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REPORT

on the proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children
(COM(1999) 220 – C5-0045/1999 – 1999/0110(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Evelyne Gebhardt

Draftsman(*): Klaus-Heiner Lehne, on behalf of the Committee on Legal Affairs and the Internal Market

(*HUGHES Procedure)

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members, except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Abbreviations for committees

- I. AFET Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
- II. BUDG Committee on Budgets
- III. CONT Committee on Budgetary Control
- IV. LIBE Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
- V. ECON Committee on Economic and Monetary Affairs
- VI. JURI Committee on Legal Affairs and the Internal Market
- VII. INDU Committee on Industry, External Trade, Research and Energy
- VIII. EMPL Committee on Employment and Social Affairs
- IX. ENVI Committee on the Environment, Public Health and Consumer Policy
- X. AGRI Committee on Agriculture and Rural Development
- XI. PECH Committee on Fisheries
- XII. REGI Committee on Regional Policy, Transport and Tourism
- XIII. CULT Committee on Culture, Youth, Education, the Media and Sport
- XIV. DEVE Committee on Development and Cooperation
- XV. AFCO Committee on Constitutional Affairs
- XVI. FEMM Committee on Women's Rights and Equal Opportunities
- XVII. PETI Committee on Petitions

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PROCEDURAL PAGE – CONSULTATION PROCEDURE

By letter of 14 July 1999 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children (COM(1999) 220 – C5-0045/1999 – 1999/0110(CNS)).

At the sitting of 23 July 1999 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion.

At the sitting of 17 September 1999 the President announced that the report was to be drawn up by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the Committee on Legal Affairs and the Internal Market following the Hughes procedure.

At its meeting of 29 July 1999 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Mrs Gebhardt rapporteur.

It considered the proposal and the draft report at its meetings of 18 October 1999 and 9 November 1999.

At the latter meeting it adopted the draft resolution by 28 votes with 3 abstentions.

The following were present for the vote: Evans, vice-chairman; Ferri, vice-chairman; Gebhardt, rapporteur; Andersson, Banotti, Boumediene-Thiery, Cappato, Cashman, Ceyhun, Coelho, Deprez, Di Pietro (for Watson), Fiori (for Dell'Utri pursuant to Rule 153(2)), Frahm, Jeggle (for von Bötticher pursuant to Rule 153(2)), Kessler, Kirkhope, Klamt, Krivine (for Sylla), Lechner (for Cornillet), Ludford, Lund, Newton Dunn (for Hannan), Paciotti, Pirker, Roure (for Karamanou), Sartori (for Buttiglione pursuant to Rule 153(2)), Schmid, Schulz, Sousa Pinto, Swiebel, Turco (for Vanhecke), Van Lancker (for Terrón i Cusí), Vattimo and Wiebenga.

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 10 November 1999.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children (COM(1999) 220 – C5-0045/1999 – 1999/0110(CNS))

The proposal is approved with the following amendments:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1)
Recital 1a (new)

Whereas respect for the principle of non-discrimination must be guaranteed under this Regulation;

Justification:

Non-discrimination is a fundamental principle of the European Union and should therefore be referred to in the recitals.

(Amendment 2)
Recital 1b (new)

Whereas it is essential to protect the fundamental interests of children, in conformity in particular with the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, having regard to the valuable work undertaken in this area by the mediator of the President of the European Parliament;

Justification:

This amendment is intended to draw attention to the importance of children's welfare and to the valuable contribution made by the mediator of the President of the European Parliament in this area.

¹ OJ C 247, 31.08.99, p.1.

(Amendment 3)

Recital 5

Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose;

Does not affect English version.

Justification:

The proposal is in the form of a regulation, not a directive as stated in the German version.

(Amendment 4)

Recital 10

Whereas the Regulation covers parental responsibility issues that are closely linked to proceedings for divorce, separation or annulment; whereas the concept of 'parental responsibility' has to be defined by the legal system of the Member State in which responsibility is under consideration, but it will apply only to children of both spouses;

Whereas the Regulation covers parental responsibility issues that are closely linked to proceedings for divorce, separation or annulment; whereas it will apply only to children of both spouses;

(21 words deleted)

Justification:

The competence of the European Court of Justice to interpret the concept of 'parental responsibility' independently must not be called into question.

(Amendment 5)

Recital 20

Whereas the Council reserves the power to decide on changes to the list of courts enjoying jurisdiction, at the request of the relevant Member State;

Deleted

Justification:

Under amendment 20, the annexes listing the courts in the Member States having jurisdiction in respect of implementation of the regulation are to be adapted by the Commission in place of the Council, in accordance with the usual procedure.

(Amendment 6)

Recital 22

Whereas, in accordance with Articles 1 and 2 of the Protocols on the position of the United Kingdom and Ireland and on the position of Denmark, those Member States are not participating in the adoption of this Regulation; whereas this Regulation is accordingly not binding on the United Kingdom, Ireland or Denmark, nor is it applicable in their regard,

Whereas, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, those Member States are participating in the adoption of this Regulation; whereas this Regulation is accordingly binding on the United Kingdom and Ireland and applicable in their regard,

Justification:

In accordance with Article 3 of the Protocol on their position annexed to the Amsterdam Treaty, the United Kingdom and Ireland have notified the Council that they are to be included in the application of this regulation. Recital 22 therefore needs to be amended accordingly, and this amendment should be seen in conjunction with the further amendment relating to Denmark.

(Amendment 7)
Recital 22 a (new)

Whereas, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, that Member State is not participating in the adoption of this Regulation; whereas this Regulation is accordingly not binding on Denmark, nor is it applicable in its regard,

Justification:

In accordance with Articles 1 and 2 of the Protocol on its position annexed to the Amsterdam Treaty, Denmark has decided not to take part. The wording of the original Recital 22 of the Commission proposal must therefore be retained for Denmark.

(Amendment 8)
Article 11a (new)

For the purposes of Article 11, a court shall be deemed to be seized:

- (1) 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
- (2) 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.

Justification:

The purpose of this amendment is to adopt the precise definition of the time at which proceedings become pending laid down in Article 30 of the Commission proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final).

(Amendment 9)
Article 12(1a) (new)

1a. Provisional or protective measures under paragraph 1 relating to matters falling within the scope of this Regulation shall cease as soon as a judgment handed down by the court having jurisdiction to deal with the merits of a case under this Regulation has acquired status of such nature that its enforcement can no longer be suspended by an appeal.

Justification:

This amendment is intended to improve the basic text.

(Amendment 10)
Article 15(1)(b)

(b) where it was given in default of appearance, if the respondent was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;

(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 defence, unless the respondent failed to commence proceedings to challenge the judgment when it was possible for him to do so;

Justification:

This amendment is intended to bring the provisions into line with Article 41(2) of the Commission proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final) .

(Amendment 11)

Article 15(2)(b)

(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;

(b) if it was given, except in case of urgency, without the best interests of the child having been taken into account and/or 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;

Justification:

Under some legal systems, eg. the Scottish legal system, children are respected in law as legal persons, yet are offered assistance where failure to provide assistance would jeopardise the child's interests.

(Amendment 12)

Article 15(2)(f)

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

Deleted

Justification:

This objective of this regulation is to achieve recognition of judgments in matrimonial and custody matters between EU Member States. Precisely in custody cases it is necessary that judgments once delivered are legally valid, in order above all to ensure that the position of children is a secure one. Article 15(2)(f) is inconsistent with this intention and should therefore be deleted.

(Amendment 13)
Article 15a (new)

Where a Member State is required to recognise a divorce pursuant to the provisions of this regulation, it may not prohibit either of the spouses from remarrying on the grounds that the national law of a third country of which the spouses are nationals does not recognise that divorce.

Justification:

The purpose of this amendment is to ensure that nationals of a third country whose divorce is required to be recognised pursuant to this regulation are not prevented from remarrying on the grounds that the divorce is not recognised under the national law of the third country concerned.

(Amendment 14)
Article 21(1)

1. The application shall be submitted to the local courts having jurisdiction, as follows:

- in Belgium, the 'Tribunal de première instance' or the 'Rechtbank van eerste aanleg' or the 'erstinstanzliche Gericht',
- in the Federal Republic of Germany, the 'Familiengericht',
- in Greece, the ‘Μονομελές Πρωτοδικείο’,
- in Spain, the 'Juzgado de Primera Instancia',
- in France, the presiding Judge of the 'Tribunal de grande instance',
- in Italy, the 'Corte d'appello',
- in Luxembourg, the presiding Judge of the 'Tribunal d'arrondissement',

1. The application shall be submitted to the local courts having jurisdiction as listed in Annex I.

(The list of courts to which Article 21(1) refers is to be included in a new Annex I)

- in the Netherlands, the presiding Judge of the 'arrondissementsrechtbank',
- in Austria, the 'Bezirksgericht',
- in Portugal, the 'Tribunal de Comarca' or 'Tribunal de Família',
- in Finland, the 'käräjäoikeus/tingsrätt',
- in Sweden, the 'Svea hovrätt'.

Justification:

This amendment is intended to bring the provisions into line with the Commission proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final). It is a technical amendment, which is to be seen in conjunction with amendment 20.

(Amendment 15)
Article 26(1)

1. An appeal against the judgment authorising enforcement shall be lodged, in accordance with the rules governing procedure in contradictory matters, with the courts listed below:
- in Belgium, the 'Tribunal de première instance' or the 'Rechtbank van eerste aanleg' or the 'erstinstanzliche Gericht',
 - in the Federal Republic of Germany, the 'Oberlandesgericht',
 - in Greece, the 'Εφετείο',
 - in Spain, the 'Audiencia Provincial',
 - in France, the 'Cour d'appel',
 - in Italy, the 'Corte d'appello',
 - in Luxembourg, the 'Cour d'appel',
 - in the Netherlands, the 'arrondissementsrechtbank',

1. An appeal against the judgment authorising enforcement shall be lodged, in accordance with the rules governing procedure in contradictory matters, with the courts listed in Annex II.

(The list of courts to which Article 26(1) refers is to be included in a new Annex II)

- in Austria, the 'Bezirksgericht',
- in Portugal, the 'Tribunal da Relação',
- in Finland, the 'Hovioikeus/Hovrätt',
- in Sweden, the 'Svea hovrätt'.

Justification:

This amendment is intended to bring the provisions into line with the Commission proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final). It is a technical amendment, which is to be seen in conjunction with amendment 20.

(Amendment 16)
Article 26(2)

2. The judgment given on appeal may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in the Federal Republic of Germany, by a 'Rechtsbeschwerde',
- in 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'.

2. The judgment given on appeal may be contested only by means of the appeal procedures listed in Annex III.

(The list of appeal procedures to which Article 26(2) refers is to be included in a new Annex III)

Justification:

This amendment is intended to bring the provisions into line with the Commission proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final). It is a technical amendment, which is to be seen in conjunction with amendment 20.

(Amendment 17)

Article 28(1)

1. If the application for enforcement is refused, the applicant may appeal to the courts listed below:

- in Belgium, the 'Cour d'appel' or the 'Hof van beroep',
- in the Federal Republic of Germany, the 'Oberlandesgericht',
- in Greece, the 'Εφετείο',
- in Spain, the 'Audiencia Provincial',
- in France, the 'Cour d'appel',
- in Italy, the 'Corte d'appello',
- in Luxembourg, the 'Cour d'appel'
- in the Netherlands, the 'gerechtshof',
- in Austria, the 'Bezirksgericht',
- in Portugal, the 'Tribunal da Relação',
- in Finland, the 'Hovioikeus/Hovrätt',
- in Sweden, the 'Svea hovrätt'.

1. If the application for enforcement is refused, the applicant may appeal to the courts listed in Annex IV.

(The list of courts to which Article 28(1) refers is to be included in a new Annex IV)

Justification:

This amendment is intended to bring the provisions into line with the Commission proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final). It is a technical amendment, which is to be seen in conjunction with amendment 20.

(Amendment 18)

Article 29

A judgment given on appeal provided for in Article 28 may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in the Federal Republic of Germany, by a 'Rechtsbeschwerde',
- in 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'.

A judgment given on appeal provided for in Article 28 may be contested only by means of the appeal procedures listed in Annex V.

(The list of appeal procedures to which Article 29 refers is to be included in a new Annex V)

Justification:

This amendment is intended to bring the provisions into line with the Commission proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final). It is a technical amendment, which is to be seen in conjunction with amendment 20.

(Amendment 19)

Chapter Va - LANGUAGES

Article 43a (new)

The Member States shall ensure that the languages in which documents relating to the proceedings are produced include at least a language comprehensible to the

parties.

Justification:

It must be ensured that a party is not placed at a disadvantage on the basis of her or her language knowledge.

(Amendment 20)

Article 45

The lists of courts and redress procedures in Articles 21(1), 26(1) and (2), 28(1) and 29 may be amended by decision of the Council.

The Member States shall notify the Commission of the text of their legislative provisions amending the courts or competent authorities indicated in Annexes I, II and IV or the provisions of their national legislation listed in Annexes III and V. The Commission shall adapt the annexes concerned accordingly.

Justification:

This amendment is intended to bring the provisions into line with the Commission proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final). Amendments to the annex are necessitated by amendments to the national law of the Member States. It is therefore sufficient for notification to be given to the Commission; a legislative act of the Council is not needed. This amendment is to be seen in conjunction with amendments 14, 15, 16, 17 and 18.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children (COM(1999) 220 – C5-0045/1999 – 1999/0110(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(1999) 220¹),
 - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0045/1999),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0057/1999),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 247, 31.8.99, p. 1

EXPLANATORY STATEMENT

Legal basis of the regulation and other legal aspects

With the entry into force of the Maastricht Treaty, judicial cooperation became part of European Union law. However, it was not incorporated into the EC Treaty, but came under the third pillar, 'Provisions on cooperation in the fields of justice and home affairs'. This pillar did not provide for EC legal instruments to be adopted, but only for international agreements to be concluded. By letter of 21 January 1998, the European Parliament was consulted by the Council on a draft Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters. Parliament approved the proposal, subject to a number of amendments. The convention based on Article K3 of the TEU ('Brussels II') was signed on 28 May 1998, but was not ratified before the entry into force of the Amsterdam Treaty.

Under the Amsterdam Treaty, which entered into force on 1 May 1999, judicial cooperation in civil matters was incorporated into the EC Treaty as part of Title IV (Articles 61 and 65). As a result of judicial cooperation being brought within the Community system under the Amsterdam Treaty, the Member States may no longer conclude international agreements in this area, but special EC legal instruments (regulations and directives) have to be employed.¹ Accordingly, the Commission has now submitted the proposal for a regulation based on Article 61 of the EC Treaty which is the subject of this report, in place of the above convention.

Pursuant to the Protocols to the Treaties, Denmark, the United Kingdom and the Republic of Ireland do not in principle take part in the adoption of legal instruments under Title IV, and such instruments are therefore not binding on them. However, at the meeting of the Justice and Home Affairs Council on 12 March 1999, the United Kingdom and the Republic of Ireland stated that they wished to participate fully in the work of the Community in the area of judicial cooperation in civil matters, as a result of which the regulation will apply to them. Denmark has not yet made any statement in this connection.

The proposal for a regulation in question is to be judged a positive measure in that it fills a gap in private international law. The objective of developing the EU into an area of freedom, security and justice can be more easily achieved by means of European legal instruments than global conventions, as differences between legal systems are even more significant at world level, requiring even more compromises to be made. This can be seen from previous efforts to harmonise international provisions in this area. The Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations only partly solves the problems which arise, as it does not lay down direct jurisdiction provisions and does not sufficiently avoid the problem of irreconcilable judgments. In addition, it has been ratified by only 8 of the 15 Member States. The Hague Convention of 5 October 1961 concerning the protection of minors has proved equally

¹ This is not altered by the fact that Article 293 (ex Article 220) of the EC Treaty, which provides for measures to simplify 'formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards', remains in force. The uniform provisions on international jurisdiction laid down in the regulation considered in this report are primarily intended to help achieve the free movement of persons, which is the main purpose of Title IV. The Commission has therefore rightly chosen Article 61 of the EC Treaty as the legal basis for this regulation.

unsatisfactory. This led to the conclusion of a new Hague Convention on 19 October 1996, which, however, has not yet entered into force.

Assessment

The regulation in question makes a substantial difference to EU citizens, giving them greater legal certainty and accordingly improving the operation of the internal market with its open borders. Uniform civil status throughout the EU is guaranteed.

As more people are exercising their right to freedom of movement within the EU, marriages are increasingly taking place between nationals of different countries. In the past, problems have arisen in that documents certifying marital status were not equally recognised by all the Member States. Those concerned were therefore required to submit additional certification of validity, which was an expensive and time-consuming procedure. Under the new regulation, if a divorce has been granted in a Member State, the parties may, in principle, remarry in any other country. Once a petition has been successful in one Member State, there is no need for further proceedings, saving the European citizen unnecessary costs.

The previous rules caused particular difficulties for spouses of different nationalities who wished to separate. Questions regarding the competence of the courts and the validity of their judgments meant that it was not possible to rely on a judgment which had been delivered. In particular, children frequently suffered as the issue of custody was fought over. For spouses who were nationals of different countries, divorcing therefore often entailed additional costs as a result of their different nationalities.

The precise purpose of the regulation in question is therefore to contribute towards removing remaining discrimination against EU citizens who exercise their right to free movement, and guaranteeing the right to non-discriminatory treatment as a fundamental principle of the Treaty on European Union.

Your rapporteur pays particular attention to the matter of children's best interests. She therefore welcomes the fact that the regulation is not confined to provisions on jurisdiction and the recognition of judgments on dissolution of marriages, but also covers custody proceedings associated with divorce. It is essential that in all judgments by the courts the best interests of the children are taken into account, as it is the children who are affected the most by the separation or divorce of their parents. For that reason, it is important to protect children's fundamental interests. Their welfare in terms of their moral and physical development must be ensured, and they must be given an opportunity to express their wishes. Judges have many opportunities for determining which parent children should live with after a divorce. Even small children must be allowed to express their wishes in the absence of their parents. Your rapporteur therefore proposes amendment 7 which ensures both that the child has had an opportunity to be heard and that his or her best interests have been taken into account.

As a result of the legal certainty which it produces, this regulation may ultimately prevent parents from thinking that they are in the right in assuming custody of a child, when in fact that is not the case, and avoid children being abducted or other dramatic situations occurring. In the past, the President of the European Parliament had to take steps to mediate in such situations, and did so very successfully. The new regulation does not mean that there will no longer be a role for such

mediators. On the contrary, mediation will be increasingly important in settling disputes (amendment 2).

As the regulation concerns the children of both spouses, your rapporteur is of the opinion that it is unnecessary to define the concept of ‘parental responsibility’ more precisely. Defining ‘parental responsibility’ in accordance with the Member States’ respective national laws could result in wide differences in judgments on custody from one Member State to another. The relevant reference should therefore be deleted from the regulation (amendment 4).

Member States’ legislation can also pose problems as regards conflict of laws provisions. It is therefore regrettable that the Commission has not, in bringing ‘Brussels II’ into the Community system, also taken the opportunity to set about laying down uniform conflict of laws provisions. This is the only way of ensuring that the same case is judged under the same national law in all Member States, so that the outcome of the proceedings does not depend on in which Member State the case is brought. As long as there are not such uniform provisions, to the extent that different possibilities are open to them in terms of jurisdiction applicants will bring proceedings in the country under whose conflict of laws provisions the law most favourable to their petition applies (forum shopping). Alternatively, they will bring the same proceedings successively in different countries until the petition is successful. Your rapporteur expects the Commission to comment on this problem in the report reviewing the regulation which it is required to submit under Article 44. Moreover, the Commission should deal with the problem of different conflict of laws provisions as soon as possible, and submit an appropriate proposal to Parliament.

The importance of legal certainty in separation and divorce matters has already been made clear. It is essential that the parties concerned, both the applicant and the respondent, are aware of what legal action is available to them. The objective of the regulation is the mutual recognition of judgments, and only a small number of grounds for non-recognition are permitted under it. These grounds must, however, be clearly worded, particularly in respect of the rights of the respondent, and should not leave room for interpretation at the latter’s expense. Amendment 10 therefore establishes a clear indication of the respondent’s acceptance of the judgment in cases where he or she has not been given a proper opportunity to arrange a defence. Under this amendment, respondents are deemed to have accepted a judgment if they have failed to commence proceedings to challenge the judgment when it was possible for them to do so. This wording is based on amendments proposed in connection with the revision of Brussels I, contributing towards ensuring that the two future regulations are as closely in line with each other as possible. This is particularly important as they are intended to complement each other.

As nationals of third countries who are permanently legally resident in the EU are also affected by this regulation, their interests also have to be considered. Member States must not be permitted to refuse to recognise a judgment on matters relating to separation and divorce on the grounds that a divorce is not recognised by the third country of which the spouses are nationals (amendment 13).

The problem of which court has jurisdiction when applications have been lodged in two different Member States is only partly solved by the provisions of this regulation. In the same way as the Brussels I Convention, the proposal lays down that, where proceedings for divorce, separation or annulment of a marriage have been brought before the courts of different Member States, the court before which proceedings were brought first has jurisdiction. However, this wording caused problems in implementing Brussels I, as the moment at which proceedings became pending was

not established. The European Court of Justice took the view that the issue of *lis pendens* should be judged under national law. This approach was greatly criticised, as it led to ‘forum running’. Such criticism was taken into account in the revision of Brussels I. Under the new Brussels I provisions, a case will in future be deemed to become pending at the time when the application is lodged with the court or, if the application is first required to be served, at such a time, provided that the applicant subsequently takes all the steps which he or she may be reasonably expected to take to ensure that the other part of the respective procedure is carried out. Such a provision is precise and therefore avoids the problems known to have arisen in implementing Brussels I. It should consequently be included in Brussels II. For that reason, your rapporteur proposes amendment 8, which clearly establishes on the basis of which criteria a court may declare that proceedings have been brought before it.

In a legal area as culturally and linguistically diverse as the EU, communication difficulties may give rise to uncertainty in relation to marriages between spouses of different nationalities. A regulation which is to be implemented by national authorities must therefore include a reference to the languages to be used in connection with judgments (amendment 19).

It would also seem sensible to adopt the system laid down in the proposal for a regulation concerning the revision of Brussels I for listing the courts which have jurisdiction and the appeal procedures permitted. In that proposal, the latter are not included in the text of the regulation, but are listed in a separate annex. If it is necessary to amend them, the amendments, which will be of a purely technical nature, may be made by the Commission and do not require a legislative act (amendments 14, 15, 16, 17 and 18). However, wording relating to this amendment procedure which correctly reflects, from a legal point of view, the cooperation between, and the role of, the Member States and the European Commission needs to be incorporated into the regulation. Decisions may on no account be referred to the Council, as laid down in Article 45. Wording usual in such cases is therefore proposed in amendment 20.

8 November 1999

OPINION

(Rule 162)

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children (COM(1999) 220 – C5-0045/1999 – 1999/0110(CNS)) (report by Mrs Gebhardt)

Committee on Legal Affairs and the Internal Market

Draftsman: Klaus-Heiner Lehne

PROCEDURE

At its meeting of 21, 22, and 23 September 1999 the Committee on Legal Affairs and the Internal Market appointed Mr Lehne draftsman.

It considered the draft opinion at its meetings of 11, 12 and 13 October, 26 October and 8 and 9 November 1999.

At the last meeting it adopted the following conclusions by 22 votes to 2.

The following were present for the vote: Palacio Vallelersundi, chairman; Rothley, vice-chairman; Wieland, vice-chairman; Lehne, draftsman; Crowley, Dehousse, Ferri, Fiori (for Tajani), Fourtou, Garaud, Gebhardt, Harbour, Inglewood, Koukiadis, MacCormick, Manders, Marinho, Medina Ortega, Moraes, Uca, Villiers, Wallis, Zacharakis, Zappalà.

1. Background

The proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children is the successor to the draft Convention on jurisdiction, recognition and enforcement of judgments in matrimonial matters (13245/1997 – C4-0063/1998 – 1997/0918(CNS)), approved by Parliament, subject to its amendments, in its legislative resolution of 30 April 1998 (A4-0131/98) and by the Council on 28 May 1998. The draft Convention was made possible by the Maastricht Treaty, which, in addition to Article 293 of the EC Treaty (formerly Article 220 of the EEC Treaty), has opened up new avenues for judicial cooperation in civil matters under Article K.3, whereas previously, only Article 220 afforded some limited scope for action in this area.

Because the Convention was not ratified before the Treaty of Amsterdam entered into force, its rules have not taken effect. A virtually identical text has therefore been submitted, this time in

the form of a Regulation, since the EC Treaty now provides the necessary legal basis for its adoption, namely Article 61(c). Under this legal basis Denmark, Ireland, and the United Kingdom are excluded because, by virtue of the respective Protocols applying to them, they do not take part in measures under Title IV of the EC Treaty. However, the United Kingdom and Ireland, though not Denmark, have the right to 'opt in', subject to the conditions set out in the Protocol annexed to the Treaty, and have indicated that they intend to do so.

2. Justification for the amendments proposed

Amendment 1

Your draftsman considers it preferable that the Court of Justice should have the power to define the concept of 'parental responsibility' in its own way.

Amendments 2 and 6

For the purposes of the proposal for a Regulation, the term 'judgment' means only 'positive' decisions leading to divorce, legal separation, or annulment of marriage. Consequently, a judgment refusing divorce could not be recognised under the Regulation. Because of this narrow definition, an applicant would therefore be entitled to reapply for divorce before a court in any given Member State even when an application on the same grounds had already been rejected by a court in another Member State and the respondent might have sought to have the earlier judgment recognised under a treaty between the two Member States concerned. Your draftsman regards this as an unfortunate loophole which he feels he must close by widening the definition of 'judgment' to cover positive and 'negative' decisions.

Note on Article 3

Your draftsman does not wish to reinstate the amendment to Article 3 tabled by Parliament when it considered the draft Convention. The Hague Convention of 19 October 1996 on 'jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, provided that the child concerned is habitually resident in a Member State', as mentioned in Parliament's previous amendment, does not seem an appropriate reference point. The implication was that the Convention (now the Regulation) had to be enforced in a manner consistent with the international instrument. However, Article 52(2) of the 1996 Hague Convention stipulates that there is nothing in the Convention to prevent one or more contracting States from concluding agreements containing provisions on matters governed by the Convention that could apply to children habitually resident in a State party to such an agreement.

Once the Hague Convention and the Regulation under consideration have entered into force, therefore, the Regulation will take precedence as regards children living in Member States covered by the Regulation (but not in Denmark, Ireland, or the United Kingdom), whereas the Hague Convention will apply in other cases.

Your draftsman supports the provision in Article 3(3) of the proposal for a Regulation, modelled on Article 10(2) of the 1996 Hague Convention, which debars a divorce court from exercising perpetual jurisdiction for the purposes of protecting the children of a marriage and instead imposes a time-limit on exercise of the jurisdiction conferred by paragraphs 1 and 2.

Amendment 4

The object of this amendment is to bring the provisions of the Regulation dealt with in this opinion into line with those of the proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Convention) and more especially with Article 30 of the latter proposal, which contains its own definition of seising, thus enabling the problem of *lis pendens* to be resolved more easily.

Amendment 5

Article 12 in the form proposed could interfere with enforcement of the Regulation. If in divorce proceedings, for example, the court of a Member State having jurisdiction to rule on the divorce awarded custody of a child on a temporary basis, the fact that such a step had been taken would not prevent a court in another Member State, namely the country where the child happened to be, from taking a measure to the opposite effect (by awarding custody to the other parent, for instance), and no special authority would be required to enforce it (because the child was living in the country where the latter court was situated). Even though the judge involved was entitled to exercise jurisdiction under the Regulation, the provisional measure taken in connection with the divorce proceedings would consequently be unenforceable. Your draftsman is therefore proposing to add a second paragraph to Article 12 to rank the courts in order of precedence.

Amendment 6

See the remarks on Amendment 2 above.

Amendment 7

Your draftsman is proposing to bring the text into line with Article 41(2) of the proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Amendments 8, 9, 10, 11 and 12

Your draftsman is proposing to introduce the system used in the proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, whereby courts and redress procedures are specified in annexes to the main Regulation that can be altered when necessary by the Commission, thus averting the need for any purely technical amendments to be referred to the Council.

In the proposal under consideration, however, the courts and remedies concerned are specified in the body of the Regulation. It would be better to list them in annexes, especially if the Commission were entitled to amend those parts of the text. On the other hand, changes made by the Commission to a Council act inevitably raise a number of legal issues, since they do not constitute implementing measures within the meaning of Article 211, fourth indent, of the EC Treaty.

Amendment 13

Your draftsman is proposing to incorporate the certificate system provided for in Article 51 of and Annex V to the proposal for a Regulation (EC) on jurisdiction and the recognition and

enforcement of judgments in civil and commercial matters.

3. Conclusions

The Committee on Legal Affairs and the Internal Market puts forward the following conclusions:

1. The proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children is the successor to the draft Convention on jurisdiction, recognition and enforcement of judgments in matrimonial matters (13245/1997 – C4-0063/1998 – 1997/0918(CNS)), approved by Parliament, subject to its amendments, in its legislative resolution of 30 April 1998 (A4-0131/98) and by the Council on 28 May 1998.
2. The wording of the proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children and the proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(99) 348 – 99/0154(CNS)) should, as far as possible, be brought into line so as to avoid all ambiguity and enable the concepts common to the two instruments to be interpreted in the same way.
3. Questions of property linked to divorce, legal separation, or annulment of marriage are excluded from the substantive scope of the proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children. Maintenance obligations are encompassed within the proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. However, even if the two Regulations are implemented in conjunction, it will not be possible to deal with all matters arising from the breakup of a marital relationship. Parliament therefore calls on the Commission to fill the gap by submitting a proposal for a Regulation as soon as possible to cover jurisdiction and recognition and enforcement of judgments relating to marriage settlements and successions.
4. The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs to incorporate the following amendments in its report:

(Amendment 1)
Recital 10

Whereas the Regulation covers parental responsibility issues that are closely linked to proceedings for divorce, separation or annulment; whereas the concept of ‘parental responsibility’ has to be defined by the legal system of the Member State in which responsibility is under consideration, but it will apply only to children of both spouses;

Whereas the Regulation covers parental responsibility issues that are closely linked to proceedings for divorce, separation or annulment; whereas the concept of ‘parental responsibility’ will apply only to children of both spouses;

(Amendment 2)
Recital 13

Whereas the word ‘judgment’ refers only to positive decisions, that is to say those that lead to divorce, legal separation or marriage annulment; whereas those documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State are treated as equivalent to such ‘judgments’;

Whereas the word ‘judgment’ refers both to positive decisions, that is to say those that lead to divorce, legal separation or marriage annulment, and to negative decisions, that is to say those whereby divorce, legal separation, or marriage annulment is not granted; whereas those documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State are treated as equivalent to such ‘judgments’;

Amendment 3
Recital 17a (new)

(17a) Whereas the small number of Member States concerned are competent for matters which fall within the scope of that Convention;

(Amendment 4)
Article 11a (new)

For the purposes of this Section, a court shall be deemed to be seised:

(1) on the date on which 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 required to have the document served on the respondent, or

(2) if the document has to be served before being lodged with the court, on the date on which it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps required to have the document lodged with the court.

(Amendment 5)
Article 12(1a) (new)

1a. Provisional or protective measures under paragraph 1 relating to matters falling within the scope of this Regulation shall cease as soon as a judgment handed down by the court having jurisdiction to deal with the merits of a case under this Regulation has acquired status of such nature that its enforcement can no longer be suspended by an appeal.

(Amendment 6)

Article 13(1)

1. For the purposes of this Regulation, ‘judgment’ means a divorce, legal separation or marriage annulment pronounced by a court of a Member State, as well as a judgment relating to the parental responsibility of the spouses given on the occasion of such matrimonial proceedings, whatever the judgment may be called, including a decree, order or decision.

1. For the purposes of this Regulation, ‘judgment’ means any decision to grant or reject an application for divorce, legal separation or marriage annulment pronounced by a court of a Member State, as well as a judgment relating to the parental responsibility of the spouses given on the occasion of such matrimonial proceedings, whatever the judgment may be called, including a decree, order or decision.

(Amendment 7)

Article 15(1)(b)

(b) where it was given in default of appearance, if the respondent was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;

(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 defence unless the respondent failed to commence proceedings to challenge the judgment when it was possible for him or her to do so;

(Amendment 8)

Article 21

1. The application shall be submitted to the local courts having jurisdiction, as follows:

- in Belgium, the ‘Tribunal de première instance’ or the ‘Rechtbank van eerste aanleg’ or the ‘erstinstanzliche Gericht’,
- in the Federal Republic of Germany, the ‘Familiengericht’,
- in Greece, the ‘Μονομελές Πρωτοδικείο’,
- in Spain, the ‘Juzgado de Primera Instancia’,
- in France, the presiding Judge of the ‘Tribunal de grande instance’,

1. The application shall be submitted to the local courts having jurisdiction, as specified in Annex I to this Regulation.

- 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 Família’,
- in Finland, the ‘käräjäoikeus/tingsrätt’,
- in Sweden, the ‘Svea hovrätt’.

(Amendment 9)
Article 26(1)

1. An appeal against the judgment authorising enforcement shall be lodged, in accordance with the rules governing procedure in contradictory matters, with the courts listed below:

- in Belgium, the ‘Tribunal de première instance’ or the ‘Rechtbank van eerste aanleg’ or the ‘erstinstanzliche Gericht’,
- in the Federal Republic of Germany, the ‘Oberlandesgericht’,
- in Greece, the ‘Εφετείο’,
- in Spain, the ‘Audiencia Provincial’,
- in France, the ‘Cour d’appel’,
- in Italy, the ‘Corte d’appello’,
- in Luxembourg, the ‘Cour d’appel’,
- in the Netherlands, the
- ‘arrondissementsrechtbank’,
- in Austria, the ‘Bezirksgericht’,
- in Portugal, the ‘Tribunal da Relação’,
- in Finland, the ‘Hovioikeus/Hovrätt’,
- in Sweden, the ‘Svea hovrätt’.

1. An appeal against the judgment authorising enforcement shall be lodged, in accordance with the rules governing procedure in contradictory matters, with the courts having jurisdiction listed in Annex II to this Regulation.

(Amendment 10)
Article 26(2)

2. The judgment given on appeal may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in the Federal Republic of Germany, by a ‘Rechtsbeschwerde’,
- in 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’.

2. The judgment given on appeal may be contested only by the redress procedures specified in Annex III to this Regulation.

(Amendment 11)
Article 28(1)

1. If an application for enforcement is refused, the applicant may appeal to the courts listed below:

- in Belgium, the ‘Tribunal de première instance’ or the ‘Rechtbank van eerste aanleg’ or the ‘erstinstanzliche Gericht’(sic),
- in the Federal Republic of Germany, the ‘Oberlandesgericht’,
- in Greece, the ‘Εφετείο’,
- in Spain, the ‘Audiencia Provincial’,
- in France, the ‘Cour d’appel’,
- in Italy, the ‘Corte d’appello’,
- in Luxembourg, the ‘Cour d’appel’,
- in the Netherlands, the ‘gerechtshof’,
- in Austria, the ‘Bezirksgericht’,
- in Portugal, the ‘Tribunal da Relação’,

1. If an application for enforcement is refused, the applicant may appeal to the courts listed in Annex IV to this Regulation.

- in Finland, the ‘Hovioikeus/Hovrätt’,

- in Sweden, the ‘Svea hovrätt’.

(Amendment 12)
Article 29

A judgment given on appeal provided for in Article 28 may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,

- in the Federal Republic of Germany, by a ‘Rechtsbeschwerde’,

- in 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’.

A judgment given on appeal provided for in Article 28 may be contested only by the redress procedures specified in Annex V to this Regulation.

(Amendment 13)
Article 34

A party applying for enforcement shall produce, besides the documents referred to in Article 33, documents of whatever nature which establish that, according to the law of the Member State of origin, the judgment is enforceable and has been served.

1. A party applying for enforcement shall produce, besides the documents referred to in Article 33, documents of whatever nature which establish that, according to the law of the Member State of origin, the judgment is enforceable and has been served.

2. At the request of any interested party, the court or proper authority of the Member State where the judgment was delivered shall issue a certificate using the standard form in Annex VI.

(Amendment 14)

Article 45

The lists of courts and redress procedures in Articles 21(1), 26(1) and (2) and 29 may be amended by decision of the Council.

Member States shall notify the Commission of the texts of their legislative provisions amending the courts or redress procedures referred to in Annexes I, II, III, IV, and V. The Commission shall make the necessary adjustments to the annexes concerned.