



COMMISSION OF THE EUROPEAN COMMUNITIES

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1999/0110 (CNS)

Amended proposal for a

COUNCIL REGULATION

**on jurisdiction and the recognition and enforcement of judgments in
matrimonial matters and in matters of parental responsibility for joint children**

(presented by the Commission pursuant to Article 250 (2)
of the EC Treaty)

EXPLANATORY MEMORANDUM

1. BACKGROUND

On 4 May 1999, the Commission adopted a proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children.¹ Following the entry into force of the Amsterdam Treaty and the fact that judicial cooperation in civil matters has been brought into the Community framework, that proposal for a Regulation broadly takes over the content of the Convention signed by the Member States on 28 May 1998 on the basis of Article K.3(2)(c) of the Maastricht Treaty, which never entered into force.

The proposal was transmitted to the Council, the European Parliament and the Economic and Social Committee. The Committee gave its opinion at its session of 20 et 21 October 1999. By letter dated 14 July 1999, the Council consulted the European Parliament in accordance with Article 67 of the EC Treaty.

Parliament referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (responsible for the report) and the Committee on Legal Affairs and the Internal Market (consulted for opinion). The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, after receiving and examining the opinion of the Committee on Legal Affairs and the Internal Market, adopted its own report on 11 November 1999. On 17 November 1999, Parliament adopted its opinion² in plenary, approving the Commission proposal subject to amendments and calling on the Commission to amend its proposal accordingly, in accordance with Article 250(2) of the EC Treaty.

2. THE AMENDED PROPOSAL

The amended proposal reflects Parliament's opinion, taking over most of the amendments. It also incorporates changes linked to developments since the original proposal was adopted. And it incorporates certain amendments agreed in the Council to which the Commission can also agree.

2.1. Parliament amendments

2.1.1. Amendments accepted in toto

The Commission accepts amendments 1, 3 to 8, 14 to 18 and 20 proposed by Parliament and incorporates them purely and simply in its proposal. Consequently:

- recital 18 relating to the Nordic Agreement of 1931 is amended to take account of amendment No 1 relating to compliance with the principle of non-discrimination;

¹ COM (1999)220, OJ

² OJ C..

- the German version of recital 5 to the proposal for a Regulation is amended in response to amendment No 3;
- recital 10 is amended in response to amendment No 4. The Commission shares Parliament’s view that the concept of parental responsibility must be given an autonomous interpretation;
- recital 20 relating to the power of the Council to amend the annexes is deleted, in response to amendment No 5. It will be for the Commission to amend the annexes;
- recital 22 is amended and a new recital 23 is inserted in response to Parliament’s amendments Nos 6 and 7. Recital 22 has been reworded as the United Kingdom and Ireland have declared their intention of participating in the adoption of the Regulation;
- a new paragraph 4 is added to Article 11 in response to amendment No 8. It determines the date when a court is deemed to be seised for the purpose of the *lis pendens* rules. The provision corresponds to the one in the proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;³
- a new paragraph is added to Article 17 in response to amendment No 13, which seeks to promote the free movement of persons;
- Articles 21 and 26 are amended in response to amendments Nos 14 to 18. The lists of courts and redress procedures in these Articles are now in Annexes I to III.
- Article 43 (formerly Article 45) is amended in response to amendment No 20. There is no reason why the annexes should be amended by Council Decision as there is no more than a reference to purely national provisions. The new paragraph 1 accordingly provides that the annexes will be adapted by the Commission.

2.1.2. *Amendments accepted in part*

Certain of the amendments proposed by Parliament can be accepted in part or subject to further amendment. Consequently:

- recital 12 is amended by way of partial response to amendment No 2. It now refers to the Hague Convention of 1980 on the civil aspects of international child abduction. The reference to the work done by the European Ombudsman, however, is not taken over as the sole function of a recital is to give grounds for the provisions of the instrument itself.
- a new paragraph is inserted in Article 12 by way of partial response to amendment No 9; it clarifies the scope in time of provisional, including protective, measures that can be taken under Article 12. It is necessary to

³ COM(1999) 348.

provide that these measures will lapse when a court has given a judgment on the basis of the grounds of jurisdiction provided for by the Regulation.⁴ But contrary to amendment No 9, it is not necessary for the judgment given by a court having jurisdiction to hear the case on the merits to have become enforceable. It is enough for the judgment to have been recognised (or enforced) pursuant to the Regulation. And these provisional, including protective, measures will lapse only if the judgment given by the court having jurisdiction to hear the case on the merits relates to the same subject-matter.

- Article 15(1)(b) and (2)(c) is amended by way of partial response to amendment No 10. The words “in sufficient time” are replaced by “in sufficient time and in such a way as”. This amendment establishes a parallel with the draft Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.⁵ It is not proposed that the second part of the amendment be taken over, whereby recognition could not be withheld if the defaulting defendant had not “commenced proceedings to challenge the judgment when it was possible for him to do so”. A provision such as this is perfectly logical and acceptable in civil and commercial matters but cannot be transposed into the sensitive area of matrimonial matters, where the defendant must have “accepted the judgment unequivocally”.

2.1.3. *Amendments rejected:*

- amendment 11 is rejected. Taking the child’s best interests into account would presuppose an examination of the judgment given on the merits, and the Regulation prohibits this. The most that a Member State requested to order enforcement can do is to check that recognition of the original judgment will not violate its fundamental procedural rules (the child being heard where appropriate);
- amendment 12 is rejected. It would have the effect of given privileged status to mechanical enforcement of a possibly old judgment rather than a more recent judgment given by another court also having jurisdiction by reason of a change in the child’s personal situation and depriving the scheme of all possibility for flexibility;
- amendment 19 is rejected. It would introduce a translation rule that would be out of place in an instrument on jurisdiction and the recognition of judgments. And this proposal is in contradiction with the proposed instrument on the service in the Member States of judicial and extra-judicial documents in civil and commercial matters.⁶

⁴ See report by Ms Borrás, No 59.

⁵ COM(1999)348.

⁶ COM(1999)219.

2.2. Amendments introduced to reflect institutional developments since the proposal was adopted.

By letters dated 2 August and 5 July 1999 respectively, the United Kingdom and Ireland stated their intention of participating in the adoption of the Regulation. Their decision has consequences for the proposed Regulation and it is therefore proposed that the changes required by the fact that the United Kingdom and Ireland are to be bound by the Regulation be made.

Some of these changes were proposed by Parliament and have been taken into account accordingly (recital 22).

The following additional amendments are made:

- Article 2(1)(a) (indent 5) and 2(b) is amended to take account of the fact that in the legal systems of the United Kingdom and Ireland "domicile" is assimilated to "nationality". A new paragraph 2 defines the concept of "domicile"; Articles 7 and 8 are amended accordingly;
- Article 10 is amended to take account of the political agreement reached in the Council on the conversion of the proposal for a directive on the service in the Member States of judicial and extra-judicial documents in civil and commercial matters⁷ into a proposal for a Regulation;
- a new paragraph is added to Article 19 since Ireland and the United Kingdom do not have the concept of "ordinary appeal" (paragraph 1), and a new paragraph is added to Article 20 to take account of the registration procedure in the United Kingdom;
- the courts and redress procedures of the United Kingdom and Ireland are added to the lists in Annexes I to III;

2.3. Amendments introduced to take account of Council proceedings

The Commission accepts certain purely technical amendments agreed in the Council. The following amendments are concerned:

- the amended proposal refers not only to Article 61(c) but also to Article 67(1);
- recital 4 is amended to take account of the fact that only "certain" national rules of jurisdiction and recognition are liable to impede the free movement of persons and the operation of the internal market;
- there is a new reference in recital 6 to the changes made in order to establish parallelism with identical provisions of the proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; there is also a new footnote referring to the Official

⁷ COM(1999)219.

Journal containing the Council Act of 28 May 1998 and Ms Borrás's explanatory report;

- in recital 10, the words "joint children" are replaced by "children of both spouses"
- Article 20 clarifies the requirement of service or notification of the original judgment;
- the provisions relating to redress procedures in the event of enforcement (former Articles 25 to 27) and of refusal of enforcement (former Articles 28 and 29) have been merged in the new Articles 25 to 27. The former Articles 28 to 29 are accordingly deleted. There is no amendment as regards the substance.
- Articles 31 and 32 (former Articles 33 and 34) are amended to take account of the introduction of a certificate based on the one provided for by the proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Two new annexes are also added (Annexes IV and V), presenting the standard forms to be used for recognition/enforcement and judgments relating to dissolution of the marriage bond and questions of parental responsibility;
- Article 40 (former Article 42) introduces a specific provision warranted by the need for Italy and Spain to abide by their international commitments vis-à-vis the Holy See. As regards Italy, the provision was in a declaration annexed to the Convention of 28 May 1998;
- Article 43 (former Article 45) introduces a new paragraph 2, providing for the possibility for the Commission to update or amend the certificates annexed to the Regulation, in accordance with the advisory procedure of Article 3 of Decision 1999/468/EC; a new Article 44 accordingly mentions this procedure;
- Article 45 (former Article 46) (entry into force of the Regulation) is amended to take account of the fact that the Member States will need to put in place a number of measures implementing the Regulation.

Amended proposal for a

COUNCIL REGULATION

on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (c) of Article 61 and Article 67(1) thereof,

Having regard to the proposal from the Commission,⁸

Having regard to the Opinion of the European Parliament,⁹

Having regard to the Opinion of the Economic and Social Committee,¹⁰

Whereas:

- (1) The Member States have set themselves the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured; to establish such an area the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market.
- (2) The sound operation of the internal market entails the need to improve and expedite the free movement of judgments in civil matters.
- (3) This is a subject now falling within the ambit of Article 65 of the Treaty.
- (4) Differences between certain national rules governing jurisdiction and enforcement hamper the free movement of persons and the sound operation of the internal market. There are accordingly grounds for enacting provisions to unify the rules of conflict of jurisdiction in matrimonial matters and in matters of parental responsibility so as to simplify the formalities for rapid and automatic recognition and enforcement of judgments.
- (5) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This Regulation confines itself to the minimum

⁸ OJ C

⁹ OJ C

¹⁰ OJ C

required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

- (6) The Council, by Act dated 28 May 1998,¹¹ concluded a Convention on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and recommended it for adoption by the Member States in accordance with their respective constitutional requirements. Continuity in the results of the negotiations for conclusion of the Convention should be ensured. The content of this Regulation is substantially taken over from it, but the Regulation contains a number of new provisions not in the Convention in order to secure consistency with certain provisions of the Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
- (7) In order to attain the objective of free movement of judgments in matrimonial matters and in matters of parental responsibility within the Community, it is necessary and appropriate that the cross-border recognition of jurisdiction and judgments in relation to the dissolution of matrimonial ties and to responsibility for the children of both spouses be governed by a mandatory, and directly applicable, Community legal instrument.
- (8) The scope of this Regulation should include civil proceedings and other non-judicial proceedings occurring in matrimonial matters in certain States, and excludes purely religious procedures. It should therefore be provided that the reference to 'courts' includes all the authorities, judicial or otherwise, with jurisdiction in matrimonial matters.
- (9) This Regulation should be confined to proceedings relating to the dissolution or annulment of matrimonial ties as such. The recognition of divorce and annulment rulings affects only the dissolution of matrimonial ties; despite the fact that they may be interrelated, the Regulation does not affect issues such as the fault of the spouses, property consequences of the marriage, the maintenance obligation or any other ancillary measures.
- (10) The Regulation covers parental responsibility issues that are closely linked to proceedings for divorce, separation or annulment; it will apply only to children of both spouses.
- (11) The grounds for jurisdiction accepted in this Regulation are based on the rule that there must be a real link between the party concerned and the Member State exercising jurisdiction. The decision to include certain grounds corresponds to the fact that they exist in different national legal systems and are accepted by the other Member States.
- (12) One of the risks to be considered in relation to the protection of the children of both spouses in a marital crisis is that one of the parents will take the child to another country. The fundamental interests of the children must therefore be

¹¹ OJ C 221, 16.7.1998, p. 1. Ms Borrás' explanatory report is also published in the same Official Journal.

protected, in accordance with, in particular, the Hague Convention of 25 October 1980 on the Civil Aspects of the International Abduction of Children. The lawful habitual residence is accordingly maintained as the criterion for jurisdiction in cases where, because the child has been moved or has not been returned without lawful reason, there has been a *de facto* change in the habitual residence.

- (13) The Regulation does not preclude the courts of a Member State from taking provisional or protective measures in an urgent situation regarding persons and property situated within the territory of such Member State.
- (14) The word 'judgment' refers only to positive decisions, that is to say those that lead to divorce, legal separation or marriage annulment. Those documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State are treated as equivalent to such 'judgments'.
- (15) The recognition and enforcement of judgments given in a Member State are based on the principle of mutual trust. The grounds for non-recognition are kept to the minimum required. None the less, means of redress should be available in order to ensure observance of public policy in the State addressed and to safeguard the rights of the defence and those of the parties, so as to withhold recognition of irreconcilable judgments.
- (16) The State addressed should review neither the jurisdiction of the State of origin nor the findings of fact.
- (17) No procedures may be required for the updating of civil-status documents in one Member State where a final judgment has been given in another Member State.
- (18) The Convention concluded by the Nordic States in 1931 should be capable of application within the limits set by this Regulation and in compliance with the principle of non-discrimination.
- (19) Spain, Italy and Portugal had concluded Concordats before these matters were brought within the ambit of the Treaty; it is necessary to ensure that these States do not breach their international commitments in relation to the Holy See.
- (20) The Member States should remain free to agree among themselves on practical measures for the application of the Regulation so long as no Community measures have been taken to that end.
- (21) No later than five years after the date of the entry into force of this Regulation, the Commission must review its application and propose such amendments as may appear necessary.
- (22) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and

Ireland have given notice of their intention of participating in the adoption of this Regulation.

- (23) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Regulation; this Regulation is accordingly not binding on Denmark, nor is it applicable in its regard.
- (24) The measures required for the implementation of this Regulation must, in accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission,¹² be laid down by the advisory committee procedure provided for in Article 3 of that Decision,

HAS ADOPTED THIS REGULATION:

¹² OJ L 184, 17.7.1999, p. 23.

Chapter I - Scope

Article 1

1. This Regulation shall apply to:
 - (a) civil proceedings relating to divorce, legal separation or marriage annulment;
 - (b) civil proceedings relating to parental responsibility for the children of both spouses on the occasion of the matrimonial proceedings referred to in (a).
2. Other proceedings officially recognised in a Member State shall be regarded as equivalent to judicial proceedings. The term 'court' shall cover all the authorities with jurisdiction in these matters in the Member States.

Chapter II - Jurisdiction

SECTION 1 - GENERAL PROVISIONS

Article 2

Divorce, legal separation and marriage annulment

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State:
 - (a) in whose territory:
 - the spouses are habitually resident, or
 - the spouses were last habitually resident, in so far as one of them still resides there, or
 - the respondent is habitually resident, or
 - in the event of a joint application, either of the spouses is habitually resident, or
 - the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
 - the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is a national of the Member State in question or has his domicile there;
 - (b) of nationality of both spouses or, in the case of the United Kingdom and Ireland, of their durable common domicile.
2. For the purposes of this Regulation, the word “domicile” has the meaning given to it in the legal systems of the United Kingdom and Ireland.

Article 3

Parental responsibility

1. The Courts of a Member State exercising jurisdiction by virtue of Article 2 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in a matter relating to parental responsibility over a child of both spouses where the child is habitually resident in that Member State.
2. Where the child is not habitually resident in the Member State referred to in paragraph 1, the courts of that State shall have jurisdiction in such a matter if the child is habitually resident in one of the Member States and:

- (a) at least one of the spouses has parental responsibility in relation to the child, and
 - (b) the jurisdiction of the courts has been accepted by the spouses and is in the best interests of the child.
3. The jurisdiction conferred by paragraphs 1 and 2 shall cease as soon as:
- (a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final, or
 - (b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final, or
 - (c) the proceedings referred to in (a) and (b) have come to an end for another reason.

Article 4

Child abduction

The courts with jurisdiction within the meaning of Article 3 shall exercise their jurisdiction in conformity with the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, and in particular Articles 3 and 16 thereof.

Article 5

Counterclaim

The court in which proceedings are pending on the basis of Articles 2 to 4 shall also have jurisdiction to examine a counterclaim, in so far as the latter comes within the scope of this Regulation.

Article 6

Conversion of legal separation into divorce

Without prejudice to Article 2, a court of a Member State which has given a judgment on a legal separation shall also have jurisdiction for converting that judgment into a divorce, if the law of that Member State so provides.

Article 7

Exclusive nature of jurisdiction under Articles 2 to 6

A spouse who:

- (a) is habitually resident in the territory of a Member State; or

- (b) is a national of a Member State, or has his domicile there within the meaning of Article 2(2),

may be sued in another Member State only in accordance with Articles 2 to 6.

Article 8

Residual jurisdiction

1. Where no court of a Member State has jurisdiction pursuant to Articles 2 to 6, jurisdiction shall be determined, in each Member State, by the laws of that State.
2. As against a respondent who is not habitually resident and is not a national of a Member State or does not have his domicile there within the meaning of Article 2(2), any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.

**SECTION 2 - EXAMINATION AS TO JURISDICTION
AND ADMISSIBILITY**

Article 9

Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 10

Examination as to admissibility

1. Where a respondent does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.
2. Article 19 of Council Regulation (EC) No ... of on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters¹³ shall apply in lieu of the provisions of paragraph 1 if the document commencing the action has had to be transmitted abroad pursuant to that Regulation.

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Where that Regulation does not apply, Article 15 of the Convention of the Hague of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document commencing the action has had to be transmitted abroad pursuant to that Convention.

SECTION 3 - *LIS PENDENS* AND DEPENDENT ACTIONS

Article 11

1. Where proceedings involving the same cause of action and between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. Where proceedings relating to divorce, legal separation or marriage annulment not involving the same cause of action but between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.

4. For the purposes of Article 11, a court shall be deemed to be seised:
 - (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant, or
 - (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

SECTION 4 - PROVISIONAL AND PROTECTIVE MEASURES

Article 12

1. In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

2. Provisional, including protective, measures taken pursuant to paragraph 1 and relating to matters within the scope of this Regulation shall expire when a judgment with the same subject-matter has been given by the court having jurisdiction to hear the case on the merits pursuant to this Regulation and has been recognised or enforced pursuant thereto.

Chapter III - Recognition And Enforcement

Article 13

Meaning of "judgment"

1. For the purposes of this Regulation, 'judgment' means a divorce, legal separation or marriage annulment pronounced by a court of a Member State, as well as a judgment relating to the parental responsibility of the spouses given on the occasion of such matrimonial proceedings, whatever the judgment may be called, including a decree, order or decision.
2. The provisions of this Chapter shall also apply to the determination of the amount of costs and expenses of proceedings under this Regulation and to the enforcement of any order concerning such costs and expenses.
3. For the purposes of implementing this Regulation, documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also settlements which have been approved by a court in the course of proceedings and are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as the judgments referred to in paragraph 1.

SECTION 1 - RECOGNITION

Article 14

Recognition of a judgment

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.
2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for up-dating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.
3. Any interested party may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be or not be recognised.
4. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.

Article 15

Grounds of non-recognition

1. A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:
 - (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;
 - (b) where it was given in default of appearance, if the respondent was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;
 - (c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought;
 - (d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-member country between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

2. A judgment relating to the parental responsibility of the spouses given on the occasion of matrimonial proceedings as referred to in Article 13 shall not be recognised:
 - (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;
 - (b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;
 - (c) if the person in default was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;
 - (d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;
 - (e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought; or

- (f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-member country of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Article 16

Prohibition of review of jurisdiction of court of origin

The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Article 15(1)(a) and (2)(a) may not be applied to the rules relating to jurisdiction set out in Articles 2 to 8.

Article 17

Differences in applicable law

The recognition of a judgment relating to a divorce, legal separation or a marriage annulment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

Where a Member State is required by this Regulation to recognise a divorce, it shall not prevent either of the spouses from contracting a new marriage on the basis of the fact that the national law of a Member State of which the spouses have the nationality does not recognise the divorce.

Article 18

Non-review as to substance

Under no circumstances may a judgment be reviewed as to its substance.

Article 19

Stay of proceedings

A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

A court of a Member State in which recognition is sought of a judgment given in the United Kingdom or Ireland, the enforcement of which is suspended in the Member State of origin by reason of an appeal, may stay the proceedings.

SECTION 2 - ENFORCEMENT

Article 20

Enforceable judgments

A judgment on the exercise of parental responsibility in respect of a child of both parties given in a Member State which is enforceable in that Member State and has been duly served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

However, in the United Kingdom, judgments shall be enforced in England and Wales, Scotland or Northern Ireland, after registration for enforcement on application by an interested party, in one or other of those parts of the United Kingdom as the case requires.

Article 21

Jurisdiction of local courts

1. The application shall be submitted to the local courts listed in Annex I.
2. The jurisdiction of local courts in relation to an application for enforcement shall be determined by reference to the place of the habitual residence of the person against whom enforcement is sought or by reference to the place of habitual residence of any child to whom the application relates.

Where neither of the places referred to in the first subparagraph can be found in the Member State where enforcement is sought, the jurisdiction of local courts is determined by reference to the place of enforcement.

3. In relation to procedures referred to in Article 14(3), the jurisdiction of local courts shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

Article 22

Procedure for enforcement

1. The procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.
2. The applicant must give an address for service within the area of jurisdiction of the court applied to. However, if the law of the Member State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.
3. The documents referred to in Articles 31 and 32 shall be attached to the application.

Article 23

Judgment of the court

1. The court applied to shall give judgment without delay. The person against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.
2. The application may be refused only for one of the reasons specified in Article 15.
3. Under no circumstances may a judgment be reviewed as to its substance.

Article 24

Service of judgment

The appropriate officer of the court shall without delay serve on the applicant the judgment given on the application in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.

Article 25

Appeal against the judgment

Either party may appeal against the judgment given on the application for a declaration of enforceability. The appeal shall be brought in the relevant court in the list in Annex II. It shall be examined in accordance with the rules governing adversarial proceedings.

If the appeal is brought by the party who applied for the declaration of enforceability, the party against whom enforcement is sought shall appear before the court hearing the appeal. If that party does not appear, Article 10 shall apply.

The appeal against the judgment making the declaration of enforceability shall be brought within one month following service of the judgment. If the party against whom enforcement is sought is habitually resident in a Member State other than that in which the judgment making the declaration of enforceability was given, the time allowed shall be two months and shall run from the date of service either on that party or at his residence. No extension of time may be granted on account of distance.

Article 26

Courts of appeal and means of contest

The judgment given on appeal may be contested only in the manners listed in Annex III.

Article 27

Stay of proceedings

The court with which the appeal is lodged pursuant to Articles 25 and 26 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such appeal has not yet expired. In the latter case, the court may specify the time within which an appeal is to be lodged.

If the decision is given in the United Kingdom or Ireland, all appeals brought in the Member State of origin shall be considered to be ordinary appeals for the purposes of paragraph 1.

Article 28

Partial enforcement

1. Where a judgment has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.
2. An applicant may request partial enforcement of a judgment.

Article 29

Legal aid

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedures provided for in Articles 21 to 24, to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State addressed.

Article 30

Security, bond or deposit

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the ground that he or she is a foreign national or that he or she is not habitually resident in the Member State in which enforcement is sought.

SECTION 3 - COMMON PROVISIONS

Article 31

Documents

1. A party seeking or contesting recognition or applying for enforcement of a judgment shall produce:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
 - (b) the certificate provided for by Article 34, without prejudice to Article 35.
2. In addition, in the case of a judgment given in default, the party seeking recognition or applying for enforcement shall produce:
 - (a) the original or a certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document; or
 - (b) any document indicating that the defendant has accepted the judgment unequivocally.

Article 32

Other documents

The court or competent authority of the Member State in which the judgment was given shall, at the request of any interested party, issue a certificate on the model at Annex IV (judgments in matrimonial matters) or Annex V (judgments in matters of parental responsibility).

Article 33

Absence of documents

1. If the documents specified in Article 31(1)(b) or (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.
2. If the Court so requires, a translation of such documents shall be furnished. The translation shall be certified by a person qualified to do so in one of the Member States.

Article 34

Legalisation or other similar formality

No legalisation or other similar formality shall be required in respect of the documents referred to in Articles 31, 32 and 33(2) or in respect of a document appointing a representative *ad litem*.

Chapter IV - Transitional Provisions

Article 35

1. The provisions of this Regulation shall apply only to legal proceedings instituted, to documents formally drawn up or registered as authentic instruments and to settlements which have been approved by a court in the course of proceedings after its entry into force.
2. Judgments given after the date of entry into force of this Regulation in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Chapter III if jurisdiction was founded on rules which accorded with those provided for either in Chapter II of this Regulation or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.

Chapter V - General Provisions

Article 36

Relation with other Conventions

1. Subject to the provisions of Articles 35 and 38 and paragraph 2 of this Article, this Regulation shall, for the Member States which are parties to it, supersede conventions existing at the time of entry into force of this Regulation which have been concluded between two or more Member States and relate to matters governed by this Regulation.
2. Finland and Sweden shall have the option of declaring that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, will apply, in whole or in part, in their mutual relations, in place of the rules of this Regulation. Such declarations shall be annexed to this Regulation and published in the *Official Journal of the European Communities*. They may be withdrawn, in whole or in part, at any moment by the said Member States.

The principle of non-discrimination on the grounds of nationality between citizens of the Union shall be respected.

The rules of jurisdiction in any future Agreement to be concluded between the Member States referred to in the first subparagraph which relate to matters governed by this Regulation shall be in line with those laid down in this Regulation.

Judgments handed down in any of the Nordic States which have made the declaration provided for in the first subparagraph under a forum of jurisdiction corresponding to one of those laid down in Chapter II, shall be recognised and enforced in the other Member States under the rules laid down in Chapter III thereof.

3. Member States shall send to the Commission:
 - (a) a copy of the agreements and uniform laws implementing these agreements referred to in the first and third subparagraphs of paragraph 2;
 - (b) any denunciations of, or amendments to, those agreements or uniform laws.

Article 37

Relation with certain multilateral conventions

In relations between the Member States which are parties to it, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

- the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors,
- the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages,
- the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations,
- the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children,
- the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, provided that the child concerned is habitually resident in a Member State.

Article 38

Extent of effects

1. The agreements and conventions referred to in Articles 36(1) and 37 shall continue to have effect in relation to matters to which this Regulation does not apply.
2. They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic before the entry into force of this Regulation.

Article 39

Agreements between Member States

1. Two or more Member States may conclude agreements or arrangements to amplify this Regulation or to facilitate its application.

Member States shall send to the Commission:

- (a) a copy of the draft agreements; and
- (b) any denunciations of, or amendments to, these agreements.

2. In no circumstances may the agreements or arrangements derogate from Chapters II or III.

Article 40

Treaties with the Holy See

1. This Regulation shall apply without prejudice to the International Treaty (Concordat) between the Holy See and Portugal, signed at the Vatican City on 7 May 1940.
2. Any decision as to the invalidity of a marriage taken under the Treaty referred to in paragraph 1 shall be recognised in the Member States on the conditions laid down in Chapter III.
3. The provisions laid down in paragraphs 1 and 2 shall also apply to the following International Treaties (Concordats) with the Holy See:
 - Concordato lateranense of 11 February 1929 between Italy and the Holy See, modified by the agreement, with additional Protocol signed in Rome on 18 February 1984,
 - Agreement between the Holy See and Spain on legal affairs of 3 January 1979.
4. In Italy and Spain the recognition of decisions to which paragraph 2 applies may be referred to the same procedures and the same reviews as decisions given by ecclesiastical courts in accordance with the international treaties with the Holy See referred to in paragraph 3.
5. Member States shall send to the Commission:
 - (a) a copy of the Treaties referred to in paragraphs 1 and 3;
 - (b) any denunciations of or amendments to those Treaties.

Article 41

Member States with two or more legal systems

With regard to a Member State in which two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units:

- (a) any reference to habitual residence in that Member State shall refer to habitual residence in a territorial unit;
- (b) any reference to nationality shall refer to the territorial unit designated by the law of that State;

- (c) any reference to the authority of the Member State having received an application for divorce or legal separation or for marriage annulment shall refer to the authority of a territorial unit which has received such an application;
- (d) any reference to the rules of the requested Member State shall refer to the rules of the territorial unit in which jurisdiction, recognition or enforcement is invoked.

Chapter VI - Final Provisions

Article 42

Review

No later than five years after the date of the entry into force of this Regulation, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation, and in particular Articles 36, 39 and 40 thereof. The report shall be accompanied if need be by proposals for adaptations.

Article 43

Amendment of Annexes

1. The Member States shall notify the Commission of their legislative provisions amending the designations of courts and competent authorities listed in Annexes I and II and the redress procedures listed in Annex III. The Commission shall adapt those Annexes accordingly.
2. Updates and technical amendments to the standard forms in Annexes IV and V shall be adopted by the procedure provided for by Article 44.

Article 44

1. The Commission shall be assisted by an Advisory Committee consisting of representatives of the Member States and chaired by the Commission.
2. Where reference is made to paragraph 1, the advisory procedure laid down by Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) of that Decision.

Article 45

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*. It shall have effect from 1 January 2001.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX I

The applications provided for by Article 21 shall be submitted to the following courts or competent authorities:

- in Belgium, the ‘Tribunal de première instance’ or the ‘Rechtbank van eerste aanleg’ or the ‘erstinstanzliche Gericht’,
- in the Federal Republic of Germany, the ‘Familiengericht’,
- in Greece, the ‘Μονομελές Πρωτοδικείο’,
- in Spain, the ‘Juzgado de Primera Instancia’,
- in France, the presiding Judge of the ‘Tribunal de grande instance’,
- in Ireland, the High Court;
- in Italy, the ‘Corte d'apello’,
- in Luxembourg, the presiding Judge of the ‘Tribunal d'arrondissement’,
- in the Netherlands, the presiding Judge of the ‘arrondissementsrechtbank’,
- in Austria, the ‘Bezirksgericht’,
- in Portugal, the ‘Tribunal de Comarca’ or ‘Tribunal de Família’,
- in Finland, the ‘käräjäoikeus/tingsrätt’,
- in Sweden, the ‘Svea hovrätt’,
- in the United Kingdom:
 - a) in England and Wales, the High Court of Justice,
 - b) in Scotland, the Court of Session;
 - c) in Northern Ireland, the High Court of Justice.

ANNEX II

The appeal provided for by Article 25 shall be lodged with the courts listed below:

- in Belgium, the ‘Tribunal de première instance’ or the ‘Rechtbank van eerste aanleg’ or the ‘erstinstanzliche Gericht’,
- in the Federal Republic of Germany, the ‘Oberlandesgericht’,
- in Greece, the ‘Εφετείο’,
- in Spain, the ‘Audiencia Provincial’,
- in France, the ‘Cour d'appel’,
- in Ireland, the High Court of Justice;
- in Italy, the ‘Corte d'appello’,
- in Luxembourg, the ‘Cour d'appel’,
- in the Netherlands, the ‘arrondissementsrechtbank’,
- in Austria, the ‘Bezirksgericht’,
- in Portugal, the ‘Tribunal da Relação’,
- in Finland, the ‘Hovioikeus/Hovrätt’,
- in Sweden, the ‘Svea hovrätt’.
- in the United Kingdom:
 - a) in England and Wales, the High Court of Justice,
 - b) in Scotland, the Court of Session;
 - c) in Northern Ireland, the High Court of Justice.

ANNEX III

The appeals provided for by Article 26 may be brought only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in the Federal Republic of Germany, by a ‘Rechtsbeschwerde’,
- in Ireland, by an appeal on a point of law to the Supreme Court,
- in Austria, by a ‘Revisionsrekurs’,
- in Portugal, by a ‘recurso restrito à matéria de direito’,
- in Finland, by an appeal to ‘Korkein oikeus/högsta domstolen’,
- in Sweden, by an appeal to the ‘Högsta domstolen’,
- in the United Kingdom, by an appeal on a point of law only.

ANNEX IV

Certificate under Article 34 of the Regulation concerning judgments in matrimonial matters of parental responsibility.

1. Member State of origin
2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel/Fax/E-mail
3. Marriage
 - 3.1 Wife
 - 3.1.1 Name
 - 3.1.2 Country and place of birth
 - 3.1.3 Date of birth
 - 3.2 Husband
 - 3.2.1 Name
 - 3.1.2 Country and place of birth
 - 3.1.3 Date of birth
 - 3.3 Country and date of marriage
 - 3.3.1 Country
 - 3.3.2 Date
4. Court which delivered the judgment
 - 4.1. Type of court
 - 4.2. Place of court
5. Judgment
 - 5.1 Date
 - 5.2 Reference number
 - 5.3 Nature of judgment

5.3.1 Divorce

5.3.2 Annulment

5.3.3 Separation

5.4 Judgment given in default of appearance

5.4.1 No

5.4.2 Yes¹⁴

6. Names of parties to whom legal aid has been granted

7. Is the judgment appealable in the State of origin?

7.1 No

7.2 Yes

8. Date of legal effect:

8.1 of divorce¹⁵

8.2 of separation

Done at, (date)

Signature/stamp

¹⁴ The documents referred to in Article 33(2) must be attached.

¹⁵ If different from that given at 5.1.

ANNEX V

Certificate under Article 34 of the Regulation concerning judgments in matters of parental responsibility.

1. Member State of origin
2. Court or authority issuing the certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Tel/Fax/E-mail
3. Parents
 - 3.1 Mother
 - 3.1.1 Name
 - 3.2 Father
 - 3.2.2 Name
4. Court which delivered the judgment
 - 4.1. Type of court
 - 4.2. Place of court
5. Judgment
 - 5.1 Date
 - 5.2 Reference number
 - 5.3 Judgment given in default of appearance
 - 5.3.1 No
 - 5.3.2 Yes¹⁶
6. Children concerned by the judgment¹⁷
 - 6.1 Name and date of birth
 - 6.2 Name and date of birth

¹⁶ The documents referred to in Article 33(2) must be attached.

¹⁷ If more than four children are involved, use a second form.

6.3 Name and date of birth

6.4 Name and date of birth

7. Names of parties to whom legal aid has been granted

8. Enforceability of service/notification

8.1 Is the judgment enforceable in accordance with the laws of the State of origin?

8.1.1 Yes

8.1.2 No

8.2 Has the judgment been served on/notified to the party against whom enforcement is sought?

8.2.1 Yes

8.2.1.1 Name of party

8.2.1.2 Date of service/notification

8.2.2 No

Done at, (date)

Signature/stamp