in a foster family or in ***secure*** institutional care ***abroad***;

Amendment 31

Proposal for a regulation

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

1. 'authority' means any judicial or administrative authority in the Member States with jurisdiction in the matters falling within the scope of this Regulation ;

Amendment

1. 'authority' means any judicial or administrative authority, ***and any other authority*** in the Member States with jurisdiction in the matters falling within the scope of this Regulation ;

Amendment 32

Proposal for a regulation

Article 2 – paragraph 1 – point 3

Text proposed by the Commission

3. ‘Member State’ means all Member States with the exception of Denmark;

Amendment

3. ‘Member State’ means all Member States ***of the European Union*** with the exception of Denmark;

Amendment 33

Proposal for a regulation

Article 2 – paragraph 1 – point 4

Text proposed by the Commission

4. ‘decision’ means a decree, order *or* judgment of an authority of a Member State concerning divorce, legal separation, marriage annulment or parental responsibility;

Amendment

4. ‘decision’ means a decree, order, judgment of an authority of a Member State, ***or an authentic instrument enforceable in a Member State or an agreement between the parties that is enforceable in the Member State in which it is concluded*** concerning divorce, legal separation, marriage annulment or parental responsibility;

Amendment 34

Proposal for a regulation

Article 2 – paragraph 1 – point 12 – introductory part

Text proposed by the Commission

12. ‘***wrongful removal or retention***’ means a child's removal or retention where:

Amendment

12. ‘***international child abduction***’ means a child's removal or retention where:

Amendment 35

Proposal for a regulation

Article 7 – paragraph 1

Text proposed by the Commission

1. The authorities of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the authorities of the Member State of the new

Amendment

1. The authorities of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the authorities of the Member State of the new

habitual residence shall have jurisdiction.

habitual residence shall have jurisdiction, *unless the parties agree before the move that jurisdiction should continue to lie with the authority of the Member State where the child has hitherto been habitually resident.*

Amendment 36

Proposal for a regulation

Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where custody and access proceedings are pending, the authority of the Member State of origin shall retain jurisdiction until the proceedings have concluded, unless the parties agree that the proceedings should be brought to an end.

Amendment 37

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the authorities of the Member State of the child's new habitual residence by participating in proceedings before those authorities without contesting their jurisdiction.

2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1, *having been informed by the authorities of the former habitual residence of the legal implications*, has accepted the jurisdiction of the authorities of the Member State of the child's new habitual residence by participating, *that information notwithstanding*, in proceedings before those authorities without contesting their jurisdiction.

Amendment 38

Proposal for a regulation

Article 9 – paragraph 1 – point b – point i

Text proposed by the Commission

Amendment

(i) within one year after the holder of rights of custody has had or should have

(i) within one year after the holder of rights of custody has had or should have

had knowledge of the whereabouts of the child, *no* request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

had knowledge of the whereabouts of the child, *and notwithstanding the fact that he or she has been informed by the authorities of the legal requirement to make a* request for return, *no such request* has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;

Amendment 39

Proposal for a regulation

Article 10 – paragraph 5 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The designated judges shall be practicing and experienced family judges, in particular with experience in matters having a cross-border jurisdictional dimension.

Amendment 40

Proposal for a regulation

Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

In urgent cases, the authorities of a Member State where the child or property belonging to the child is present shall have jurisdiction to take provisional, including protective, measures in respect of that child or property.

In urgent cases, the authorities of a Member State where the child or property belonging to the child is present shall have jurisdiction to take provisional, including protective, measures in respect of that child or property. *Such measures should not unduly delay the proceedings and final decisions on custody and access rights.*

Amendment 41

Proposal for a regulation

Article 12 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

In so far as the protection of the best interests of the child so requires, the authority having taken the protective measures shall inform the authority of the

In so far as the protection of the best interests of the child so requires, the authority having taken the protective measures shall inform the authority of the

Member State having jurisdiction under this Regulation as to the substance of the matter, either directly or through the Central Authority designated pursuant to Article 60.

Member State having jurisdiction under this Regulation as to the substance of the matter, either directly or through the Central Authority designated pursuant to Article 60. ***That authority shall ensure the equal treatment of the parents involved in the proceedings, and shall ensure that they are thoroughly informed without delay about all the measures in question, in a language they fully understand.***

Amendment 42

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

2. The measures taken pursuant to paragraph 1 shall cease to apply as soon as the authority of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate.

Amendment

2. The measures taken pursuant to paragraph 1 shall cease to apply as soon as the authority of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate ***and from the moment it notifies the authority of the Member State in which the provisional measures were taken of those measures.***

Amendment 43

Proposal for a regulation Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. In cases referred to in paragraphs 1 and 2, upon request by an authority seised of the dispute, any other authority seised shall without delay inform the requesting authority of the date when it was seised in accordance with Article 15.

Amendment 44

Proposal for a regulation Article 20

Text proposed by the Commission

Article 20

Right of the child to express his or her views

When exercising their jurisdiction under Section 2 of this Chapter, the authorities of the Member States shall ensure that a child who is capable of forming his or her own views is given the genuine and effective opportunity to express those views freely during the proceedings.

The authority shall give due weight to the child's views in accordance with his or her age and maturity and document its considerations in the decision.

Amendment

Article 20

Right of the child to express his or her views

When exercising their jurisdiction under Section 2 of this Chapter, the authorities of the Member States shall ensure that a child who is capable of forming his or her own views is given the genuine and effective opportunity to express those views freely during the proceedings, ***in accordance with the relevant national procedural rules, Article 24(1) of the Charter, with Article 12 of the UN Convention on the Rights of the Child and the Council of Europe Recommendation to member States on the participation of children and young people under the age of 18^{1a}. Authorities shall document their considerations in this regard in the decision.***

The hearing of a child exercising his or her right to express his or her views shall be conducted by a judge or by a specially trained expert in accordance with national provisions, without any pressure, in particular parental pressure, in a child-friendly setting appropriate for his or her age in terms of language and content and shall provide all the guarantees that allow the emotional integrity and the best interests of the child to be protected.

The hearing of the child shall not be conducted in the presence of the parties to the proceedings or their legal representatives, but shall be recorded and added to the documentation so that the parties and their legal representatives can have the opportunity to see the record of the hearing.

The authority shall give due weight to the child's views in accordance with his or her age and maturity, ***taking into account the best interests of the child***, and document its considerations in the decision.

Amendment 45

Proposal for a regulation Article 23 – paragraph 2

Text proposed by the Commission

2. As early as possible during the proceedings, the court shall examine whether the parties are willing to engage in mediation to find, in the best interests of the child, an agreed solution, provided that this does not unduly delay the proceedings.

Amendment

2. As early as possible during the proceedings, the court shall examine whether the parties are willing to engage in mediation to find, in the best interests of the child, an agreed solution, provided that this does not unduly delay the proceedings. ***In that event, the court shall ask the parties to make use of mediation.***

Amendment 46

Proposal for a regulation Article 25 – paragraph 3

Text proposed by the Commission

3. The court may declare the decision ordering the return of the child provisionally enforceable notwithstanding any appeal, even if national law does not provide for such provisional enforceability.

Amendment

3. The court may declare the decision ordering the return of the child provisionally enforceable notwithstanding any appeal, even if national law does not provide for such provisional enforceability, ***taking account of the best interests of the child.***

Amendment 47

Proposal for a regulation Article 25 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. When a judicial authority has ordered the return of the child, it shall notify the central authority of the Member State of the habitual residence of the child prior to the wrongful removal of such decision and the date upon which it takes effect.

Amendment 48

Proposal for a regulation Article 32 – paragraph 4

Text proposed by the Commission

4. Where the decision was not enforced within six weeks from the moment the enforcement proceedings were initiated, the court of the Member State of enforcement shall inform the requesting Central Authority in the Member State of origin, or the applicant, if the proceedings were instituted without Central Authority assistance, about this fact and the reasons.

Amendment

4. Where the decision was not enforced within six weeks from the moment the enforcement proceedings were initiated, the court of the Member State of enforcement shall **duly** inform the requesting Central Authority in the Member State of origin, or the applicant, if the proceedings were instituted without Central Authority assistance, about this fact and the reasons **and shall provide an estimated time of enforcement**.

Amendment 49

Proposal for a regulation Article 37 – paragraph 1 – point a

Text proposed by the Commission

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought; or

Amendment

(a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought, **though refusal may not result in any form of discrimination prohibited under Article 21 of the Charter**; or

Amendment 50

Proposal for a regulation Article 38 – paragraph 1 – introductory part

Text proposed by the Commission

1. On the application of any interested party, **the recognition of** a decision relating to parental responsibility shall **be refused**:

Amendment

1. On the application of any interested party, a decision relating to parental responsibility shall **not be recognised**:

Amendment 51

Proposal for a regulation Article 38 – paragraph 1 – point b

Text proposed by the Commission

(b) where *it* was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the decision unequivocally; or

Amendment 52

**Proposal for a regulation
Article 58 – paragraph 1**

Text proposed by the Commission

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedures provided for in Article 27(3), Articles 32, 39 and 42 to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement.

Amendment 53

**Proposal for a regulation
Article 63 – paragraph 1 – point a**

Text proposed by the Commission

(a) provide, on the request of the Central Authority of another Member State, assistance in discovering the whereabouts of a child where it appears that the child may be present within the territory of the requested Member State and the determination of the whereabouts of the child is necessary for *carrying out a request under* this Regulation;

Amendment

(b) where *the decision* was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the decision unequivocally; or

Amendment

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid, *aid to cover costs incurred in mediation*, or exemption from costs or expenses shall be entitled, in the procedures provided for in Article 27(3) *and* Articles 32, 39 and 42 to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement.

Amendment

(a) provide, on the request of the Central Authority of another Member State, assistance in discovering the whereabouts of a child where it appears that the child may be present within the territory of the requested Member State and the determination of the whereabouts of the child is necessary for *the application of* this Regulation;

Amendment 54

Proposal for a regulation

Article 63 – paragraph 1 – point d

Text proposed by the Commission

(d) facilitate communications between **authorities**, in particular for the application of Article 14, Article 25(1)(a), Article 26(2) and the second subparagraph of Article 26(4);

Amendment

(d) facilitate communications between **court authorities**, in particular for the application of Articles 14 and **19**, Article 25(1)(a), Article 26(2) and the second subparagraph of Article 26(4);

Amendment 55

Proposal for a regulation

Article 63 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) inform the holders of parental responsibility about legal aid and assistance, such as assistance provided by specialised bilingual lawyers, in order to prevent holders of parental responsibility from giving their consent without having understood the scope of that consent.

Amendment 56

Proposal for a regulation

Article 63 – paragraph 1 – point g

Text proposed by the Commission

(g) ensure that where they initiate or facilitate the institution of court proceedings for the return of children under the 1980 Hague Convention, the file prepared in view of such proceedings, save where exceptional circumstances make this impossible, is complete within six weeks.

Amendment

(g) ensure that where they initiate or facilitate the institution of court proceedings for the return of children under the 1980 Hague Convention, the file prepared in view of such proceedings, save where exceptional circumstances make this impossible, is complete **and submitted to the court or other competent authority** within six weeks.

Amendment 57

Proposal for a regulation

Article 64 – paragraph 1 – introductory part

Text proposed by the Commission

1. Upon a request made with supporting reasons by the Central Authority or an authority of a Member State with which the child has a substantial connection, the Central Authority of the Member State where the child is habitually resident and present *may*, directly or through authorities or other bodies:

Amendment 58

**Proposal for a regulation
Article 64 – paragraph 2**

Text proposed by the Commission

2. Where a decision in matters of parental responsibility is contemplated, an authority of a Member State, if the situation of the child so requires, *may* request any authority of another Member State which has information relevant to the protection of the child to communicate such information.

Amendment 59

**Proposal for a regulation
Article 64 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment 60

**Proposal for a regulation
Article 64 – paragraph 3**

Amendment

1. Upon a request made with supporting reasons by the Central Authority or an authority of a Member State with which the child has a substantial connection, the Central Authority of the Member State where the child is habitually resident and present *shall*, directly or through authorities or other bodies:

Amendment

2. Where a decision in matters of parental responsibility is contemplated, an authority of a Member State, if the situation of the child so requires, *shall* request any authority of another Member State which has information relevant to the protection of the child to communicate such information.

Amendment

2a. Where matters of parental responsibility are under scrutiny, the central authority of the Member State where the child is habitually resident shall inform, without undue delay, the central authority of the Member State of which the child or one of the child's parents is a national on the existence of proceedings.

Text proposed by the Commission

3. An authority of a Member State **may** request the authorities of another Member State to assist in the implementation of decisions in matters of parental responsibility given under this Regulation, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contact on a regular basis.

Amendment 61

**Proposal for a regulation
Article 64 – paragraph 5**

Text proposed by the Commission

5. The authorities of a Member State where the child is not habitually resident shall, upon request of a **person** residing in that Member State who **is** seeking to obtain or to maintain access to the child, or upon request of a Central Authority of another Member State, gather information or evidence, and may make a finding, on the suitability of **that person** to exercise access and on the conditions under which access should be exercised.

Amendment 62

**Proposal for a regulation
Article 64 – paragraph 5 a (new)**

Text proposed by the Commission

Amendment

3. An authority of a Member State **shall** request the authorities of another Member State to assist in the implementation of decisions in matters of parental responsibility given under this Regulation, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contact on a regular basis.

Amendment

5. The authorities of a Member State where the child is not habitually resident shall, upon request of a **parent or family member** residing in that Member State who **are** seeking to obtain or to maintain access to the child, or upon request of a Central Authority of another Member State, gather information or evidence, and may make a finding, on the suitability of **those persons** to exercise access and on the conditions under which access should be exercised.

Amendment

5a. An authority of a Member State may request the central authority of another Member State to provide information on the national law of that Member State with regard to issues that fall within the scope of this Regulation and are relevant for the examination of a case under this Regulation. The authority of the Member State to which a request is submitted shall respond as soon as possible.

Amendment 63

Proposal for a regulation Article 65 – paragraph 1

Text proposed by the Commission

1. Where an authority having jurisdiction under this Regulation contemplates the placement of a child *in institutional care or with a foster family* in another Member State, it shall first obtain the consent of the competent authority in that other Member State. To that effect it shall, through the Central Authority of its own Member State, transmit to the Central Authority of the Member State where the child is to be placed a request for consent which includes a report on the child together with the reasons for the proposed placement or provision of care.

Amendment

1. Where an authority having jurisdiction under this Regulation contemplates the placement of a child *with family members, in foster families, or in secure institutional care* in another Member State, it shall first obtain the consent of the competent authority in that other Member State. To that effect it shall, through the Central Authority of its own Member State, transmit to the Central Authority of the Member State where the child is to be placed a request for consent which includes a report on the child together with the reasons for the proposed placement or provision of care. *Member States shall ensure that parents and relatives of the child, regardless of their place of residence, can have regular access, except where this would jeopardise the well-being of the child.*

Amendment 64

Proposal for a regulation Article 65 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

If the competent authority intends to send social workers to another Member State in order to determine whether a placement there is compatible with the well-being of the child, it shall inform the Member State concerned accordingly.

Amendment 65

Proposal for a regulation Article 66 – paragraph 4

Text proposed by the Commission

4. Each Central Authority shall bear its own costs.

Amendment

4. ***Save where otherwise agreed between the requesting Member State and the requested Member State***, each Central Authority shall bear its own costs.

Amendment 66

Proposal for a regulation Article 79 – paragraph 1

Text proposed by the Commission

By [**10** years after the date of application] the Commission shall present to the European Parliament, to the Council and to the European Economic and Social Committee a report on the ***ex post*** evaluation of this Regulation supported by information supplied by the Member States. The report shall be accompanied, where necessary, by a legislative proposal.

Amendment

By [**five** years after the date of application] the Commission shall present to the European Parliament, to the Council and to the European Economic and Social Committee a report on the ***ex-post*** evaluation of this Regulation supported by information supplied by the Member States. The report shall be accompanied, where necessary, by a legislative proposal.

Amendment 67

Proposal for a regulation Article 79 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) the number of cases and decisions in mediation procedures in matters of parental responsibility;