Civil judicial cooperation: jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

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The European Parliament adopted, by 522 votes to 89 with 35 abstentions, a legislative resolution approving, subject to amendments, the proposal for a Council regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters.

The report had been tabled for consideration in plenary by Evelyne **GEBHARDT** (PES, DE) on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

The main amendments – made in the framework of the consultation procedure – are as follows:

Title of the Regulation: Parliament proposes to amend the title of the Regulation. The title should concern jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, as well as the law applicable to divorce and legal separation.

Definition of the term "habitual residence": a definition of the term has been provided to mean a person' s place of ordinary abode. This definition is deemed necessary so as to avoid as much as possible arbitrary interpretations. The term should be interpreted in accordance with the purposes of this Regulation. Its meaning should be determined by the judge in each individual case and on the basis of facts. The term does not refer to a concept of national law but, rather, to a separate concept established in Community law.

Choice of jurisdiction: the proposal introduces the possibility for spouses to designate by common agreement the competent jurisdiction in their divorce procedure. MEPs propose to introduce a new article which stipulates that when the competent jurisdiction under this Regulation is situated in a Member State whose law makes no provision for divorce or does not recognise the existence or validity of the marriage in question, jurisdiction shall be allocated: i) to the Member State of the nationality of one of the spouses; or ii) to the Member State in which the marriage was celebrated.

Choice of applicable law: the proposal introduces the possibility for the spouses to designate by common agreement the law applicable in their divorce procedure. MEPs also deem it necessary to allow the possibility of choosing: a) the law of the State in which the spouses have their habitual residence at the time when the agreement is concluded; b) the law of the State in which the marriage took place at the time when the agreement is concluded; c) the law of the State in which the spouses have had their habitual residence for a minimum period of three years. The adopted text also stipulates, following an oral amendment by the EPP-ED Group, that the spouses may agree to designate the law applicable to divorce and legal separation provided that such law is in conformity with the fundamental rights defined in the Treaties and in the Charter of Fundamental Rights of the European Union and the principle of public policy. MEPs stress that the possibility of choosing the law applicable to divorce and to legal separation should not harm the interests of the child.

Lex fori: should the law indicated pursuant to the Regulation not recognise separation or divorce or do so in a form that is discriminatory as regards one of the spouses, the lex fori shall apply. This amendment is

intended to deal with the problems encountered by certain women from third countries who wish to obtain a separation or divorce in a Member State. Another amendment clarifies situations in which the law of a Member State or the marriage contract stipulates stricter requirements than those laid down in the Regulation.

Informed choice: MEPs consider that the informed agreement of the two spouses is a basic principle of this Regulation. Each partner in the couple should know exactly what legal and social implications follow from the choice of jurisdiction and of applicable law. They recall that the possibility of choosing by common agreement the jurisdiction and the applicable law should be without prejudice to the rights of, and equal opportunities for, the two spouses. Hence judges in the Member States should be aware of the importance of an enlightened choice on the part of the two spouses concerning the legal implications of the agreement concluded.

Information from the Member States: MEPs propose that 3 months after the date upon which this Regulation comes into force at the latest, the Member States shall notify the Commission of their national rules concerning the formal requirements applying to agreements relating to the choice of competent jurisdiction and of the law applicable to marriage contracts. The Member States shall notify the Commission of any subsequent change to those rules. The Commission is invited to make available to the public the information which has been notified to it by means of appropriate measures, in particular the European Judicial Network in civil and commercial matters.