

II

(Preparatory Acts)

COUNCIL

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

(2000/C 234/08)

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 initiative from the French Republic,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

Having regard to the Opinion of the Economic and Social Committee ⁽²⁾,

Whereas:

- (1) The Member States have set themselves the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured. To establish such an area gradually the Community is to adopt, among others, the measures in the field of judicial cooperation in civil matters needed for the proper functioning of the internal market.
- (2) The European Council meeting in Tampere on 15 and 16 October 1999 highlighted the need to establish a genuine European judicial area in which, amongst other things, judgments relating to rights of access in the case of the children of separated or divorced couples would be directly enforceable in the Member States.
- (3) In the event of the loosening or the dissolution of matrimonial ties, a child's fundamental right to maintain regular contact with both parents must be able to be guaranteed, whatever the parents' place of establishment in the Community.
- (4) The proper functioning of the internal market entails the need to improve and simplify the free movement of judgments on the subject and the effective cross-border exercise of rights of access in the case of the children of

couples whose divorce or legal separation has been granted in the Community.

- (5) Children of separated couples will not be able to move more freely within the Union until judgments relating to them are able to move more freely, which will be brought about by mutual recognition of the enforceability of these judgments and a strengthening of cooperation mechanisms.
- (6) This is a subject now falling within the ambit of Article 65 of the Treaty.
- (7) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This Regulation does not go beyond what is necessary to achieve those objectives.
- (8) Judgments covered by this Regulation must have been given in proceedings referred to in Article 1(1)(b) of Council Regulation (EC) No .../2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses ⁽³⁾ (Brussels II).
- (9) These judgments must also relate to cross-border rights of access to children under 16 years of age.
- (10) These judgments are covered by Regulation (EC) No .../2000 (Brussels II), but this Regulation departs from the Brussels II Regulation by laying down the principle of mutual recognition of the enforceability of the judgments in question.
- (11) To balance the direct enforceability of these judgments in all the Member States, there must be guarantees safeguarding the interests of both parents and of the child.

⁽¹⁾ OJ C ...

⁽²⁾ OJ C ...

⁽³⁾ OJ L ...

- (12) There must be a single procedure enabling enforcement to be suspended in exceptional circumstances where it would put the child's interests at serious risk or where there is another enforceable judgment which is irreconcilable. In addition, a judgment which has become *res judicata*, declaring grounds for non-recognition or non-enforcement pursuant to Regulation (EC) No .../2000 (Brussels II), will prevent rights of access being enforced.
- (13) The interests of the parent with custody must also be safeguarded. Such parents must be able to have a guarantee that the child will return after its stay abroad, which means, firstly, that apart from any urgent need to protect the child, the authorities of the Member State where the child is staying may not take jurisdiction during the child's stay to amend the foreign judgment which is being enforced and secondly, that they should have circumscribed powers to order the child's return.
- (14) The objectives of this Regulation also necessitate the establishment of close cooperation between the central bodies responsible for implementing mutual administrative and judicial assistance.
- (15) To ensure compliance with the judgments referred to in this Regulation, the central bodies are to exchange information and use any means at their disposal under the internal law of their States to encourage voluntary exercise of rights of access or to guarantee enforcement of those rights by recourse to coercive means.
- (16) The central bodies must be accessible to the parents concerned, whether they are claiming rights of access or are required to grant them.
- (17) The Commission is to report on the application of this Regulation, with a view to proposing any necessary adaptations. Information forwarded to it by the central bodies will assist it in this task.
- (18) The Commission should be able to amend the Annexes to the Regulation, concerning central bodies, courts, competent authorities and redress procedures, on the basis of information forwarded by the Member States.
- (19) The central bodies will meet regularly to exchange experience.
- (20) 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, are not participating in the adoption of this Regulation and are therefore not bound by it nor subject to its application.

- (21) 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,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Scope

Article 1

1. This Regulation shall apply to any judgment given in a Member State in proceedings referred to in Article 1(1)(b) of Regulation (EC) No .../2000 (Brussels II) granting rights of access to one of the parents to one of their children when:

(a) these rights of access are to be exercised in the territory of a Member State other than that of the authorities which granted them; and

(b) the child is under 16 years of age when enforcement of the judgment is sought.

2. The rights of access referred to paragraph 1 include the right to take a child for a limited period of time to a place other than the child's habitual residence.

3. For the purposes of this Regulation, the term 'Member State' shall mean all Member States with the exception of (...).

CHAPTER II

Mutual recognition of the enforceability of judgments on rights of access

Article 2

By way of derogation from Article 21 of Regulation (EC) No .../2000 (Brussels II), a judgment referred to in Article 1 of this Regulation which has been given in a Member State and is enforceable in that Member State, even provisionally, can be enforced in all the other Member States without any special procedure being required.

Article 3

Recognition of the enforceability of a judgment given in another Member State shall enable the same means of enforcement to be employed, under the same conditions, as would be available for a judgment of the same nature which would be enforceable in the Member State of recognition after being given by the authorities of that State.

CHAPTER III**Refusal to enforce rights of access***Article 4*

Enforcement of a judgment referred to in Article 1 may not be suspended in another Member State unless the parent with custody of the child establishes, in proceedings provided for in Article 6, that:

- (a) owing to a change in circumstances, exercise of rights of access or rights to have a child to stay for a limited period would pose a serious, direct risk to the child's physical or psychological health; or
- (b) the judgment is irreconcilable with a judgment already enforceable in the territory of that Member State.

Article 5

1. In particular, enforcement may not be suspended by the institution of proceedings challenging recognition or enforcement of all or part of a judgment given in civil proceedings referred to in Article 1(1) of Regulation (EC) No .../2000 (Brussels II).

2. Without prejudice to Article 4, only a judgment which has become *res judicata* declaring that there are grounds for non-recognition or non-enforcement of a judgment referred to in paragraph 1 shall prevent enforcement of rights of access.

Article 6

The proceedings challenging the exercise of rights of access or rights to have a child to stay for a limited period provided for in Article 4 shall be brought before the courts of the Member State in which the child is habitually resident, as listed in Annex II.

Article 7

1. The procedure for making and serving the application shall be governed by the law of the Member State of residence of the parent with rights of access.

2. Judgments shall be given by an emergency procedure in which both parties are heard as well as, if necessary, the child, if appropriate having regard to the circumstances and to the child's understanding.

3. The judgment shall be given within eight days at the most of the date on which the person with rights of access made his or her submissions known. It shall be enforceable notwithstanding exercise of the right of appeal provided for in Article 8.

Article 8

The judgment on the application challenging the exercise of rights of access may be appealed against only by means of the proceedings referred to in Annex III.

CHAPTER IV**Amendment of the order***Article 9*

Notwithstanding any overriding need to organise immediate, provisional protection of the child's person where this cannot be done by the authorities of the child's habitual residence, the length of the child's stay in another Member State pursuant to a judgment referred to in Article 1 does not authorise any authority in that State to take jurisdiction to amend the judgment which is being enforced.

CHAPTER V**Prompt return of the child***Article 10*

If the child is not returned to the parent with custody at the end of the period of access and stay set out in the judgment referred to in Article 1, the parent with custody may apply for the child's prompt return to the central body referred to in Article 12 of the Member State of the place of his or her habitual residence or of the place where the child is staying.

Article 11

The competent authorities of the State where the child is staying shall order the prompt return of the child without the person with rights of access being able to challenge the order, in particular by invoking proceedings referred to in Article 5, the existence of a judgment granting him or her custody given in that State or likely to be recognised in that State, or Article 13 of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

CHAPTER VI**Cooperation***Article 12*

1. Member States shall cooperate with each other via the national central bodies which they designate and which are listed in Annex I to ensure the effective exercise of rights of access to children and their prompt return to the parent with custody at the end of the access period.

2. To that end, those bodies shall cooperate with each other directly to promote cooperation between the competent authorities in their respective territories.

3. In particular, either directly or through any intermediary, those bodies shall take appropriate measures to:

- (a) exchange information on the child's background;
- (b) facilitate the voluntary exercise of rights of access;
- (c) facilitate any parental agreement on the exercise of rights of access by conciliation, mediation or any other similar means;
- (d) initiate or facilitate, in accordance with the rules applicable in each Member State, the institution of any relevant proceedings and recourse to coercive means provided for by their national law in the event of a clear refusal to allow rights of access or to return the child to the parent with custody at the end of the access period;
- (e) exchange between themselves information on the law of their States on the application of this Regulation;
- (f) keep each other informed of any difficulties encountered in applying this Regulation.

Article 13

1. Anyone who has obtained a judgment referred to in Article 1 and who is encountering difficulties in exercising his or her rights may apply to the central body of the Member State of his or her place of residence or of the child's place of residence.

2. In support of his application he shall produce the following documents:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- (b) the form provided for in Annex V to Regulation (EC) No .../2000 (Brussels II), duly completed, certifying that the judgment is enforceable in accordance with the law of the Member State of origin and that it has been served on the parent against whom enforcement is sought.

CHAPTER VII

Final provisions

Article 14

The provisions of Council Regulation (EC) No .../2000 (Brussels II) shall apply to the judgments referred to in Article 1, save where otherwise provided by this Regulation.

Article 15

1. Not later than ... (*), the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation.

2. The report referred to in paragraph 1 shall be accompanied if need be by proposals for adapting the Regulation.

3. With a view to drawing up the report referred to in paragraph 2, the Commission may ask the central bodies referred to in Article 12 to send it information on the application of this Regulation. The central bodies may also forward such information to the Commission of their own accord.

Article 16

Member States shall forward to the Commission the texts of any of their internal provisions amending either the designation of the central bodies referred to in Annex I, or the courts, competent authorities and redress procedures set out in Annexes II and III.

The Commission shall adopt the Annexes concerned accordingly.

Article 17

1. The central bodies referred to in Article 12 shall meet to exchange experience and seek solutions to any practical or legal problems which they encounter in the framework of the cooperation established by this Regulation.

2. Each Member State shall appoint a representative to attend the meetings referred to in paragraph 1.

3. The central bodies shall meet for the first time in the three months following entry into force of this Regulation. They shall subsequently meet regularly on an ad hoc basis, normally once a year, depending on need, at the invitation of the Council Presidency, which shall also take Member States' wishes into consideration.

4. The meetings shall be held in Brussels, at the Council's headquarters, in accordance with its rules of procedure.

5. A report shall be drawn up on each meeting and forwarded to the Member States and the Commission.

Article 18

This Regulation shall enter into force on ...

(*) Five years after the entry into force of this Regulation.

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

List of national central bodies (Article 12)

— In Belgium:

(. . .)

ANNEX II

List of courts and authorities competent to rule on proceedings suspending enforcement (Articles 4 and 6)

— In Belgium:

(. . .)

ANNEX III

Proceedings provided for in Article 8

— In Belgium:

(. . .)
