Civil judicial cooperation: judgments in matrimonial matters and parental responsability, Brussels II Convention

1999/0110(CNS) - 17/03/2000 - Modified legislative proposal

The amended proposal reflects the Parliament's opinion, taking over most of the amendments. It also incorporates changes linked to developments since the original proposal was adopted. It also incorporates certain amendments agreed in the Council to which the Commission can also agree. The Commission accepts in total amendments 1, 3 to 8, 14 to 18 and 20 proposed by the Parliament and incorporates them purely and simply in its proposal. Thes amendmetns relate to: - the Nordic Agreement of 1931 which is amended to take account of amendment No 1 relating to compliance with the principle of non-discrimination; - the German version of recital 5 to the proposal for a Regulation is amended in response to amendment No 3; - recital 10 is amended in response to amendment No 4. The Commission shares in Parliament's view that the concept of parental respônsibility must be given autonomous interpretation; - recital 20 relating to the power of the Council to amend the annexes is deleted, in response to amendment No 5. It will be for the Commission to amend the annexes; - recital 22 is amended and a new recital 23 is inserted in response to Parliament's amendments Nos 6 and 7. Recital 22 has been reworded as the United Kingdom and Ireland have declared their intention of participating in the adoption of this Regulation; - a new paragraph 4 is added to Article 11 in response to amendment No 8. It determines the date when a court is deemed to be seised for the purpose of the lis pendens rules. The provision corresponds to the one in the proposal for a Regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters; - a new paragraph is added to Article 17 in response to amendment No 13, which seeks to promote the free movement of persons; - Articles 21 and 26 are amended in response to amendments Nos 14 to 18. The list of courts and redress procedures in these Articles are now in Annexes I to III; - Article 43 is amended in response to amendment No 20. There is no reason why the annexes should be amended by Council Decision as there are no more than a reference to purely national provisions. The new paragraph 1 accordingly provides that the annexes will be adapted by the Commission. In addition, the Commission accepts in part the amendments relating to: - the inclusion of the reference to the Hague Convention of 1980 on the civil aspects of international child abduction; - the insertion of a new paragraph which clarifies the scope in time of provisional, including protective measures; - the replacing of the words "in sufficient time" are replaced by "in sufficient time and in such a way as". The amendments rejected by the Commission relate to: - amendment 11, taking the child's best interests into account would presuppose an examination of the judgement given on the merits, and the Regulation prohibits this; - amendment 12 as it would have the effect of given priviledged status to mechanical enforcement of a possibly old judgement rather more than recent judgement given by anothercourt also having jurisdiction by reason of a change in the child's personal situation; - amendment 19 would introduce a translation rule that would be out of place in an instrument on jurisdiction and the recognition of judgements.