Civil judicial cooperation: divorce and parental responsibility

2002/0110(CNS) - 27/11/2003 - Final act

PURPOSE : to extend the scope of Council Regulation 1347/2000/EC to cover all civil proceedings relating to parental responsibility by severing the link with the matrimonial proceedings. LEGISLATIVE ACT : Council Regulation 2201/2003/EC concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347 /2000/EC. CONTENT : the Council adopted the Regulation concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility. This Regulation replaces Regulation 1347/2000/EC, which is consequently repealed. In accordance with the Protocols on the position of respectively the United Kingdom and Ireland as well as Denmark, annexed to the Treaties, Ireland and the United Kingdom have given notice of their wish to take part in the adoption and application of this Regulation, whereas Denmark is not participating in its adoption and will not be bound by it or subject to its application. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to divorce, legal separation or marriage annulment; the attribution, exercise, delegation, restriction or termination of parental responsibility. The matters referred to above may, in particular, deal with rights of custody and rights of access; guardianship, curatorship and similar institutions; the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child; the placement of the child in a foster family or in institutional care; measures for the protection of the child relating to the administration, conservation or disposal of the child's property. On the other hand, this Regulation shall not apply to the establishment or contesting of a parent-child relationship; decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption; the name and forenames of the child; emancipation; maintenance obligations; trusts or succession; measures taken as a result of criminal offences committed by children. This Regulation constitutes an important step to the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. The Regulation shall apply, whatever the nature of the Court of tribunal, in civil matters relating to divorce, legal separation or marriage annulment as well as in matters relating to parental responsibility. This Regulation stipulates which courts of the Member States have jurisdiction in matters relating to the dissolution of the marriage or on parental responsibility. This means for instance that, if a spouse, living in one Member State wants to sue the other spouse, having his or her habitual residence in another Member State, the rules established by the Regulation will apply. Likewise, if a parent or any other holder of parental responsibility wishes to regulate the rights or duties relating to the person or the property of a child, jurisdiction will be determined in accordance with the Regulation. Such judgements will be recognised and enforced in all Member States in accordance with the rules laid down by the Regulation.In particular, any enforceable judgement on rights of access that have been certified by a judge shall be automatically recognised and enforceable in any Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition. Of particular importance are the rules on child abduction. The Regulation provides for complementary rules in order to obtain the return of a child to his or her habitual residence in cases where the child has been abducted in another Member State. Moreover, the return of such a child to his or her habitual residence will take place without the need for a declaration of enforceability and without any possibility of opposing its recognition where the judge of origin has delivered a certificate. The Regulation provides for cooperation between the central authorities in matters of parental responsibility. ENTRY INTO FORCE : This Regulation will enter into force on 1st August 2004 and shall apply from 1st March 2005.