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REPORT

on the 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 (COM(2002) 222 – C5-0234/2002 – 2002/0110(CNS))

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

Rapporteur: Mary Elizabeth Banotti

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)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 28 May 2002 the Council consulted Parliament, pursuant to Article 67(1) of the EC Treaty, on the Commission 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 (COM(2002) 222 – 2002/0110(CNS)).

At the sitting of 29 May 2002 the President of Parliament announced that he had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0234/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Mary Elizabeth Banotti rapporteur at its meeting of 2 July 2002.

It considered the Commission proposal and the draft report at its meetings of 23 May 2002, 12 September 2002, 8 October 2002 and 5 November 2002.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Lousewies van der Laan and Giacomo Santini, vice-chairmen; Mary Elizabeth Banotti, rapporteur; Kathalijne Maria Buitenweg (for Patsy Sörensen), Michael Cashman, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Evelyne Gebhardt (for Ozan Ceyhun), Pierre Jonckheer, Timothy Kirkhope, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Martine Roure, Heide Rühle, Francesco Rutelli, Ole Sørensen (for Baroness Sarah Ludford), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Olga Zrihen Zaari (for Adeline Hazan).

The opinion of the Committee on Women's Rights and Equal Opportunities is attached; the Committee on Legal Affairs and the Internal Market decided on 11 July 2002 not to deliver an opinion.

The report was tabled on 7 November 2002.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the 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 (COM(2002) 222 – C5-0234/2002 – 2002/0110(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2002) 222¹),
 - having been consulted by the Council pursuant to Article 67(1) of the EC Treaty (C5-0234/2001),
 - having regard to Article 67(1) of the EC Treaty,
 - having been informed by the Council that the United Kingdom and Ireland wish to participate in adopting and applying the measure concerned in the Commission proposal,
 - having regard to Rules 107 and 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 Women's Rights and Equal Opportunities (A5-0385/2002),
1. Approves the Commission proposal as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 4. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 203 E, 27.8.2002, p. 155.

Amendment 1
Recital 12 (a) (new)

12 (a) In order to facilitate smooth contacts with the competent authorities, appropriate support concerning the legal procedures should be provided, where necessary, to parents.

Justification

The return of a child in cases of abduction or wrongful denial of access requires a good knowledge and understanding of parental responsibility legal rights as well as the rights of the child and an ability to present these rights to the competent authorities. Parents or holders of parental responsibility should be given appropriate support to help them deal with legal procedures.

Amendment 2
Recital 14

(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 matters¹ may be used for the hearing of the child.

(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 matters¹ may be used for the hearing of the child. ***The hearing of the child should take account of the age and maturity of the child and may take the form of a separate interview by an independent, qualified person.***

Justification

Participation in court proceedings can be very intimidating for young children. Accordingly, they should be heard separately and their views presented to the court.

¹ OJ L174, 27.6.2001, p.1.

Amendment 3
Recital 15

(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.

(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. ***Where the procedures in this Regulation have been followed, these grounds for non-recognition will not apply to judgments on the right of access and judgments on the return of the child.***

Justification

Recital 16 refers to the absence of any special procedure in these cases, but it is, in itself, not sufficiently clear. It should be specifically stated that the grounds for non-recognition do not apply to cases concerning rights of access and the return of a child.

Amendment 4
Recital 23

(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.***

(23) ***This Regulation does not apply to Denmark because, pursuant to*** the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, ***Denmark is not involved in this proposal for a Regulation.***

Justification

It is sufficient to make this point in the recitals. Accordingly, Article 2(2) is deleted.

Amendment 5
Article 2(2)

(2) The term "Member State" shall mean all Member States with the exception of Denmark; **Delete**

Justification

It is sufficient to make this point in the recitals. Accordingly, Article 2(2) is deleted.

Amendment 6
Article 4

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.

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

Justification

See justification to amendment 2. This article corresponds to Article 24(1) of the Charter of Fundamental Rights, and its inclusion in the proposal is to be welcomed.

Amendment 7
Article 4a (new)

In all court decisions relating to children, the child's best interests must be a primary consideration.

Justification

Article 24(2) of the Charter of Fundamental Rights of the European Union.

Amendment 8 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.

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 **clearly demonstrated** 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 **without delay** stay the proceedings and prescribe a **maximum** period of **one month** 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.

Justification

The rules laid down in Article 15 must be as restrictive as possible so as to avoid a situation where holders of parental responsibility submit an application for transfer on tactical grounds with a view to delaying the procedure. With regard to decisions on parental responsibility, the length of the period spent by the child with a holder of parental responsibility plays a vital role.

Amendment 9 Article 22, paragraph 2 (b)

(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.

(b) ensure that the child has been returned within one month from locating him or her, ***either voluntarily with the agreement of the holder of parental responsibility or, in the absence of an agreement, following an appropriate court order***, unless proceedings instituted pursuant to paragraph 3 are pending.

Justification

If the child is not returned voluntarily, it may be necessary for the central authority to institute legal proceedings.

Amendment 10 Article 22, 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.

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.

An application may be made to the courts by the central authority, by the parent with rights of access, by any interested person, e.g. the social services, or by the child in question where such action is permitted under national law.

Justification

The Regulation should specify exactly who may apply to the courts for protective measures.

Amendment 11
Article 23, paragraph 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 courts of the Member State to which the child has been abducted shall decide, ***as far as possible within a period of two months***, on an application for a protective measure pursuant to Article 22, paragraph 3.

Justification

This provision is too vague. Where the procedures take too long, there is a risk of the child becoming alienated from the other parent. Although it may not be possible for a decision to be taken within two months, this should be the objective.

Amendment 12
Article 24(3), third subparagraph

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.

The child shall be heard during the procedure ***in a manner appropriate to*** his or her age or degree of maturity ***unless, having regard to his or her age and degree of maturity, it is inappropriate for him or her to be heard***. 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.

Justification

Implements Article 4 of the Regulation.

Amendment 13
Article 24, paragraph 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.

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 ***specify the period within which the child shall be returned and shall state the sanctions which will apply in the case of the non-return of the child. The judgment 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.

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

Justification

The judgment should specify the date by which the child must be returned and the consequences of the non-return of the child.

Amendment 14
Article 28, introductory sentence

A judgment relating to parental responsibility shall not be recognized:

Excluding cases complying with the procedural requirements in Section 3, a judgment relating to parental responsibility shall not be recognized:

Justification

It should be made clearer that the non-recognition of judgments does not apply to cases concerning rights of access and the return of a child.

Amendment 15
Article 46(2)(b)

(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.

(b) the child was heard *in a manner appropriate to his or her age and degree of maturity* unless, having regard to his or her age or degree of maturity, *it was inappropriate for him or her to be heard*.

Justification

Implements Article 4 of the Regulation.

Amendment 16
Article 47(2)

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.

2. The court of origin shall issue the certificate referred to in paragraph 1 only if the child was heard *in the proceedings in a manner appropriate to his or her age and degree of maturity*, unless a hearing was considered inappropriate, having regard to his or her age or degree of maturity.

Justification

Implements Article 4 of the Regulation.

Amendment 17
Article 56, first paragraph

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.

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, *and establishing guidelines and promoting convergence of standards to be applied in cases, for example, of the interviewing of the child and in cases of domestic violence*.

Justification

Close cooperation and appropriate guidelines could lead to more consistency in the standards applied in the various Member States.

Amendment 18
Article 57(d)

(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;

(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 ***and including support and advice to parents concerning the official procedures and legal requirements;***

Justification

Parents should be given assistance in dealing with the legal procedures.

Amendment 19
Article 57(e)

(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;

(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. ***It shall also be open to any judge dealing with a cross-border family matter to put questions to them before deciding the case before him.***

Justification

These issues are very complicated and call for skills and experience which not all courts possess. A procedure whereby a judge might put questions to the central authorities would enable him to consult a service specialising in cross-border family matters before deciding the case before him.

Amendment 20
Article 57, final sentence (new)

Member States shall ensure that the central authorities are granted adequate resources to fulfil the tasks described above.

Justification

The tasks given to the central authorities are to be welcomed, but it is important that they should have adequate resources.

Amendment 21
Article 60(2)

(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 recognised and enforced in the other Member States under the rules laid down in Chapter IV of this Regulation.

(d) Judgments handed down in any of the 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 recognised and enforced in the other Member States under the rules laid down in Chapter IV of this Regulation.

Justification

The States involved have already been listed individually in paragraph 2(a).

Amendment 22
Annex V

6. Children who are covered by the judgment(27)

- 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

6. Children who are covered by the judgment(27)

- 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
- 6.5. Full name and date of birth***
- 6.6. Full name and date of birth***

(27) If more than **four** children are covered, use a second form.

(27) If more than **six** children are covered, use a second form.

Justification

Families with five or six children are not uncommon. Such families might feel that they were the subject of discrimination if the relevant form had space for only four children.

Amendment 23
Annex VI

6. Children who are covered by the judgment(28)

- 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

(28) If more than **four** children are covered, use a second form.

6. Children who are covered by the judgment(28)

- 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
- 6.5. Full name and date of birth**
- 6.6. Full name and date of birth**

(28) If more than **six** children are covered, use a second form.

Justification

Families with five or six children are not uncommon. Such families might feel that they were the subject of discrimination if the relevant form had space for only four children.

Amendment 24
Annex VI

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.

9. The children were heard ***in a manner appropriate to their age and degree of maturity*** unless, having regard to their age or degree of maturity, ***it was inappropriate for them to be heard.***

Justification

Implements Article 4 of the Regulation.

Amendment 25
Annex VII

6. Children who are covered by the judgment(29)

- 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

(29) If more than **four** children are covered, use a second form.

6. Children who are covered by the judgment(29)

- 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
- 6.5. Full name and date of birth**
- 6.6. Full name and date of birth**

(29) If more than **six** children are covered, use a second form.

Justification

Families with five or six children are not uncommon. Such families might feel that they were the subject of discrimination if the relevant form had space for only four children.

Amendment 26
Annex VII

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

7. The children were heard ***in a manner appropriate to their age or degree of maturity unless***, having regard to their age and degree of maturity, ***it was inappropriate for them to be heard.***

Justification

Implements Article 4 of the Regulation.

EXPLANATORY STATEMENT

On 3 May 2002, the European Commission adopted a new proposal on parental responsibility that merges into one text the Brussels II Regulation, the Commission proposal dated 6 September 2001 and the French initiative on access rights dated 3 July 2000. The new proposal takes over the provisions of the Commission proposal dated 6 September 2001, and the European Commission has therefore announced that the proposal dated 6 September 2001 will be withdrawn.

The rapporteur strongly welcomes the new Commission proposal and, in particular, its provisions dealing with child abduction cases. She is also pleased to note that the Commission has taken into account many of the suggestions made in her working document dated 14 January 2002 (PE 310.957). The rapporteur welcomes the abolition of *exequatur* procedures in cases concerning rights of access and the return of a child and looks forward to the abolition of *exequatur* procedures in all cases of parental responsibility.

Child abduction

The new proposal provides a clear and coherent system for child abduction within the Community applicable to all children in all cases. Under this proposal, the court of habitual residence of the child will maintain jurisdiction, and the courts in the Member State to which the child has been abducted will be able to take only provisional measures. In this way, it is intended that it will no longer be possible to bring about a change in jurisdiction through the unlawful abduction or retention of a child.

Rights of the child

More generally, the rapporteur is pleased to note the two new articles on the rights of the child. However, care should be taken with the right of the child to be heard, as it is not appropriate for very young children to be heard in a courtroom, and alternative means of recording their views could be used. The central authorities could lay down non-binding guidelines on best practice in this field.

Central authorities

The rapporteur welcomes an increased role for the central authorities and considers it important that adequate resources are provided to enable them to fulfil their role. As regards the return of the child in cases of child abduction, it should be made clear that the central authorities will not have a quasi-judicial role but will, where they are unable to secure the voluntary return of the child, seek a court decision requiring the return of the child.

Incorporation of the Brussels II Regulation and the French initiative

The rapporteur welcomes the integration of the Commission proposal with the Brussels II Regulation and the French initiative, as it is important for practitioners that the relevant rules are made as clear as possible in order to prevent misunderstanding and misuse of the legal provisions.

The Hague Conference

The rapporteur supports the remarks made at the meeting of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs of 23 May by the Secretary-General and Deputy Secretary-General welcoming the Commission proposal as an instrument which may provide an more integrated system within the European Union and operate alongside the 1980 and 1996 Hague Conventions in the international sphere. It should not be forgotten that many, if not most, of the problems concerning child abduction and visiting rights arise in relation to non-EU countries.

The rapporteur calls for the European Union to become a Party to the Hague Conference and to sign and ratify the 1996 Hague Convention as soon as possible. The Commission has proposed a draft decision which would authorise the Member States to sign the 1996 Convention in the interests of the Community (COM(2001) 680), and this should be promptly followed by a decision authorising the Member States to ratify the 1996 Convention within a specified timetable. This timetable should and can be short, since the proposed Regulation is largely inspired by the rules of the 1996 Convention, and it is therefore both desirable and feasible for the Regulation and the Convention to enter into force at the same time.

The rapporteur notes that the 1996 Convention is already in force in Monaco, the Czech Republic, Slovakia, Morocco (as of 1 December 2002) and Estonia (as of 1 June 2003). It has been signed, but not yet ratified, by the Netherlands, Poland and Latvia. Australia and Canada have already drafted their implementing legislation for consideration by their parliaments, and Ecuador's Parliament has already approved accession to the Convention.

26 June 2002

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES

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

on the 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
(COM (2002) 222 – C5-0234/2002 – 2002/0110(COS))

Draftsperson: Anna Karamanou

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Anna Karamanou draftsperson at its meeting of 22 May 2002.

It considered the draft opinion at its meetings of 17 and 18 June 2002.

At the latter meeting it adopted the following amendments unanimously.

The following were present for the vote: Olga Zrihen Zaari, acting chairperson; Jillian Evans, vice-chairperson; Anna Karamanou, draftsman; María Antonia Avilés Perea, Regina Bastos, Lissy Gröner, Miet Smet, Elena Valenciano Martínez-Orozco, Olle Schmidt (for Lousewies van der Laan).

SHORT JUSTIFICATION

The creation of a harmonised and uniform judicial area in the European Union is based on the mutual recognition of judicial decisions in all Member States. This is a real necessity in the present stage of European unification, as borders between Member States are abolished and the free movement of persons make the European Union into a single territory and, hence, a single judicial area. The same applies not only to matters falling under EU competence but also to matters hitherto ruled exclusively within national borders, as is the area of family law.

The mutual recognition of decisions in the area of divorce, separation, marriage annulment and parental responsibility is governed by Council Regulation (EC) No 1347/2000, which entered into force in March 2001; matters relating to maintenance are governed by Regulation (EC) No 44/2001. The Commission initially proposed a further Regulation to govern the mutual recognition and enforcement of court rulings in matters of parental responsibility by abolishing the complicated requirements for such enforcement in another Member State (abolition of the

exequatur). In addition, a proposal was submitted with a view to regulating matters of child abduction (French initiative). The Commission decided, therefore, to propose the setting up of a single legal instrument to cover all these fields. The European Parliament agreed with this initiative, and this proposal is the result of that decision.

The proposed Regulation therefore aims at establishing a balance between ensuring that court decisions always reflect the best interests of the child and allowing decisions in one Member State to benefit from recognition throughout the European Union. It should be supported by the Committee on Women's Rights and Equal Opportunities, provided that the weaker economic and social situation of women holders of parental responsibility is duly taken into account.

AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 8(a) (new)

8(a) In cases of divorce, legal separation or marriage annulment, the parental responsibility is most often entrusted to mothers who are, as proved, generally in a weaker economic situation than men, and this important impediment should be taken into account.

Justification

The cases of cross-border recognition of court rulings most frequently entail considerable cost and effort; this should not, however, constitute an impediment for those parents who have not the financial or other means to claim the return of the child. In addition, it is statistically proved that women are in a weaker economic situation than men, more so if they have the responsibility/custody of child or children after a legal separation, marriage annulment or divorce.

Amendment 2 Recital 12 (a) (new)

12 (a) In order to facilitate smooth contacts with the competent authorities, which is in the interest of the child, appropriate support, such as training in legal literacy, should be provided for where necessary to parents, especially those who are less experienced as regards such contacts.

¹ OJ C

Justification

The return of a child in cases of abduction or wrongful denial of access requires a good knowledge and understanding of the parental responsibility legal rights as well as the rights of the child and an ability to present these rights to the competent authorities. Parents or holders of parental responsibility should not be deprived of their right to act because of lack of experience or literacy in this field.

Amendment 3 Article 12.1 (c)

(c) if the jurisdiction of the courts has been accepted by the spouses and is in the best interests of the child.

(c) if the jurisdiction of the courts has been accepted ***in full cognizance of the implications*** by the spouses and is in the best interest s of the child;

Justification

Courts should make clear what are the consequences of the acceptance of their jurisdiction and ensure that the parents/holders or parental responsibility fully understand these implications.

Amendment 4 Article 12.2 (a)

(a) all holders of parental responsibility have accepted jurisdiction at the time the court is seized;

(a) all holders of parental responsibility have accepted jurisdiction at the time the court is seized, ***provided the implications of such acceptance are fully understood by them;***

Justification

Courts should make clear what are the consequences of the acceptance of their jurisdiction and ensure that the parents/holders or parental responsibility fully understand these implications.

Amendment 5 Article 16 (b) a (new)

(c) if failure to take the steps required is due to lack of legal literacy of the applicant.

Justification

If the applicant has not taken the required steps due to his/her lack of understanding the requirements or the procedure or the language, the spouse or the child should not be deprived of his/her rights; the courts should ascertain whether failure to take the subsequent steps is the result of such a lack of understanding and proceed to facilitate the applicant.

Amendment 6
Article 25.2 (a) (new)

(2) a. Central Authorities must provide adequate support and advice to parents hampered by reluctance or moral or financial inability in dealing with official procedures and legal requirements.

Justification

The return of a child in cases of abduction or wrongful denial of access requires a good knowledge and understanding of the parental responsibility legal rights as well as the rights of the child and an ability to present these rights to the competent authorities. Parents or holders of parental responsibility should not be deprived of their right to act because of lack of experience or literacy in this field.