Jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility; international child abduction. Recast

2016/0190(CNS) - 30/06/2016 - Legislative proposal

PURPOSE: to improve EU rules that protect children in the context of cross-border parental responsibility disputes related to custody, access rights and child abduction.

PROPOSED ACT: Council Regulation.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: Council Regulation (EC) No 2201/2003 (the Brussels IIa Regulation) is the cornerstone of judicial cooperation in family matters in the European Union. It establishes uniform jurisdiction rules for divorce, separation and the annulment of marriage as well as for disputes about parental responsibility in cross-border situations.

It facilitates the free circulation of judgments, authentic instruments and agreements in the Union by laying down provisions on their recognition and enforcement in other Member States. It applies since 1 March 2005 to all Member States except Denmark.

The Commission has assessed the operation of the Regulation in practice and considered necessary amendments to the instrument in its application report adopted in April 2014.

The evaluation showed that between the two major areas covered by the Regulation, the matrimonial and parental responsibility matters, the latter were identified to have caused **acute problems**. The overall efficiency of certain aspects of the child-related proceedings has been called into question:

- in matters concerning parental child abduction, cross-border placement of children, recognition and enforcement of decisions and cooperation between (central and other) national authorities there are excessive and undue delays arising from the way the existing procedures are formulated or applied. This has had a negative impact on parent-child relationships and the best interests of children;
- the requirement of exequatur generated average delays per case of several months and costs reaching up to EUR 4 000 Euro for citizens;
- the vague description of the cooperation between Central Authorities has often led to delays of several months or even to the non-fulfilment of requests – which is detrimental to children's welfare;
- the enforcement of decisions given in another Member State was identified as problematic; decisions are often not enforced or only with significant delays. In addition, the work of specialised lawyers generates costs for parents between EUR 1 000 and 4 000 per case;
- difficulties arise due to the fact that Member States have diverging rules governing the hearing of the child.

The objective of the recast of the Brussels IIa Regulation is to further develop the European area of Justice and Fundamental Rights based on Mutual Trust by removing the remaining obstacles to the free movement of judicial decisions in line with the principle of mutual recognition and to better protect the best interests of the child by simplifying the procedures and enhancing their efficiency.

IMPACT ASSESSMENT: the policy options and their impact assessment were dealt with separately for each of the issues identified as problematic in the evaluation of the Regulation. For all issues a baseline scenario and alternative options were developed.

For matrimonial and parental responsibility matters, policy options with different degrees of intervention were considered. The **preferred package of policy options** for parental responsibility matters would meet the simplification objectives by reducing delays relating to the return of the child, the placement decisions, and cooperation between the Central Authorities, and eliminate unnecessary delays and costs related to the exequatur requirement. At the same time it would also respond to the urgency of remedying the problems currently faced in this area, where it is of outmost importance to act and set the scene for changes keeping in mind the situation of children, families and their best interests.

CONTENT: this proposal is a recast of Council Regulation (EC) No 2201/2003 (the Brussels IIa Regulation) concerning jurisdiction and the recognition and enforcement of judgments concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. The main elements of the proposal are as follows:

More efficient proceedings: several substantial modifications are proposed with the aim of improving the efficiency of the return of an abducted child and the problems relating to the complexity of the "overriding mechanism" under the Regulation. More specifically, the proposal:

- clarifies the **time limit for issuing an enforceable return order**: the deadlines applied to different stages of the child return procedure will be limited to a **maximum period of 18 weeks** (maximum six weeks for the receiving Central Authority to process the application, six weeks for the first instance court, and six weeks for the appellate court) instead of average proceedings taking up to 165 days nowadays;
- includes an obligation for Member States to **concentrate jurisdiction** for child abduction cases in a limited number of courts while respecting the structure of the legal system concerned;
- **limits the number of possibilities to appeal** a decision on return to one and explicitly invites a judge to consider whether a decision ordering return should be provisionally enforceable;
- obliges the Member State where the child was habitually resident immediately before the wrongful removal or retention to conduct a **thorough examination of the best interests of the child** before a final custody decision, possibly implying return of the child, is given.

Decision to place a child: for placement decisions an **autonomous consent procedure** shall be established to be applied to all cross-border placements, flanked by a time limit for the requested Member State to respond to the request which is now **8 weeks** instead of the current 6 months or more.

Rapid enforcement of decisions in other Member States: under the new rules, the **exequatur procedure is abolished** for all decisions covered by the Regulation's scope. The abolition of exequatur will be accompanied by **procedural safeguards** which ensure that the defendant's right to an effective remedy and the right to a fair trial.

The defendant parent could make an application to challenge recognition and/or enforcement in the Member State of enforcement in one and the same procedure.

The proposal includes uniform rules to define in which situations not only cross-border enforceability but also enforcement as such could be opposed.

Ensuring the child is heard: the proposal leaves Member States' rules and practices on how to hear a child untouched, but requires mutual recognition between the legal systems. This means that an **obligation** to give the child who is capable of forming his or her own views an opportunity to express these views would be made explicit in the Regulation.

Improving the efficiency of actual enforcement: in this respect, the proposal:

- foresees an **indicative time limit for the actual enforcement of a decision**. In case the enforcement has not occurred after the lapse of 6 weeks from the moment the enforcement proceedings were initiated, the court of the Member State of enforcement would have to inform the requesting Central Authority in the Member State of origin (or the applicant, if the proceedings were conducted without Central Authority assistance) about this fact and the reasons for the lack of timely enforcement;
- provides that the court of origin could **declare a decision provisionally enforceable** even if this possibility does not exist in its national law.

Clarification of the Central Authorities' and other requested authorities' tasks: the new rules proposed shall promote better cooperation between Central Authorities. Member States shall ensure that Central Authorities have **adequate financial and human resources** to enable them to carry out the obligations assigned to them under this Regulation. Moreover, courts and child welfare authorities may request the assistance of Central Authorities.

BUDGETARY IMPLICATIONS: according to the Commission, the proposal triggers **relatively modest** compliance costs. The abolition of exequatur and the concentration of jurisdiction would require Member States to incur costs for training to familiarise the legal profession with the new procedures envisaged. Training is however already necessary today.