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

2016/0190(CNS) - 02/07/2019 - Final act

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.

LEGISLATIVE ACT: Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction.

CONTENT: this Regulation consists of a revision of Regulation (EC) No 2201/2003, known as "Brussels IIa", with a view to strengthening the current legal rules protecting children in cross-border parental responsibility disputes concerning, for example, custody, access and child abduction.

A key objective of the new rules is to ensure more rapid 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 new Regulation complements the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. It applies to decisions ordering the return of a child to another Member State under the Hague Convention which must be enforced in a Member State other than the one in which the decision was given.

The Council Regulation shall apply in civil matters of:

- divorce, legal separation or marriage annulment;
- 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 II bis Regulation in a number of respects and provide in particular for:

- uniform rules of jurisdiction in matters of divorce, legal separation and marriage annulment, as well as rules on parental responsibility disputes with an international element;

- speeding up the return procedure in cases of child abduction by introducing clear deadlines so that cases can be settled quickly; courts will have to give their decisions within 6 weeks. The use of mediation shall be promoted;

- the extension of the right of the child to express his or her views, with the introduction of an obligation to give the child a genuine and effective opportunity to express his or 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;

- more effective implementation of decisions. 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;

- the simplified transmission of decisions, authentic instruments and certain agreements within the Union by laying down provisions concerning their recognition and enforcement in other Member States. The Regulation provides that the transmission of agreements on divorce, legal separation or parental responsibility shall be authorised if they are accompanied by the relevant certificate;

- better collaboration between the central authorities of the different Member States and between the courts, while respecting the procedural rights of the parties to the proceedings and the confidentiality of information.

ENTRY INTO FORCE: 22.7.2019.

APPLICATION: from 1.8.2022 (with the exception of certain provisions which apply from 22.7.2019).