Cross-border aspects of adoptions

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The Committee on Legal Affairs adopted the report by Tadeusz ZWIEFKA (EPP, PL) with recommendations to the Commission on cross-border aspects of adoptions (Initiative – Rule 46 of the Rules of Procedure).

The Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption, has been ratified by all Member States. It concerns the procedure for adoptions across borders, and mandates the automatic recognition of such adoptions.

However, the Convention does not cover the situation of a family with a child adopted under a purely national procedure which then moves to another Member State. This can lead to significant legal difficulties if the legal relationship between the parent(s) and the adopted child is not automatically recognised. Additional administrative or judicial procedures may be required, and in extreme cases recognition may be refused altogether.

Cross-border recognition of domestic adoption orders: in order to exercise their right to free movement and to protect fundamental human rights of EU citizens, Members stated that there is a clear need for European legislation to provide for the automatic cross-border recognition of domestic adoption orders. They called on the Commission to **submit, by 31 July 2017**, on the basis of Articles 67 and 81 of the Treaty on the Functioning of the European Union, a proposal for a Council Regulation on the cross-border recognition of adoption orders, following the recommendations set out below:

- the proposed regulation provides for the **automatic recognition of adoption orders** made in a Member State under any procedure other than under the framework of the 1993 Hague Convention. Once one Member State has recognised an adoption order made in a third country under its relevant national procedural rules, that adoption order shall be recognised in all other Member States;
- the rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the **adopting parents' habitual residence**, or the habitual residence of one of those parents or of the child. Jurisdiction should be limited to this ground, save in situations involving third countries, where the Member State of nationality may be a connecting factor;
- any interested party should be able to apply for **refusal of the recognition** of an adoption order if he or she considers one of the grounds for refusal of recognition to be present: (i) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State addressed; (ii) if the originating Member State did not have jurisdiction;
- a **European Certificate of Adoption** should be created in order to speed up any administrative query over automatic recognition. The model for the certificate is to be adopted as a Commission delegated act.

The draft resolution adopted by the committee responsible highlighted the following issues:

Common minimum standards for adoptions: Member States should take all decisions in adoption matters with the best interests of the child in mind and with respect for his or her fundamental rights, while always taking into account the specific circumstances of the particular case.

Children who have been put up for adoption should not be seen as the property of a state, but as **individuals with internationally recognised fundamental rights**. Cultural and linguistic traditions of the child should be taken into consideration and be respected as much as possible.

The child should always be given the opportunity to be **heard without pressure**, and express his or her view on the adoption process, taking into account his or her age and maturity.

Members stated that **no decision on adoption should be taken** before the biological parents have been heard and, where applicable, have exhausted all legal remedies concerning their parental authority, and the withdrawal of parental authority from the biological parents is final.

The relevant authorities should always first consider the possibility of placing the child with **relatives**, even when those relatives live 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 needs, before giving the child up for adoption by strangers.

Particular attention should be given to **unaccompanied minors who have applied for or have refugee status**, preferably by placing them in foster families in the interim period.

Civil justice cooperation in the field of adoption: the report called on the Member States to intensify their cooperation in the field of adoption and the Commission to establish an effective **European network of judges and authorities** specialised in adoption in order to facilitate the exchange of information and good practice.

Members stressed the need to cooperate closely, including through European authorities such as Europol, to **prevent the cross-border abduction, sale and trafficking of children** for adoption purposes.

Lastly, the Commission is urged to **publish on the European e-Justice Portal** relevant legal and procedural information on adoption law and practice in all the Member States.