

BACKGROUND PAPER NO 3

EUROPEAN FORUM ON THE RIGHTS OF THE CHILD (BRUSSELS, 13 AND 14 NOVEMBER)

WORKSHOP NO 2 – 14 NOVEMBER

INVOLVEMENT OF CHILD WELFARE AUTHORITIES IN CASES RELATING TO CHILD CUSTODY

1. OBJECTIVE OF THE WORKSHOP

The EU Agenda for the Rights of the Child¹ specifically highlights that family law disputes may have adverse effects on the well-being of children. It refers to the EU legislation facilitating the recognition and enforcement of decisions on parental responsibility. Child Welfare Authorities (CWA)² usually play an important role when there are custody disagreements between the parents.

Generally the CWA do not act within the scope of EU law but their decisions and practices can have an impact on the functioning of the mutual recognition system for court decisions on parental responsibility governed by [Regulation \(EC\) 2201/2003 \(Brussels IIa\)](#). For this reason, the Commission has an interest in:

- Promoting an exchange of good practice that facilitates better performance by the CWA in their role to protect the child's rights in custody proceedings
- Exploring how the EU can support Member States in view of its powers

2. STRUCTURE OF THE WORKSHOP

The three-hour workshop will be chaired by Commission representatives. A panel composed of three experts will open the workshop with a brief overview of the situation and highlight the current challenges in respect of the role of child welfare authorities in custody disputes, in particular when parents come from different Member States. Then, participants will be invited to present their views on the challenges highlighted. Interpretation will be available in the following languages: German, English, French, Italian, Polish and Spanish.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0060:en:NOT>

² Child welfare authorities, as one component of child protection systems, can have different definitions and functions in various Member States. For the purposes of this paper, the term CWA refers to State, regional or local authorities responsible for protecting the rights and interests of children in a difficult family situation with the objective of ensuring that children receive adequate care and are not subjected to undue physical and/or psychological stress or distress.

Participants from all EU Member States will be invited to the workshop. These participants will represent a broad range of professionals in charge of providing protection to children in the case of custody proceedings:

- Representatives of Member States authorities
- Members of the Petitions Committee of the European Parliament
- Professionals, academics and civil society organisations working in this area.

A number of cross-cutting principles - such as the best interests of the child, the right of the child to maintain regular contact with both parents, the right of the child to be heard and have his/her view taken into account, - will be addressed at the workshops. The workshop will also consider the role of the EU, with due regard to its competences.

3. CONTEXT

There are various authorities and individuals involved in the court and administrative proceedings deriving from family disputes. However, ultimately it is the Court which orders interim measures or takes the decisions. Courts are often assisted by state authorities or local authorities acting as CWA to protect the best interests and welfare of the child. In case of a complaint or review other state authorities such as ministries may also be involved.

Despite the differences in powers of child welfare authorities in the Member States, CWA usually play an important role when there are custody disagreements between the parents. If involved, their main task is to ensure that the child's best interests are duly protected in these situations. The powers of CWA in protecting the welfare of a child can encompass the right to determine the child's place of residence or the necessary medical treatment; investigation into cases, making applications to the court, proposing adequate measures, care planning, placement of the child, support of and interactions with the family (parents), and the monitoring and control of the implementation of court orders.

The possibility for EU citizens to reside freely on the territory of the EU has contributed to the rising number of international couples and marriages between EU citizens of different nationalities. Divorce or separation of such couples can, however, be more problematic as the custody arrangements, including the exercise of visitation rights, need to take into account the fact that many parents reside in a country other than their country of origin. Moreover, Member State authorities may exercise more vigilance with regard to potential international abductions of the child and for this reason impose monitoring measures or restrictions on custody rights, including parents' access rights. In such situations the CWA have to ensure that any restrictions or measures do not result in discrimination against parents who are nationals of another Member State.

The CWA are required to carefully safeguard the best interests of the child and the rights of the child to maintain a regular contact with both parents. This, of course, also applies in case of cross-border couples. In recent years complaints have been received against alleged abusive practices of the CWA relating to the imposition of restrictions on access of parents to

their children, for example concerning the obligatory use of an official language during certain access visits, and against the lack of effective review procedures against the decisions of the CWA. The general lack of information and awareness about the national rules governing the functioning of the CWA, their powers and competencies, seems to be a particular concern notably for citizens coming from other Member States.

4. THE WAY AHEAD

The Forum participants are invited to exchange views on good practice that facilitates CWA to better carry out their role, in particular in cases of family situations involving the exercise of free movement rights under the Treaty. Participants are invited to present their views on the following questions:

- *Do CWA consider that specific challenges exist when dealing with custody cases involving cross-border couples?*
- *Is specific information provided to the parents - and to the child in a child friendly manner, for example in the form of a leaflet, explaining in different languages the proceedings and powers of the child welfare authorities, citizens' rights in relation to its powers, the possibilities for effective remedy, possible access to an Ombudsperson and support services or assistance?*
- *In what circumstances is it appropriate to impose an obligation that access visits of the parents and children should be supervised by the CWA? Under what circumstances is it appropriate to impose the use of a specific official language of the Member State during access visits?*

If the use of a certain language is imposed, how can interpretation services be assured during access visits?

- *Are there safeguards in place to ensure that parents and their children are treated in a non-discriminatory way and that their fundamental rights are protected by the CWA? Are there any specific guidelines at national level to ensure systematic fair treatment of people coming from other Member States?*
- *Are there any data available on the number and proportion of cases where access visits between a separated parent and his or her child were supervised by the child welfare authorities?*
- *Do you have any suggestions as to how the EU, within the remit of its competence, can support Member State authorities in protecting the rights of the child in custody proceedings?*