

Informal Justice and Home Affairs Ministers' meeting

9-10 July 2015, Luxembourg

Discussion Paper

**Reflections on a revision of Council Regulation
(EC) No 2201/2003 of 27 November 2003
concerning jurisdiction and the recognition
and enforcement of judgments in matrimonial
matters and the matters of parental
responsibility, repealing Regulation
(EC) No 1347/2000**



The growing mobility of the citizens of the European Union has led to an increasing number of families with an international dimension. The number of multinational families living in Member States of which not all of the family members are nationals has strongly increased. Nearly 15 million citizens live in a Member State which is not their country of origin. It is estimated that each year, there are approximately 140,000 international divorces in the European Union.

Admittedly, each family separation is by nature delicate and painful, but the difficulties often increase when the separation involves an international family. This is why the European Union must set up an appropriate legal framework. It is important to afford these families greater legal certainty and predictability in the crisis situations they may face.

The Brussels IIa Regulation¹, which applies since 1 March 2005 (hereafter “the Regulation”), is the cornerstone of the judicial cooperation in family law matters in the European Union. The Regulation provides for uniform rules to settle conflicts of jurisdiction and facilitates the free circulation of judgments, authentic instruments and agreements by laying down provisions on their recognition and enforcement in another Member State. It complements the Hague Convention of 25 October 1980 on the civil aspects of international child abduction and lays down specific rules for the child’s return.

The effectiveness and the usefulness of this Regulation cannot be denied.

As provided for by Article 65 of the Regulation, a report² on the application of the Regulation was published on 15 April 2014 by the European Commission (hereafter the “Commission”) followed by a public consultation. A revision of the Regulation is currently being prepared. The Presidency thanks the Commission for its commitment and welcomes its initiative which is expected with great interest.

The protection of the family and more specifically of the children is at the core of this Regulation. The European Union must face up to its responsibilities in order to avoid leaving children in precarious situations for too long.

For these reasons, the Presidency wishes to concentrate the debate on questions relating to the protection of children.

¹ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

² Report of the 15th April 2014 on the application of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

1) Free circulation of judgments

The Regulation is the first Union instrument to have abolished *exequatur* in civil matters in respect of certified judgments on access rights to children and certified return orders in child abduction cases. However, judgments relating to rights of custody do not benefit from the abolition of *exequatur*, which leads to complex, lengthy and costly procedures in matters of parental responsibility.

The application of different rules leads to contradictory situations where a Member State must recognize access rights while, at the same time, it could refuse the recognition of custody rights granted in the same judgment.

The Commission is examining whether the introduction of a simplified mechanism based on certain safeguards aimed, at protecting the child's best interest and ensuring good administration of justice as well as due protection of the rights of defense, could allow to reduce costs and speed up proceedings.

2) Procedure for an effective and swift return of abducted children

One of the main objectives of the Regulation is to ensure the child's prompt return to the Member State where the child was habitually resident before his/her abduction. The families concerned are confronted with lengthy proceedings and delays before the courts.

The European Court of Human Rights has also addressed this issue and has ruled that, where it is established that a child has been wrongfully removed, Member States have a duty to make adequate and effective efforts to secure the return of the child and that failure to make such efforts constitutes a violation of the right to a family life as set out in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Commission is reflecting on ways to improve the existing rules regarding these matters.

3) Appropriate enforcement of judgments

As the enforcement procedure is governed by the law of the Member State of enforcement and as differences exist between national laws, difficulties can arise with regard to the enforcement of parental responsibility decisions.

Some national systems do not contain special procedures for the enforcement of family law decisions and parties must resort to procedures available for ordinary civil or commercial decisions. However, in the area of parental responsibility, the passing of time has irreversible consequences.

The application of different Member State procedures may thus not ensure an effective and prompt enforcement of judgments (for example, concerning the right of appeal, which suspends the effects of the judgment).

There is ongoing reflection on how to allow appropriate enforcement of family law decisions.

4) Cooperation between central authorities

The Regulation provides for a cooperation between central authorities as regards parental responsibility which works positively overall.

However, the evaluation of the Regulation mentions difficulties with: (1) the obligation to collect and exchange information on the situation of the child, (2) the delay in the treatment of the applications for information and (3) the translation of exchanged information.

Also, significant differences exist between Member States with regard to the assistance provided by central authorities to holders of parental responsibility who seek enforcement of access rights judgments.

More precisely defining the role and missions of the central authorities can contribute to making the system more effective and to guaranteeing a better protection of the child's best interests.

Items for discussion

1. Do Member States agree to have the above mentioned aspects included in the revision process of the Regulation?
2. Are there any other subjects that Member States wish to address in the revision process?