

# CCBE initial comments on the Council of Europe draft Recommendation on the protection of the best interests of the child and his or her rights in parental separation proceedings

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## EXECUTIVE SUMMARY

The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and Law Societies of 46 countries, and through them, more than 1 million European lawyers.

The CCBE was recently contacted by the Council of Europe Committee of Experts on the Rights and Best Interests of the Child in Parent Separation and in Care Proceedings ([CJ/ENF-ISE](#)) for input on its draft recommendation and preliminary draft explanatory memorandum to the draft recommendation on the protection of the best interests of the child and his or her rights in parental separation proceedings.

The CCBE welcomes the efforts of the Council of Europe on this important matter and supports the aims and principles set out. However, the CCBE believes that a number of important issues have not been addressed, and with regard to certain recommendations mentioned, further information would be necessary to provide more in-depth input, besides some minor comments raised during the discussions amongst the relevant CCBE experts.

## 1. General observations

The CCBE welcomes the work done by the Council of Europe Committee of Experts on the Rights and Best Interests of the Child in Parent Separation and in Care Proceedings (CJ/ENF-ISE) in preparing the draft Recommendation on the protection of the best interests of the child and his or her rights in parental separation proceedings. While the draft Recommendation of the Council of Europe are merely to guide Member States, the CCBE supports the aim of the Recommendation to establish a common framework, as well as the recommendations and the principles it sets out. In particular, the CCBE considers that the general notion of the best interests of children should be the primary consideration in such situations, which in turn means guaranteeing a number of rights and principles in the relevant Member State (while still acknowledging the diversity of their legal systems).

Notwithstanding the above, the CCBE considers that there are some important issues, such as in regard to parental responsibility, which are not addressed in the draft Recommendation and the inclusion of which would be of benefit in order to provide guidance to the Member States on these difficult

matters. Furthermore, the CCBE wishes to emphasise that the Recommendations should be in line with the Brussels IIter Regulation. In addition, the CCBE would find it useful to understand the reasoning and information (for example, any comparative studies, questionnaires, etc.) collected which led to these recommendations in order to properly assess them. In the meantime, the CCBE would like to raise some minor initial points with respect to a few aspects in the draft.

## 2. The scope

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Under Chapter I on definitions and scope, the draft Recommendation provides that it applies to administrative or judicial proceedings as well as alternative dispute resolution processes in which parental responsibility for, custody or upbringing of, or access to, or contact with a child, is under consideration where the parents of a child are not living together or no longer wish to do so.

The CCBE proposes to mention that this Recommendation also applies to divorce proceedings without a judge. In addition, the Recommendation should also state that it applies to any act involving a child, regardless of the terminology used, for example, decisions, contracts, agreements, protocols, etc.

## 3. The right to information and assistance

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With respect to Chapter V on the right to information and assistance, the CCBE wishes to emphasise that, when it comes to assistance and support for children, practices vary from country to country.

When discussing the draft within the CCBE, several experts expressed being in favour that the person assisting and advising the child is a lawyer, if this is in the best interests of the child. Furthermore, the CCBE would also like to strongly stress the importance that the lawyer is specialised in assisting and advising children.

Moreover, the CCBE would also like to note that, when appointing a lawyer according to national procedure law to represent and assist the child, it would be beneficial to do so in advance in order for the lawyer to better familiarise themselves with the case and the child, as well as to assign the same lawyer throughout the proceedings when possible, as they would already have some information in regard to the situation and would have established a connection with the child (thereby also having some consistency for the child and facilitating the establishment of a bond of trust).

Lastly, in regard to paragraph 25, we wish to mention that some CCBE experts raised concerns in regard to whether the person assigned can also provide legal advice (and whether the role of the lawyer is limited to providing legal advice), in addition to considering that it should be specified who determines which person is able to advise and support the child. Moreover, it should be noted that it is up to the national procedure law of the countries to specify the tasks and limitations of the appointed person assisting the child within the proceedings.

## 4. Concluding remarks

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The CCBE would like to congratulate the Council of Europe for its efforts and work on this very important matter, and would happily further discuss or clarify any of the above points. In closing, as mentioned in the general observations, the CCBE would appreciate any additional information that can be given in regard to the background material the CJ/ENF-ISE used to draft these recommendations in order to provide more in-depth input.

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