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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2016) 208 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document 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)

Delegations will find attached document SWD(2016) 208 final.

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Brussels, 30.6.2016
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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

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 }
{ SWD(2016) 207 final }

Executive Summary Sheet
Impact assessment accompanying the Proposal for a recast of the Brussels IIa Regulation (No 2201/2003)
A. Need for action
Why? What is the problem being addressed?
<p>The evaluation identified a number of problems which would need to be tackled in order to ensure that the Regulation delivers the results intended for it. These problems relate to the predictability and efficiency of the cross-border procedures established in the Regulation in the interest of parents and children. Problems stem also from the fact that the current legal text is insufficiently clear or there are omissions.</p> <p>With regard to parental responsibility matters covering parental child abduction, cross-border placement of children, recognition and enforcement of judgments and cooperation between (central and other) national authorities there are excessive and undue delays arising from the way the existing procedures are formulated or applied. Judgments are often not enforced or with significant delays. Finally, a vague description of the cooperation between Central Authorities has led to delays or the non-fulfilment of requests which were detrimental to children's welfare.</p> <p>These delays and deficiencies have a negative impact on the fundamental rights of the child and a corrosive effect on the mutual trust between the Member States on which the smooth operation of the Regulation depends.</p> <p>With regard to matrimonial matters, spouses in an international marriage do not have the possibility to agree on a court to settle their divorce. In cases of the spouses not having a common EU nationality who live in a non-EU country, access to an EU court may be limited. While these problems have been considered, no action is proposed at this stage.</p>
What should be achieved?
<p>The proceedings should be simplified by the reduction of delays and costs. The child return proceedings would be improved through a clarification of the current return mechanism and the introduction of new measures, such as concentration of jurisdiction and limitation of appeals, to shorten the delays. For placement decisions an autonomous consent procedure should be established to be applied to all cross-border placements, flanked by a time-limit for the requested Member State to respond to the request. Furthermore, <i>exequat</i> would be abolished while maintaining appropriate safeguards (grounds for non-recognition and challenges against enforcement as such or against specific enforcement measures) to be invoked by the defendant at the stage of enforcement, thereby shortening the overall duration of the proceedings, including at the enforcement stage. Finally, with regard to cooperation, a clarification should specify; (1) who can ask (2) which assistance or information (3) from whom and (4) under which conditions. It should be made clear that where necessary, also courts and child welfare authorities could request the assistance of Central Authorities.</p>
What is the value added of action at the EU level?
<p>Due to the cross-border nature of the problem only international couples/parents are affected by the problem. Shortcomings identified in the existing Union law cannot be addressed by the Member States acting individually, and the objectives cannot be sufficiently achieved at the national level; they therefore require the Union's intervention. National substantive family law rules are not affected by the proposed actions.</p>
B. Solutions
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?
<p>The policy options and their impact assessment are dealt with separately for each of the issues identified in the evaluation of the Regulation as problematic. For all issues a baseline scenario and alternative options were developed. For matrimonial and the parental responsibility matters, policy options with different degrees of intervention were considered. For the child abduction procedure, mere clarifications of the current mechanism alongside an option foreseeing a list of flanking measures are considered. In addition, two options were developed to assess possible radical changes of the return</p>

mechanism (a return to the "Hague" system and a creation of a unique forum in the Member State of origin). For the placement mechanism, two options are proposed to choose between a system either with presume or explicit consent.

With regard to recognition and enforcement, both main policy options do away with the *exequatur* requirement or propose a new procedure to respond best to the inefficiency problem. The new system is supplemented by three alternative sub-options tackling the problem of the hearing of the child. Also, two complementary options are proposed to improve enforcement either through an indicative time-limit or through a full harmonisation of the enforcement law for parental responsibility decisions.

The assessment finishes with the comprehensive preferred options for all issues presented in the report.

What are different stakeholders' views? Who supports which option?

It is clear that stakeholders, including Member States, support the need for a carefully targeted reform of the existing Regulation. In cases concerning parental child abduction, the majority (over 70%) of respondents, including parents, think that the Regulation has not ensured the immediate return of the child within the EU. The main suggestion for improvement arose in the area of enforcement and with respect to the time limit for issuing the return order and for its enforcement.

While parents are the most prominent group who sought to expand the abolition of *exequatur*, followed by judges and lawyers, some Member States indicated that *exequatur* should not be fully abolished. A significant number of respondents (86%) considered enforcement of parental responsibility decisions as an important area for improvement. Finally, parents have particularly expressed their concern as regards the cooperation between the Central Authorities.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The preferred options address the problems identified better than any of the other options. Taken as a whole, they enhance predictability in cross-border litigation by ensuring a genuinely free circulation of judgments based on the principle of mutual recognition and enhance the respect of fundamental rights, in particular the rights of the child, by providing the necessary safeguards. Overall, they help in creating swifter procedures and thereby minimising the negative impact on parents and above all on children.

What are the costs of the preferred option (if any, otherwise main ones)?

The preferred policy options would lead to savings for European citizens engaged in cross-border litigation. The abolition of *exequatur* would allow them to save the major part of the current costs of the *exequatur* procedure (on average €2,200 to be paid for processing the application). In addition, the preferred policy option for enforcement would contribute to saving costs by parents seeking enforcement as they would not necessarily need to look for highly specialised lawyers with knowledge of the foreign enforcement system. There could be a small reduction of costs for Central Authorities; if procedures contain unified rules or are shorter at the enforcement stage. Likewise, the clarification of Central Authorities' tasks and of the placement procedure will save costs as cooperation procedures become more streamlined.

How will businesses, SMEs and micro-enterprises be affected?

Not applicable.

Will there be significant impacts on national budgets and administrations?

The preferred policy options would trigger relatively modest financial costs. The abolition of *exequatur* would require Member States to incur costs for training to familiarize the legal profession with the new procedures envisaged, but training needs to be provided already today, and to far more judges. For some Member States the obligation to provide their Central Authority with adequate resources is likely to generate additional costs (in particular for human resources) if their Central Authorities currently are not sufficiently equipped.

D. Follow-up

When will the policy be reviewed?

5 years after the adoption of the Regulation.