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*Plenary sitting*

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**A8-0388/2017**

30.11.2017

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## **REPORT**

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))

Committee on Legal Affairs

Rapporteur: Tadeusz Zwiefka

(Recast – Rule 104 of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT 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)  
(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 acts<sup>1</sup>,
  - 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;
  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.

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<sup>1</sup> OJ C 77, 28.3.2002, p.1.

## Amendment 1

### Proposal for a regulation

#### Recital 1

*Text proposed by the Commission*

(1) Council Regulation (EC) No 2201/2003<sup>34</sup> has been substantially amended<sup>35</sup>. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

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<sup>34</sup> 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).

<sup>35</sup> 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 2201/2003<sup>34</sup> has been substantially amended<sup>35</sup>. 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.***

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<sup>34</sup> 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).

<sup>35</sup> 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.

##### *Justification*

*Necessary amendment to keep the internal logic of the text.*

### 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*

*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 *or other proceedings*.

(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.

#### *Justification*

*The wording is not in accordance with Article 1(3) of the very same Regulation.*

## **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.*

*Justification*

*Necessary amendment to keep the internal logic of the text.*

**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.*

*Justification*

*Necessary amendment to keep the internal logic of the text.*

**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***

(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,***

*State with the child.*

*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*

(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 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*

(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 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.

## Justification

*Necessary amendment to keep the internal logic of the text.*

### 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 .

###### *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.***

## Justification

*Necessary amendment to keep the internal logic of the text.*

### 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

###### *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 *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.

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<sup>1a</sup>* 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*.

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<sup>1a</sup> *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 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

##### *Amendment*

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

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.

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 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.

##### *Amendment*

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

*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

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.

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.

#### *Justification*

*The proposed text goes beyond the scope, as set out in this Regulation*

### **Amendment 19**

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

*Text proposed by the Commission*

*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 of Fundamental Rights of the European Union.***

### **Amendment 20**

#### **Proposal for a regulation Recital 42**

*Text proposed by the Commission*

*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

(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.

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 shall 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

*Amendment*

(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.

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*

(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.

## Amendment 26

### Proposal for a regulation Recital 50

#### *Text proposed by the Commission*

(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 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

#### *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 *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*

(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 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

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.

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.

##### *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 first 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*

*Amendment*

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

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:

*Justification*

*Necessary amendment to keep the internal logic of the text.*

### **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;***

*Justification*

*Necessary amendment to keep the internal logic of the text.*

### **Amendment 30**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

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

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

*Justification*

*Necessary amendment to keep the internal logic of the text.*

### **Amendment 31**

#### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 1**

*Text proposed by the Commission*

*Amendment*

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

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 ;

*Justification*

*Necessary amendment to keep the internal logic of the text.*

**Amendment 32**

**Proposal for a regulation**

**Article 2 – paragraph 1 – point 3**

*Text proposed by the Commission*

*Amendment*

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

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

*Justification*

*Necessary amendment to keep the internal logic of the text.*

**Amendment 33**

**Proposal for a regulation**

**Article 2 – paragraph 1 – point 4**

*Text proposed by the Commission*

*Amendment*

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

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;

*Justification*

*Necessary amendment to keep the internal logic of the text.*

## 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:

*Justification*

*Necessary amendment to keep the internal logic of the text.*

## 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 habitual residence shall have jurisdiction.

*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, ***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.*

*Justification*

*The arrangement should be such as to rule out the possibility that a child might be removed to another country in order to escape a possibly unfavourable decision by an authority.*

**Amendment 37**

**Proposal for a regulation  
Article 8 – paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

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.

*Justification*

*Necessary amendment to keep the internal logic of the text.*

**Amendment 38**

**Proposal for a regulation  
Article 9 – paragraph 1 – point b – point i**

*Text proposed by the Commission*

(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;

*Amendment*

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

*Justification*

*Necessary amendment to keep the internal logic of the text.*

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

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. ***That authority shall ensure the***

Article 60.

*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.**

*Justification*

*Necessary amendment to keep the internal logic of the text.*

## 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.**

*Justification*

*Necessary amendment to keep the internal logic of the text.*

## Amendment 44

### Proposal for a regulation Article 20

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.

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<sup>1a</sup>. 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.

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*1a CM/Rec(2012)2 of 28 March 2012.*

#### **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

*Justification*

*Necessary amendment to keep the internal logic of the text.*

#### **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

*Amendment*

1. On the application of any interested party, a decision relating to parental

to parental responsibility shall **be refused**:

responsibility shall **not be recognised**:

*Justification*

*Necessary amendment to keep the internal logic of the text.*

**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*

(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

*Justification*

*Necessary amendment to keep the internal logic of the text.*

**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*

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.

*Justification*

*Necessary amendment to keep the internal logic of the text.*

## 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*

(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;

*Justification*

*This is to adapt the recast proposal to the proposed generalised abolition of the exequatur. It could be debatable whether automatic enforcement could be considered as a “request” and could thus lead to unnecessary confusion.*

## 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);

*Justification*

*Necessary amendment to keep the internal logic of the text.*

## 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.*

*Justification*

*Necessary amendment to keep the internal logic of the text.*

**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*

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 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**

*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**

*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.**

*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.

## 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 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

*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*

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

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.

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.***

*Justification*

*Necessary amendment to keep the internal logic of the text.*

**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*

*Amendment*

4. Each Central Authority shall bear its own costs.

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

*Justification*

*Necessary amendment to keep the internal logic of the text.*

## 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 .

*Justification*

*Necessary amendment to keep the internal logic of the text.*

## 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;**

## EXPLANATORY STATEMENT

### I. Scope

This proposal for a recast of 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 and repealing Regulation (EC) No 1347/2000 (Brussels IIa Regulation) constitutes an initiative within the Regulatory Fitness Programme (REFIT).

Among the two areas covered by the Regulation, the matrimonial and parental responsibility matters, the latter were identified in the European Commission's consultation of stakeholders and in a number of studies conducted, as having caused acute problems and as being in need of urgent solution. Special attention was thus given to the overall efficiency of certain aspects of the child-related proceedings, including matters concerning parental child abduction, cross-border placement of children, recognition and enforcement of decisions and cooperation between national authorities.

### II. The return procedures

The recast aims at improving the efficiency of the return of an abducted child. Firstly, the proposal envisages a maximum period of 18 weeks for all possible stages, namely a separate 6-week time limit before the Central Authorities for the receipt and processing of a child return application (Article 63(1)); an additional 6-week time limit for the proceedings before the first instance court, and a final 6-week time limit before the appellate court (Article 23(1)). Secondly, it limits the number of appeal possibilities to one (Article 25(4)) and obliges the Member States 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 is given, hearing for that matter the child provided it is capable of forming his or her own views.

The proposal also provides for concentration of jurisdiction for child abduction cases in specialised courts (Article 22). These courts need to be identified by the Member States and then notified to the Commission. This is seen as one of the most important innovations of the proposal, which could contribute to the correct application of the relevant rules within the designated timeframe. However, it should be noted that concentration of jurisdiction should not undermine citizens' access to justice and the timeliness of return proceedings, especially in bigger Member States.

Additionally, the proposal seeks to improve the practical application of the so-called 'overriding mechanism' in Article 26(2)-(4), laying down the procedure to be followed after a non-return order is issued in the State of refuge on the basis of Article 13 of the 1980 Hague Convention. This offers the court of the State of habitual residence of the child immediately before the wrongful removal or retention, still having jurisdiction to decide on parental responsibility, the possibility to "override" any decision of the return court by issuing a decision ordering the return of the child. The recast proposal introduces a new obligation to translate the documents into the official language of the state to which it is sent, whereas the court is also required to review the issue of child custody taking into account the best interests

of the child, as well as the reasons and evidence for the decision of non-return of the child.

Finally, in cases of grave risk of harm for the child or of an otherwise intolerable situation if returned to the country of its habitual residence without any safeguards, the proposal introduces the possibility for the court of the Member State of refuge to take urgent protective measures (Article 25(1)(b)).

### III. The abolition of the exequatur

The current version of Brussels IIa has already abolished the procedure for declaring a decision given in another Member State enforceable (“exequatur”) for access rights and certain return decisions. The recast proposal abolishes the exequatur procedure for all decisions covered by the Regulation’s scope, including custody rights, child protection orders and placement orders. This development is accompanied by procedural safeguards regarding defendants’ right to a fair trial and effective remedy guaranteed under Article 41 of the EU Charter on Fundamental Rights. In accordance with the Commission proposal, this would allow European citizens engaged in cross-border litigation to save on average €2,200 for the processing of the application, also eliminating delays.

### IV. The obligation to hear the child

The hearing of the child is a sensitive topic and the right stems from Article 12 of the 1989 United Nations Convention on the Rights of the Child, also reiterated in Article 24(1) of the Charter of Fundamental Rights of the European Union. Neither the 1996 Convention nor the 1980 Convention stipulate a general requirement to give the child who is capable of forming his or her own views a genuine and effective opportunity to express those views freely in the context of judicial or administrative proceedings under these Conventions. Such general requirement is now included in the recast proposal. However, a distinction needs to be made between the obligation to give the child the opportunity to be heard when it is capable of forming his or her own views on the one hand (Article 20(1)), and the weight the judge shall give to the child’s views on the other hand (Article 20(2)).

That being said, since the hearing of the child can contribute to the appropriate identification of the best interest of the child in a given case (especially in abduction cases), the rapporteur underscores the necessity to give special consideration to the possibility for a child to express their view. Such consideration should therefore be duly reported in courts’ decisions.

What is more, the proposal leaves intact Member States’ rules and practices on how to hear a child before a court. It nonetheless, requires mutual recognition between the legal systems, meaning that a court in a country will not refuse to recognise a decision of another country on the mere fact that a hearing of the child was done differently comparing to the standards applied by that court (Article 38).

### V. Enforcement of decisions

The proposed recast is aimed at tackling the problem of inefficient enforcement. Firstly, the application for enforcement has to be made to a court in the Member State of enforcement using for that matter the procedures, means and modalities of that Member State. Also, if enforcement has not occurred after the lapse of six weeks from the moment the enforcement

proceedings were initiated, the Central Authority in the Member State of origin or the applicant would have to be informed of this fact and the reasons for the lack of timely enforcement. Finally, the proposal introduces specific public policy grounds restricted to safeguarding the best interests of the child (Article 40).

#### VI. The role of mediation

The recast proposal introduces an explicit obligation for courts to actively seek to promote mediation, examining for that purpose as early as possible during the proceedings the possibility for parties to engage in mediation to achieve an amicable solution in the best interests of the child (Article 23(2)). Such efforts should nonetheless not result in any undue delay in return proceedings.

#### VII. The role of Central Authorities and other requested authorities

The recast proposal also reinforces the role of Central Authorities in providing that Member States have the obligation to ensure that CAs have adequate financial and human resources to enable them to carry out the obligations assigned to them under the Regulation (Article 61). These authorities have been gaining competences with the entry into of force of various Union and international instruments, which has led to an expansion of their workload. They should thus be provided with sufficient funding and human resources to fulfil their role. Specifically, Central Authorities of both States involved in child abduction cases need to inform each other and be up-to-date about cases treated in courts. The recast proposal therefore sees Central Authorities more involved in the judicial proceedings on return and in the investigation of the case, the support to the parties, and the promotion of mediation.

#### VIII. Training needs

The number of recitals and articles in the proposed recast has significantly increased; many of them have increased in length; many will be substantially amended and renumbered. That will require the creation of a simple training tool, in the form of a systematic guide of all amendments and novelties, demonstrating how these are connected. What is more, training at Union and national level should be promoted in an attempt to raise awareness of the recast, its contents and consequences for practitioners, as well as a means to contribute to the creation of mutual trust between the Member States judiciaries.

#### IX. Conclusion

In conclusion, the rapporteur notes that this proposal for a recast regulation on the jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility is clearly in the interest of the EU and of its international families. Recasting Brussels IIa Regulation is indispensable considering the increasing number of international couples and new modes of living. More attention needs therefore to be paid to the protection of the best interests of the child, which is important not only in cases of separation and divorce, but already where marriages formally exist, but there is no real relationship between the two parties – this is the point when most international abductions take place.

Your rapporteur is aware of the sensitivity and complexity of the relevant issues and has

therefore followed a cautious but clear approach that could contribute to finding a compromise acceptable in every Member State. The streamlining of the grounds to deny enforcement, the existence of adequate financial support for the Central Authorities, the concentration of jurisdiction for international child abduction cases and the participation rights for children, without interfering with Member States' national provisions on the modalities of the hearing of a child, are sincerely welcomed.

Overall, the proposed recast will make it possible to put an end to many cases of confusion and legal uncertainty and to unnecessary delays and complications. It will also ensure that children are treated with the highest respect and not as the property of their parents, relevant organisations or States themselves. Your rapporteur therefore proposes that Parliament issue a favourable opinion on this proposal with certain amendments, which can be consulted in the legislative resolution above.

**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



GRUPE CONSULTATIF  
DES SERVICES JURIDIQUES

Brussels, 24.11.2016

**OPINION**

**FOR THE ATTENTION OF      THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a 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)**

**COM(2016) 411 final of 30.6.2016 - 2016/0190 (CNS)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 29 September and 27 October 2016 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings<sup>1</sup>, an examination of the proposal for a Council Regulation recasting 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 resulted in the Consultative Working Party's establishing, by common accord, that the following should have been marked with the grey-shaded type generally used for identifying substantive changes:

- in recital 31, the proposed adding of the wording '*In particular, when presented with a decision given in another Member State and pronouncing divorce, legal separation or the annulment of a marriage which can no longer be challenged*', and of the final words '*and update their civil-status records accordingly*';

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<sup>1</sup> The Consultative Working Party worked on the basis of the English language version of the proposal, being the master-copy language version of the text under discussion.

- in recital 41, the proposed adding of the wordings '*should be designated in all Member States*' and '*support parents and competent authorities in cross-border proceedings*';
- in Article 2(9), the proposed adding of the words '*institution or other body*';
- in Article 2(10), the proposed adding of the wording '*or by an agreement having legal effect under the law of the Member State where the child is habitually resident*';
- in Article 21, the proposed replacement of the reference currently made to '*paragraphs 2 to 8*' with a reference to '*Articles 22 to 26*';
- the proposed deletion of Article 27(2) of Regulation (EC) No 2201/2003;
- the entire text of Article 36(1);
- the entire text of Article 38(2);
- the proposed deletion of Article 42(1) of Regulation (EC) No 2201/2003;
- the proposed deletion of Article 51(b) of Regulation (EC) No 2201/2003;
- in Article 79, the proposed replacement of the word '*application*' with the words '*ex post evaluation*' and that of the words '*on the basis of*' with '*supported by*'.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

F. DREXLER  
Jurisconsult

H. LEGAL  
Jurisconsult

L. ROMERO REQUENA  
Director General

28.4.2017

## **OPINION OF THE COMMITTEE ON PETITIONS**

for the Committee on Legal Affairs

on the proposal for a 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)  
(COM(2016)0411 – C8-0322/2016 – 2016/0190(CNS))

Rapporteur: Soledad Cabezón Ruiz

### **SHORT JUSTIFICATION**

Among the numerous petitions received in relation to child welfare issues, many of them pointed out the shortcomings of the Regulation and/or the failures in its implementation. The PETI committee has a special interest in safeguarding the right of the child and we look for mechanisms to ensure that their problems and opinions are listened to, bearing in mind their vulnerability.

The proposed recast is aimed at enhancing children's rights and in particular introduces a separate provision on the obligation for courts to give children the opportunity to be heard. It also aims to improve the efficacy of return proceedings following international parental child abduction and seeks to abolish exequatur proceedings for all parental responsibility cases. All of these issues have been raised in the petitions received, most of the time linked to situations where the non-national parent was, in practice, discriminated by the Member State having jurisdiction.

The rapporteur considers that the proposal has globally reached its aim and proposes interesting improvements. However, she considers that some changes should be made to the proposal in order to make it even more effective and offer a better protection of the best interests of the child and of EU citizens' fundamental rights and freedoms in general. By doing so, It will contribute to the further development of an efficient European area of Justice and Fundamental Rights.

### **AMENDMENTS**

The Committee on Petitions calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

## Amendment 1

### 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 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.

## Amendment 2

### Proposal for a regulation

#### Recital 10

*Text proposed by the Commission*

(10) This Regulation should not apply to the establishment of parenthood, since this is a different matter from the attribution of parental responsibility, nor to other

*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, *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*

(10) This Regulation should not apply to the establishment of parenthood, since this is a different matter from the attribution of parental responsibility, nor to other

questions linked to the status of persons.

questions linked to the status of persons.  
***However, decisions relating to the exercise of parental responsibility taken on the basis of this Regulation should duly respect all forms of parenthood legally recognised in the other Member States.***

### **Amendment 3**

#### **Proposal for a regulation**

##### **Recital 13**

###### *Text proposed by the Commission*

(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.

###### *Amendment*

(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 in accordance with them. 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 the matter, after taking a final decision providing for the return of the 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 4**

#### **Proposal for a regulation**

##### **Recital 17**

###### *Text proposed by the Commission*

(17) This Regulation should not prevent

###### *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 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.

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 State ***or in the case of gender-based violence as defined in the Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention')***. 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 5**

### **Proposal for a regulation**

#### **Recital 18**

*Text proposed by the Commission*

(18) In exceptional cases, the authorities of the Member State of habitual residence

*Amendment*

(18) ***Particular attention should be paid to the fact that,*** in exceptional cases, ***such***

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 should not be allowed to transfer jurisdiction to a third authority.

*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. 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 should not be allowed to transfer jurisdiction to a third authority.

## Amendment 6

### 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 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 *emphatically* 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, *but in order to protect the fundamental rights at stake, provision should be made in any case for the hearing of the child to be recorded. It is essential that the hearing of the child provide all guarantees necessary to allow*

*the emotional integrity and the best interests of the child to be protected and, for this reason, such hearings should involve the support of professional mediators along with psychologists and/or social workers and interpreters. This would also facilitate cooperation between both parents and the relationship between them and the child at a later stage.*

## Amendment 7

### Proposal for a regulation

#### Recital 26

##### *Text proposed by the Commission*

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

##### *Amendment*

(26) In order to conclude the return proceedings under the 1980 Hague 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. *Measures should also*

Convention to one.

***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 should also be recognised throughout the Union, especially when the interests of children are at stake.***

## Amendment 8

### Proposal for a regulation

#### Recital 28

*Text proposed by the Commission*

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

*Amendment*

(28) In all cases concerning children, and in particular in cases of international child abduction, judicial and administrative authorities should consider the possibility of achieving amicable solutions through mediation and other appropriate means ***to ensure the full protection of the rights of the child and of additional related fundamental rights.*** Such efforts should not, however, unduly prolong the return proceedings under the 1980 Hague Convention. ***In addition, the expertise of ombudsmen should be better used and implemented.***

## Amendment 9

### 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

*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,

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 10**

### **Proposal for a regulation**

#### **Recital 38**

##### *Text proposed by the Commission*

(38) In order to inform the person against whom enforcement is sought of the enforcement of a decision given in another Member State, the certificate established under this Regulation should be served on that person *in reasonable time* before the first enforcement measure and if necessary, accompanied by the decision. In that context, the first enforcement measure should mean the first enforcement measure after such service.

## **Amendment 11**

### **Proposal for a regulation**

#### **Recital 42**

##### *Text proposed by the Commission*

(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

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*

(38) In order to inform the person against whom enforcement is sought of the enforcement of a decision given in another Member State, the certificate established under this Regulation should be served on that person *promptly and* before the first enforcement measure and if necessary, accompanied by the decision. In that context, the first enforcement measure should mean the first enforcement measure after such service.

##### *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.

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 shall inform, without undue delay, the central authorities of the Member State of which the child is a national.***

## Amendment 12

### 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) ***In special cases, when the best interests of the child so require, an*** authority of a Member State contemplating a decision on parental responsibility should be ***required*** to request the communication of information relevant to the protection of ***that*** child from the authorities of another Member State. Depending on the circumstances, this may include information on proceedings and decisions concerning a parent ***for example, in cases of domestic and gender-based violence, or on decisions concerning*** siblings of the child, or ***information*** on the capacity of a parent to care for a child or to have access to the child. ***The assessment of this capacity should be determined by a professional practitioner. 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 13

### Proposal for a regulation Recital 48 a (new)

*Text proposed by the Commission*

*Amendment*

***(48a) A support platform for Union citizens who are seeking the return of a child before courts in other Member States should be created. In addition, Union citizens residing in other Member States where they are seeking the return of a child should be assisted by their respective representations.***

## Amendment 14

### Proposal for a regulation Article 7 – paragraph 1

*Text proposed by the Commission*

*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.

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, ***as defined by the Court of Justice***, the authorities of the Member State of the new habitual residence shall have jurisdiction.

## Amendment 15

### Proposal for a regulation Article 7 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(1a) In order to simplify questions of competence, Member States shall designate a court at national level which shall deal with all cross-border cases***

*involving children.*

## **Amendment 16**

### **Proposal for a regulation**

#### **Article 12 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

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.

*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. ***Such measures should not unduly delay the proceedings and final decisions on custody and access rights.***

## **Amendment 17**

### **Proposal for a regulation**

#### **Article 12 – paragraph 2 – subparagraph**

*Text proposed by the Commission*

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.

*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 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 that the parents involved in the proceedings are thoroughly informed without delay about all the measures in question, in a language they fully understand. Accordingly, it shall be strictly forbidden to charge the parent from the Member State whose authorities have jurisdiction over the substance of the matter under this Regulation for the costs of translation.***

## Amendment 18

### Proposal for a regulation Article 20

#### *Text proposed by the Commission*

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*

When exercising their jurisdiction under Section 2 of this Chapter, the authorities of the Member States shall ensure that a child is given the genuine and effective opportunity to express ***his or her own*** 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, ***more particularly when the child is above 12 years-old*** and clearly document its objective considerations in the decision. ***From the age of 16, the wishes of the child shall be considered as decisive. Determining the capabilities and maturity of the child shall be done with the help of child and family professionals. The authority shall create the right conditions so that the child can clearly and exhaustively express his or her own opinions in the decision. To determine the capacity and the degree of maturity of the child, the assistance professionals in child and family issues should be sought.***

## Amendment 19

### 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

#### *Amendment*

2. As early as possible during the proceedings, the court shall ***propose mediation services, except in cases of gender-based violence,*** to find, in the best interests of the child, an agreed solution, provided that this does not unduly delay

this does not unduly delay the proceedings.

the proceedings. *Where the parties agree to engage in mediation, the authorities of the Member State having jurisdiction shall ensure access to mediation services.*

## Amendment 20

### Proposal for a regulation Article 31 – paragraph 1

*Text proposed by the Commission*

1. The procedure for the enforcement of decisions given in another Member State shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State of enforcement. *Without prejudice to Article 40, a decision given in a Member State which is enforceable in the Member State of enforcement shall be enforced there under the same conditions as a decision given in the Member State of enforcement.*

*Amendment*

1. The procedure for the enforcement of decisions given in another Member State shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State of enforcement.

## Amendment 21

### Proposal for a regulation Article 34 – paragraph 2

*Text proposed by the Commission*

2. The court *may, where necessary*, require the applicant to provide, in accordance with Article 69, a translation or a transliteration of the relevant content of the certificate which specifies the obligation to be enforced.

*Amendment*

2. The court *shall* require the applicant to provide, in accordance with Article 69, a translation or a transliteration of the relevant content of the certificate which specifies the obligation to be enforced.

## Amendment 22

### 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, for example about specialised bilingual lawyers, in order to prevent holders of parental responsibility giving their consent without having understood the scope of their consent.*

## **Amendment 23**

### **Proposal for a regulation**

#### **Article 64 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a.** *Where a decision on matters of parental responsibility is contemplated, 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 is a national on the existence of the related proceedings.*

## **Amendment 24**

### **Proposal for a regulation**

#### **Article 64 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

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.

5. The authorities of a Member State where the child is not habitually resident shall, upon request of a **relative** 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 25**

### **Proposal for a regulation**

#### **Article 65 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) Social workers and other staff of authorities dealing with the cross-border placement of children in homes or with foster families shall receive training to raise their awareness of the issues involved.***

## **Amendment 26**

### **Proposal for a regulation Article 65 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***(1b) Member States shall guarantee parents right of regular access, except where this would jeopardise the well-being of the child.***

## **Amendment 27**

### **Proposal for a regulation Article 65 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) 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.***

## **Amendment 28**

### **Proposal for a regulation Article 79 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. By [**10** years after the date of application] the Commission shall present to the European Parliament, to the Council

1. 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.

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 29**

### **Proposal for a regulation**

#### **Article 79 – paragraph 2 – point b**

##### *Text proposed by the Commission*

(b) with regard to applications for enforcement pursuant to Article 32, the number of cases where enforcement has not occurred within six weeks from the moment the enforcement proceedings were initiated;

##### *Amendment*

(b) with regard to applications for enforcement pursuant to Article 32, the number of cases where enforcement has ***been suspended, for how long enforcement has been suspended and the number of cases in which enforcement has*** not occurred within six weeks from the moment the enforcement proceedings were initiated;

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)
<b>References</b>	COM(2016)0411 – C8-0322/2016 – 2016/0190(CNS)
<b>Committee responsible</b> Date announced in plenary	JURI 12.9.2016
<b>Opinion by</b> Date announced in plenary	PETI 12.9.2016
<b>Rapporteur</b> Date appointed	Soledad Cabezón Ruiz 16.11.2016
<b>Date adopted</b>	24.4.2017
<b>Result of final vote</b>	+: 15 –: 0 0: 8
<b>Members present for the final vote</b>	Marina Albiol Guzmán, Margrete Auken, Beatriz Becerra Basterrechea, Soledad Cabezón Ruiz, Pál Csáky, Eleonora Evi, Lidia Joanna Geringer de Oedenberg, Peter Jahr, Notis Marias, Marlene Mizzi, Cristian Dan Preda, Gabriele Preuß, Laurențiu Rebegea, Virginie Rozière, Josep-Maria Terricabras, Jarosław Wałęsa, Cecilia Wikström, Tatjana Ždanoka
<b>Substitutes present for the final vote</b>	Miltiadis Kyrkos, Julia Pitera, Ángela Vallina, Axel Voss, Rainer Wieland

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

15	+
ALDE	Beatriz Becerra Basterrechea, Cecilia Wikström
GUE/NGL	Albiol Guzmán, Ángela Vallina,
ECR	Notis Marias
ENF	,Laurențiu Rebeca,
S&D	Soledad Cabezón Ruiz, Lidia Joanna Geringer de Oedenberg, Miltiadis Kyrkos, Marlene Mizzi, Gabriele Preuß, Virginie Rozière,
VERTS/ALE	Margrete Auken, Josep-Maria Terricabras, Tatjana Ždanoka

0	-

8	0
EFDD	Eleonora Evi,
PPE	Pál Csáky, Peter Jahr, Julia Pitera, Cristian Dan Preda, Axel Voss, Jarosław Wałęsa, Rainer Wieland

**Key to symbols:**

+ : in favour

- : against

0 : abstention

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)		
<b>References</b>	COM(2016)0411 – C8-0322/2016 – 2016/0190(CNS)		
<b>Date of consulting Parliament</b>	15.7.2016		
<b>Committee responsible</b> Date announced in plenary	JURI 12.9.2016		
<b>Committees asked for opinions</b> Date announced in plenary	LIBE 12.9.2016	FEMM 12.9.2016	PETI 12.9.2016
<b>Not delivering opinions</b> Date of decision	LIBE 11.7.2016	FEMM 1.9.2016	
<b>Rapporteurs</b> Date appointed	Tadeusz Zwiefka 11.7.2016		
<b>Discussed in committee</b>	22.3.2017	30.5.2017	13.7.2017
<b>Date adopted</b>	21.11.2017		
<b>Result of final vote</b>	+ : 22 - : 0 0 : 3		
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Mady Delvaux, Rosa Estaràs Ferragut, Laura Ferrara, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka		
<b>Substitutes present for the final vote</b>	Isabella Adinolfi, Daniel Buda, Angelika Niebler, Tiemo Wölken		
<b>Substitutes under Rule 200(2) present for the final vote</b>	John Flack, Emma McClarkin, Sabine Verheyen		
<b>Date tabled</b>	1.12.2017		

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

22	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
EFDD	Joëlle Bergeron
ENF	Marie-Christine Boutonnet, Gilles Lebreton
GUE/NGL	Kostas Chrysogonos, Jiří Maštálka
PPE	Rosa Estaràs Ferragut, Angelika Niebler, Emil Radev, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
S&D	Mady Delvaux, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Evelyn Regner, Tiemo Wölken
VERTS/ALE	Max Andersson, Julia Reda

0	-

3	0
ECR	John Flack, Emma McClarkin
EFDD	Isabella Adinolfi

**Key to symbols:**

+ : in favour

- : against

0 : abstention