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

2016/0190(CNS) - 12/12/2018 - Amended legislative proposal for reconsultation

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

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: the Council adopted its position on the revision of so called Brussels IIa regulation which sets out rules on jurisdiction, recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, as well as on intra-EU child abduction.

The proposal was presented by the Commission on 30 June 2016. It aims at improving the current legal EU rules that protect children in the context of cross-border parental responsibility disputes related to custody, access rights and child abduction. A key objective of the new rules is to ensure faster general procedures, given the need to move quickly to protect the best interests of the child in the context of cross-border parental responsibility disputes.

The European Parliament delivered its opinion on the initial proposal on 18 January 2018. It is consulted again on this amended legislative proposal.

CONTENT: the draft Council Regulation aims to facilitate and accelerate the cross-border enforcement of decisions on parental responsibility and international child abduction. It shall apply in civil matters of:

(a) **divorce, legal separation or marriage annulment**;

(b) **the attribution, exercise, delegation, restriction or termination of parental responsibility**. The matters may, in particular, include: (i) rights of custody and rights of access; (ii) guardianship, curatorship and similar institutions; (iii) the designation and functions of any person or body having charge of the person or property of the child, representing or assisting the child; (iv) the placement of the child in institutional or foster care; (v) measures for the protection of the child relating to the administration, conservation or disposal of the property of the child.

The new rules amend the existing Brussels IIa regulation on a number aspects and foresee in particular:

- enhanced and clearer rules on intra-EU child abduction cases with the introduction, for example, of **clear deadlines** to ensure these cases are treated in the most expeditious manner;

- clearer rules on the opportunity for the child to express his/her views with the introduction of an obligation to give the child a genuine and effective opportunity to express his/her views either directly, or through a representative or an appropriate body;

- the complete abolition of exequatur for all decisions in matters of parental responsibility. This will save time and money for citizens whenever a decision needs to circulate from one member state to another. This abolition of exequatur is associated with a number of safeguards;

- clearer provisions on the placement of a child in another Member State, including the need to obtain consent for all placements, except where a child is to be placed with a parent. The best interests of the child should remain the primary consideration;

- the harmonisation of certain rules for the enforcement procedure. While the enforcement procedure remains governed by the law of the member state of enforcement, the regulation includes some harmonised grounds for suspending or refusing enforcement, thereby giving more legal certainty to parents and children;

- clearer rules on the circulation of extra judicial agreements. The text foresees that these agreements, for example on divorce or legal separation, will be allowed to circulate only if they are accompanied by a special certificate;

- as early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is against the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings.