Basic information

2016/0190(CNS) CNS - Consultation procedure Regulation	Procedure completed
Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast Repealing Regulation (EC) No 2201/2003 2000/0818(CNS) Repealing Regulation (EC) No 2201/2003 2002/0110(CNS) **Subject** 4.10.02 Family policy, family law, parental leave 4.10.03 Child protection, children's rights 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	ZWIEFKA Tadeusz (PPE)	21/01/2019

Former committee responsible	Former rapporteur	Appointed
JURI Legal Affairs	ZWIEFKA Tadeusz (PPE)	11/07/2016

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
FEMM Women's Rights and Gender Equality	The committee decided not to give an opinion.	
PETI Petitions	The committee decided not to give an opinion.	

Former committee for opinion	Former rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
FEMM Women's Rights and Gender Equality	The committee decided not to give an opinion.	

PETI Petitions	CABEZÓN RUIZ Soledad (S&D)	16/11/2016

Former committee for opinion on the recast technique	Former rapporteur for opinion	Appointed
JURI Legal Affairs	BOUTONNET Marie-Christine (ENF)	24/01/2017

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3584	2017-12-08
Justice and Home Affairs (JHA)	3546	2017-06-08

European Commission

Commission DG	Commissioner
Justice and Consumers	JOUROVÁ Věra

Key events

Date	Event	Reference	Summary
30/06/2016	Legislative proposal published	COM(2016)0411	Summary
12/09/2016	Committee referral announced in Parliament		
08/06/2017	Debate in Council		
21/11/2017	Vote in committee		
01/12/2017	Committee report tabled for plenary, 1st reading/single reading	A8-0388/2017	Summary
08/12/2017	Debate in Council		
17/01/2018	Debate in Parliament		
18/01/2018	Decision by Parliament	T8-0017/2018	Summary
18/01/2018	Results of vote in Parliament		
12/12/2018	Amended legislative proposal for reconsultation published	15401/2018	Summary
19/12/2018	Formal reconsultation of Parliament		
23/01/2019	Vote in committee		
31/01/2019	Committee report tabled for plenary, reconsultation	A8-0056/2019	Summary
13/03/2019	Debate in Parliament		
14/03/2019	Decision by Parliament	T8-0206/2019	Summary

14/03/2019	Results of vote in Parliament		
25/06/2019	Act adopted by Council after consultation of Parliament		
25/06/2019	End of procedure in Parliament		
02/07/2019	Final act published in Official Journal		

Technical information

Procedure reference	2016/0190(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Recast
Legislative instrument	Regulation
Amendments and repeals	Repealing Regulation (EC) No 2201/2003 2000/0818(CNS) Repealing Regulation (EC) No 2201/2003 2002/0110(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 081-p3
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	JURI/8/15284 JURI/8/06998

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE602.839	09/05/2017	
Committee opinion	PETI	PE597.699	15/05/2017	
Amendments tabled in committee		PE606.308	26/06/2017	
Committee report tabled for plenary, 1st reading/single reading		A8-0388/2017	01/12/2017	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0017/2018	18/01/2018	Summary
Committee final report tabled for plenary, reconsultation		A8-0056/2019	31/01/2019	Summary
Text adopted by Parliament after reconsultation		T8-0206/2019	14/03/2019	Summary

Council of the EU

Document type	Reference	Date	Summary
Amended legislative proposal for reconsultation	15401/2018	12/12/2018	Summary

European Commission

Document type	Reference	Date	Summary
	COM(2016)0411		

Legislative proposal		30/06/2016	Summary
Document attached to the procedure	SWD(2016)0207	30/06/2016	
Document attached to the procedure	SWD(2016)0208	30/06/2016	
Commission response to text adopted in plenary	SP(2018)83	14/02/2018	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2016)0411	10/10/2016	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES5280/2016	25/01/2017	
EDPS	Document attached to the procedure	N8-0014/2019 OJ C 120 06.04.2018, p. 0018	15/02/2018	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Regulation 2019/1111
OJ L 178 02.07.2019, p. 0001 Summary

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast

2016/0190(CNS) - 30/06/2016 - Legislative proposal

PURPOSE: to improve EU rules that protect children in the context of cross-border parental responsibility disputes related to custody, access rights and child abduction.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: Council Regulation (EC) No 2201/2003 (the Brussels IIa Regulation) is the cornerstone of judicial cooperation in family matters in the European Union. It establishes uniform jurisdiction rules for divorce, separation and the annulment of marriage as well as for disputes about parental responsibility in cross-border situations.

It facilitates the free circulation of judgments, authentic instruments and agreements in the Union by laying down provisions on their recognition and enforcement in other Member States. It applies since 1 March 2005 to all Member States except Denmark.

The Commission has assessed the operation of the Regulation in practice and considered necessary amendments to the instrument in its application report adopted in April 2014.

The evaluation showed that between the two major areas covered by the Regulation, the matrimonial and parental responsibility matters, the latter were identified to have caused **acute problems**. The overall efficiency of certain aspects of the child-related proceedings has been called into question:

- in matters concerning parental child abduction, cross-border placement of children, recognition and enforcement of decisions and cooperation between (central and other) national authorities there are excessive and undue delays arising from the way the existing procedures are formulated or applied. This has had a negative impact on parent-child relationships and the best interests of children;
- the requirement of exequatur generated average delays per case of several months and costs reaching up to EUR 4 000 Euro for citizens;
- the vague description of the cooperation between Central Authorities has often led to delays of several months or even to the non-fulfilment of requests – which is detrimental to children's welfare;
- the enforcement of decisions given in another Member State was identified as problematic; decisions are often not enforced or only with significant delays. In addition, the work of specialised lawyers generates costs for parents between EUR 1 000 and 4 000 per case;
- difficulties arise due to the fact that Member States have diverging rules governing the hearing of the child.

The objective of the recast of the Brussels IIa Regulation is to further develop the European area of Justice and Fundamental Rights based on Mutual Trust by removing the remaining obstacles to the free movement of judicial decisions in line with the principle of mutual recognition and to better protect the best interests of the child by simplifying the procedures and enhancing their efficiency.

IMPACT ASSESSMENT: the policy options and their impact assessment were dealt with separately for each of the issues identified as problematic in the evaluation of the Regulation. For all issues a baseline scenario and alternative options were developed.

For matrimonial and parental responsibility matters, policy options with different degrees of intervention were considered. The **preferred package of policy options** for parental responsibility matters would meet the simplification objectives by reducing delays relating to the return of the child, the placement decisions, and cooperation between the Central Authorities, and eliminate unnecessary delays and costs related to the exequatur requirement. At the same time it would also respond to the urgency of remedying the problems currently faced in this area, where it is of outmost importance to act and set the scene for changes keeping in mind the situation of children, families and their best interests.

CONTENT: this proposal is a recast of Council Regulation (EC) No 2201/2003 (the Brussels IIa Regulation) concerning jurisdiction and the recognition and enforcement of judgments concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. The main elements of the proposal are as follows:

More efficient proceedings: several substantial modifications are proposed with the aim of improving the efficiency of the return of an abducted child and the problems relating to the complexity of the "overriding mechanism" under the Regulation. More specifically, the proposal:

- clarifies the **time limit for issuing an enforceable return order**: the deadlines applied to different stages of the child return procedure will be limited to a **maximum period of 18 weeks** (maximum six weeks for the receiving Central Authority to process the application, six weeks for the first instance court, and six weeks for the appellate court) instead of average proceedings taking up to 165 days nowadays;
- includes an obligation for Member States to **concentrate jurisdiction** for child abduction cases in a limited number of courts while respecting the structure of the legal system concerned;
- **limits the number of possibilities to appeal** a decision on return to one and explicitly invites a judge to consider whether a decision ordering return should be provisionally enforceable;
- obliges the Member State where the child was habitually resident immediately before the wrongful removal or retention to conduct a **thorough examination of the best interests of the child** before a final custody decision, possibly implying return of the child, is given.

Decision to place a child: for placement decisions an **autonomous consent procedure** shall be established to be applied to all cross-border placements, flanked by a time limit for the requested Member State to respond to the request which is now **8 weeks** instead of the current 6 months or more.

Rapid enforcement of decisions in other Member States: under the new rules, the **exequatur procedure is abolished** for all decisions covered by the Regulation's scope. The abolition of exequatur will be accompanied by **procedural safeguards** which ensure that the defendant's right to an effective remedy and the right to a fair trial.

The defendant parent could make an application to challenge recognition and/or enforcement in the Member State of enforcement in one and the same procedure.

The proposal includes uniform rules to define in which situations not only cross-border enforceability but also enforcement as such could be opposed.

Ensuring the child is heard: the proposal leaves Member States' rules and practices on how to hear a child untouched, but requires mutual recognition between the legal systems. This means that an **obligation** to give the child who is capable of forming his or her own views an opportunity to express these views would be made explicit in the Regulation.

Improving the efficiency of actual enforcement: in this respect, the proposal:

- foresees an **indicative time limit for the actual enforcement of a decision**. In case the enforcement has not occurred after the lapse of 6 weeks from the moment the enforcement proceedings were initiated, the court of the Member State of enforcement would have to inform the requesting Central Authority in the Member State of origin (or the applicant, if the proceedings were conducted without Central Authority assistance) about this fact and the reasons for the lack of timely enforcement;
- provides that the court of origin could **declare a decision provisionally enforceable** even if this possibility does not exist in its national law.

Clarification of the Central Authorities' and other requested authorities' tasks: the new rules proposed shall promote better cooperation between Central Authorities. Member States shall ensure that Central Authorities have **adequate financial and human resources** to enable them to carry out the obligations assigned to them under this Regulation. Moreover, courts and child welfare authorities may request the assistance of Central Authorities.

BUDGETARY IMPLICATIONS: according to the Commission, the proposal triggers **relatively modest** compliance costs. The abolition of exequatur and the concentration of jurisdiction would require Member States to incur costs for training to familiarise the legal profession with the new procedures envisaged. Training is however already necessary today.

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast

2016/0190(CNS) - 14/03/2019 - Text adopted by Parliament after reconsultation

The European Parliament adopted, by 553 votes to 7 with 38 abstentions, following a special legislative procedure (repeated consultation of the Parliament), a legislative resolution on the draft Council Regulation on jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast).

The European Parliament approved the Council's draft concerning the revision of the Brussels II bis Regulation (Regulation on jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, and on international child abduction).

The proposed Regulation would aim to facilitate and accelerate the cross-border enforcement of decisions on parental responsibility and international child abduction. It shall apply in civil matters of: (i) divorce, legal separation or marriage annulment; (ii) the attribution, exercise, delegation, restriction or termination of parental responsibility.

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast

2016/0190(CNS) - 01/12/2017 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Tadeusz ZWIEFKA (EPP, PL) 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).

The committee recommended the European Parliament to approve 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:

General objectives of the recast: Members pointed out that the amendments introduced by the recast of Regulation (EC) No 2201/2003 shall help to **strengthen legal certainty** and increase flexibility, 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.

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 shall be ensured.

This Regulation shall fully respect the rights set out in the **Charter of Fundamental Rights of the European Union**, and especially the right to an effective remedy and to a fair trial, as well as the right to respect for private and family life, and the rights of the child.

Jurisdiction rules: jurisdiction rules shall also be applicable to all children who are present on Union territory and whose habitual residence cannot be established with certainty. Members proposed extending the scope of such rules in particular to cover **refugee children** and children who have been internationally displaced.

Jurisdiction over parental responsibility: the Regulation shall prevent a child from being taken to another country in order to avoid a potentially unfavourable decision of the authorities. Pending proceedings relating to custody and access rights shall 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.

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

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. The best interests of the child shall always be taken into account.

Right of the child to express an opinion: this right shall be exercised in accordance with the national procedural rules, the EU Charter of Fundamental Rights and the UN Convention on the Rights of the Child. The hearing of a child shall be **conducted by a judge or by a specially trained expert**, 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. It shall not be conducted in the presence of the parties to the proceedings or their legal representatives, but shall be recorded.

Mediation: the judicial and administrative authorities shall provide assistance to the parties before and during the court proceedings with regard to the selection of mediators or the organisation of mediation. The parties shall 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.

Procedure for the return of a child: Members pointed out that 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.

Cooperation in cases concerning parental responsibility: the central authorities should take all appropriate measures to 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.

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.

Placement of the child in another Member State: 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, it shall **obtain the consent of the competent authority** of the Member State in which the child should be placed before ordering the placement.

Member States shall guarantee parents right of **regular access**, except where this would jeopardise the wellbeing of the child.

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

Lastly, Members stressed the **need to enhance judicial training**, especially in cross-border family law, to improve judicial cooperation in civil matters with cross-border implications.

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast

2016/0190(CNS) - 31/01/2019 - Committee final report tabled for plenary, reconsultation

The Committee on Legal Affairs adopted, following a special legislative procedure (consultation), the report by Tadeusz ZWIEFKA (EPP, PL) on the draft Council regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast).

The European Parliament being consulted again on the draft Council Regulation aimed to facilitate and accelerate the cross-border enforcement of decisions on parental responsibility and international child abduction. It shall apply in civil matters of: (i) divorce, legal separation or marriage annulment; (ii) the attribution, exercise, delegation, restriction or termination of parental responsibility.

The committee responsible recommended that the European Parliament approve the Council's draft as amended.

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast

2016/0190(CNS) - 15/02/2018 - Document attached to the procedure

OPINION of the European Data Protection Supervisor (EDPS) on the proposal to recast the Brussels IIa Regulation.

The EDPS opinion focuses on specific recommendations to strengthen the lawfulness of the processing operation provided for in Articles 63 and 64 of the proposal. It also contains recommendations on specific safeguards to protect the fundamental rights and interests of the persons concerned.

Lawfulness of the processing

Since children are among the data subjects affected by the proposal, the EDPS recommends including in the Regulation specific clauses in relation to the purpose of processing and the types of data subject to the processing. In particular, it recommends clarifying whether the cooperation framework set up under Chapter V of the proposal covers only parental responsibility cases or whether it also includes international child abduction.

Considering that Chapter V appears to include the two areas of cooperation, and in order to ensure greater legal certainty and to meet the requirements of the purpose limitation principle, the EDPS considers that Article 63(3) could be amended to limit the purposes to 'cooperation in specific cases relating to parental responsibility and international child abduction', thus excluding 'matrimonial cases', which is the other main area covered by the Regulation.

The EDPS also recommends introducing an explicit reference to the principles of data quality and data minimisation.

Protection of the fundamental rights and interests of the data subject

The EDPS recommends:

- specifying that the reference to the national law of the requested Member State under Article 63(4) does not allow further limitations on the right to information to be introduced at national level, so that the specific measure envisaged to ensure fairness of the processing enshrined in this provision be consistently applied across the Union;

- establishing in the Regulation, as a principle, the right of access of data subjects to the information transmitted to the requesting authority of a Member State;

- supplementing the proposal with a clear and specific provision laying down ‘the scope of the restrictions’, in accordance with the GDPR to the extent restrictions to the rights of access and rectification are considered necessary in the particular context of the proposal.

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast

2016/0190(CNS) - 02/07/2019 - Final act

PURPOSE: to improve EU rules that protect children in the context of cross-border parental responsibility disputes related to custody, access rights and child abduction.

LEGISLATIVE ACT: Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction.

CONTENT: this Regulation consists of a revision of Regulation (EC) No 2201/2003, known as "Brussels IIa", with a view to strengthening the current legal rules protecting children in cross-border parental responsibility disputes concerning, for example, custody, access and child abduction.

A key objective of the new rules is to ensure more rapid general procedures, given the need to move quickly to protect the best interests of the child in the context of cross-border parental responsibility disputes.

The new Regulation complements the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. It applies to decisions ordering the return of a child to another Member State under the Hague Convention which must be enforced in a Member State other than the one in which the decision was given.

The Council Regulation shall apply in civil matters of:

- divorce, legal separation or marriage annulment;
- the attribution, exercise, delegation, restriction or termination of parental responsibility. The matters may, in particular, include: (i) rights of custody and rights of access; (ii) guardianship, curatorship and similar institutions; (iii) the designation and functions of any person or body having charge of the person or property of the child, representing or assisting the child; (iv) the placement of the child in institutional or foster care; (v) measures for the protection of the child relating to the administration, conservation or disposal of the property of the child.

The new rules amend the existing Brussels II bis Regulation in a number of respects and provide in particular for:

- uniform rules of jurisdiction in matters of divorce, legal separation and marriage annulment, as well as rules on parental responsibility disputes with an international element;

- speeding up the return procedure in cases of child abduction by introducing clear deadlines so that cases can be settled quickly; courts will have to give their decisions within 6 weeks. The use of mediation shall be promoted;

- the extension of the right of the child to express his or her views, with the introduction of an obligation to give the child a genuine and effective opportunity to express his or her views either directly or through a representative or an appropriate body;

- the complete abolition of exequatur for all decisions in matters of parental responsibility. This will save time and money for citizens whenever a decision needs to circulate from one member state to another. This abolition of exequatur is associated with a number of safeguards;

- clearer provisions on the placement of a child in another Member State, including the need to obtain consent for all placements, except where a child is to be placed with a parent. The best interests of the child should remain the primary consideration;

- more effective implementation of decisions. While the enforcement procedure remains governed by the law of the member state of enforcement, the regulation includes some harmonised grounds for suspending or refusing enforcement, thereby giving more legal certainty to parents and children;

- the simplified transmission of decisions, authentic instruments and certain agreements within the Union by laying down provisions concerning their recognition and enforcement in other Member States. The Regulation provides that the transmission of agreements on divorce, legal separation or parental responsibility shall be authorised if they are accompanied by the relevant certificate;

- better collaboration between the central authorities of the different Member States and between the courts, while respecting the procedural rights of the parties to the proceedings and the confidentiality of information.

ENTRY INTO FORCE: 22.7.2019.

APPLICATION: from 1.8.2022 (with the exception of certain provisions which apply from 22.7.2019).

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast

2016/0190(CNS) - 18/01/2018 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 562 votes to 16, with 43 abstentions, in line with the consultation procedure, a legislative resolution 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).

The European Parliament approved 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 subject to the following amendments:

General objectives of the recast: Parliament pointed out that the amendments introduced by the recast of Regulation (EC) No 2201/2003 shall:

- **help to strengthen legal certainty** and increase flexibility, help to ensure that access to court proceedings is improved, and that such proceedings are made more efficient;
- enable Member States to retain full sovereignty with regard to substantive law on parental responsibility;
- ensure 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;
- guarantee the respect for the rights set out in the **Charter of Fundamental Rights of the European Union**, and especially the right to an effective remedy and to a fair trial, as well as the right to respect for private and family life, and the rights of the child.

Members stressed the need to ensure that court judgments handed down in one Member State are **recognised** in another Member State and that they be recognised throughout the European Union, especially in the interests of children.

Jurisdiction rules: jurisdiction rules shall also be applicable to all children who are present on Union territory and whose habitual residence cannot be established with certainty. Parliament proposed extending the scope of such rules in particular to cover **refugee children** and children who have been internationally displaced.

Jurisdiction over parental responsibility: the Regulation shall prevent a child from being taken to another country in order to avoid a potentially unfavourable decision of the authorities. Pending proceedings relating to custody and access rights shall 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.

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

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. The best interests of the child shall always be taken into account.

Right of the child to express an opinion: this right shall be exercised in accordance with the national procedural rules, the EU Charter of Fundamental Rights and the UN Convention on the Rights of the Child. The hearing of a child shall be **conducted by a judge or by a specially trained expert**, 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. It shall not be conducted in the presence of the parties to the proceedings or their legal representatives, but shall be recorded.

Mediation: the amended text emphasised that, 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 this context, the judicial and administrative authorities shall provide assistance to the parties before and during the court proceedings with regard to the selection of mediators or the organisation of mediation. The parties shall 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.

Procedure for the return of a child: Members pointed out that 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.

Cooperation in cases concerning parental responsibility: the central authorities should take all appropriate measures to 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.

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.

Placement of the child in another Member State: 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, it shall obtain the **consent of the competent authority** of the Member State in which the child should be placed before ordering the placement.

Member States shall guarantee parents right of regular access, except where this would jeopardise the wellbeing of the child.

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

Training: Parliament stressed the need to enhance judicial training, especially in cross-border family law, to improve judicial cooperation in civil matters with cross-border implications. 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.

Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast

2016/0190(CNS) - 12/12/2018 - Amended legislative proposal for reconsultation

PURPOSE: to improve EU rules to protect children in the context of cross-border parental responsibility disputes concerning custody, access and abduction of children.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: the Council adopted its position on the revision of so called Brussels IIa regulation which sets out rules on jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, as well as on intra-EU child abduction.

The proposal was presented by the Commission on 30 June 2016. It aims at improving the current legal EU rules that protect children in the context of cross-border parental responsibility disputes related to custody, access rights and child abduction. A key objective of the new rules is to ensure faster general procedures, given the need to move quickly to protect the best interests of the child in the context of cross-border parental responsibility disputes.

The European Parliament delivered its opinion on the initial proposal on 18 January 2018. It is consulted again on this amended legislative proposal.

CONTENT: the draft Council Regulation aims to facilitate and accelerate the cross-border enforcement of decisions on parental responsibility and international child abduction. It shall apply in civil matters of:

(a) **divorce, legal separation or marriage annulment**;

(b) **the attribution, exercise, delegation, restriction or termination of parental responsibility**. The matters may, in particular, include: (i) rights of custody and rights of access; (ii) guardianship, curatorship and similar institutions; (iii) the designation and functions of any person or body having charge of the person or property of the child, representing or assisting the child; (iv) the placement of the child in institutional or foster care; (v) measures for the protection of the child relating to the administration, conservation or disposal of the property of the child.

The new rules amend the existing Brussels IIa regulation on a number aspects and foresee in particular:

- enhanced and clearer rules on intra-EU child abduction cases with the introduction, for example, of **clear deadlines** to ensure these cases are treated in the most expeditious manner;

- clearer rules on the opportunity for the child to express his/her views with the introduction of an obligation to give the child a genuine and effective opportunity to express his/her views either directly, or through a representative or an appropriate body;

- the complete abolition of exequatur for all decisions in matters of parental responsibility. This will save time and money for citizens whenever a decision needs to circulate from one member state to another. This abolition of exequatur is associated with a number of safeguards;

- clearer provisions on the placement of a child in another Member State, including the need to obtain consent for all placements, except where a child is to be placed with a parent. The best interests of the child should remain the primary consideration;

- the harmonisation of certain rules for the enforcement procedure. While the enforcement procedure remains governed by the law of the member state of enforcement, the regulation includes some harmonised grounds for suspending or refusing enforcement, thereby giving more legal certainty to parents and children;

- clearer rules on the circulation of extra judicial agreements. The text foresees that these agreements, for example on divorce or legal separation, will be allowed to circulate only if they are accompanied by a special certificate;

- as early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is against the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.