Judicial cooperation: rights of access to children, mutual enforcement of judgments. Initiative France

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PURPOSE : to establish rules on the mutual enforcement of judgments on rights of access to children. LEGISLATIVE ACT : Council Regulation 2201/2003/EC concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000/EC. CONTENT : this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding. Since the application of the rules on parental responsibility often arises in the context of matrimonial proceedings, there is a single instrument for matters of divorce and parental responsibility. The scope of the Regulation covers civil matters, whatever the nature of the court or tribunal. The main points are as follows: - The grounds of jurisdiction in matters of parental responsibility established in this Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction will lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility. In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. However, in this case the second court should not be allowed to transfer the case to a third court. - The Regulation does not prevent the courts of a Member State from taking provisional, including protective measures, in urgent cases, with regard to persons or property situated in that State. - In cases of wrongful removal or retention of a child, the return of the child must be obtained without delay, and to this end the Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation. The courts of the Member State to which the child has been wrongfully removed or retained will be able to oppose his return in specific, duly justified cases. However, such a decision may be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. Should that judgment entail the return of the child, the return must take place without any special procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained. - Where a court has decided not to return a child on the basis of Article 13 of the 1980 Hague Convention, it must inform the court having jurisdiction in the Member State where the child was habitually resident prior to the wrongful removal. Unless the court in the latter Member State has been seised, this court should notify the parties. This obligation should not prevent the central authority from also notifying the relevant public authorities in accordance with national law. - The hearing of the child plays an important role, although this Regulation is not intended to modify national procedures applicable. The hearing of a child in another Member State may take place under the arrangements laid down in Council Regulation1206/2001/EC. - 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 must be kept to the minimum required. - The Tampere European Council considered in its conclusions that judgments in the field of family litigation should be "automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement". This is why judgments on rights of access and judgments on return that have been certified in the Member State of origin in accordance with the provisions of the Regulation must be recognised and enforceable in all other Member States without any further procedure being required. Arrangements for the enforcement of such judgments continue to be governed by national law. - The certificate issued to facilitate enforcement of the judgment is not subject to appeal. It may be rectified only where there is a material error, i.e. where it does not correctly reflect the judgment. - The United Kingdom and Ireland will take part in the adoption and application of the Regulation. - Denmark is not participating in the adoption

of the Regulation and is therefore not bound by it not subject to its application. ENTRY INTO FORCE : 1 August 2004. DATE OF APPLICATION: The Regulation shall apply from 1 March 2005, with the exception of Articles 67, 68, 69 and 70, which shall apply from 1 August 2004. The latter articles relate to comitolgy and to information on central authorities and languages accepted as well as information relating to courts and redress procedures.