

Strasbourg, 16 May 2022

CJ/ENF-ISE(2022)PV1

**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)**

Fifth Meeting, 2 – 4 May 2022

Hybrid meeting

Meeting report

Agenda item 1: Opening of the meeting and welcome

1. The fifth 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, “the Committee”) 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 Committee adopted its draft agenda as it appears in Appendix I.

Agenda item 3: Statement by the Chair and the Secretariat

4. At the request of the Chair, the Committee observed a minute of silence out of respect for the victims of the Russian aggression against Ukraine.
5. The Committee took note of the information provided by the Chair and the Secretariat on:
 - The nomination of Ms Stéphanie Hebrard (France) as new member of the CJ/ENF-ISE following the departure of Mr Ewald Filler (Austria);
 - the outcome of the [High Level Launching Conference for the Strategy for the Rights of the Child \(2022-2027\)](#), Rome, 7 – 8 April 2022, and notably of the session on “Promoting legal clinics as a means of strengthening children’s access to justice”;
 - the outcome of the [call for tender for consultancy services](#) to support the work of CJ/ENF-ISE launched in February 2022, leading to the establishment of several pools of experts to support the Committee in carrying out the different tasks under its terms of reference, including the elaboration of implementation tool(s).
6. Ms Regina Jensdottir, Head of the Children's Rights Division and Council of Europe Coordinator for the Rights of the Child, highlighted the importance of the tasks of the Committee within the wider framework of the new Strategy, and informed them about first steps undertaken towards the implementation of the Strategy in the area child-friendly justice, and of the opening, on 4 May 2022, of the [first Barnahus for child victims of sexual abuse in Slovenia](#) in line with international standards and promising European practices, and of similar projects underway or planned in Finland, Spain and Ireland. The projects are funded by European Commission DG Reform and demonstrate the joint action of the Council of Europe and the European Commission in strengthening child-friendly justice.

Agenda item 4: 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 (deliverable (1) – examination of the draft instrument)

7. The Chair reminded the Committee of its decision taken at its fourth meeting, in line with the decision taken by the bureaux of CDCJ and CDENF at their second joint meeting (24 June 2021), to move forward, at this stage, on the elaboration of a single legal instrument, comprising a part containing guidance applicable to both parental separation and child-care cases, followed by two separate parts specifically applicable to, on the one hand, parental separation and, on the other

hand, to placement in care.

8. The Committee expressed its appreciation for the work carried out by Ms Daja Wenke, consultant, which enabled the Committee to have a good basis for further elaboration of the draft instrument.
9. The Committee examined the structure and the substantive principles of the draft legal instrument, considering the written comments received before the meeting, and those raised during the meeting. It observed the need to revise the structure and content of the document, notably in order to distinguish the elements specific to public law and those specific to private law, leading to different applicability of certain principles.
10. The Committee agreed that, to create an added value, the draft text should be as practical and specific as possible, and that any redundancies and the mere repetition of principles laid down in other Council of Europe instruments, notably the Child-Friendly Justice Guidelines, should be avoided. Instead, reference to relevant standards should be made in the Explanatory Memorandum, alongside examples from national jurisdictions and relevant case-law of the European Court of Human Rights.
11. The Committee agreed that the further drafting process should notably be guided by the general considerations laid out above, and by the following specific considerations:
 - General Principles: The draft instrument should focus in particular on Timeliness, Rule of Law, Respect for the child's dignity and Right to non-discrimination in the framework of parental separation and care proceedings (to be complemented as appropriate).
 - To clarify the role of the child in the proceedings (party, participant, or other), and its implications.
 - Best interests determination procedure: In light of the different roles of the "competent authority" in public and private law and of the importance of upholding the principle of subsidiarity notably in the private sphere, specific provisions on the best interests determination procedure should be provided in the distinct part on public law proceedings. Specific provisions for the best interest determination procedure must also be provided for in parental separation cases, where a substantive decision is to be made by a competent authority. Relevant mechanisms should be further considered to ensure the respect of the best interests of the child in parental separation cases where there is no competent authority making a decision, e.g. mediation processes and where the parents enter into private agreements.
 - Best interest assessment: To review the language and the sequence of the factors to be taken into account, also in light of UNCRC General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, and to put more emphasis on children's needs.
 - Access to effective remedies and redress: To include the right to appeal.
 - Support by a guardian or other independent representative: To clarify the role of guardian specifically appointed for judicial proceedings (in some jurisdictions referred to as *guardian ad litem*).
 - Emergency measures: To allow for interim decisions, as provided under national law.
 - Mediation services: To include the relevant provisions in the part on parental separation, so as to avoid ambiguities, and to deal with forms of mediation which exist in national

law on child-care proceedings separately.

- Parental support policy: to include relevant provisions in the part on parental separation encouraging parental support policies (information towards parents and social actions) in order to protect the best interest of the child in the family life and prevent conflicts
- Right to be heard: To give practical guidance and to make sure that the child's right to be heard is given the appropriate prominence.
- Right to information: To refer to the Child-friendly justice guidelines to avoid redundancies.
- Complaints mechanisms: To clarify the concept, possibly also by referring to the role of Ombudspersons for children in this context.
- Enforcement proceedings: To be dealt with separately for private and public law proceedings.
- Implementation measures: To add a provision on prevention, and on relocation, – examples to be provided in the Explanatory Memorandum.
- Monitoring and accountability: To review the concept for both areas, not to refer to “accountability” in view of respecting judicial independence.

12. The Committee instructed the consultant to restructure and revise the draft instrument in accordance with the exchange and agreements reached during the meeting. A revised version of the text would be sent to the Committee members in early June for written comments.

Agenda item 5: Draft explanatory memorandum to the 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

13. The Committee instructed the consultant to further elaborate the detailed outline of the draft explanatory memorandum in the light of discussions during the meeting and in light of further comments to be submitted by Delegations together with their comments on the revised version of the draft Recommendation (see above) in view of its examination during the 6th meeting in October 2022.

Agenda item 6: Implementation tool(s) on the rights and the best interests of the child in parental separation and in care proceedings

14. The Committee considered that two handbooks for practitioners (parental separation and care proceedings) should be elaborated, to be complemented by other media easily accessible by practitioners (such as videos) and child-friendly material, as appropriate.

Agenda item 7: Child and Stakeholder Consultation

Agenda item 7.1: Child participation process

15. The Committee was informed that consultation of groups of children were in the process of being carried out together with national delegations in Italy and Portugal. A third group of children was consulted directly by the consultant entrusted with supporting the child consultation process. A report on the outcome of the entire consultation process would be available in the beginning of September.

16. The Committee appreciated the progress achieved, emphasising the importance of this exercise, and suggested additional questions/issues to be raised with the groups of children.

Agenda item 7.2: Hearing of stakeholders

17. The Committee examined and provided comments on the draft concept note on the hearing of stakeholders to take place in Dublin (Ireland) in October 2022. CJ/ENF-ISE members were invited to send the names and contact details of potential relevant umbrella civil society organisations to the Secretariat by Friday, 6 May 2022.
18. The Committee instructed the Secretariat to finalise the concept note, in view of its submission to the CDCJ and CDENF for information.

Agenda item 8: Update on key developments and other events by members and observers

19. The Committee took note of the information provided the European Commission's representative on the implementation process of the EU Strategy on the Rights of the Child, and of the forthcoming High-level conference (8 September 2022) on the Brussels IIb Regulation hosted by the European Parliament Coordinator on Children's Rights and the Commissioner for Justice in a hybrid format in Brussels.
20. The Committee was invited by the representative of the Conference of INGO's to attend an online webinar, on 21 June 2022 (9:30-12:30 CET) on "Determining and Evaluating the Best Interests and Rights of Children in Parental Separation and Care Proceedings: exploring perspectives and best practices across Europe". The webinar intends to support the work of the Committee. The webinar will provide an opportunity for exchanges of views and knowledge amongst professionals, scientists and others working in the field of parental separation and care proceedings across diverse European countries.
21. The Committee entrusted its Secretariat to share any further detailed information on the two events.

Agenda item 9: Exchange of views on the future work programme and implementation of tasks in 2022-2023

22. The Committee examined and approved the proposed work programme, timetable and working methods of the Committee for 2022-2023 (as it appears in document [CJ/ENF-ISE\(2022\)01](#)).

Agenda item 10: Election of CJ/ENF-ISE Vice-Chair

23. The Committee elected Mr Thomas Knoll-Biermann (Germany) as Vice-Chair to complete his predecessor's term until October 2022, renewable once.

Agenda item 11: Any other business

24. No additional issues were raised.

Agenda item 12: Date and place of next meeting

25. The Committee took note that the next meeting of CJ/ENF-ISE would be held, in person, in Dublin on 3-5 October 2022. The meeting will be organised back-to-back with the conference organised under the upcoming Irish presidency of the Committee of Ministers and the hearing of stakeholders.

Agenda item 13: Approval of the meeting report

26. 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 5th meeting
(2-4 May 2022)

1.	Opening of the meeting and welcome	<u>Reference document</u> <ul style="list-style-type: none"> • List of participants – CJ/ENF-ISE(2022)LOP1
2.	Adoption of the agenda and order of business	<u>Working documents</u> <ul style="list-style-type: none"> • Draft agenda – CJ/ENF-ISE(2022)OJ1 prov • Draft annotated agenda – CJ/ENF-ISE(2022)OJ1 ANN
3.	Statement by the Chair and the Secretariat	<u>Working documents</u> <ul style="list-style-type: none"> • Draft legal instrument on the best interests of the child in parental separation situations and care proceedings – CJ/ENF-ISE(2022)03 (restricted) <i>English only</i>
4.	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 (deliverable (1) – examination of the draft instrument)	<u>Reference documents</u> <ul style="list-style-type: none"> • Compilation of comments from CJ/ENF-ISE on the preliminary draft instrument – CJ/ENF-ISE(2022)02Mos (restricted) • Compilation of comments from CJ/ENF-ISE on the preliminary draft instrument – CJ/ENF-ISE(2022)06Mos (restricted) • 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
5.	Draft explanatory memorandum to the 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	<u>Working document</u> <ul style="list-style-type: none"> • Detailed outline of the draft explanatory memorandum on the draft legal instrument on the best interests of the child in parental separation situations and care proceedings – CJ/ENF-ISE(2022)04 (restricted)

6.	Implementation tool(s) on the rights and the best interests of the child in parental separation and in care proceedings	
	(deliverable 2, agreement on the format and the scope of implementation tools)	
7.	Child and Stakeholder Consultation	
		<i>Oral information by the Secretariat</i>
7.1	Child participation process	<u>Reference documents</u> <ul style="list-style-type: none"> • Concept note on child consultations: workplan – CJ/ENF-ISE(2021)05rev • The Council of Europe’s child participation approach
7.2	Hearing of stakeholders to be organised by the upcoming Irish Presidency of the Committee of Ministers	<u>Working document</u> <ul style="list-style-type: none"> • Draft Concept note on the hearing of stakeholders – CJ/ENF-ISE(2022)05 <u>Reference document</u> <ul style="list-style-type: none"> • Concept note on the organisation of consultations with stakeholders – CJ/ENF-ISE(2021)04
8.	Update on key developments and other events by members and observers	
9.	Exchange of views on the future work programme and implementation of tasks in 2022-2023	<u>Working document</u> <ul style="list-style-type: none"> • Working methods and workplan proposals- CJ/ENF-ISE(2022)01 Prov
10.	Election of CJ/ENF-ISE Vice-Chair	
11.	Any other business	
12.	Date and place of next meetings	
13.	Approval of the meeting report	CJ/ENF-ISE(2022)PV1

GENERAL REFERENCE DOCUMENTS

Terms of reference of the CJ/ENF-ISE 2022-2023
Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods

MEETING REPORTS

CDCJ&CDENF/Bu(2021)PV1	Report of the 2nd joint meeting of CDCJ and CDENF Bureaus
CJ/ENF-ISE(2021)PV2	Report of the 4th meeting of the CJ/ENF-ISE
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

PREPARATORY WORKS

Feasibility study on a legal instrument on the protection of the best interests of the child in situations of parental separation
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