
Conclusions and Recommendations

for the attention of the Council on General Affairs and Policy of March 2018

Family agreements involving children ("family agreements") are generally in the best interests of children and should be promoted internationally. Such agreements are often concluded as a result of mediation, conciliation or similar processes. The Experts' Group recognises that the best interests of a child is enhanced when such an agreement can be more easily rendered enforceable in one State and more readily recognised and enforced in other States.

While the existing Hague Family Conventions encourage the amicable resolution of disputes involving children, they do not contemplate the use of "package agreements" (*i.e.*, family agreements related to custody, access, relocation and/or child support and which may include spousal support and other financial matters, such as property issues) and do not provide a simple, certain or efficient means for their enforcement. From the Group's experience it is recognised that such agreements are increasingly frequently used. Very often the matters covered require the simultaneous application of more than one Hague Family Convention while some elements of those package agreements are not within the scope of any of the existing Hague Family Conventions. This creates difficulties for the enforcement of package agreements.

The Experts' Group's work on the navigation tool has confirmed that much benefit could be gained from adding value to the existing Hague Family Conventions by developing a new binding instrument in order to facilitate family agreements in Contracting States.

The benefits of such an instrument include:

- enabling package agreements to be made legally enforceable in one Contracting State and then recognised and enforced in other Contracting States cost effectively;
- establishing a simplified and prompt procedure, which may include concentrated jurisdiction, to render a package agreement legally binding and enforceable in one Contracting State and for simple and prompt recognition and enforcement of the decision of that court or authority in other Contracting States;
- whilst protecting the best interests of the child, enabling party autonomy by giving parents the possibility of selecting a legal system which has a substantial connection with the child to render the agreement enforceable.

Therefore the Experts' Group recommends to the Council to develop a new Hague Convention that would build on, and add value to, the 1980, 1996 and 2007 Hague Conventions, and be developed with a view to attracting as many States as possible.