



**2016/0190(CNS)**

9.5.2017

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## **DRAFT REPORT**

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))

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 the 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 opinion of the Committee on Legal Affairs on the use of delegated acts,
  - 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, 78c and 40 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Petitions (A8-0000/2017),
- 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 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 are 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 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.

Or. en

## Amendment 2

### 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

*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.

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.

Or. en

### Amendment 3

#### 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

###### *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 **common minimum standards regarding the procedure** to hear the child, for instance, whether the child **should be** heard by the judge in person or by a specially trained expert reporting to the

or in another place.

court afterwards, or whether the child *should be* heard in the courtroom or in another place, *which is still governed by Member States' national provisions*.

Or. en

#### Amendment 4

#### 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 Convention to one.

##### *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 one court of first instance within each district of a court of appeal, *without undermining however 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



## **Amendment 5**

### **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 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*

(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 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 6**

### **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 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, that is to say placement lasting more than one year, 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.***

Or. en

**Amendment 7**

**Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

**(b a) international child abduction;**

Or. en

## Amendment 8

### Proposal for a regulation

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 9

### 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:

Or. en

## Amendment 10

### 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.

Or. en

## Amendment 11

### 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 those measures to the authority of the Member State in which the provisional measures were taken.***

Or. en

## Amendment 12

### 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.***

Or. en

## Amendment 13

### Proposal for a regulation Article 20 – paragraph 1

*Text proposed by the Commission*

*Amendment*

When exercising their jurisdiction under

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.

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. ***Authorities shall document their considerations in this regard in the decision.***

Or. en

## **Amendment 14**

### **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.***

Or. en

## **Amendment 15**

### **Proposal for a regulation**

#### **Article 32 – paragraph 4**

*Text proposed by the Commission*

*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 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.

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.*

Or. en

## **Amendment 16**

### **Proposal for a regulation**

#### **Article 38 – paragraph 1 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## **Amendment 17**

### **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

Or. en

## **Amendment 18**

### **Proposal for a regulation**

#### **Article 63 – paragraph 1 – point a**

*Text proposed by the Commission*

*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 **carrying out a request under** this Regulation;

(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;

Or. en

*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 19**

**Proposal for a regulation**

**Article 63 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(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);

(d) facilitate communications between **courts 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);

Or. en

**Amendment 20**

**Proposal for a regulation**

**Article 63 – paragraph 1 – point g**

*Text proposed by the Commission*

*Amendment*

(g) ensure that where they initiate or facilitate the institution of court proceedings for the return of children

(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.

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* within six weeks.

Or. en

## Amendment 21

### 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:

Or. en

## Amendment 22

### Proposal for a regulation

#### Article 64 – paragraph 5 a (new)

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

##### *Amendment*

***5 a. 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 falling within the scope of this Regulation and that are relevant for the examination of a case under this Regulation.***

Or. en



## Amendment 23

### Proposal for a regulation Article 65 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 24

### Proposal for a regulation Article 66 – paragraph 4

*Text proposed by the Commission*

4. Each Central Authority shall bear its own costs.

*Amendment*

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

Or. en

## 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.