

**Milan, 16-18 September 2016**

## **Resolution on the Commission Proposal for a recast of the Brussels IIa Regulation, concerning parental responsibility and child abduction<sup>1</sup>**

The European Group for Private International Law (GEDIP) **welcomes and supports** 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) 411 final), published by the Commission on 30 June 2016<sup>2</sup>. The Proposal will, on the whole, significantly improve the operation of the current Regulation 2201/2003.

In addition, the Group proposes the following clarifications and amendments to further improve the Regulation.

### ***Child return proceedings***

I. **Appeals.** The proposal should clarify whether the limitation to two appeals includes, or not, appeals to highest courts that only examine the application of the law (as opposed to the facts – *cassation*).

### ***The overriding return mechanism***

II. In Article 26 (4) new, substitute “the merits of custody” for “the question of custody”.

III. The changes brought to the overriding return mechanism are to be welcomed in principle. There is, however, a concern in the Group that the proposed improvements could not fully meet the need to ensure that the quest for speed, efficiency and mutual trust between the courts of Member States serve the overriding goal of safeguarding the best interests of the child and respect for family life in all cases.

### ***Hearing of the child***

IV. The proposal should clarify (in a Recital) that Article 38 (1) (a) (violation of public policy, taking into account the child’s best interests) provides relief in cases where the authorities of the Member State of origin did *not at all* respect these principles.

### ***Cooperation between Central Authorities***

V. **Assistance in discovering the whereabouts of the child:** The duty of Central Authorities to provide assistance in discovering the whereabouts of a child (Article 63 (2) new) should be

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<sup>1</sup> The discussions were based on the **Comments on 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)**, prepared by the Sub-group “Nationality”, accessible at [http://www.gedip-egpil.eu/>comptes rendus des réunions> compte rendu de la réunion de Milan, Annexe I](http://www.gedip-egpil.eu/>comptes%20rendus%20des%20r%C3%A9unions%20compte%20rendu%20de%20la%20r%C3%A9union%20de%20Milan,%20Annexe%20I).

<sup>2</sup> <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-411-EN-F1-1.PDF>

extended to cases where the assistance is sought by holders of parental responsibility, and Article 63 (2) new should be amended accordingly.

#### **VI. Cooperation with authorities of the Common European Asylum System (CEAS).**

Considering the many issues relating to (unaccompanied) children seeking international protection under the CEAS, cooperation between CEAS authorities and the network of Central Authorities under the Regulation is needed, so that Central Authorities would, where necessary, follow up on the activity of the CEAS authorities, and vice versa. While Articles 63 and 64 are broad enough to permit such cooperation, a specific reference to the necessity to cooperation between Central Authorities and CEAS national authorities should be made in Article 63 (3), and a specific reference to such cooperation should be included in the Recitals.

#### **Relocation**

VII. A recital on relocation should be added. It could be formulated along the following lines:

*A court to which an application concerning the relocation of a child is made should, while considering all relevant factors in its examination, give primary consideration to the best interests of the child.*

*In this context, the court should ensure that the child is given the opportunity to express his or her views in accordance with Article 20 of this Regulation.*

*The court shall act expeditiously.*

#### **Applicable Law**

VIII. More visibility should be given to the fact that Chapter III of the 1996 Convention governs the applicable law in the context of the Regulation, by the introduction of a new chapter consisting of the following Article:

#### *Article 26A – Applicable law*

*The law applicable to parental responsibility shall be determined in accordance with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, in particular its Chapter III (Applicable Law) (Articles 15-22). The reference in Article 15 (1) of that Convention to ‘the provisions of Chapter II’ shall be read as ‘the provisions of Section 2 of Chapter II of this Regulation’.*

#### **Mediation: general provision on mediation**

IX. A general provision on mediation should be included. This provision should be worded along the lines of the proposed article 23 par. 2:

#### *Article X -Mediation*

*At any stage of 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.*