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REPORT

on the 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
(9735/2000 – C5-0397/2000 – 2000/0818(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)

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PROCEDURAL PAGE

By letter of 27 July 2000 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the 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 (9735/2000 – 2000/0818(CNS)).

At the sitting of 4 September 2000 the President of Parliament announced that she had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0397/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Mary Elizabeth Banotti rapporteur at its meeting of 29 August 2000.

It considered the initiative of the French Republic and the draft report at its meetings of 19 September, 2 October, 10 October and 23 October 2000.

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

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans and Bernd Posselt, vice-chairmen; Jan Andersson (for Adeline Hazan), Roberta Angelilli, Alima Boumediene-Thiery, Rocco Buttiglione, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giorgos Dimitrakopoulos (for Marcello Dell'Utri), Pernille Frahm, Evelyne Gebhardt (for Gerhard Schmid), Bertel Haarder (for Jan-Kees Wiebenga), Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Ewa Klamt, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Minerva Melpomeni Malliori (for Sérgio Sousa Pinto), William Francis Newton Dunn (for Daniel J. Hannan), Arie M. Oostlander (for Timothy Kirkhope), Elena Ornella Paciotti, Hubert Pirker, Martin Schulz, Patsy Sørensen, Joke Swiebel, Anna Terrón I Cusí, Maurizio Turco (for Frank Vanhecke) and Gianni Vattimo.

The report was tabled on 24 October 2000.

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

LEGISLATIVE PROPOSAL

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 (9735/2000 – C5-0397/2000 – 2000/0818(CNS))

The initiative is amended as follows:

Text proposed by the French Republic¹

Amendments by Parliament

(Amendment 1)

Article 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:

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 ***for a period of not less than one day*** to one of the parents to one of their children when:

Justification:

It is important for Article 1 of this draft text to specify that the right of access should be for not less than a day. It cannot be in the child's or the parent's interest to limit access to a brief meeting, and it would be extremely harmful if there were no specific provision as to the minimum length of these important reunions.

(Amendment 2)

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.

Recognition of 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 would be enforceable in the Member State of recognition after being given by the authorities of that State ***while ensuring that the procedures are non-discriminatory between EU nationals and***

¹ OJ C 234, 15.08.2000, p.7

that enforceability provides simple, rapid and effective access.

Justification:

The draft regulation does not harmonise the enforcement procedures in the Member States. However, it should be clear that the aim of the regulation is to ensure the full enjoyment of rights of access. The procedure should be applied in a non-discriminatory manner between EU nationals.

(Amendment 3)
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.

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:

- (a) ***with strong evidence, that*** owing to a ***significant*** change in circumstances, exercise of rights of access or rights to have a child to stay for a limited period would ***be very likely to*** pose a serious, direct risk to the child's physical or psychological health ***and which is likely to outweigh the importance of the child's right to maintain regular contact with both parents***; or
- (b) ***that*** the judgment is irreconcilable with a judgment already enforceable in the territory of that Member State.

Justification:

Article 4(a) must be made more precise to ensure that actions for the suspension of rights of access are only available where there is a real concern so that unnecessary delays do not arise.

(Amendment 4)
Article 7, paragraph (2)

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.

2. Judgments shall be given by an emergency procedure in which both parties are heard. ***In cases where the child is 12 years or over, the child may also be heard*** if appropriate, having regard to the circumstances and to the child's understanding, ***and in a manner appropriate to the child's age and understanding.***

Justification:

It is not appropriate to question very young children in court proceedings.

(Amendment 5)
Article 11 paragraph 2 (new)

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.

1. 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.

2. The order of the competent authorities shall state that the child must be returned within a period of four days and may state the sanctions applicable under national law in the event of a failure to return the child within this period.

Justification:

The draft regulation should establish a period during which the child must actually be returned and that sanctions may be attached to the order requiring the return of the child.

(Amendment 6)

Article 11a (new)

In relations between Member States, this Regulation shall take precedence over the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

Justification:

See Article 37 of the Brussels II regulation. Its non-inclusion in Article 37 may lead to uncertainty.

(Amendment 7)

Article 12, paragraph 1a (new)

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.

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1a. Member States shall ensure that in the application of this Regulation regional or lower courts within their territory do not prevent the full enforcement of the rights of access or the prompt return ordered by the competent authorities.

Justification:

The lower level courts must apply the principles in the regulation.

(Amendment 8)

Article 15, paragraph 2a (new)

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

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

2a The Commission shall also report on cases not falling within the scope of the Regulation and make proposals on widening the scope of this Regulation, and if necessary the Brussels II

Regulation or new proposals which would cover cases outside the scope of this Regulation.

Justification:

The scope of the Regulation is limited to judgments under the Brussels II Regulation. Many cases of rights of access involve unmarried couples or contractual agreements which may not fall within the scope of this Regulation. The Commission should consider whether the procedures in this Regulation should apply to such cases.

(Amendment 9)

Article 17, paragraph (2a) (new)

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

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

2b. A representative of each country which is an applicant for accession to the EU shall be invited to attend the meetings referred to in paragraphs 1 and 3 as an observer.

Justification:

Any proposal must take account of the prospective enlargement, particularly in regard to the exchange of experience. Taking into account that some of the applicant countries have not signed the 1980 Hague Convention (e.g. Bulgaria, Slovakia, Turkey) and some have not yet ratified it (e.g. Croatia, Cyprus, Poland, Rumania), the need for this amendment is even more pressing.

(Amendment 10)

Article 17, paragraph 3a (new)

3. The central bodies shall meet for the first time in the three months following entry into force of the 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.

3. The central bodies shall meet for the first time in the three months following entry into force of the 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.

3a. The Secretary General or a substitute official from the secretariat to the Hague Convention shall be invited, with observer status, to participate in the meetings referred in paragraph 3.

Justification:

The Secretary-General to the Hague Convention has much experience on the enforcement of rules relating to access to children and the return of children and therefore should be invited to attend such meetings.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the 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 (9735/2000 – C5-0397/2000 – 2000/0818(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the French Republic (9735/2000)¹,
 - having regard to Article 61(c) of the EC Treaty,
 - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0397/2000),
 - 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 (A5-0311/2000),
1. Approves the initiative of the French Republic 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 initiative of the French Republic substantially;
 4. Instructs its President to forward its position to the Council, the Commission and the government of the French Republic.

¹ OJ C 234, 15.08.00, p.7

EXPLANATORY STATEMENT

The rapporteur welcomes this French initiative on the rights of access to children as a step towards ensuring the fundamental right of children to maintain regular contact with both parents.

Background experience of the Rapporteur

Since 1995 Mary Banotti has been the European Parliament's Mediator for Transnationally Abducted Children. The Mediator has no statutory role, however, the fact that the European Parliament has appointed a Mediator to work on these cases often opens doors when all other avenues have been exhausted. Cases are referred to the Mediator through petitions sent to the European Parliament, referral by other MEPs, or direct contact with the Mediator's office, either by an affected parent or by their legal advisers. During 1999, thirty-five calls requiring substantial follow-up were received from callers seeking advice on prevention, or court procedures. Over a hundred requests for information and general advice were received.

The rapporteur also co-operates with a Franco-German working group, set up by two colleagues, Mme Pervenche Berés and Mme Evelyne Gebhardt, which seeks to resolve the over fifty cases of abduction which exist between these two countries.

Background to the draft regulation

The increase in travel and working abroad has brought about an increase in the rate of marriages between couples with different nationalities, both within the E.U. and between the E.U. and third countries. When such marriages breakdown, there may be problems in enforcing rights of access where the children reside in another Member State or there may be cases of abduction with the child not being returned by the parent with rights of access at the end of a visit. Although many of the cases involve nationals of third countries, a significant number of cases involve nationals from different EU countries.

A number of international conventions govern the rights of access, custody and deal with civil aspects of the abduction of children¹. However, the application of the various international conventions in the different national jurisdictions can mean that parents experience delays in enforcing their rights of access or the return of their children.

This regulation seeks to simplify the enforcement of rights of the parents with the aim of ensuring that children are able to maintain contact with both parents:

- 1) the regulation establishes the principle of mutual recognition of judgments for rights of access to children without any intermediary step and limits the possibilities for seeking the suspension of the enforcement such judgments;

¹ The Hague Convention of 25th October 1980 on civil aspects of international child abduction, the European Convention of 20th May 1980 on the recognition and enforcement of decisions concerning custody of children and the restoration of custody of children and the Hague Convention of 19th October 1996 on jurisdiction applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children (not yet in force).

- 2) the regulation establishes that the prompt return of the child at the end of the period of access cannot be challenged or delayed by the parent with the right of access.

Both these aspects of the draft regulation are to be welcomed.

Mutual recognition of judgments

The principle of mutual recognition of judgments for rights of access to children without any intermediary step such as the verification of the judgment is welcomed.

However, the rapporteur wishes to draw attention to a number of limitations in the draft regulation:

- the scope of the regulation is limited both in terms of the situations covered and the geographic scope.
- the Regulation does not harmonise the enforcement procedures.

The intermediary steps have in some cases caused extensive delays and it needs to be very clear that this regulation applies fully to regional and lower courts.

Decisions covered

The scope of the regulation is limited to judgments falling within the scope of the Brussels II Regulation² relating to parental responsibility for the children of both spouses and made on the occasion of proceedings relating to divorce, legal separation or annulment.

Thus, only judgments made in the framework of a divorce or separation are covered. Judgments relating to parental access of unmarried couples are not within the scope of the regulation. This limitation is regretted as many problems arise in these cases. It is not clear whether contractual agreements between parents could be enforced under the regulation. Furthermore, only judgments concerning children of both spouses are covered.

The rapporteur is concerned about the limited scope of the draft regulation. Although these limitations arise from the fact that this regulation is based on the Brussels II regulation, the rapporteur urges the Commission and the Council to consider how the draft regulation and, if necessary, the Brussels II Regulation can be revised in order to ensure the cross-border enforceability of all decisions relating to parental access, including, in particular, cases where the parents are unmarried.

The rapporteur welcomes the requirement in Article 15 of the draft regulation that the Commission shall submit a report *inter alia* to the European Parliament on the application of this regulation and that this may include proposals for adapting the regulation. The report should also consider widening the scope of the regulation.

² Council Regulation 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, OJ L 160/19, 30.06.2000

Enforcement procedures

The Regulation does not seek to harmonise the enforcement procedures which apply in the different Member States. The aim of the regulation, which is to ensure effective access, should be stated as procedures clearly contrary to this aim could possibly be set aside (Marshall II, C-27/91). Also the principle of non-discrimination between EU nationals should be stated. Consideration should be given to whether the enforcement procedures should be harmonised or whether minimum rules should be covered by the regulation.

Suspension of enforcement procedures

The rapporteur is concerned about Article 4a which is similar to Article 13(b) of the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980. This provision of the Hague Convention has been used extensively to delay the enforcement of rights of access. Therefore, the wording has to be more restrictive and the courts must, when deciding on an action to suspend the enforcement of a judgment, take full account of the child's right of maintain contact with both parents.

It is welcomed that challenges under Article 15(2) of the Brussels II Regulation can not lead to the suspension of enforcement of the judgment on rights of access.

Geographic scope of the regulation

As mentioned in recitals 20 and 21 of the draft regulation, the United Kingdom, Ireland and Denmark are currently not participating in the adoption of the regulation. However, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaties, the United Kingdom and Ireland may (and are strongly urged by the rapporteur to do so) give notice of their wish to take part in the adoption and application of this regulation. This would be consistent with their participation in the Brussels II Regulation.

Denmark may also decide to apply this regulation (and is also urged to do so).

Prompt return of the child

Article 11 of the draft regulation requires the competent authorities in the state where the child is staying to order the prompt return of the child without possible delays caused by Articles 5 and 13 of the Hague Convention of 25 October 1980 on the civil aspects of international child abduction.

It is welcomed that the competent authorities may take a decision without the person with the rights of access being able to delay proceedings. Article 11 states that the competent authorities "*shall order the prompt return*" without specifying any deadline for the actual return or any sanctions which may be applied for a failure to return the child. The rapporteur considers that a deadline for the actual return of the child must be included otherwise there may be delays in securing the return of the child. Sanctions can be attached to the order, which will be those that apply under the national legislation. However, the Commission should consider whether the (civil or criminal) sanctions applicable should be harmonised or should be established in a revised regulation.

Local and regional courts

In some Member States, lower level courts seek to verify a judgment leading to delays and difficulties for the parents seeking to enforce judgments or obtain the return of the child. It therefore has to be ensured that the lower level courts in the Member States respect the principles in the regulation as otherwise the regulation will not lead to an improvement in the current situation.

Meetings of the central bodies

Article 17 of the draft regulation refers to regular meetings of the representative of the central bodies. The rapporteur suggests that attendance at these meetings on an optional basis should be offered to the Secretary-General or substitute official from the secretariat to the Hague Convention.