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## TEXTS ADOPTED

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### **P9\_TA(2022)0104**

#### **Protection of the rights of the child in civil, administrative and family law proceedings**

##### **European Parliament resolution of 5 April 2022 on the protection of the rights of the child in civil, administrative and family law proceedings (2021/2060(INI))**

*The European Parliament,*

- having regard to the Treaty on European Union, in particular Article 3(3) thereof,
- having regard to the Charter of Fundamental Rights of the European Union (the ‘Charter’), in particular Article 24 thereof,
- having regard to Article 81 of the Treaty on the Functioning of the European Union,
- having regard to the UN Convention on the Rights of the Child,
- having regard to General Comment No 24 (2019) of the UN Committee on the Rights of the Child on children’s rights in the child justice system,
- having regard to the Commission communication of 24 March 2021 on the EU strategy on the rights of the child (COM(2021)0142),
- having regard to 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<sup>1</sup> (Brussels IIa Regulation),
- having regard to Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations<sup>2</sup> (Maintenance Regulation),
- having regard to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters<sup>3</sup>,

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<sup>1</sup> OJ L 338, 23.12.2003, p. 1.

<sup>2</sup> OJ L 7, 10.1.2009, p. 1.

<sup>3</sup> OJ L 136, 24.5.2008, p. 3.

- having regard to Regulation (EU) 2021/693 of the European Parliament and of the Council of 28 April 2021 establishing the Justice Programme<sup>1</sup>,
- having regard to Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values Programme<sup>2</sup>,
- having regard to the EU Justice Scoreboard,
- having regard to the guidelines of the Committee of Ministers of the Council of Europe of 17 November 2010 on child-friendly justice,
- having regard to Council of Europe Resolution 2079 of 2 October 2015 on equality and shared parental responsibility: the role of fathers,
- having regard to the judgment of the Court of Justice in Case C-490/20<sup>3</sup>,
- having regard to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction,
- having regard to the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption,
- having regard to its resolution of 2 February 2017 with recommendations to the Commission on cross-border aspects of adoptions<sup>4</sup>,
- having regard to its resolution of 11 March 2021 on children’s rights in view of the EU strategy on the rights of the child<sup>5</sup>,
- having regard to its resolution of 6 October 2021 on the impact of intimate partner violence and custody rights on women and children<sup>6</sup>,
- having regard to Rule 54 of its Rules of Procedure,
- having regard to the opinion of the Committee on Petitions,
- having regard to the report of the Committee on Legal Affairs (A9-0033/2022),

***Child-friendly justice in civil, administrative and family law proceedings***

- A. whereas an increasing number of children and adolescents are coming into contact with the judicial system in civil, administrative and family law proceedings, mainly due to the increase in divorce, separation and adoption; whereas in such proceedings all

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<sup>1</sup> OJ L 156, 5.5.2021, p. 21.

<sup>2</sup> OJ L 156, 5.5.2021, p. 1.

<sup>3</sup> Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, C-490/20, ECLI:EU:C:2021:1008.

<sup>4</sup> OJ C 252, 18.7.2018, p. 14.

<sup>5</sup> OJ C 474, 24.11.2021, p. 146.

<sup>6</sup> Texts adopted, P9\_TA(2021)0406.

children should be guaranteed non-discriminatory access to justice including, in particular, access to courts and alternative methods of dispute resolution;

- B. whereas the EU is committed to ensuring that every child's rights are respected, protected and exercised with a view to building a healthier, more resilient, more equitable and fairer society for all;
- C. whereas children have the right to participate, to be heard and to express their views in accordance with their age, maturity and language skills in any proceedings concerning their well-being and future life arrangements; whereas children's views should be given due weight, regardless of whether the proceedings are held by a court or any other relevant authority;
- D. whereas participation in court and administrative proceedings should take place in a comfortable and child-friendly environment so as not to cause additional trauma or stress for the child and to minimise the psychological and emotional impact of such circumstances, in particular for the most vulnerable children such as children with disabilities or those from a migrant background;
- E. whereas children's participation in such proceedings should be supported through a multidisciplinary approach by the relevant authorities;
- F. whereas the Member States are obliged to establish procedural safeguards, guarantees and rules which govern hearings of the child; whereas these provisions differ greatly between the Member States however;
- G. whereas at home and in a family environment, where conflict between the parents exists children may find themselves the victims of 'witnessed violence' by experiencing a variety of forms of ill-treatment through acts of physical, verbal, psychological, sexual and economic violence against reference figures or other figures of significance in the household; whereas violence such as this has very serious consequences for the psychological and emotional development of the child; whereas it is therefore essential to pay due attention to such violence when the hearing of the child takes place in family law proceedings in order to ensure that the best interests of the child are the primary consideration;
- H. whereas children have the right to be duly informed in a manner commensurate with their age, maturity and language skills and in a way they can understand at every step of the court and administrative proceedings concerning them;
- I. whereas in civil, administrative and family law proceedings, especially in cross-border cases, children have limited possibilities to be represented by a legal professional or counsel;
- J. whereas in certain cases experience has shown<sup>1</sup> the benefits of having a dedicated and independent person of trust to support and accompany the child throughout the legal proceedings, including in cases of mediation;
- K. whereas courts, administrative bodies and social welfare institutions should make the best interests of the child the primary consideration when taking any decision

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<sup>1</sup> Such as the *Kindbehartiger* in the Netherlands or 'Youth At Risk' in Flanders.

concerning the child; whereas such decisions should be made on an individual basis, taking into consideration the age, needs and specific circumstances of the child and their family;

- L. whereas the best interests of the child and access to justice for all children cannot be ensured if their participation in civil, administrative and family law proceedings and the use of accompanying support services depends on the financial resources of their parents, not least because the costs of such proceedings and services can be very high;
- M. whereas the EU and its Member States are obliged to promote the rights of the child, including through child-friendly justice, in the implementation of all actions under the Justice Programme;

***An EU framework for the protection of the rights of the child in cross-border civil disputes***

- N. whereas increased mobility means that the number of children born to families with a cross-border element is also likely to increase;
- O. whereas although substantive civil and family law remains a competence of the Member States, harmonised rules on cross-border civil and family law may be established at EU level;
- P. whereas as parties to the UN Convention on the Rights of the Child, the Member States must make the best interests of the child a primary consideration in all public action, including when dealing with cross-border family disputes; whereas in family disputes with cross-border implications, the competent authorities in some Member States often interpret the protection of the best interests of the child as their having to remain on the territory of the state, even in cases where abuse and domestic violence have been reported against the parent residing in that state;
- Q. whereas the principle of mutual recognition, which is based on mutual trust, obliges Member States to give effect to a judgment or decision originating in another Member State;
- R. whereas cross-border proceedings are more complex from a legal perspective and therefore usually more time-consuming and expensive;
- S. whereas the lack of effective procedures for the enforcement of judgments concerning parental responsibility, access rights, parental child abductions or maintenance obligations in cross-border cases is detrimental to the best interests of the child;
- T. whereas children involved in cross-border civil and family law disputes should enjoy the same rights, level of protection, procedural guarantees and minimum standards in all Member States, regardless of the nationality of their parents;
- U. whereas every child has a right to know and be cared for by their parents; whereas in the case of separation, every child has a right to maintain personal relations and direct contact with both parents on a regular basis or, if their parents are unavailable, with their parents' relatives or, failing that, with a person of their choosing; whereas a child's personal relations and direct contacts with their parents may be restricted by the competent authority only to protect the best interests of the child;

- V. whereas the 1980 Hague Convention introduces a system of international cooperation between countries to promptly settle cases of international child abduction; whereas the convention has been ratified by 101 countries to date, including all EU Member States;
- W. whereas despite the efforts made to date, the EU does not have sufficient data on judicial proceedings involving children, nor do the specialised courts dealing with them;
- X. whereas the lack of common EU rules on the recognition of judgments on parenthood, particularly in cases involving same-sex parents, may result in a loss of parental rights, may infringe the right of the child to be raised and maintain a relationship with both parents and any rights deriving from parenthood (such as maintenance or succession), and may also encourage forum shopping in the case of cross-border family disputes; whereas the future legislative proposal in this area should help to reduce the number of administrative and judicial proceedings;
- Y. whereas the Court of Justice recently established the following ruling in Case C-490/20: in the case of a child who is a Union citizen and whose birth certificate was issued by the competent authorities of a host Member State and designates that child's parents as two persons of the same sex, the Member State of which that child is a national is obliged (i) to issue to that child an identity card or a passport without requiring a birth certificate to be drawn up beforehand by its national authorities, and (ii) to recognise, as is any other Member State, the document from the host Member State that permits that child to exercise, with each of those two persons, the child's right to move and reside freely within the territory of the Member States;

#### ***Mediation in cases concerning children***

- Z. whereas in many cases, family mediation has proven to be quicker, cheaper and more child-friendly to resolve the dispute than court proceedings and may therefore help to prevent future parental child abductions;
- AA. whereas the use of alternative dispute resolutions should be encouraged, unless it is contrary to the best interests of the child, notably in the case of domestic violence and sexual abuse;
- AB. whereas the number of domestic and cross-border family mediation proceedings remains low;
- AC. whereas in most Member States there is no legal aid available for mediation for parents who have limited financial means but could at the same time be eligible to receive legal aid for legal proceedings;
- AD. whereas parents may find it difficult to obtain proper and verified information on the possibility of entering into mediation at pre-court stage;
- AE. whereas commercial mediation differs substantially from family mediation;
- AF. whereas cross-border family mediation has the potential to facilitate agreements between parents that serve to uphold the best interests of the child, reducing the emotional and financial burden and legal complexity inherent in judicial proceedings;

- AG. whereas cross-border family mediation is more complex than mediation in domestic family disputes from a legal and logistical perspective and requires additional knowledge and language skills from the mediator;
- AH. whereas both judges and lawyers should be trained to have more knowledge on cross-border family meditation;

***Child-friendly justice in civil, administrative and family law proceedings***

1. Calls on the Member States to ensure that in all proceedings concerning the child's well-being and future life arrangements, the rights of the child are respected, guaranteed and implemented in full, and the best interests of the child are given the highest priority and are duly incorporated and consistently applied in every action taken by public institutions, especially in judicial proceedings, which has a direct or indirect impact on children, in accordance with Article 24 of the Charter;
2. Recalls that access to justice and the right to be heard are fundamental rights and that every child, irrespective of their social, economic or ethnic background, must be able to fully enjoy those rights in a personal capacity, independent of their parents or legal guardians;
3. Underlines that the COVID-19 pandemic caused additional challenges in terms of access to justice, including delays to proceedings; calls on the Member States, therefore, to provide for measures to facilitate access to justice during pandemics, especially if a child is involved in civil, administrative or family law proceedings;
4. Calls on the Commission to present, without undue delay, a set of common guidelines or similar non-legislative tool, which should include recommendations and best practices for the Member States to follow in order to ensure that the hearing of the child is conducted either by a judge or trained expert and that no pressure is applied, including from the parents; stresses that such hearings, particularly in family law proceedings, should take place in a child-friendly setting and be appropriate for the age, maturity and language skills of the child in terms of language and content, while providing for all guarantees that ensure that the emotional integrity and the best interests of the child are respected, avoiding unnecessary stress and ensuring that the competent authority gives due consideration to the child's views in accordance with their age and maturity; stresses, moreover, that the hearing of the child in family proceedings where there is suspected domestic or family violence or 'witnessed violence' should always be conducted in the presence of qualified professionals, doctors or psychologists, including professionals qualified in child neuropsychiatry, so as not to deepen their trauma or victimise them further;
5. Underlines that such guidelines or similar non-legislative tool must clearly state that children involved in civil, administrative or family law proceedings should be informed at every stage of the procedure in a manner that they can fully understand and, in particular, that the decision given by the authority should be explained to the child by a specially trained professional in a manner befitting of their age, maturity and language skills;
6. Stresses the need to recognise the close connection between criminal, civil and other legal proceedings in order to coordinate the judicial and other legal responses to child

and intimate partner violence; calls on the Member States, therefore, to adopt measures to link criminal and civil cases involving an individual family and children in order to effectively prevent any discrepancies between judicial and other legal decisions that are harmful to children;

7. Calls on the Member States to ensure and provide easily accessible, understandable and exhaustive child-friendly information on the rights of the child in civil, administrative and family law proceedings and the proceedings themselves, including those of a cross-border nature;
8. Calls on the Member States to enable access to free, publicly-funded, high-quality legal representation for children involved in civil, administrative and family disputes, including those of a cross-border nature, in cases where parents do not exercise full parental responsibility or when there is a suspicion that their interests may conflict with the best interests of the child;
9. Strongly recommends that the Member States adopt a multidisciplinary approach and set up easily accessible, high-quality, personalised, free and publicly-funded advisory and child support services – both within and outside court – to provide, where necessary, the support of trained professionals, such as doctors, psychologists, qualified child neuropsychiatry professionals, social workers and childcare specialists in order to support the child in the best possible way throughout all stages of the proceedings; stresses that an individualised approach should be taken for each child involved in civil, administrative and family law proceedings and that particular attention should be given to children who frequently face discrimination or are in a vulnerable situation, including children with disabilities, children from migrant backgrounds and children who live in poverty or are socially excluded;
10. Calls on the Member States to provide mandatory training courses on the rights and specific needs of the child for judges, other legal professionals, enforcement authorities, social workers, teachers, nurseries and all other relevant parties involved in court and administrative proceedings concerning children; calls on the Commission to step up support for such actions, for instance through the European Judicial Training Network, the Citizens, Equality, Rights and Values Programme, and the Justice Programme;
11. Calls on the Commission to encourage existing networks and platforms of legal professionals to exchange good practices on the hearing of the child, the child's right to information and the right to privacy across the EU; calls on the Commission to consider setting up a one-stop shop of experts from across the EU to serve as an information exchange platform; encourages the European Judicial Training Network to provide for such a forum for judges involved in cross-border family disputes;
12. Calls on the Member States to make sufficient resources available to ensure that civil, administrative and family law proceedings involving children are handled with the utmost compliance with the standards of child-friendly justice, with appropriate respect for the child's emotional and physical integrity, and without undue delay; underlines, in this regard, that the Member States should ensure that child and family courts function as an essential service, continuing to hold emergency hearings and executing court orders for the care and protection of children who are at an immediate risk of neglect or abuse;

13. Recalls that Member States should make best use of the Justice Programme to finance actions and organisations facilitating effective and non-discriminatory access to justice for all children and to provide financial support for organisations working with and for children through the Citizens, Equality, Rights and Values Programme; calls on the Member States to establish appropriate mechanisms and procedures for complaints, remedy or redress in order to fully ensure that the rights of the child are appropriately integrated in judicial proceedings that have a direct or indirect impact on the child;

***An EU framework for the protection of the rights of the child in cross-border civil disputes***

14. Calls on the Member States to protect the best interests of the child in cross-border family proceedings, including by ensuring that laws and procedures do not discriminate between the parents on the basis of their nationality, country of residence or otherwise, and by refusing the assumption that the best interest of the child is always to remain within a particular Member State's territory;
15. Underlines that one of the reasons that cross-border cases can be legally challenging is different national terminology, such as differences in minimum age requirements across the Member States, which may result in a child being treated differently depending on diverging age criteria, or the different roles of the child's legal counsel in proceedings involving children;
16. Urges the Member States to respect the right of each child to maintain personal and direct contact with each parent, unless it is against the best interests of the child, irrespective of their family constitution or biological kinship; underlines that those rights should be respected despite the restrictive measures linked to COVID-19;
17. Calls on the Member States to effectively enforce judgments in cross-border family disputes concerning children in line with applicable EU law and the judgments of the Court of Justice, especially in cases related to cross-border parental child abductions but also separation, divorce, custody, adoption and foster care and decisions related to the recognition of parenthood, including same-sex couples, while always taking into account the best interests of the child in line with Article 24 of the Charter;
18. Calls on the Member States to properly implement the new rules and obligations under Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction<sup>1</sup>; underlines the importance of the exchange of information between national courts in cross-border cases and urges the Commission to cooperate with the Member States to that effect, to carefully monitor the correct implementation of the regulation, and to respond promptly to any failure to do so;
19. Recalls that the recast of the Brussels IIa Regulation was aimed at protecting the rights of the child by clarifying the rules, shortening cross-border proceedings concerning children through established deadlines and the abolition of *exequaturs*, and fostering closer cooperation between the central authorities and the exchange of information in cross-border cases; calls on the Member States, in this regard, to provide proper human and financial resources to facilitate the effective implementation of the regulation;

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<sup>1</sup> OJ L 178, 2.7.2019, p. 1.



20. Calls on the Commission and the Member States to provide appropriate training on the new rules for central authorities, judges and other legal professionals involved in cross-border disputes, including on the hearing of the child and the possible use of mediation in such cases; emphasises that such training should provide for a sufficient level of knowledge and expertise on cross-border family proceedings;
21. Calls on the Commission to provide a guide to good practice on the recast Brussels IIa Regulation;
22. Calls on the Commission to evaluate the need for EU legislation to harmonise procedural guarantees for children in cross-border family law proceedings;
23. Calls on the Member States to ensure that the financial costs of proceedings and additional costs inherent in cross-border cases are not a barrier to accessing justice in cross-border civil, administrative and family cases involving children; calls on the Member States to make the information on the possible legal aid in such cases available and accessible;
24. Notes that the United Kingdom no longer participates in cooperation under the Brussels IIa Regulation and Maintenance Regulation; calls on the Commission to urgently assess the most appropriate means, including a bilateral tool, to address the existing legal uncertainty between the EU and the United Kingdom in the field of civil, administrative and family proceedings concerning children;
25. Welcomes the Commission's announcement to put forward a legislative proposal to facilitate mutual recognition of parenthood between Member States;
26. Calls on the Commission, in this regard, to take due consideration of Parliament's resolution of 2 February 2017 on cross-border aspects of adoptions, including the annex thereto providing for a regulation on the cross-border recognition of adoption orders, in order to create a clear legal framework and provide families with the necessary legal certainty for adoption orders that are legally issued in one Member State to be recognised in another;
27. Calls on the Commission and the Council to duly inform and include Parliament in any new or revised legislative proposal in the field of cross-border civil and family law, as such rules directly influence the lives and well-being of EU citizens and above all children;
28. Considers the 1980 Hague Convention a vital instrument for safeguarding the best interests of the child in cases of international child abduction and believes that having new countries join this convention is to be welcomed by the EU; encourages the Commission, therefore, to make swift progress with its assessment of the accession of new countries and calls on the Member States to show no hesitation in accepting them;
29. Reiterates its call for increased international cooperation amongst Member States and with third countries, in particular Japan, so as to implement all international legislation concerning child protection with the aim of protecting children from the harmful effects of parental child abduction;
30. Calls on the Commission to continue to expand the research and collection of data on child-friendly justice and best practices in the field in the Member States; calls on the

Commission and the Member States to collect data on the cross-border civil disputes involving children such as custody, access and parental child abduction cases; calls on the Commission to include this data in the EU Justice Scoreboard;

### *Mediation in cases concerning children*

31. Calls on the Commission to put forward a new proposal for a regulation on cross-border mediation, accompanied by a thorough impact assessment, which should establish common standards for the cross-border procedure, rules on the recognition and enforcement of mediated agreements, requirements for the establishment of a European certificate for mediators to ensure the quality of expertise in cross-border cases, and common standards for cross-border mediation contracts; considers that such common standards should ensure respect for the confidentiality rules of each Member State and provide the parties with enough legal information about the concept, limits and consequences of mediation;
32. Calls on the Commission and the Member States to continue to support existing networks of mediators in cross-border family disputes;
33. Calls on the Member States to establish pre-mediation offices in order to provide the parents and children concerned with all the information they need about the conduct of mediation and its possible costs and benefits, in particular for the children themselves and their rights and well-being; highlights that some Member States have already established such offices or are seeking to do so;
34. Underlines that mediation can be an effective tool to protect the best interests of the child in cases of cross-border parental child abductions; highlights, in this regard, the good practices and ‘mediators in court model’ used by some Member States to resolve cross-border family disputes amicably and out of court;
35. Calls on the Member States to ensure that children have the possibility to talk to a qualified and independent individual throughout the mediation process who can provide them with child-friendly information and support;
36. Calls on the Member States to facilitate access to legal aid for mediation for cases of cross-border family disputes for parents with limited financial means;
37. Underlines the need to explore the use of online tools, including video conferencing, in mediation in the case of long-distance disputes or disputes affected by extraordinary circumstances, such as the COVID-19 pandemic;
38. Calls on the Member States to actively promote voluntary mediation in family matters concerning children, including through changes to legislation;
39. Calls on the Member States to provide for simple, speedy and affordable rules to render mediated agreements between parents legally binding and enforceable;

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40. Instructs its President to forward this resolution to the Council, the Commission, the Committee of the Regions, the Economic and Social Committee, and the governments and parliaments of the Member States.