

Strasbourg, 21 December 2021

CJ/ENF-ISE(2021)PV2

**EUROPEAN COMMITTEE ON LEGAL
CO-OPERATION
(CDCJ)**

**STEERING COMMITTEE FOR THE
RIGHTS OF THE CHILD
(CDENF)**

**Committee of Experts on the Rights and the Best interests of
the Child in Parental Separation and in Care Proceedings
(CJ/ENF-ISE)**

Fourth Meeting, 13 and 14 December 2021
Videoconference

Meeting report

Agenda item 1: Opening of the meeting and welcome

1. The fourth meeting of the Committee of experts on the rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE) was opened by Mr. Seamus Carroll (Ireland), Chair of the Committee, who welcomed the participants.
2. The list of participants to the meeting is available on the CJ/ENF-ISE's website.

Agenda item 2: Adoption of the agenda and order of business

3. The draft agenda was adopted as it appears in Appendix I.

Agenda item 3: Statement by the Chair and the Secretariat

4. The Committee took note of the information provided by the Chair and the Secretariat on:
 - the outcome of the 2nd joint meeting of the Bureaux of the CDCJ and CDENF (24 June 2021) and the observations of the Bureaux on the form and scope of the legal instrument (in particular point IV of the [report of the 2nd joint meeting](#));
 - the need for the draft legal instrument to provide practical guidance, while not necessarily seeking to achieve harmonisation of national legislation;
 - the importance of reviewing the working methods of the Committee in order to achieve the expected results as set out in its Terms of Reference for 2022-2023;
 - welcoming Mr Thomas Knoll-Biermann (Germany) and Ms Salomé Adroher Biosca (Spain) as new members of the CJ/ENF-ISE since its last meeting.

Agenda item 4: Reviews of law, policy and practice on how the best interest of the child and their rights are protected in situations of parental separation and in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care (specific tasks (i) and (ii))

5. The Committee took note of the finalisation and publication in July 2021 of the:
 - feasibility study on a legal instrument on the protection of the best interests of the child in situations of parental separation (document [CJ/ENF-ISE\(2021\)08A](#)) ;
 - feasibility study of a legal instrument on the protection of the best interests of the child in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care (document [CJ/ENF-ISE\(2021\)08B](#)).

Agenda item 5: Draft legal instrument on the protection of the best interests of the child and his/her rights in parental separation situations and/or care proceedings (specific task (iii) – examination of the draft instrument)

6. The Committee examined the preliminary draft legal instrument on the protection of the best interests of the child and his/her rights in parental separation situations and/or care proceedings, prepared by Ms Nuala Mole and Ms Daja Wenke, consultants to the CJ/ENF-ISE, and expressed their appreciation for the work accomplished so far, which enabled the Committee to have a good working draft for discussion.
7. The Committee agreed to review the recitals of the draft recommendation after having discussed the substantive elements of the Appendix and any changes that should be taken into consideration. Discussions highlighted, in particular, the following aspects to consider

during the drafting process:

- to define the scope such as to include all relevant proceedings (before, during and after the decision-making), including the breakdown of civil partnerships, where provided by national law, mediation proceedings and enforcement proceedings;
- to review definitions set out in the legal instrument on the basis of suggestions expressed during the meeting;
- to pay particular attention to the implementation of relevant domestic judgments and decisions;
- to pay particular attention throughout the text to situations putting children at risk (for example risk of domestic violence or sexual abuse);
- to address the situation of very young children and other children in situations of particular vulnerability, including for example children with special needs, children of imprisoned parents;
- to address the need to develop specific parenting programmes;
- to ensure that the legal instrument provides guidance for judges when they take into consideration the interests of other persons involved, including parents, children and minor siblings in particular, and other important persons for the child;
- to include in the explanatory memorandum some of the elements currently reflected in the Appendix (i.e. explanations, examples) as well as the sources of relevant provisions, in particular from existing Council of Europe legal instruments ;
- to eliminate redundancies and simplify the text of the recommendation.

8. Following a discussion on whether to proceed with drafting a single instrument, a hybrid or two separate instruments, the experts agreed, at this stage, to move forward by developing a single legal instrument, comprising a part containing guidance applicable to both parental separation and child-care cases, followed by separate parts specifically applicable to parental separation and to care cases. In that context, the differences between private law and public law, and the role of mediation, was noted. The development of separate handbooks as implementation tools could be considered at a later stage.
9. The experts agreed to **send their written comments** (indicating the relevant paragraph, drafting proposals and possible explanations) **on the preliminary draft**, including on points raised during the meeting, to the Secretariat **by 7 January 2022**.
10. The Committee instructed the consultants to revise the preliminary draft instrument so that a consultation on its revised version could be initiated with the steering committees and to prepare a preliminary draft explanatory memorandum, in the light of the oral observations provided by the members and participants during the meeting as well as any written comments. In their work, the consultants should pay particular attention to the relevant case-law of the European Court of Human Rights and the general comments of the UN Committee on the Rights of the Child.

Agenda item 6: Consultations of relevant stakeholders

Agenda item 6.1: Planning of child participation

11. The Committee discussed and approved the revised concept note on child participation and the implementation modalities, as set out in the work plan in document [CJ/ENF-ISE\(2021\)05rev.](#)
12. The Committee took note of the presentation by Ms Barbara Nemeth, Hintalovon Foundation, Council of Europe service provider, on the proposed methodology for carrying out child consultations in collaboration with up to five member States between January and May 2022 and endorsed the approach.
13. It was drawn to the attention of the Committee that a call was made in October-November 2021 to CJ/ENF-ISE delegations to support the child consultation process and that so far, no delegation had responded positively to this call.
14. In light of the discussions and given the importance of children's participation in the work of the Committee, the Chair reiterated this call and invited the CJ/ENF-ISE delegations to inform the Secretariat of their national authorities' interest to participate in the child consultation exercise.

Agenda item 6.2: Planning of consultations of other stakeholders

15. The Committee took note that a written consultation of steering committees and selected stakeholders (professional associations of judges, lawyers, social workers, mediators and other relevant networks), on the draft legal instrument and the explanatory memorandum should be organised after the 5th meeting of CJ/ENF-ISE (2-4 May 2022), subject to the progress of the Committee. Contributions received will be compiled and a summary of the opinions expressed will be prepared by a consultant together with the revised the draft instrument by the CJ/ENF-ISE.
16. The Committee took note that the hearing of stakeholders would be organised in the framework of the upcoming Irish Presidency of the Committee of Ministers of the Council of Europe and would likely be back-to-back with the 6th meeting of the CJ/ENF-ISE (3-5 October 2022, Dublin). The opinions expressed in the course of the hearing will be consigned in a document to be prepared by a rapporteur and considered by the CJ/ENF-ISE prior to the finalisation of the draft instrument.

Agenda item 7: Update on key developments and other events by members and observers

17. CJ/ENF-ISE took note of the information provided the European Commission's representative on the adoption on 24 March 2021 of the EU Strategy on the Rights of the Child. This strategy aims to bring all existing EU legislative, policy and funding instruments within one coherent framework and includes both actions for the European Commission and recommendations for EU Member States. Among the six thematic areas of the

Strategy, the most relevant for CJ/ENF-ISE relate to child-friendly justice¹ and child protection.² Moreover, with the aim to embedding a child perspective in all EU actions, the EU Commission is also working on the establishment of the EU network for children's rights to reinforce the dialogue and mutual learning on children's rights.

18. The Committee was also informed of the approval, by the CDENF, of the draft Council of Europe Strategy for the Rights of the Child (2022-2027), which is pending examination and adoption by the Committee of Ministers, and of its planned launching at an International Conference hosted by the Italian Presidency to the Committee of Ministers on 7 - 8 April 2022 (Rome, Italy).

Agenda item 8: Terms of reference - exchange of views on the future work programme and implementation of tasks in 2022-2023

19. The CJ/ENF-ISE welcomed the adoption of its [terms of reference for 2022-2023](#) by the Committee of Ministers at its 1418th meeting (23-25 November 2021) and discussed the tasks, expected results and timelines.
20. The Committee took note that, in the context of the renewed mandate of the CJ/ENF-ISE, the Bureaux of the CDCJ and the CDENF were entrusted to determine the composition of the CJ/ENF-ISE for the period 2022-2023, in line with the Terms of reference and following each committee's established practice. In this context, all members of the CJ/ENF-ISE present in the meeting confirmed their availability and readiness to support the work of the CJ/ENF-ISE in 2022-2023.
21. The Committee appointed Ms Bente Therese Bekkus (Norway) as Gender Equality Rapporteur.
22. The Committee took note of the changes introduced by [Resolution CM/Res\(2021\)3](#), which will enter into force on 1 January 2022, and the possible implications for the Committee and its future work programme for 2022-2023.
23. The Committee also discussed its working methods and approved the work plan for 2022-2023 as amended in document CJ/ENF-ISE(2021)09, subject to any further changes it may deem necessary.
24. The Committee was informed by the European Commission representative that the Commission is required to coordinate with EU member States in advance of the meetings in which it participates in order to present the views of the EU.

¹ In the area of child-friendly justice, actions from the European Commission include the promotion of the full implementation of the Council of Europe Guidelines on Child-Friendly Justice; an update the Practical Guide on the implementation of the Brussels IIa b Regulation and trainings of justice professionals on the rights of the child and child-friendly justice.

² In the area of violence against children and child protection, actions from the Commission include a proposal for a legislative instrument on violence against women and domestic violence which should be adopted in the first semester of 2022 and putting forward an initiative on integrated child protection systems.

Agenda item 9: Any other business

25. None at present.

Agenda item 10: Date and place of the next meeting

26. The Committee agreed that its fifth meeting would be held in Strasbourg on 2-4 May 2022. The format of the meeting (in person, hybrid or online) will depend on the health situation.

Agenda item 11: Approval of the meeting report

27. The Committee agreed that the approval of the report of the meeting would be undertaken through a written procedure after the meeting.

APPENDIX I
Agenda of the 4th meeting
(13-14 December 2021)

1.	Opening of the meeting and welcome	<u>Reference document</u> <ul style="list-style-type: none"> • CJ/ENF-ISE(2021)LOP2 prov.
2.	Adoption of the agenda and order of business	<u>Working document</u> <ul style="list-style-type: none"> • Draft agenda - CJ/ENF-ISE(2021)OJ2 prov. • Draft annotated agenda - CJ/ENF-ISE(2021)OJ2 ANN
3.	Statement by the Chair and the Secretariat	<ul style="list-style-type: none"> • Report of the 2nd joint meeting of CDCJ and CDENF Bureaus - CDCJ&CDENF/Bu(2021)PV1
4.	Reviews of law, policy and practice on how the best interest of the child and their rights are protected in situations of parental separation and in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care (specific tasks (i) and (ii)) <i>(for information)</i>	<u>Reference document</u> <ul style="list-style-type: none"> • Feasibility study on a legal instrument on the protection of the best interests of the child in situations of parental separation – CJ/ENF-ISE(2021)08A • Feasibility study of a legal instrument on the protection of the best interests of the child in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care - CJ/ENF-ISE(2021)08B
5.	Draft legal instrument on the protection of the best interests of the child and his/her rights in parental separation situations and/or care proceedings (specific task (iii) – examination of the draft instrument)	<u>Working document</u> <ul style="list-style-type: none"> • Preliminary draft legal instrument on the best interests of the child in parental separation situations and care proceedings – CJ/ENF-ISE(2021)10 (restricted) <u>Reference document</u> <ul style="list-style-type: none"> • Best interests of the child and children’s rights in parental separation - relevant international and European instruments – CJ/ENF-ISE(2020)INF2Rev1 • Best interests of the child in care proceedings - relevant international and European instruments - CJ/ENF-ISE(2020)INF3
6.	Consultations of relevant stakeholders	
6.1	Planning of child participation	<u>Working document</u> <ul style="list-style-type: none"> • Concept note on child consultations: workplan – CJ/ENF-ISE(2021)05rev.
6.2	Planning of consultations of other stakeholders	<u>Reference document</u> Council of Europe child participation approach

7.	Update on key developments and other events by members and observers	<u>Working documents</u> <ul style="list-style-type: none"> Working methods and workplan (2022-2023) - CJ/ENF-ISE(2021)09 prov.
8.	Terms of reference: exchange of views on the future work programme and implementation of tasks in 2022-2023	<u>Reference documents</u> <ul style="list-style-type: none"> Terms of reference of the CJ/ENF-ISE (2022-2023) CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods
9.	Any other business	
10.	Date and place of next meeting	
11.	Approval of the meeting report	CJ/ENF-ISE(2021)PV2

GENERAL REFERENCE DOCUMENTS

Terms of reference	CJ/ENF-ISE Terms of reference 2020-2021
CM/Res(2011)24 and amendments	Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods, and amendments adopted by the Committee of Ministers' Deputies at their 1404 th meeting (12 and 17 th May 2021)

MEETING REPORTS

CDCJ&CDENF/Bu(2021)PV1	Report of the 2nd joint meeting of CDCJ and CDENF Bureaus
CJ/ENF-ISE(2021)PV1	Report of the 3rd meeting of the CJ/ENF-ISE
CJ/ENF-ISE(2020)PV2	Report of the 2nd meeting of the CJ/ENF-ISE
CJ/ENF-ISE(2020)PV1	Report of the 1st meeting of the CJ/ENF-ISE