Civil judicial cooperation: parental responsibility, recognition and enforcement of judgments

2001/0204(CNS) - 06/09/2001 - Legislative proposal

PURPOSE: To establish a clear and coherent set of rules relating to jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility. CONTENT: Harmonised rules on the enforcement of judgments in matters of parental responsibility are deemed necessary as people increasingly move from one Member State to another. Given that some families break up and are recomposed, children need a secure legal environment for maintaining relations with persons who have parental responsibility over them and who may now live in a different Member State. This social trend has led some parents to become increasingly reluctant to send their child/ren abroad. For example, parents who have been given custody of a child, in say the UK, are sometimes fearful of sending their child to visit their father/mother another Member State for fear that they might not be returned. As a consequence the Justice and Home Affairs Council, which met in November 2000 adopted a programme for the progressive abolition of exequatur in four areas of work. This proposal is based on area 2 of the programme. Community initiatives in this field is fully in line with Article 5 of the EC Treaty which establishes the principle of subsidiarity. The legal basis for the proposal rests on Articles 61(c) and 67(1), according to which the Community has the option of adopting measures in the field of judicial cooperation in civil matters having cross-border implications and in so far as necessary for the proper functioning of the internal market. Council Regulation (EC) No 1347/2000 is, to date, the most established of EU legislation in the field of family law. It sets out rules on jurisdiction, automatic recognition and simplified enforcement of certain judgments issued at the time of divorce or separation. As regards decisions on parental responsibility, its scope is limited to judgments on parental responsibility for the children of both spouses rendered on the occasion of the matrimonial proceedings. In line with the wish to establish clear rules on the recognition and enforcement of judgments in matters of parental responsibility, the French government proposed that the Community adopt a two fold strategy. Firstly, to extend the scope of Regulation 1347/2000 and secondly to abolish exequatur for rights of access. In accordance with this concept and following a public hearing with interested parties, this proposal is, in effect extending Regulation 1347/2000 by improving the free circulation of all decisions on parental responsibility based on a set of common rules on jurisdiction that must be laid down at Community level and which reinforces cooperation between authorities. The ultimate objective is the abolition of exequatur before a decision taken in one Member State can be enforced in another Member State. The Commission is of the opinion that this proposal reflects the Communities objective of protecting the child's best interests, and in particular to give concrete expression to his or her fundamental right to maintain on a regular basis a personal relationship and direct contact with both parents.