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NOTE

From: Presidency

To: Permanent Representatives Committee/Council

Subject: 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)

- Policy debate

I. Introduction

1. The Working Party on Civil Law Matters (Brussels IIa) has regularly examined the proposed Brussels IIa Recast Regulation since it received the Commission proposal in 2016. The Council held policy debates on the hearing of the child in June 2017 and on the abolition of *exequatur* in December 2017.
2. The proposed Brussels IIa Recast Regulation is subject to the special legislative procedure of Article 81(3) of the Treaty on the Functioning of the European Union¹.

¹ In accordance with Articles 3 and 4a (1) of Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of the proposed Brussels IIa Recast Regulation.

In accordance with Articles 1 and 2 of Protocol No. 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark will not be taking part in the adoption of the proposed Brussels IIa Recast Regulation and will not be bound by it or subject to its application.

3. The European Parliament's opinion on the Commission proposal was delivered on 18 January 2018.
4. The European Economic and Social Committee's opinion was delivered on 26 January 2017.
5. The Presidency is of the opinion that a discussion at ministerial level is needed on the allocation of resources for Central Authorities which play an important role in the Regulation and will probably see their workload increase because of the growing number of international families.
6. Bearing in mind the results of the Council (JHA) in December 2017, work will continue on a broad package together with other relevant parts of the Brussels IIa Recast Regulation based on the *unanimity requirement* and the principle that *nothing is agreed until everything is agreed*.

II. Allocation of resources for Central Authorities

7. The Brussels IIa Regulation provides for cooperation among Central Authorities which have a crucial role in cross-border cases in matters of parental responsibility. The Practice Guide for the Application of the Brussels IIa Regulation specifies that Central Authorities "must be given sufficient financial and human resources to be able to fulfil their duties".²
8. As cross-border mobility and the number of international couples are increasing, the number of requests for cross-border cooperation in child-related matters can be expected to increase. It is therefore likely that the workload of the Central Authorities will also grow. Since time is of the essence in child-related cases, the role of the Central Authorities is of utmost importance and should be strengthened thereby also contributing to mutual trust among Member States.

² Practice Guide for the Application of the Brussels IIa Regulation, p. 85.

9. The Commission proposed to include an article in the Brussels IIa Recast Regulation on the allocation of resources for Central Authorities.³ An explicit obligation set out in the Regulation would stress the political importance of duly equipped Central Authorities in order to ensure that the Regulation is implemented effectively. While this situation is not comparable with the role of Central Authorities, the Presidency would like to mention that the European legislator has already enacted EU law provisions on the allocation of resources to national competent authorities.⁴
10. The Presidency is of the view that it is essential for Central Authorities to have sufficient financial and human resources for the effective performance of the tasks and functions entrusted to them by the Brussels IIa Recast Regulation. An exchange of views on this matter of interest would therefore underline the importance of ensuring effective implementation of the Regulation in the best interests of children.
11. *Without prejudice to the principle of subsidiarity, the Council is invited to discuss how to ensure sufficient financial and human resources for Central Authorities to fulfil their role under the Brussels IIa Recast Regulation, and in particular the following two questions:*
- *Should a legislative provision as proposed by the Commission be inserted in the Recast to help the Central Authorities to deal better with their tasks?*
 - *Are there any other means to ensure that the Central Authorities will remain able to cope with the expected increase in workload?*

³ Article 61 of the Commission proposal (see Annex).

⁴ Such as in the General Data Protection Regulation, the Directive for a high common level of security of network and information systems across the Union, and the Decision on the European Judicial Network (see Annex).

Article 61 of the Commission proposal for the Brussels IIa Regulation (Recast):⁵

"Member States shall ensure that Central Authorities have adequate financial and human resources to enable them to carry out the obligations assigned to them under this Regulation".

Article 52 of the General Data Protection Regulation:⁶

"4. Each Member State shall ensure that each supervisory authority is provided with the human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks and exercise of its powers, including those to be carried out in the context of mutual assistance, cooperation and participation in the Board."

Article 8 of the Directive for a high common level of security of network and information systems across the Union:⁷

"5. Member States shall ensure that the competent authorities and the single points of contact have adequate resources to carry out, in an effective and efficient manner, the tasks assigned to them and thereby to fulfil the objectives of this Directive. Member States shall ensure effective, efficient and secure cooperation of the designated representatives in the Cooperation Group."

Article 2 of the Decision on the European Judicial Network:⁸

"2a. Member States shall ensure that the contact points have sufficient and appropriate facilities in terms of staff, resources and modern means of communication to adequately fulfil their tasks as contact points."

⁵ Commission proposal 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).

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

⁷ Directive (EU) 2016/1148 of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

⁸ Council Decision 2001/470/EC as amended by Decision No 568/2009/EC of the European Parliament and of the Council of 18 June 2009.