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CORRIGENDUM

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Proposal for a

**COUNCIL REGULATION**

**concerning jurisdiction and the recognition and enforcement of judgments in  
matrimonial matters and in matters of parental responsibility repealing  
Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001  
in matters relating to maintenance**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. BACKGROUND

This Proposal is part of ongoing work within the European Community for the creation of a genuine judicial area based on the principle of mutual recognition of judicial decisions.<sup>1</sup>

Its legal basis is Articles 61(c) and 67(1) of the Treaty establishing the European Community. According to Articles 61(c) and 65 of the Treaty, the Community adopts measures in the field of judicial cooperation in civil matters having cross-border implications and insofar as necessary for the proper functioning of the internal market. These measures include improving and simplifying the recognition and enforcement of decisions in civil and commercial cases. The basic instrument in this area is Council Regulation (EC) No 44/2001, which however does not apply to certain well-defined matters, including the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession.<sup>2</sup>

In the family law area, Council Regulation (EC) No 1347/2000 sets out rules on jurisdiction, recognition and enforcement of judgments on divorce, separation and marriage annulment, as well as judgments on parental responsibility for the children of both spouses given on the same occasion.<sup>3</sup> Council Regulation (EC) No 1347/2000 was the first Community instrument to be adopted in the area of judicial cooperation in civil matters, and constitutes an important first step for the mutual recognition of decisions in the family law area. The Regulation entered into force on 1 March 2001.

Building on Council Regulation (EC) No 1347/2000 France presented on 3 July 2000 an initiative aimed at abolishing *exequatur* for the part of the decision on parental responsibility that concerns rights of access (“French initiative on rights of access”).<sup>4</sup> The abolition of *exequatur* was coupled with a guarantee for the automatic return of the child at the end of the period of access, while the scope of the initiative was defined by reference to Council Regulation (EC) No 1347/2000.

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<sup>1</sup> Conclusions of the Tampere European Council, Point 33.

<sup>2</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ No L 12 of 16.1.2001, p. 1, Article 1(2)(a).

<sup>3</sup> Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, OJ No L 160 of 30.6.2000, p. 19.

<sup>4</sup> Initiative of the French Republic with a view to adopting a Council Regulation on the mutual enforcement of judgments on rights of access to children, OJ No C 234 of 15.8.2000, p. 7.

The Justice and Home Affairs Council meeting on 30 November 2000 adopted a program for organizing future work for the mutual recognition of decisions in four areas of work with the final aim of abolishing *exequatur* for all decisions.<sup>5</sup> Area 2 of the program is based on Council Regulation (EC) No 1347/2000, and includes at its first stage the extension of the scope of the Regulation beyond the divorce context and the abolition of *exequatur* for rights of access. On the same occasion, the Council concluded that work on the French initiative on rights of access should be pursued in parallel with the extension of the scope of Council Regulation (EC) No 1347/2000, so as to guarantee equality of treatment for all children.

On 6 September 2001 the Commission presented a Proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility (“Commission proposal on parental responsibility”).<sup>6</sup> The Proposal extends the rules on recognition and enforcement of Council Regulation (EC) No 1347/2000 to all decisions on parental responsibility based on common rules on jurisdiction and on reinforced cooperation between authorities. The basic rule on jurisdiction is the habitual residence of the child. The Proposal specifically addresses the problem of child abduction through provisions on jurisdiction and on the return of the child.

At the same time and for the purpose of addressing international situations, the Commission presented on 20 November 2001 a Proposal for a Council decision authorizing the Member States to sign the 1996 Hague Convention.<sup>7</sup>

The discussions in the Council that followed pointed to the need to bring together into a single instrument the Commission proposal on parental responsibility and the French initiative on rights of access. Moreover, the informal meeting of the Justice and Home Affairs Ministers of 14-15 February 2002 opened the way for a solution to the difficult issue of the return of the child in cases of child abduction. This would entail giving the final say to the Member State of the habitual residence of the child, with the Member State to which the child has been abducted being limited to taking provisional measures to protect the child.

In the light of these discussions, the European Parliament has preferred to wait for this Proposal before giving its opinion. Given that the provisions of the Commission proposal on parental responsibility are taken over in their entirety in the present Proposal, that proposal is now devoid of purpose and will be formally withdrawn by the Commission using standard procedures.

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<sup>5</sup> Programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, OJ No C 12 of 15.1.2001, p. 1. The program concerns the following four areas of work: (i) Brussels I; (ii) Brussels II and family situations arising through relationships other than marriage; (iii) rights in property arising out of a matrimonial relationship and the property consequences of the separation of an unmarried couple; and (iv) wills and succession. In the third (and final) stage of the program, the *exequatur* will have been abolished in all four areas.

<sup>6</sup> Proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility, OJ No C 332 of 27.11.2001, p. 269. This Proposal builds on a working document presented on 27 March 2000 and a hearing held on 27 June 2001.

<sup>7</sup> Proposal for a Council Decision authorizing the Member States to sign in the interest of the European Community the Convention on Jurisdiction, Applicable Law, Recognition and Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention), COM (2001) 680 final of 20.11.2001.

Hence the Commission is now presenting a new proposal that brings together Council Regulation (EC) No 1347/2000, the Commission proposal on parental responsibility and the French initiative on rights of access. The Proposal has two elements. First, it takes over the provisions on divorce of Council Regulation (EC) No 1347/2000 as they are. Second, it integrates into a complete system of rules on parental responsibility the provisions on parental responsibility of Council Regulation (EC) No 1347/2000, the Commission proposal on parental responsibility and the French initiative on rights of access. As a result, Council Regulation (EC) No 1347/2000 is repealed, its provisions having been taken over in their entirety in the Proposal.

The Commission has opted for a single instrument on divorce and parental responsibility with a view to facilitating the work of judges and practitioners when dealing with questions on parental responsibility that often arise in the context of matrimonial proceedings. The alternative would have been to repeal only the provisions on parental responsibility of Council Regulation (EC) No 1347/2000 to bring them together with the Commission proposal on parental responsibility and the French initiative on rights of access. The end result would have been two separate instruments dealing with related matters, one on divorce and one on parental responsibility, the former being an existing instrument (Council Regulation (EC) No 1347/2000) but with half of its provisions repealed. This alternative was not deemed satisfactory neither for facilitating the application of the law by judges and practitioners nor for promoting the simplification and coherence of Community legislation.

## **2. OBJECTIVE**

The Proposal aims at the recognition and enforcement within the Community of decisions in matrimonial matters and in matters of parental responsibility based on common rules on jurisdiction.

As regards matrimonial matters, the relevant provisions are taken over from Council Regulation (EC) No 1347/2000.

As regards matters of parental responsibility, a new set of rules is proposed, which builds on the existing provisions on parental responsibility in the context of divorce proceedings of Council Regulation (EC) No 1347/2000 and also brings together the two proposals under discussion.

The European Council meeting at Tampere in October 1999 identified the area of visiting rights as a priority for judicial cooperation.<sup>8</sup> This is a response to a real social need. As people increasingly move from one Member State to another, and families break up and are recomposed, children need a secure legal environment for maintaining relations with persons who have parental responsibility over them and who may now live in different Member States.

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<sup>8</sup> Conclusions of the Tampere European Council, Point 34.

The objective of Community action in this context is to protect the child's best interests. This means, in particular, to give concrete expression to his or her fundamental right to maintain contact with both parents, as laid down in Article 24 of the Charter of Fundamental Rights of the European Union.

To this end, the Commission is hereby proposing:

- (1) to extend the principle of mutual recognition to all decisions on parental responsibility (this corresponds to the Commission proposal on parental responsibility);
- (2) to abolish *exequatur* for rights of access (this corresponds to the French initiative on rights of access);<sup>9</sup> and
- (3) to elaborate a solution for the return of the child in cases of child abduction, whereby the Member State to which the child has been abducted may take a provisional protective measure not to return the child, which could in turn be superseded by a judgment on custody issued by the courts of the Member State of the child's habitual residence. Furthermore, should the latter entail the return of the child, the child should be returned without any special procedure being required for the recognition and enforcement of the judgment in the Member State to which the child has been abducted.

Hence the Proposal builds on Council Regulation (EC) No 1347/2000 to complete the first stage of the program of mutual recognition in area 2, the ultimate objective remaining the abolition of *exequatur* for all decisions.

The Proposal does not go beyond what is necessary to achieve the objective of simplifying the recognition and enforcement of decisions on parental responsibility, and thus meets the requirements of subsidiarity and proportionality set out in Article 5 of the Treaty establishing the European Community.

### 3. ARTICLES

The core of the Proposal is Chapters II and IV, which contain the rules on jurisdiction and recognition and enforcement respectively, and Chapter III, which elaborates a solution for the return of the child in cases of child abduction.

#### **Chapter I – Scope, Definitions and Basic Principles**

##### Article 1 – Scope

The Proposal extends the scope of Council Regulation (EC) No 1347/2000 to cover all civil proceedings relating to parental responsibility by severing the link with the matrimonial proceedings.

However, matters relating to maintenance are excluded, as these are already covered by Council Regulation (EC) No 44/2001, which offers a more advanced system of recognition and enforcement.

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<sup>9</sup> At the same time the Commission is proposing abolishing *exequatur* for certain judgments in the commercial law area through the creation of a European Enforcement Order (EEO) for uncontested claims.

Moreover, it appears that in some Member States there is a clear separation between criminal measures and subsequent civil measures of protection, such as the placement of the child in an institution. Thus an exclusion from the scope is also provided to make clear that the Member State that takes the criminal measures would not be precluded by virtue of this Regulation from exercising jurisdiction to also take the required civil measures.

The term ‘civil proceedings’ encompasses not only judicial but also administrative proceedings where available under national law.

This Article corresponds to Article 1(1) and (2) of Council Regulation (EC) No 1347/2000.

## Article 2 – Definitions

### *Court and Judgment*

The definitions of the terms ‘court’ and ‘judgment’ correspond to Articles 1(2) and 13(1) of Council Regulation (EC) No 1347/2000 respectively.

### *Member State*

The Proposal does not apply to Denmark, in conformity with the Protocol on the position of Denmark annexed to the Treaty on the European Union and the Treaty establishing the European Community.

Ireland and the United Kingdom are bound by Council Regulation (EC) No 1347/2000. They have also already given notice of their wish to take part in the adoption and application of the French initiative on rights of access and the Commission proposal on parental responsibility, in conformity with the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and the Treaty establishing the European Community.

### *Member State of origin and Member State of enforcement*

The terms ‘Member State of origin’ and ‘Member State of enforcement’ are used to facilitate the reading.

### *Parental responsibility*

A general definition of the term ‘parental responsibility’ is provided. This definition is broad, as the Commission considers it important not to discriminate between children by excluding certain measures and thus leaving certain children and situations outside the scope of the Regulation.

Hence the term relates to both the person and the property of the child, while a holder of parental responsibility may be either a natural or a legal person. The relevant rights and duties may be acquired by judgment, by operation of law or by an agreement having legal effect. It is further specified that the term includes rights of custody and rights of access.

### *Holder of parental responsibility*

The term ‘holder of parental responsibility’ is used to facilitate the reading.

### *Rights of custody*

Contrary to common usage, a broad definition is given to the term ‘rights of custody’ to encompass any right to have a say in determining the child’s place of residence. In fact, the definition follows closely Article 5 of the 1980 Hague Convention,<sup>10</sup> albeit using “have a say in determining” instead of “determine”, which better reflects the case law under the Convention.

The term is then used in the definition of child abduction, which is based on a breach of rights of custody.

### *Rights of access*

This definition mirrors the definition in Article 5 of the 1980 Hague Convention.

### *Child abduction*

This definition mirrors the definition in Article 3 of the 1980 Hague Convention. This requires taking notice directly of the law or of a judgment of the Member State of the habitual residence of the child to determine whether a child abduction has taken place.

### Article 3 – Right of the child to contact with both parents

This and the next article introduce into the Proposal two fundamental rights of the child found in Article 24 of the Charter of Fundamental Rights of the European Union, which has in turn drawn inspiration from the United Nations Convention on the rights of the child.

The right of the child to maintain contact with both parents, unless this is contrary to his or her interests, is the guiding principle for all decisions on rights of custody and rights of access.

### Article 4 – Right of the child to be heard

The right of the child to be heard becomes an essential procedural requirement that must be met before the *exequatur* for rights of access and for the return of the child can be abolished.

The hearing of the child may take place using the mechanism of Council Regulation (EC) No 1206/2001.<sup>11</sup>

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<sup>10</sup> XXVIII. Convention on the civil aspects of international child abduction (concluded October 25, 1980). The Convention is in force in all Member States.

<sup>11</sup> Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ No L 174 of 27.6.2001, p. 1.

## **Chapter II – Jurisdiction**

### **Section 1 – Divorce, legal separation and marriage annulment**

The provisions of this Section reproduce the provisions concerning divorce, legal separation and marriage annulment of Chapter II, Section 1 of Council Regulation (EC) No 1347/2000.

#### Article 5 – General jurisdiction

This Article corresponds to Article 2 of Council Regulation (EC) No 1347/2000.

#### Article 6 – Counterclaim

This Article corresponds to Article 5 of Council Regulation (EC) No 1347/2000.

#### Article 7 – Conversion of legal separation into divorce

This Article corresponds to Article 6 of Council Regulation (EC) No 1347/2000.

#### Article 8 – Exclusive nature of jurisdiction under Articles 5 to 7

This Article corresponds to Article 7 of Council Regulation (EC) No 1347/2000.

#### Article 9 – Residual jurisdiction

This Article corresponds to Article 8 of Council Regulation (EC) No 1347/2000.

### **Section 2 – Parental responsibility**

The Proposal sets up a complete system of bases of jurisdiction for judgments on parental responsibility aimed at avoiding conflicts of competence. The rules have to a large extent been inspired by the corresponding rules of the 1996 Hague Convention.<sup>12</sup>

The basic ground of the child's habitual residence (Article 10) is qualified in certain cases of a change in the child's residence (lawful or unlawful) or pursuant to an agreement between the holders of parental responsibility (Articles 11, 12 and 21) and a flexibility mechanism is also provided (Article 15). The aim is to attribute jurisdiction in all cases in a way that serves the best interests of the child.

These rules apply irrespective of the child's habitual residence being within or outside the Community. However, should the Community decide for the ratification of the 1996 Hague Convention by the Member States, the rules on jurisdiction set out in the Convention would take precedence over Community rules where the child concerned is not resident within the Community and is resident in a Contracting Party to the Convention that is not a Member State.

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<sup>12</sup> XXXIV. Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children (concluded October 19, 1996).



### Article 10 – General jurisdiction

As in the 1996 Hague Convention, jurisdiction is based in the first place on the child's habitual residence. This means that, where a child's habitual residence changes, the courts of the Member State of his or her new habitual residence shall have jurisdiction.

In line with customary practice within the Hague Conference where the concept of 'habitual residence' has been developed, the term is not defined, but is instead a question of fact to be appreciated by the judge in each case.

### Article 11 – Continuing jurisdiction of the Member State of the child's former residence

This Article applies in certain cases of relocation, that is of a lawful change of residence of a child, to allow jurisdiction to remain for some time with the Member State of the former residence of the child. The conditions that must be met for the continuing jurisdiction of the courts of the Member State of the child's former residence that have already issued a judgment on parental responsibility are that the child has only recently moved to his or her new residence while one of the holders of parental responsibility continues to reside in the Member State of the former residence of the child. Thus the modification of its earlier judgment to take into account the child's relocation is made by the court that is closest to the child, which allows for some continuity without nonetheless touching on the definition of the term 'habitual residence'.

Paragraph 3 provides that an appearance that is not entered for the purpose of contesting jurisdiction does not automatically imply that he or she has accepted the court's jurisdiction. It is important in family law cases that the judge should have some discretion in evaluating whether this is the case.

### Article 12 – Prorogation of jurisdiction

This Article covers two situations.

First, the spouses may accept the jurisdiction of the divorce court to also decide on parental responsibility over their common children. Paragraphs 1 and 3 correspond to Article 3(2) and (3) of Council Regulation (EC) No 1347/2000.

Second, paragraph 2 allows for an agreement among all holders of parental responsibility to bring the case before the courts of a Member State with which the child has a substantial connection. Such a connection may for instance be based on the habitual residence of one of the holders of parental responsibility or on the nationality of the child. This solution aims at promoting agreement, even if only on the court that should hear the case, also giving some flexibility to the holders of parental responsibility, while the court seized must find that assuming jurisdiction is in the best interests of the child.

Paragraph 4 is the same as paragraph 3 of Article 11.

### Article 13 – Jurisdiction based on the child’s presence

Paragraph 1 provides that if a child’s habitual residence cannot be established, then the Member State of the child’s presence shall by default assume jurisdiction.

Paragraph 2 provides for the jurisdiction of the Member State of the child’s presence also in respect of refugee children.

This Article is subsidiary in relation to the jurisdictional bases in the preceding articles.

### Article 14 – Residual jurisdiction

The residual application of national rules of conflicts of law is foreseen where no court of a Member State has jurisdiction pursuant to Articles 10 to 13 and 21. A decision based on residual jurisdiction would thus benefit from the rules of this Proposal for its recognition and enforcement in all other Member States.

### Article 15 – Transfer to a court better placed to hear the case

The rules on jurisdiction in this Section have been structured with a view to putting into place a complete and rational system that serves the best interests of the child. Still, there may be situations (albeit exceptional) where the courts of another Member State would be better placed to hear the case. A provision that allows the transfer of a case has thus been included both to recognize and to further promote the mutual trust that has been developing between Member States in the area of judicial cooperation. A similar mechanism for the transfer of cases is foreseen in the 1996 Hague Convention.

However, the system proposed here is less open-ended. It is emphasized that this Article should apply only in exceptional circumstances. The requisite connection to the Member State to which the case may be transferred is based on the child having a former habitual residence in that Member State, or the child being a national of that Member State, or one of the holders of parental responsibility having his or her habitual residence in that Member State or the child having property there. Moreover, the transfer must be requested by a holder of parental responsibility, and cannot therefore be made on the court’s own initiative. An additional safeguard is the evaluation of the court proposing the transfer as well as the court accepting the transfer that this is in the best interests of the child.

The central authorities contribute towards facilitating communications between courts for purposes of this Article. At a later stage, a mechanism for direct court-to-court transfer may be envisaged; for the time being, however, the second court must be seized using normal procedures.

## **Section 3 – Common provisions**

### Article 16 – Seizing of a Court

This Article corresponds to Article 11(4) of Council Regulation (EC) No 1347/2000.

#### Article 17 – Examination as to jurisdiction

This Article corresponds to Article 9 of Council Regulation (EC) No 1347/2000.

#### Article 18 – Examination as to admissibility

This Article corresponds to Article 10 of Council Regulation (EC) No 1347/2000.

#### Article 19 – Lis pendens and dependent actions

This Article provides the same mechanism as Article 11(1) to (3) of Council Regulation (EC) No 1347/2000, whereby the court second seized declines its jurisdiction in favor of the court first seized.

As regards proceedings relating to divorce, legal separation or marriage annulment, the mechanism is triggered if these are between the same parties. This corresponds to Articles 11(1) and (2) of Council Regulation (EC) No 1347/2000.

As regards proceedings relating to parental responsibility, the mechanism is triggered if these involve matters of parental responsibility over the same child. It is expected that this will rarely be used, as the jurisdictional regime for parental responsibility does not provide for alternative grounds of jurisdiction.

#### Article 20 – Provisional, including protective, measures

This Article follows closely Article 12 of Council Regulation (EC) No 1347/2000. In urgent cases, the courts of the Member State where the child is present or his assets are located should be able to take the necessary measures to protect the child's person or property.

In addition, paragraph 2 provides that these measures shall cease to apply once the courts having jurisdiction as to the substance of the matter have taken a decision.

A different regime for the provisional protection of the child is foreseen in Chapter III for cases of child abduction.

### **Chapter III – Child abduction**

The fact that jurisdiction automatically follows a change in the child's habitual residence presents the risk of resorting to unlawful action to establish artificial jurisdictional links with a view to obtaining custody of a child.

At the international level, the 1980 Hague Convention aims at the restoration of the status quo by requiring the State to which a child has been abducted to order his or her immediate return. The Convention creates an effective *ad hoc* remedy without putting in place common rules on jurisdiction, recognition and enforcement. The latter are proposed in the 1996 Hague Convention, which nonetheless gives precedence to the 1980 Hague Convention. Ultimately both conventions allow under certain circumstances for a transfer of jurisdiction to the Member State to which the child has been abducted once a decision not to return the child has been taken by a court in that State.

The solution put forth in this Chapter is premised on a level of trust inherent in a common judicial area and is expected to produce a deterrent effect, in that it would no longer be possible to bring about a change in the court having jurisdiction through unlawful action. Hence the Member State to which the child has been abducted can only take a provisional measure not to return the child, which could in turn be superseded by a decision on custody taken in the Member State of the child's habitual residence. And unlike the Hague Conventions only on the basis of the latter would jurisdiction be transferred.

The solution relies on the active cooperation between central authorities, which must institute proceedings and keep each other informed of all stages in the process. For purposes of hearing the child, the mechanism of Council Regulation (EC) No 1206/2001 may be used.

Given that a Community-specific solution is fashioned in cases of child abduction, Article 4 of Council Regulation (EC) No 1347/2000 has not been included. Instead, the 1980 Hague Convention is now listed in Article 63 among the conventions over which the Regulation takes precedence in the relations between Member States.

#### Article 21 – Jurisdiction

Paragraph 1 provides that, as a general matter, the change in a child's habitual residence resulting from abduction should not entail a transfer of jurisdiction to the courts of the Member State to which the child has been abducted.

As an exception to paragraph 1, paragraph 2 recognizes that it may be legitimate in certain cases for the *de facto* situation created by an unlawful act of child abduction to produce as a legal effect the transfer of jurisdiction. To this end, a balance must be struck between allowing the court that is now closest to the child to assume jurisdiction and preventing the abductor from reaping the benefit of his or her unlawful act.

In Article 7 of the 1996 Hague Convention this balance is found on the basis that sufficient time has passed and that no request for return lodged within the one-year period is still pending. This means either that no request for return has been lodged, or that the Member State to which the child has been abducted has decided that a valid reason exists for not returning the child by applying one of the exceptions to return of the 1980 Hague Convention.

Whereas the Convention allows for a transfer of jurisdiction on the basis of a decision in the Member State to which the child has been abducted, the Proposal would allow a transfer of jurisdiction only if the courts of the Member State of the child's habitual residence immediately before the removal or retention have issued a judgment on custody that does not entail the child's return, or have failed to issue a judgment within one year from being seized.

#### Article 22 – Return of the child

This Article places an obligation to act within a strict time limit on the central authority of the Member State to which the child has been abducted. The child must be returned within one month from locating him or her, unless proceedings for a protective measure have been instituted and are still pending. Hence, the only way to

refuse to return the child is by means of applying to the courts for a protective measure within one month from locating him or her. Such an application may be made either by a holder of parental responsibility or by an authority.

This should not prevent a holder of rights of custody from obtaining the return of the child through other means, for instance by seeking to enforce an existing custody decision.

#### Article 23 – Provisional protective measure not to return the child

A protective measure not to return the child can only be taken on the basis of a grave risk or the objection of the child. These mirror the exceptions to return available in Article 13 of the 1980 Hague Convention. As regards point (a) of Article 13 of the Convention, which refers to custody rights not being actually exercised or to consent or subsequent acquiescence, the child's removal or retention would not be considered child abduction in these cases according to the definition in Article 2.

The difference with the 1980 Hague Convention lies, however, in the fact that this measure is provisional. Most importantly, paragraph 3 provides that the measure shall be superseded by a judgment on custody issued by the Member State of the child's habitual residence immediately before the removal or retention.

#### Article 24 – Judgment on custody

This Article expresses the basic principle that the custody decision that sets out where the child should live should be taken by the courts of the Member State of the child's habitual residence immediately before the removal or retention.

Moreover, an obligation is placed on the central authority of the Member State of the child's habitual residence immediately before the removal or retention to seize the courts for this purpose, while the possibility is also left open to any holder of parental responsibility to do the same. Of course, should all holders of parental responsibility expressly acquiesce to the new *de facto* situation, this would no longer constitute child abduction and the central authority would not have the obligation to seize the courts for a final determination.

The child must be heard in the procedure, and the provisions of Council Regulation 1206/2001 may be used for this purpose.

Most importantly, paragraph 5 provides that, should the judgment on custody entail the return of the child, this shall be recognized and enforced without any special procedure being required in the Member State to which the child has been abducted. It is emphasized that the *exequatur* is abolished for the judgment on custody only for the limited purpose of returning the child. The provisions of Chapter IV, Section 3 apply for this purpose.

#### Article 25 – Fees and other costs

This Article provides that central authorities shall assist holders of parental responsibility free of charge, while courts may direct an abductor to pay the costs incurred in locating and returning the child.

## **Chapter IV – Recognition and Enforcement**

### **Section 1 - Recognition**

The provisions of this Title reproduce Section 1 of Chapter III of Council Regulation (EC) No 1347/2000.

It has not been necessary to include Article 16 of Council Regulation (EC) No 1347/2000 on agreements with third countries. This is because preexisting agreements are already protected in accordance with Article 307 of the Treaty. As regards future agreements, which can only be concluded by the Community to the extent they may affect the Regulation or alter its scope in accordance with the AETR case law, these would take precedence over the Regulation even in the absence of a specific provision to this effect.

#### Article 26 – Recognition of a judgment

This Article corresponds to Article 14 of Council Regulation (EC) No 1347/2000.

Paragraph 1 also provides that authentic instruments and court settlements shall be recognized under the same conditions as judgments. In addition, the provisions on recognition and enforcement also cover costs and expenses. This paragraph corresponds to Article 13(2) and (3) of Council Regulation (EC) No 1347/2000.

For purposes of proceedings on recognition or non-recognition, paragraph 3 refers to the same procedures as for a declaration of enforceability of a judgment on parental responsibility in Section 2. As in Article 22(3) of Council Regulation (EC) No 1347/2000, local jurisdiction is determined by reference to the internal law of the Member State where proceedings are brought. However, in the case of rights of access or the return of the child certified pursuant to Chapter IV, Section 3, it would no longer be possible to apply for non-recognition.

#### Article 27 – Grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment

This Article corresponds to Article 15(1) of Council Regulation (EC) No 1347/2000.

#### Article 28 – Grounds of non-recognition for judgments relating to parental responsibility

This Article corresponds to Article 15(2) of Council Regulation (EC) No 1347/2000.

#### Article 29 – Prohibition of review of jurisdiction of court of origin

This Article corresponds to Article 17 of Council Regulation (EC) No 1347/2000.

#### Article 30 – Differences in applicable law

This Article corresponds to Article 18 of Council Regulation (EC) No 1347/2000.

#### Article 31 – Non-review as to substance

This Article corresponds to Article 19 of Council Regulation (EC) No 1347/2000.

Article 32 – Stay of proceedings

This Article corresponds to Article 20 of Council Regulation (EC) No 1347/2000.

**Section 2 – Application for a declaration of enforceability**

The provisions of this Section reproduce Sections 2 and 3 of Chapter III of Council Regulation (EC) No 1347/2000.

Article 33 – Enforceable judgments

This Article corresponds to Article 21 of Council Regulation (EC) No 1347/2000.

Article 34 – Jurisdiction of local courts

This Article corresponds to Article 22(1) and (2) of Council Regulation (EC) No 1347/2000.

Article 35 – Procedure

This Article corresponds to Article 23 of Council Regulation (EC) No 1347/2000.

Article 36 – Decision of the court

This Article corresponds to Article 24 of Council Regulation (EC) No 1347/2000.

Article 37 – Notice of the decision

This Article corresponds to Article 25 of Council Regulation (EC) No 1347/2000.

Article 38 – Appeal against the decision

This Article corresponds to Article 26 of Council Regulation (EC) No 1347/2000.

Article 39 – Courts of appeal and means of contest

This Article corresponds to Article 27 of Council Regulation (EC) No 1347/2000.

Article 40 – Stay of proceedings

This Article corresponds to Article 28 of Council Regulation (EC) No 1347/2000.

Article 41 – Partial enforcement

This Article corresponds to Article 29 of Council Regulation (EC) No 1347/2000.

Article 42 – Documents

This Article corresponds to Article 32 of Council Regulation (EC) No 1347/2000.

Article 43 – Absence of documents

This Article corresponds to Article 34 of Council Regulation (EC) No 1347/2000.

## Article 44 – Certificate concerning judgments in matrimonial matters and certificate concerning judgments on parental responsibility

This Article corresponds to Article 33 of Council Regulation (EC) No 1347/2000.

### **Section 3 – Enforcement concerning rights of access and the return of a child**

This Section does away with the *exequatur* in the Member State of enforcement for judgments that have been certified in the Member State of origin. As a result, the judgment shall be treated for enforcement purposes as if it were given in the Member State of enforcement.

The procedural requirements that must be met for certification concern the hearing of the child and default judgments, thus corresponding to the grounds of non-recognition in Article 15(2)(b) and (c) of Council Regulation (EC) No 1347/2000.

As regards default judgments, a distinction is drawn between rights of access and the return of the child. On the one hand, abolishing *exequatur* for rights of access does not apply to default judgments (the alternative would have been to set out minimum standards on the service of documents). On the other hand, this is not a concern in cases of child abduction given their nature as well as the elaborate cooperation mechanism foreseen in Chapter III.

As regards Article 15(2)(e) and (f) of Council Regulation (EC) No 1347/2000, it should always be possible to invoke the existence of an irreconcilable later judgment at the enforcement stage under the law of the Member State of enforcement. This is the case today, for instance, where the second judgment is issued after the first judgment has obtained the *exequatur* but before any action for enforcement has been undertaken.

As regards Article 15(2)(a), the ground of public policy is not expected to be invoked often for the non-recognition of judgments under Council Regulation (EC) No 1347/2000. Should Member States have specific concerns about situations where this may still be relevant, they can make specific proposals in this respect.

As regards the right to be heard of other holders of parental responsibility (Article 15(2)(d)), their views would normally be taken into account in both rights of access and return cases. Should this not have been the case, the original judgment can be appealed and may be modified accordingly.

## Article 45 – Scope

This Section goes beyond the scope of the French initiative on rights of access to also apply to the return of the child. This is an essential element of the solution to child abduction cases put forth in Chapter III.

With respect to rights of access, the scope has been limited to parents, as national laws differ considerably on the issue of rights of access of holders of parental responsibility other than parents.

Should a judgment not benefit from certification pursuant to this Section, it may still be recognized and enforced by applying the provisions of Sections 1 and 2. This could, for instance, concern a default judgment on rights of access.



#### Article 46 – Rights of access

Paragraph 1 states the basic principle whereby a special procedure in the Member State of enforcement shall not be required for the recognition and enforcement of judgments that have been certified in accordance with the provisions of this Section.

Paragraph 2 sets out the relevant procedural requirements, namely that the judgment was not given in default of appearance and that the child was given an opportunity to be heard having regard to his or her age and maturity. The standard form in Annex VI must be used for the certificate.

#### Article 47 – Return of the child

Paragraph 1 states the basic principle whereby a special procedure in the Member State of enforcement shall not be required for the recognition and enforcement of judgments that have been certified in accordance with the provisions of this Section.

Paragraph 2 sets out the relevant procedural requirement, namely that the child was given an opportunity to be heard having regard to his or her age and maturity. The standard form in Annex VII must be used for the certificate.

#### Article 48 – Appeal

This Article provides that it is not possible to have a separate appeal against the issuing of a certificate.

#### Article 49 – Documents

For enforcement purposes, the judgment must be accompanied by the certificate and, where necessary in the case of rights of access, by a translation of the certificate.

Only point 10 of the certificate concerning rights of access, which describes the arrangements for the exercise of rights and access, may have to be translated. No translation is required for the certificate concerning return.

### **Section 4 – Other provisions**

#### Article 50 – Enforcement procedure

This Regulation does not touch on the enforcement procedure, which is to be carried out under the law of the Member State of enforcement.

#### Article 51 – Practical arrangements for the exercise of rights of access

A distinction must be drawn between decisions on attributing rights of access and decisions on organizing their exercise. In the latter case the courts of the Member State of enforcement should have some leeway to make the necessary practical arrangements, to the extent that these are not foreseen in the original decision and that its essential elements are respected.

### Article 52 – Legal aid<sup>13</sup>

This Article corresponds to Article 30 of Council Regulation (EC) No 1347/2000.

### Article 53 – Security, bond or deposit

This Article corresponds to Article 31 of Council Regulation (EC) No 1347/2000.

### Article 54 – Legalization or other similar formality

This Article corresponds to Article 35 of Council Regulation (EC) No 1347/2000.

## **Chapter V – Cooperation between central authorities**

An essential element of the Proposal is a system of cooperation between central authorities covering both divorce and parental responsibility.

Central authorities have a general information and coordination function, as well as cooperate in specific cases.

### Article 55 – Designation

Each Member State shall designate one central authority. These may be existing authorities entrusted with the application of international conventions in this area.

### Article 56 – General functions

In the first place, as members of the European Judicial Network<sup>14</sup>, the central authorities work on an information system and discuss issues of common interest and their methods of cooperation. In this context they may also develop best practices on family mediation or facilitate the networking of organizations working in this area.

### Article 57 – Cooperation on specific cases

Most importantly, central authorities assume an active role for the purpose of ensuring the effective exercise of rights of parental responsibility in specific cases, within the limits placed on their action by national law. Hence, they share information, give advice, promote mediation, and facilitate court-to-court communications. They play a particularly important role in cases of child abduction, where they have an obligation to locate and return the child, including where necessary to institute proceedings for this purpose.

### Article 58 – Working method

The ability to work in other languages and the provision of services free of charge are very important considerations for facilitating access to the central authorities.

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<sup>13</sup> The Commission presented on 18 January 2002 a Proposal for a Council Directive to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid and other financial aspects of civil proceedings, COM (2002) 13 final of 18.1.2002.

<sup>14</sup> Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, OJ No L 174 of 27.6.2001, p. 25.

### Article 59 – Meetings

It is also foreseen to use the network to hold meetings of the central authorities.

## **Chapter VI – Relations with other instruments**

### Article 60 – Relation with other instruments

This Article corresponds to Article 36 of Council Regulation (EC) No 1347/2000.

### Article 61 – Relations with certain multilateral conventions

This Article corresponds to Article 37 of Council Regulation (EC) No 1347/2000.

The list now also includes the 1980 Hague Convention.

In addition, the precedence of the Proposal to the 1996 Hague Convention is no longer limited to children habitually resident in a Member State. Should the Community decide for the ratification of the Convention by the Member States, the limitations that would be placed on Community law would thus follow from Article 52 of the Convention and would relate to children who are not resident in a Member State and who are resident in another Contracting Party.

### Article 62 – Treaties with the Holy See

This Article corresponds to Article 40 of Council Regulation (EC) No 1347/2000.

As with Article 16, it has not been necessary to reproduce Articles 38 and 39 of Council Regulation (EC) No 1347/2000. The ability of the Member States to conclude agreements follows from the case law of the Court of Justice, while the extent of effects of such agreements follows from international law as well as the provisions of Article 61.

## **Chapter VII – Transitional Provisions**

### Article 63

Paragraphs 1 and 2 adopt the same approach as Article 42 of Council Regulation (EC) No 1347/2000 for the application of this Regulation where proceedings are instituted before its date of application, but the judgment is handed out after that date.

Paragraphs 3 and 4 allow for the recognition and enforcement, using the provisions of this Proposal, of judgments that could have been recognized and enforced in accordance with Council Regulation (EC) No 1347/2000.

## **Chapter VIII – Final Provisions**

### Article 64 – Member States with two or more legal systems

This Article corresponds to Article 41 of Council Regulation (EC) No 1347/2000.

#### Article 65 – Information on central authorities and languages

On the basis of the information communicated by Member States, the Commission will keep the information on central authorities and languages up to date and make this information publicly available.

#### Article 66 – Amendments to Annexes I, II and III

The Commission will adapt Annexes I to III on the basis of the information communicated by the Member States. This Article corresponds to Article 44(1) of Council Regulation (EC) No 1347/2000.

#### Article 67 – Amendments to Annexes IV to VII

A comitology procedure is foreseen for modifying the standard forms. This Article corresponds to Article 44(2) of Council Regulation (EC) No 1347/2000.

#### Article 68 – Committee

This Article corresponds to Article 45 of Council Regulation (EC) No 1347/2000.

#### Article 69 – Repeal of Regulation (EC) No 1347/2000

Council Regulation (EC) No 1347/2000 is repealed, with its provisions on divorce, separation and marriage annulment having been included in the Proposal as they are.

However, judgments that would have been recognized and enforced under the provisions of Council Regulation (EC) No 1347/2000 would now still be recognized and enforced under the provisions of this Regulation in accordance with the transitional provisions in Article 63(3) and (4).

#### Article 70 – Amendment of Regulation (EC) No 44/2001

Article 5(2) of Regulation (EC) No 44/2001 is amended to ensure that a court can assume jurisdiction in matters related to maintenance in all cases where these are ancillary to proceedings concerning matters of parental responsibility.

#### Article 71 – Entry into force

It is foreseen that the Regulation will apply one year after its entry into force. However, Article 65 will apply from the date of entry into force, since Member States will have the obligation to communicate the information indicated therein within three months.

### **Annexes**

#### Annex I

This Annex corresponds to Annex I of Council Regulation (EC) No 1347/2000.

#### Annex II

This Annex corresponds to Annex II of Council Regulation (EC) No 1347/2000.

### Annex III

This Annex corresponds to Annex III of Council Regulation (EC) No 1347/2000.

### Annex IV

This Annex corresponds to Annex IV of Council Regulation (EC) No 1347/2000.

### Annex V

This Annex corresponds to Annex V of Council Regulation (EC) No 1347/2000.

The only difference lies in replacing 'parents' in item 3 with 'holders of parental responsibility'. As a result an item 3.3 'other' has been added to allow for holders other than the mother and the father of the child.

### Annex VI

This is the standard form for the certificate concerning judgments on rights of access pursuant to Article 46(1).

Item 10 relates to the arrangements for the exercise of rights of access. This is the only part of the certificate that needs to be translated, where necessary.

### Annex VII

This is the standard form for the certificate concerning return pursuant to Article 47(1).

### Annex VIII

This Annex contains a comparative table of the provisions of this Regulation against the corresponding provisions of Council Regulation (EC) No 1347/2000, which is now repealed.

Proposal for a

**COUNCIL REGULATION**

**concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility repealing Regulation (EC) No 1347/2000 and amending Regulation (EC) No 44/2001 in matters relating to maintenance**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>15</sup>,

Having regard to the opinion of the European Parliament<sup>16</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>17</sup>,

Whereas:

- (1) The European Community has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.
- (2) The Tampere European Council endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area, and identified visiting rights as a priority.
- (3) Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses<sup>18</sup> sets out rules on jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility for the children of both spouses rendered on the occasion of the matrimonial proceedings.
- (4) On 3 July 2000 France presented an initiative for a Council Regulation on the mutual enforcement of judgments on rights of access to children.<sup>19</sup>

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<sup>15</sup> OJ C , , p. .

<sup>16</sup> OJ C , , p. .

<sup>17</sup> OJ C , , p. .

<sup>18</sup> OJ L 160, 30.6.2000, p.19.

<sup>19</sup> OJ C 234, 15.8.2000, p.7.

- (5) For purposes of facilitating the application of the rules on parental responsibility that often arises in the context of matrimonial proceedings, it is more appropriate to have a single instrument for matrimonial matters and matters of parental responsibility.
- (6) The scope of this Regulation should cover civil proceedings, including proceedings considered equivalent to judicial proceedings, and excluding purely religious proceedings. Therefore the reference to "courts" should include all authorities, judicial or otherwise, with jurisdiction in the matters covered by this Regulation.
- (7) Authentic instruments and court settlement that are enforceable in one Member State should be treated as equivalent to "judgments".
- (8) As regards judgments on divorce, legal separation or marriage annulment, this Regulation should only apply to the dissolution of matrimonial ties, and should not affect issues such as the fault of the spouses, property consequences of the marriage, maintenance obligations or any other ancillary measures.
- (9) In order to ensure equality for all children, this Regulation should cover all decisions on parental responsibility, excluding matters relating to maintenance, which are covered by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>20</sup> and measures taken as a result of penal offences committed by children.
- (10) The grounds of jurisdiction in matters of parental responsibility accepted in this Regulation should be shaped in the light of the best interests of the child. This means that jurisdiction should lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.
- (11) Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters<sup>21</sup> should apply to the service of documents in proceedings instituted pursuant to this Regulation.
- (12) This Regulation should not prevent the courts of a Member State from taking provisional, including protective, measures, in urgent cases, with regard to persons or property situated in that State.
- (13) In cases of child abduction, the courts of the Member State to which the child has been removed or is retained should have the possibility to take a provisional protective measure not to return the child, which should be superseded by a judgment on custody issued by the courts of the child's former habitual residence. Should that judgment entail the return of the child, the child should be returned without any special procedure being required for recognition and enforcement in the Member State to which the child has been abducted.

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<sup>20</sup> OJ L 12, 16.1.2001, p.1.

<sup>21</sup> OJ L 160, 30.6.2000, p.37.

- (14) Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters<sup>22</sup> may be used for the hearing of the child.
- (15) The recognition and enforcement of judgments given in a Member State are based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required. These relate to observing public policy in the Member State of enforcement, safeguarding the rights of the defence and those of the parties, including the rights of the child, and withholding recognition of irreconcilable judgments.
- (16) No special procedure should be required in the Member State of enforcement for the recognition and enforcement of judgments on rights of access and judgments on return that have been certified in the Member State of origin in accordance with the provisions of this Regulation.
- (17) Central authorities should cooperate both as a general matter and in specific cases, including for purposes of promoting the amicable resolution of family disputes. To this end central authorities should avail themselves to participate in the European Judicial Network in civil and commercial matters created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters.<sup>23</sup>
- (18) The Commission should be empowered to amend Annexes I, II and III relating to the courts and redress procedures on the basis of the information communicated by the Member State concerned.
- (19) 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,<sup>24</sup> amendments to Annexes IV to VII should be adopted by use of the advisory procedure provided for in Article 3 of that Decision.
- (20) In the light of the foregoing, Regulation (EC) No 1347/2000 should be repealed and replaced.
- (21) Regulation (EC) No 44/2001 should be amended as to allow the court having jurisdiction in matters of parental responsibility in accordance with the provisions of this Regulation to decide on maintenance.
- (22) The United Kingdom and Ireland, 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, have given notice of their wish to take part in the adoption and application of this Regulation.
- (23) Denmark, 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, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application.

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<sup>22</sup> OJ L 174, 27.6.2001, p.1.

<sup>23</sup> OJ L 174, 27.6.2001, p.25.

<sup>24</sup> OJ L 184, 17.7.1999, p.23.



- (24) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty establishing the European Community, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This Regulation does not go beyond what is necessary to achieve those objectives.
- (25) This Regulation respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the fundamental rights of the child as recognized in Article 24 of the Charter of Fundamental Rights of the European Union.

HAS ADOPTED THIS REGULATION:

## **CHAPTER I**

### **SCOPE, DEFINITIONS AND BASIC PRINCIPLES**

#### *Article 1* *Scope*

1. This Regulation shall apply to civil proceedings relating to:
  - (a) divorce, legal separation or marriage annulmentand
  - (b) the attribution, exercise, delegation, restriction or termination of parental responsibility.
2. Notwithstanding paragraph 1 this Regulation shall not apply to civil proceedings relating to:
  - (a) matters relating to maintenanceand
  - (b) measures taken as a result of penal offences committed by children.
3. Other proceedings officially recognized in a Member State shall be regarded as equivalent to judicial proceedings.

#### *Article 2* *Definitions*

For the purposes of this Regulation the following definitions shall apply:

- 1) The term "*court*" shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;
- 2) the term "*Member State*" shall mean all Member States with the exception of Denmark;

- 3) the term "*judgment*" shall mean a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision;
- 4) the term "*Member State of origin*" shall mean the Member State where the judgment to be enforced was issued;
- 5) the term "*Member State of enforcement*" shall mean the Member State where enforcement of the judgment is sought;
- 6) the term "*parental responsibility*" shall mean rights and duties given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect and relating to the person or the property of a child. In particular, the term shall include rights of custody and rights of access;
- 7) the term "*holder of parental responsibility*" shall mean any person having parental responsibility over a child;
- 8) the term "*rights of custody*" shall include rights and duties relating to the care of the person of a child, and in particular the right to have a say in determining the child's place of residence;
- 9) the term "*rights of access*" shall include the right to take a child to a place other than his or her habitual residence for a limited period of time;
- 10) the term "*child abduction*" shall mean a child's removal or retention where:
  - (a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention;

and

- (b) provided that, at the time of removal or retention the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

### *Article 3*

#### *Right of the child to contact with both parents*

A child shall have the right to maintain on a regular basis a personal relationship and direct contact with both parents, unless this is contrary to his or her interests.

### *Article 4*

#### *Right of the child to be heard*

A child shall have the right to be heard on matters relating to parental responsibility over him or her in accordance with his or her age and maturity.

## **CHAPTER II JURISDICTION**

### **SECTION 1 DIVORCE, LEGAL SEPARATION AND MARRIAGE ANNULMENT**

#### *Article 5 General jurisdiction*

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 either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his "domicile" there;
  - (b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.
2. For the purpose of this Regulation, "domicile" shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.

#### *Article 6 Counterclaim*

The court in which proceedings are pending on the basis of Article 5 shall also have jurisdiction to examine a counterclaim, in so far as the latter comes within the scope of this Regulation.

*Article 7*  
*Conversion of legal separation into divorce*

Without prejudice to Article 5, a court of a Member State that 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 8*  
*Exclusive nature of jurisdiction under Articles 5 to 7*

A spouse who:

- (a) is habitually resident in the territory of a Member State; or
- (b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her "domicile" in the territory of one of the latter Member States,

may be sued in another Member State only in accordance with Articles 5 to 7.

*Article 9*  
*Residual jurisdiction*

1. Where no court of a Member State has jurisdiction pursuant to Articles 5 to 7, 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 either a national of a Member State or, in the case of the United Kingdom and Ireland, does not have his "domicile" within the territory of one of the latter Member States, 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**  
**PARENTAL RESPONSIBILITY**

*Article 10*  
*General jurisdiction*

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seized.
2. Paragraph 1 shall be subject to the provisions of Articles 11, 12 and 21.

*Article 11*

*Continuing jurisdiction of the Member State of the child's former residence*

1. In the case of a change of residence of a child, the courts of the Member State of the former residence of the child shall continue to have jurisdiction where:
  - (a) there is a judgment issued by these courts in accordance with Article 10;
  - (b) the child has resided in the State of his or her new residence for a period of less than six months at the time the court is seized;and
  - (c) one of the holders of parental responsibility continues to reside in the Member State of the former residence of the child.
2. Paragraph 1 shall not apply if the child's new residence has become his/her habitual residence and if the holder of parental responsibility referred to in paragraph 1, point (c) has accepted the jurisdiction of the courts of this Member State.
3. For the purposes of this Article the appearance of a holder of parental responsibility before a court shall not be deemed in itself to constitute acceptance of the court's jurisdiction.

*Article 12*

*Prorogation of jurisdiction*

1. The courts of a Member State exercising jurisdiction by virtue of Article 5 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:
  - (a) if the child is habitually resident in one of the Member States;
  - (b) if at least one of the spouses has parental responsibility in relation to the child;and
  - (c) if the jurisdiction of the courts has been accepted by the spouses and is in the best interests of the child.
2. The courts of a Member State shall have jurisdiction where:
  - (a) all holders of parental responsibility have accepted jurisdiction at the time the court is seized;
  - (b) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;and
  - (c) jurisdiction is in the best interests of the child.

3. The jurisdiction conferred in paragraph 1 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.
4. For the purposes of this Article the appearance of a holder of parental responsibility before a court shall not be deemed in itself to constitute acceptance of the court's jurisdiction.

*Article 13  
Jurisdiction based on the child's presence*

1. Where a child's habitual residence cannot be established and no court of a Member State has jurisdiction pursuant to Articles 11 or 12, the courts of the Member State where the child is present shall have jurisdiction.
2. Paragraph 1 shall also apply to refugee children or children internationally displaced because of disturbances occurring in their country.

*Article 14  
Residual jurisdiction*

Where no court of a Member State has jurisdiction pursuant to Articles 10 to 13 or 21, jurisdiction shall be determined, in each Member State, by the laws of that State.

*Article 15  
Transfer to a court better placed to hear the case*

1. On the basis of an application by a holder of parental responsibility, the courts of a Member State having jurisdiction as to the substance of the matter may, in exceptional circumstances where this is in the best interests of the child, transfer the case to the courts of another Member State which:
  - (a) was the former habitual residence of the child, or
  - (b) is the place of the child's nationality, or
  - (c) is the habitual residence of a holder of parental responsibility, or
  - (d) is the place where property of the child is located.

To this end, the courts of the Member State having jurisdiction as to the substance of the matter shall stay the proceedings and prescribe a period of time during which the courts of that other Member State must be seized.

The courts of that other Member State may, where this is in the best interests of the child, accept jurisdiction within one month from the time they are seized. In this case, the court first seized shall decline jurisdiction. Otherwise, the court first seized shall exercise jurisdiction.

2. The courts shall cooperate for purposes of this Article, either directly or through the central authorities designated pursuant to Article 55.

### **SECTION 3 COMMON PROVISIONS**

#### *Article 16 Seizing of a Court*

A court shall be deemed to be seized:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;
- 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 applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

#### *Article 17 Examination as to jurisdiction*

Where a court of a Member State is seized 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 18 Examination as to admissibility*

1. Where a respondent habitually resident in a State other than the Member State where the action was brought 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 defense, or that all necessary steps have been taken to this end.

2. Article 19 of Regulation (EC) No 1348/2000 shall apply instead of the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.
3. Where the provisions of Regulation (EC) No 1348/2000 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

#### *Article 19*

#### *Lis pendens and dependent actions*

1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.
2. Where proceedings relating to parental responsibility over the same child are brought before courts of different Member States, the court second seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.
3. Where the jurisdiction of the court first seized is established, the court second seized shall decline jurisdiction in favor of that court.

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

#### *Article 20*

#### *Provisional, including protective, measures*

1. Without prejudice to Chapter III, 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. The measures referred to in paragraph 1 shall cease to apply when the courts of the Member State having jurisdiction as to the substance of the matter have issued a judgment.



## **CHAPTER III CHILD ABDUCTION**

### *Article 21 Jurisdiction*

1. In cases of child abduction, the courts of the Member State in which the child was habitually resident immediately before the removal or retention shall continue to have jurisdiction.
2. Paragraph 1 shall not apply if the child has acquired a habitual residence in another Member State, and:
  - (a) if each holder of rights of custody has acquiesced in the removal or retention;or
  - (b) if all of the following conditions are fulfilled:
    - (i) the child has resided in that other Member State for a period of at least one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child;
    - (ii) within the period referred to under (i) no application for return has been lodged pursuant to Article 22, paragraph 1, or a judgment that does not entail return has been issued in accordance with Article 24, paragraph 3, or no judgment on custody has been issued one year after the court has been seized pursuant to Article 24, paragraph 2;and
    - (iii) the child is settled in his or her new environment.

### *Article 22 Return of the child*

1. Without prejudice to any other legal means available, a holder of rights of custody may apply for the return of an abducted child to the central authority of the Member State to which the child has been abducted, either directly or through another central authority.
2. Upon receipt of an application for return pursuant to paragraph 1, the central authority of the Member State to which the child has been abducted shall:
  - (a) take the necessary measures for locating the child;and

- (b) ensure that the child has been returned within one month from locating him or her, unless proceedings instituted pursuant to paragraph 3 are pending.

The central authority of the Member State to which the child has been abducted shall forward to the central authority of the Member State of the child's habitual residence immediately before the removal or retention all useful information and make recommendations, as appropriate, for facilitating his or her return, or shall provide all useful information and remain in contact during the proceedings pursuant to paragraph 3.

- 3. The return of the child may be refused only by applying to the courts of the Member State to which the child has been abducted for a protective measure within the time period indicated in paragraph 2.

### *Article 23*

#### *Provisional protective measure not to return the child*

- 1. The courts of the Member State to which the child has been abducted shall decide without delay on an application for a protective measure pursuant to Article 22, paragraph 3.

The child shall be heard during the procedure, unless this appears inappropriate having regard to his or her age or degree of maturity.

- 2. The courts may take a protective measure not to return the child pursuant to paragraph 1 only if:
  - (a) there is a grave risk that return would expose the child to physical or psychological harm or otherwise place him or her in an intolerable situation;
  - or
  - (b) the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views.

- 3. The measure taken pursuant to paragraph 1 shall be provisional. The courts having issued this measure may at any time decide that it shall cease to apply.

The measure taken pursuant to paragraph 1 shall be superseded by a judgment on custody issued pursuant to Article 24, paragraph 3.

### *Article 24*

#### *Judgment on custody*

- 1. The central authority of the Member State to which the child has been abducted shall inform the central authority of the Member State of the child's habitual residence immediately before the removal or retention of any protective measure taken pursuant to Article 23, paragraph 1 within two weeks from taking the measure, and shall forward all useful information, in particular a transcript of the hearing of the child, if any.

2. The central authority of the Member State of the child's habitual residence immediately before the removal or retention shall seize the courts of that Member State within one month from receiving the information referred to in paragraph 1 for a decision on custody.

Any holder of parental responsibility may also apply to the courts for the same purpose.

3. The courts seized pursuant to paragraph 2 shall issue a judgment on custody without delay.

During the procedure the court shall remain in contact, directly or through the central authorities, with the court that took the protective measure not to return the child pursuant to Article 23, paragraph 1, for purposes of monitoring the child's situation.

The child shall be heard during the procedure, unless this appears inappropriate having regard to his or her age or degree of maturity. For this purpose the court shall take into account the information forwarded pursuant to paragraph 1 and, where appropriate, use the cooperation provisions of Regulation (EC) No 1206/2001.

4. The central authority of the Member State of the child's habitual residence immediately before the removal or retention shall inform the central authority of the Member State to which the child has been abducted of the judgment issued pursuant to paragraph 3, and shall forward all useful information and make recommendations, as appropriate.

5. A judgment given pursuant to paragraph 3 that entails the return of the child and has been certified in accordance with the provisions of Chapter IV, Section 3 shall be recognized and enforced without any special procedure being required for the limited purpose of returning the child.

For purposes of this paragraph the judgment given pursuant to paragraph 3 shall be enforceable notwithstanding any appeal.

#### *Article 25* *Fees and other costs*

1. The assistance provided by the central authorities shall be free of charge.
2. The courts may direct a person who has abducted a child to pay any costs incurred, including legal fees, for locating and returning the child.

## **CHAPTER IV RECOGNITION AND ENFORCEMENT**

### **SECTION 1 RECOGNITION**

#### *Article 26 Recognition of a judgment*

1. A judgment given in a Member State shall be recognized in the other Member States without any special procedure being required.

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.

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 recognized and declared enforceable under the same conditions as judgments.

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. Without prejudice to Section 3 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognized.

The local jurisdiction of the court appearing in the list in Annex I shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

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 27 Grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment*

A judgment relating to a divorce, legal separation or marriage annulment shall not be recognized:

- (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 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 defense 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; or
- (d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-member State 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.

#### *Article 28*

#### *Grounds of non-recognition for judgments relating to parental responsibility*

A judgment relating to parental responsibility shall not be recognized:

- (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) where it was given in default of appearance if the person in default was not 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 defense 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 State 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 29*  
*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 Articles 27 point (a) and 28 point (a) may not be applied to the rules relating to jurisdiction set out in Articles 5 to 9, 10 to 14 and 21.

*Article 30*  
*Differences in applicable law*

The recognition of a judgment 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.

*Article 31*  
*Non-review as to substance*

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

*Article 32*  
*Stay of proceedings*

1. 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.
2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the Member State of origin by reason of an appeal.

**SECTION 2**  
**APPLICATION FOR A DECLARATION OF ENFORCEABILITY**

*Article 33*  
*Enforceable judgments*

1. A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.
2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

*Article 34*  
*Jurisdiction of local courts*

1. An application for a declaration of enforceability shall be submitted to the court appearing in the list in Annex I.
2. The local jurisdiction 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 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 of enforcement, the local jurisdiction shall be determined by reference to the place of enforcement.

*Article 35*  
*Procedure*

1. The procedure for making the application shall be governed by the law of the Member State of enforcement.
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 of enforcement 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 42 and 44 shall be attached to the application.

*Article 36*  
*Decision of the court*

1. The court applied to shall give its decision 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 Articles 27, 28 and 29.
3. Under no circumstances may a judgment be reviewed as to its substance.

*Article 37*  
*Notice of the decision*

The appropriate officer of the court shall without delay bring to the notice of the applicant the decision given on the application in accordance with the procedure laid down by the law of the Member State of enforcement.

*Article 38*  
*Appeal against the decision*

1. The decision on the application for a declaration of enforceability may be appealed against by either party.
2. The appeal shall be lodged with the court appearing in the list in Annex II.
3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.
4. If the appeal is brought by the applicant for a declaration of enforceability, the party against whom enforcement is sought shall be summoned to appear before the appellate court. If such person fails to appear, the provisions of Article 18 shall apply.
5. An appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him or at his residence. No extension of time may be granted on account of distance.

*Article 39*  
*Courts of appeal and means of contest*

The judgment given on appeal may be contested only by the proceedings referred to in Annex III.

*Article 40*  
*Stay of proceedings*

1. The court with which the appeal is lodged under Articles 38 or 39 may, on the application of the party against whom enforcement is sought, stay the enforcement proceedings if an ordinary appeal has been lodged 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.
2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

*Article 41*  
*Partial enforcement*

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



*Article 42*  
*Documents*

1. A party seeking or contesting recognition or applying for a declaration of enforceability shall produce:
  - (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;and
  - (b) a certificate referred to in Article 44.
2. In addition, in the case of a judgment given in default, the party seeking recognition or applying for a declaration of enforceability shall produce:
  - (a) the original or 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 43*  
*Absence of documents*

1. If the documents specified in Article 42(1) point (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 44*  
*Certificate concerning judgments in matrimonial matters and certificate concerning judgments on parental responsibility*

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

**SECTION 3**  
**ENFORCEMENT CONCERNING RIGHTS OF ACCESS AND THE RETURN OF A CHILD**

*Article 45*  
*Scope*

4. 1. This Section shall apply to:
- (a) rights of access granted to one of the parents of a child
- and
- (b) the return of a child entailed by a judgment on custody given pursuant to Article 24, paragraph 3.
5. 2. The provisions of this Section shall not prevent a holder of parental responsibility from seeking recognition and enforcement in accordance with the provisions in Sections 1 and 2 of this Chapter.

*Article 46*  
*Rights of access*

1. The rights of access referred to in Article 45, paragraph 1, point (a) granted in an enforceable judgment given in a Member State shall be recognized and enforced in all other Member States without any special procedure being required if the judgment fulfils the procedural requirements and has been certified in the Member State of origin in accordance with paragraph 2 of this Article.
2. The court of origin shall issue the certificate referred to in paragraph 1 only if:
- (a) the judgment was not given in default of appearance;
- and
- (b) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The certificate is issued by the court of origin at the request of a holder of rights of access and using the standard form in Annex VI (certificate concerning rights of access).

It shall be completed in the language of the judgment.

*Article 47*  
*Return of the child*

1. The return of a child referred to in Article 45, paragraph 1, point (b) entailed by an enforceable judgment given in a Member State shall be recognized and enforced in all other Member States without any special procedure being required if the

judgment fulfils the procedural requirements and has been certified in the Member State of origin in accordance with paragraph 2 of this Article.

2. The court of origin shall issue the certificate referred to in paragraph 1 only if the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The court of origin shall issue that certificate at its own initiative and using the standard form in Annex VII (certificate concerning return).

The certificate shall be completed in the language of the judgment.

#### *Article 48* *Appeal*

No appeal shall lie against the issuing of a certificate pursuant to Articles 46(1) or 47(1).

#### *Article 49* *Documents*

1. A party seeking enforcement of a judgment shall produce:
  - (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;and
  - (b) the certificate referred to in Article 46(1) or Article 47(1).
2. For the purposes of this Article, the certificate referred to in Article 46(1) shall be accompanied, where necessary, by a translation of its point 10 relating to the arrangements for exercising the rights of access.

The translation shall be into the official language or one of the official languages of the Member State of enforcement or any other language that the Member State of enforcement expressly accepts. The translation shall be certified by a person qualified to do so in one of the Member States.

No translation of the certificate referred to in Article 47(1) shall be required.

### **SECTION 4** **OTHER PROVISIONS**

#### *Article 50* *Enforcement procedure*

The enforcement procedure is governed by the law of the Member State of enforcement.

*Article 51*  
*Practical arrangements for the exercise of rights of access*

1. The courts of the Member State of enforcement may make practical arrangements for organizing the exercise of rights of access, if the necessary arrangements have not been made in the judgment of the Member State having jurisdiction as to the substance of the matter and provided the essential elements of this judgment are respected.
2. The practical arrangements made pursuant to paragraph 1 shall cease to apply pursuant to a later judgment by the courts of the Member State having jurisdiction as to the substance of the matter.

*Article 52*  
*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 26, 33 and 51 to benefit from the most favorable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement.

*Article 53*  
*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 following grounds:

- (a) that he or she is not habitually resident in the Member State in which enforcement is sought; or
- (b) that he or she is either a foreign national or, where enforcement is sought in either the United Kingdom or Ireland, does not have his or her "domicile" in either of those Member States.

*Article 54*  
*Legalization or other similar formality*

No legalization or other similar formality shall be required in respect of the documents referred to in Articles 42, 43 and 49 or in respect of a document appointing a representative *ad litem*.

## **CHAPTER V**

### **COOPERATION BETWEEN CENTRAL AUTHORITIES**

#### *Article 55* *Designation*

Each Member State shall designate a central authority to assist with the application of this Regulation.

In addition to the central authority designated pursuant to paragraph 1, a Member State where two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units may designate one authority for each territorial unit and specify their territorial competence. In these cases, communications may be sent either directly to the territorially competent authority, or to the central authority, which shall be responsible for forwarding them to the territorially competent authority and informing the sender thereof.

#### *Article 56* *General functions*

The central authorities shall establish an information system on national laws and procedures and take general measures for improving the application of this Regulation and strengthening their cooperation, including developing cross-border cooperation mechanisms on mediation.

For this purpose the European Judicial Network in civil and commercial matters created by Decision No 2001/470/EC shall be used.

#### *Article 57* *Cooperation on specific cases*

The central authorities shall cooperate on specific cases, in particular for the purpose of ensuring the effective exercise of parental responsibility over a child. To this end, they shall, acting directly or through public authorities or other bodies in accordance with their laws:

- (a) exchange information:
  - (i) on the situation of the child,
  - (ii) on any procedures under way, or
  - (iii) on decisions taken concerning the child;
- (b) make recommendations, as appropriate, in particular with a view to coordinate a protective measure taken in the Member State where the child is present with a decision taken in the Member State that has jurisdiction as to the substance of the matter;
- (c) take all necessary measures for locating and returning the child, including instituting proceedings to this end pursuant to Articles 22 to 24;

- (d) provide information and assistance to holders of parental responsibility seeking to recognize and enforce decisions on their territory, in particular concerning rights of access and the return of the child;
- (e) support communications between courts, in particular for the purpose of transferring a case pursuant to Article 15 or deciding in cases of child abduction pursuant to Articles 22 to 24;

and

- (f) promote agreement between holders of parental responsibility through mediation or other means, and organize cross-border cooperation to this end.

*Article 58*  
*Working Method*

1. A holder of parental responsibility may submit a request for assistance to the central authority of the Member State of his or her habitual residence, or to the central authority of the Member State where the child is habitually resident or present. If the request for assistance makes reference to a judgment given pursuant to this Regulation, the holder of parental responsibility shall attach the relevant certificates provided for in Articles 44, 46(1) or 47(1).
2. Each Member State shall communicate to the Commission the official language(s) of the European Union other than its own which it can accept for communications to the central authorities.
3. The assistance provided by the central authorities pursuant to Article 57 shall be free of charge.
4. Each central authority shall bear its own costs.

*Article 59*  
*Meetings*

The Commission shall convene meetings of central authorities, using the European Judicial Network in civil and commercial matters created by Decision No 2001/470/EC.

## **CHAPTER VI**

### **RELATIONS WITH OTHER INSTRUMENTS**

*Article 60*  
*Relation with other instruments*

1. Subject to the provisions of Article 63 and paragraph 2 of this Article, this Regulation shall, for the Member States, 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. (a) 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.
  - (b) The principle of non-discrimination on the grounds of nationality between citizens of the Union shall be respected.
  - (c) The rules of jurisdiction in any future agreement to be concluded between the Member States referred to in subparagraph (a) which relate to matters governed by this Regulation shall be in line with those laid down in this Regulation.
  - (d) Judgments handed down in any of the Nordic States which have made the declaration provided for in subparagraph (a) under a forum of jurisdiction corresponding to one of those laid down in Chapters II and III of this Regulation, shall be recognized and enforced in the other Member States under the rules laid down in Chapter IV of this Regulation.
3. Member States shall send to the Commission:
- (a) a copy of the agreements and uniform laws implementing these agreements referred to in paragraph 2 points (a) and (c);
  - (b) any denunciations of, or amendments to, those agreements or uniform laws.

#### *Article 61*

##### *Relations with certain multilateral conventions*

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

- (a) the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors;
- (b) the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages;
- (c) the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations;
- (d) the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;

- (e) the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction;

and

- (f) 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.

*Article 62*  
*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 recognized in the Member States on the conditions laid down in Chapter IV, Section 1.
3. The provisions laid down in paragraphs 1 and 2 shall also apply to the following international treaties (Concordats) with the Holy See:
  - (a) 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;
  - (b) Agreement between the Holy See and Spain on legal affairs of 3 January 1979.
4. Recognition of the decisions provided for in paragraph 2 may, in Italy or in Spain, be subject to the same procedures and the same checks as are applicable to decisions of the ecclesiastical courts handed down in accordance with the international treaties concluded 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.

## **CHAPTER VII**

### **TRANSITIONAL PROVISIONS**

*Article 63*

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 that have been approved by a court in the course of proceedings after its date of application in accordance with Article 71.

2. Judgments given after the date of application of this Regulation in proceedings instituted before that date but after the date of entry into force of Regulation (EC) No 1347/2000 shall be recognized and enforced in accordance with the provisions of Chapter IV of this Regulation if jurisdiction was founded on rules which accorded with those provided for either in Chapters II or III of this Regulation or in Regulation (EC) No 1347/2000 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.
3. Judgments given before the date of application of this Regulation in proceedings instituted after the entry into force of Regulation (EC) No 1347/2000 shall be recognized and enforced in accordance with the provisions of Chapter IV of this Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings.
4. Judgments given before the date of application of this Regulation but after the date of entry into force of Regulation (EC) No 1347/2000 in proceedings instituted before the date of entry into force of Regulation (EC) No 1347/2000 shall be recognized and enforced in accordance with the provisions of Chapter IV of this Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings and that jurisdiction was founded on rules which accorded with those provided for either in Chapters II or III of this Regulation or in Regulation (EC) No 1347/2000 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 VIII FINAL PROVISIONS**

### *Article 64*

#### *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, or in the case of the United Kingdom "domicile", shall refer to the territorial unit designated by the law of that State;
- (c) any reference to the authority of a Member State shall refer to the authority of a territorial unit within that State which is concerned;

- (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.

*Article 65*

*Information on central authorities and languages*

The Member States shall communicate to the Commission within three months following the entry into force of this Regulation

(a) the names, addresses and means of communication for the central authorities designated pursuant to Article 55;

(b) the languages accepted for communications to central authorities pursuant to Article 58, paragraph 2;

and

(c) the languages accepted for the certificate concerning rights of access pursuant to Article 49, paragraph 2.

The Member States shall communicate to the Commission any changes to this information.

The Commission shall make this information publicly available.

*Article 66*

*Amendments to Annexes I, II and III*

The Member States shall notify the Commission of the texts amending the lists of courts and redress procedures in Annexes I to III.

The Commission shall adapt the Annexes concerned accordingly.

*Article 67*

*Amendments to Annexes IV to VII*

Any amendments to the standard forms in Annexes IV to VII shall be adopted in accordance with the procedure set out in Article 68(2).

*Article 68*

*Committee*

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representatives of the Commission.
2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468 EC shall apply, in compliance with Article 7(3) thereof.
3. The committee shall adopt its rules of procedure.

*Article 69*  
*Repeal of Regulation (EC) No 1347/2000*

1. Regulation (EC) No 1347/2000 shall be repealed as from the date of application of this Regulation in accordance with Article 71.
2. Any reference to Regulation (EC) No 1347/2000 shall be construed as a reference to this Regulation according to the comparative table in Annex VIII.

*Article 70*  
*Amendment of Regulation (EC) No 44/2001*

Article 5, point 2 of Regulation (EC) No 44/2001 shall be replaced by the following:

- “2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or, if the matter is ancillary to proceedings concerning parental responsibility, in the court which according to Council Regulation (EC) No ... [on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility]\*, has jurisdiction to entertain those proceedings

\* OJ L ...”

*Article 71*  
*Entry into force*

This Regulation shall enter into force on 1 July 2003.

The Regulation shall apply from 1 July 2004, with the exception of Article 65, which shall apply from 1 July 2003.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

*For the Council*  
*The President*

## ANNEX I

The applications provided for by Articles 26 and 33 shall be submitted to the following courts:

- in Belgium, the ‘tribunal de première instance’/‘rechtbank van eerste aanleg’/‘erstinstanzliches Gericht’,
- in Germany:
  - in the district of the ‘Kammergericht’ (Berlin), the ‘Familiengericht Pankow/Weissensee’,
  - in the districts of the remaining ‘Oberlandesgerichte’ to the ‘Familiengericht’ located at the seat of the respective ‘Oberlandesgericht’
- 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’appello’,
- 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 Familia’,
- 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;
  - (d) in Gibraltar, the Supreme Court.

## ANNEX II

The appeal provided for by Article 38 shall be lodged with the courts listed below:

— in Belgium:

(a) a person applying for a declaration of enforceability may lodge an appeal with the ‘cour d’appel’ or the ‘hof van beroep’;

(b) the person against whom enforcement is sought may lodge opposition with the ‘tribunal de première instance’/‘rechtbank van eerste aanleg’/‘erstinstanzliches Gericht’,

— in Germany, the ‘Oberlandesgericht’,

— in Greece, the ‘Εφετείο’,

— in Spain, the ‘Audiencia Provincial’,

— in France, the ‘Cour d’appel’,

— in Ireland, the High Court,

— in Italy, the ‘Corte d’appello’,

— Luxembourg, the ‘Cour d’appel’,

— in the Netherlands:

(a) if the applicant or the respondent who has appeared lodges the appeal: with the ‘gerechtshof’;

(b) if the respondent who has been granted leave not to appear lodges the appeal: with 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;

(d) in Gibraltar, the Court of Appeal.

### ANNEX III

The appeals provided for by Article 39 may be brought only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in 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 a single further appeal on a point of law.

## ANNEX IV

Certificate referred to in Article 44 concerning judgments in matrimonial matters

1. Country 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. Full name
    - 3.1.2. Country and place of birth
    - 3.1.3. Date of birth
  - 3.2. Husband
    - 3.2.1. Full name
    - 3.2.2. Country and place of birth
    - 3.2.3. Date of birth
  - 3.3. Country, place (where available) and date of marriage
    - 3.3.1. Country of marriage
    - 3.3.2. Place of marriage (where available)
    - 3.3.3. Date of marriage
4. Court which delivered the judgment
  - 4.1. Name of Court
  - 4.2. Place of Court
5. Judgment
  - 5.1. Date
  - 5.2. Reference number
  - 5.3. Type of judgment
    - 5.3.1. Divorce
    - 5.3.2. Marriage annulment

5.3.3. Legal separation

5.4. Was the judgment given in default of appearance?

5.4.1. no

5.4.2. yes<sup>25</sup>

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

7. Is the judgment subject to further appeal under the law of the Member State of origin?

7.1. No

7.2. Yes

8. Date of legal effect in the Member State where the judgment was given

8.1. Divorce

8.2. Legal separation

Done at \_\_\_\_\_, date \_\_\_\_\_ Signature and/or stamp

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<sup>25</sup> Documents referred to in Article 42(2) must be attached.



## ANNEX V

Certificate referred to in Article 44 concerning judgments on parental responsibility

1. Country of origin
2. Court or authority issuing the certificate
  - 2.1. Name
  - 2.2. Address
  - 2.3. Tel./Fax/E-mail
3. Holders of parental responsibility
  - 3.1. Mother
    - 3.1.1. Full name
    - 3.2.2. Date and place of birth
  - 3.2. Father
    - 3.2.1. Full name
    - 3.2.2. Date and place of birth
  - 3.3. Other
    - 3.2.1. Full name
    - 3.2.2. Date and place of birth
4. Court which delivered the judgment
  - 4.1. Name of Court
  - 4.2. Place of Court
5. Judgment
  - 5.1. Date
  - 5.2. Reference number
  - 5.3. Was the judgment given in default of appearance?
    - 5.3.1. No
    - 5.3.2. Yes<sup>26</sup>

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<sup>26</sup> Documents referred to in Article 42(2) must be attached.

6. Children who are covered by the judgment<sup>27</sup>

6.1. Full name and date of birth

6.2. Full name and date of birth

6.3. Full name and date of birth

6.4. Full name and date of birth

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

8. Attestation of enforceability and service

8.1. Is the judgment enforceable according to the law of the Member State of origin?

8.1.1. Yes

8.1.2. No

8.2. Has the judgment been served on the party against whom enforcement is sought?

8.2.1. Yes

8.2.1.1. Full name of the party

8.2.1.2. Date of service

8.2.2. No

Done at \_\_\_\_\_, date \_\_\_\_\_ Signature and/or stamp

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<sup>27</sup> If more than four children are covered, use a second form.

## ANNEX VI

Certificate referred to in Article 46(1) concerning judgments on rights of access

1. Country 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. Full name
    - 3.2.2. Date and place of birth
  - 3.2. Father
    - 3.2.1. Full name
    - 3.2.2. Date and place of birth
4. Court which delivered the judgment
  - 4.1. Name of Court
  - 4.2. Place of Court
5. Judgment
  - 5.1. Date
  - 5.2. Reference number
6. Children who are covered by the judgment<sup>28</sup>
  - 6.1. Full name and date of birth
  - 6.2. Full name and date of birth
  - 6.3. Full name and date of birth
  - 6.4. Full name and date of birth
7. The judgment is enforceable according to the law of the Member State of origin
8. The judgment was not given in default of appearance

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<sup>28</sup> If more than four children are covered, use a second form.

9. The children were given an opportunity to be heard, unless a hearing was considered inappropriate having regard to their age or degree of maturity

10. Arrangements for the exercise of rights of access

10.1. Date

10.2. Place

10.3. Specific obligations on holders of parental responsibility for picking up / returning the children

10.3.1. Responsibility for transport costs

10.3.2. Other

10.4. Any restrictions attached to the exercise of rights of access

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

Done at \_\_\_\_\_, date \_\_\_\_\_ Signature and/or stamp

## **ANNEX VII**

Certificate referred to in Article 47(1) concerning return

1. Country of origin
2. Court or authority issuing the certificate
  - 2.1. Name
  - 2.2. Address
  - 2.3. Tel./Fax/E-mail
3. Holders of parental responsibility
  - 3.1. Mother
    - 3.1.1. Full name
    - 3.2.2. Date and place of birth
  - 3.2. Father
    - 3.2.1. Full name
    - 3.2.2. Date and place of birth
  - 3.3. Other
    - 3.3.1. Full name
    - 3.3.2. Date and place of birth
4. Court which delivered the judgment
  - 4.1. Name of Court
  - 4.2. Place of Court
5. Judgment
  - 5.1. Date
  - 5.2. Reference number
6. Children who are covered by the judgment<sup>29</sup>
  - 6.1. Full name and date of birth
  - 6.2. Full name and date of birth
  - 6.3. Full name and date of birth

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<sup>29</sup> If more than four children are covered, use a second form.

6.4. Full name and date of birth

7. The children were given an opportunity to be heard, unless a hearing was considered inappropriate having regard to their age or degree of maturity

8. The judgment entails the return of the children

9. Person who has custody over the children

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

Done at \_\_\_\_\_, date \_\_\_\_\_ Signature and/or stamp

## ANNEX VIII

Comparative table with Regulation (EC) No 1347/2000

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