

## SPECIAL LEGISLATIVE PROCEDURE – Consultation

**Follow up to the European Parliament legislative resolution of 18 January 2018 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)**

### 2016/0190 (CNS)

1. **Rapporteur:** Tadeusz ZWIEFKA (EPP/PL)
2. **EP reference number:** A8-0388/2017 / P8\_TA-PROV(2018)0017
3. **Date of adoption of the resolution:** 18 January 2018
4. **Subject:** Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility, and on international child abduction
5. **Interinstitutional reference number:** 2016/0190 (CNS)
6. **Legal basis:** Article 81(3) of the Treaty on the Functioning of the European Union
7. **Competent Parliamentary Committee:** Committee on Legal Affairs (JURI)
8. **Commission's position:**

The Commission can accept a substantial number of amendments. The amendments proposed by the Parliament are broadly in line with the objectives of the Commission proposal. The amendments confirm in general the policy as proposed by the Commission, for instance in relation to aspects regarding the best ways to achieve the key objectives of the recast instrument (to prevent the risk that in cross-border cases children end up being taken hostage to long legal disputes, to increase legal certainty and improve the handling of procedures in this field). The Commission can therefore accept those amendments which follow the provisions and the logic of its proposal.

On the other hand, the Commission cannot accept certain amendments that are too detailed or overly burdensome on courts and authorities, or that would go beyond the scope of the Regulation.

The amendments which appear to be too detailed include the specification of the practical modalities for the hearing of the child (as practice among Member States greatly differs; see in this regard amendment 44) and the proposed rule on who should participate in family mediation (see amendment 15). Some amendments are unclear (e. g. amendments 23, 53 or 55) and/ or overly burdensome on the courts and authorities (e.g. the information obligation in amendments 20, 58, 59 or 60).

The amendments reaching beyond the scope of the Regulation include the professional qualifications of family mediators (as there is another EU instrument dealing with mediation – the Mediation Directive, see in this regard amendment 16) as well as attempts to impose substantive law standards on the courts and authorities when exercising their jurisdiction under the Regulation (see amendment 27) and cannot therefore be accepted.

Other grounds for non-acceptance of some of the amendments refer to the introduction of a review of the substance of the judgment running counter to the mutual trust principle (see amendment 2) or to the insertion of some aspects in the recitals which are, to some extent, inconsistent with the provisions contained in the proposal (e. g. amendments 5 or 25). Some other reasons for non-acceptance are related to the introduction of examples or terms deemed to be unsuitable (e. g. amendments 12 or 34) or the proposed deletion of suitable examples which should be retained (e. g. amendment 13).

Besides, some amendments are redundant (see amendments 19 and 49) or would intend to create obligations in a recital which are not contained in the enacting terms (see again amendment 20). Finally, some of the proposed amendments cannot be accepted because they would limit some provisions too much (e.g. amendments 41, 42, 65 or 66).

#### **9. Outlook for amendment of the proposal:**

In the framework of the special legislative procedure, there is no need for a formal modified proposal to be prepared. In the consideration of the European Parliament's amendments in the forthcoming negotiations in the Council, the Commission will take the positions set out above and support those amendments that are in line with the thrust and the objectives of the Commission proposal.

#### **10. Outlook for the adoption of the proposal:**

The Bulgarian Presidency is aiming for a political agreement on this Regulation by June 2018. If that objective is attained, the adoption of the new instrument can be expected under the Austrian Presidency.

##### **Council's position:**

In June 2017, the Council agreed to incorporate a provision regarding the child's right to be heard into the Regulation.

In December 2017, the Council unanimously decided to abolish the *exequatur* for all decisions in matters of parental responsibility, and mandated the Working Party to discuss the technical details for this purpose. In this regard, the *exequatur* will be abolished for all those decisions in matters of parental responsibility for which it is still necessary today (in particular for custody, placement and child protection decisions), together with the introduction of the necessary safeguards.

The Working Party on 11 January 2018 started the follow-up of the December JHA Council by discussing the technical questions to be resolved in connection with the abolition of *exequatur*.

##### **Informal JHA Council, Sofia, 26 January 2018:**

Ministers discussed how to improve mutual trust regarding the recast of the Brussels IIa Regulation, showing willingness and flexibility to support a balanced compromise. The child's right to be heard was also mentioned as a key issue. A few Member States (Germany, Italy and France) also suggested exploring the inclusion of private agreements in the scope of the new instrument.

The Chair of the JURI Committee (Pavel SVOBODA, EPP/CZ) set out the key features of the opinion adopted by the European Parliament on 18 January 2018. The Director of the Fundamental Rights Agency (Michael O'Flaherty) proposed to assist Member States in building mutual trust and highlighted the utility of juvenile courts and the need to ensure child protection training.

