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Directorate A: Civil justice  
Unit A.1 : Civil justice policy

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Dr. Vittorio Vezzetti  
President of COLIBRI  
European Platform for Joint Custody,  
Co-Parenting and Childhood

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Dear Mr Vezzetti,

Thank you for your letter of 24 January 2016 addressed to Commissioner Věra Jourová who asked me to reply to you.

In your letter you express your concern about difficulties encountered by children in international families in cases of family break-up. You point to the legal framework and practices in several Member States in respect of the custody of a child and access/visiting arrangements in case of separation/divorce of the parents and highlight different ways of dealing with these matters in Member States. You also make a link between joint custody exercised equally by both parents and the protection of the best interests of the child.

The European Union attaches great importance to the protection of the rights of the child as enshrined in Article 24 of the Charter of Fundamental Rights according to which every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both parents, unless it is contrary to the best interests of the child. Therefore, in decisions regarding parental responsibility, the primary consideration shall be the best interests of the individual child, underlining that the assessment of a child's best interests must be carried out on an individual basis, case-by-case.

The Commission is aware of differences in the national systems and diverging practices when it comes to granting and exercising these rights, where often cultural and societal aspects play an important role. It is nevertheless of the opinion that in decisions concerning children the primary consideration shall be the best interests of the individual child assessed on a case-by-case basis, in line with General Comment No 14 (2013) of the UN Committee on the rights of the child to have his or her best interests taken as a primary consideration.<sup>1</sup>

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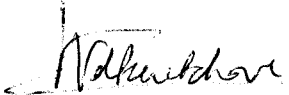
<sup>1</sup> [http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC\\_C\\_GC\\_14\\_ENG.pdf](http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf)

The legal base enshrined in the Treaty<sup>2</sup> on which the Brussels IIa Regulation is based, gives the Commission the powers to propose measures to 'develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases'. The objective of the reform of the Regulation is therefore to enhance mutual trust in the fairness of parental responsibility proceedings in the Member States and thereby to ensure the smooth functioning of the Brussels IIa Regulation to the benefit of parents and their children. In this context, the Commission does not intend to unify the definition of the "best interests of the child".

Under the Rights, Equality and Citizenship Programme and its predecessor, we have prioritised projects that build the capacity of judicial and other practitioners on the rights of the child, in particular the child's right to be heard, and on communicating with children in a context- and age-appropriate manner.<sup>3</sup> As you know, we have also conducted a study to collect data and assess legislation and policy measures in place on children's involvement in judicial proceedings in the 28 Member States of the EU<sup>4</sup>, and drawn up principles on integrated child protection systems<sup>5</sup>.

I hope that the information provided above is of assistance.

Yours sincerely,



Karen Vandekerckhove  
Acting Head of Unit

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<sup>2</sup> The legal basis for Union action in family matters is established in Articles 81(1), (2) and (3) of the Treaty on the Functioning of the European Union.

<sup>3</sup>[http://ec.europa.eu/justice/fundamental-rights/files/rights\\_child/compilation\\_previously\\_funded\\_projects\\_rights\\_of\\_the\\_child\\_and\\_violence\\_against\\_children.pdf](http://ec.europa.eu/justice/fundamental-rights/files/rights_child/compilation_previously_funded_projects_rights_of_the_child_and_violence_against_children.pdf)

<sup>4</sup> **Data:** [www.childreninjudicialproceedings.eu](http://www.childreninjudicialproceedings.eu) - **Reports:** [-Policy brief -Children's involvement in administrative judicial proceedings \(June 2015\) EU Summary and 29 country reports](#) [-Children's involvement in civil judicial proceedings \(June 2015\) EU Summary and 29 country reports](#) [-Children's involvement in criminal judicial proceedings \(June 2014\) EU Summary and 29 country reports](#)

<sup>5</sup> [http://ec.europa.eu/justice/fundamental-rights/rights-child/protection-systems/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/protection-systems/index_en.htm)