Basic information

2002/0110(CNS) CNS - Consultation procedure Regulation	Procedure completed
Civil judicial cooperation: divorce and parental responsibility Repealing Regulation (EC) No 1347/2000 1999/0110(CNS) Repealed by 2016/0190(CNS) **Subject** 4.10.02 Family policy, family law, parental leave 4.10.03 Child protection, children's rights 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	BANOTTI Mary Elizabeth (PPE-DE)	02/07/2002

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	The committee decided not to give an opinion.	
FEMM Women's Rights and Equal Opportunities	KARAMANOU Anna (PSE)	04/06/2002

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2514	2003-06-05
Justice and Home Affairs (JHA)	2469	2002-11-28
Justice and Home Affairs (JHA)	2548	2003-11-27

European Commission

Commission DG	Commissioner
Justice and Consumers	

Key events

Date	Event	Reference	Summary
03/05/2002	Legislative proposal published	COM(2002)0222	Summary

29/05/2002	Committee referral announced in Parliament		
05/11/2002	Vote in committee		Summary
05/11/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0385/2002	
20/11/2002	Decision by Parliament	T5-0543/2002	Summary
27/11/2003	Act adopted by Council after consultation of Parliament		
27/11/2003	End of procedure in Parliament		
23/12/2003	Final act published in Official Journal		

Technical information

Procedure reference	2002/0110(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealing Regulation (EC) No 1347/2000 1999/0110(CNS) Repealed by 2016/0190(CNS)
Legal basis	EC Treaty (after Amsterdam) EC 067-p1 EC Treaty (after Amsterdam) EC 061
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/16251

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0385/2002	05/11/2002	
Text adopted by Parliament, 1st reading/single reading		T5-0543/2002 OJ C 025 29.01.2004, p. 0025-0171 E	20/11/2002	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2002)0222 OJ C 203 27.08.2002, p. 0155 E	03/05/2002	Summary
Follow-up document	COM(2014)0225	15/04/2014	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2014)0225	12/08/2014	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1021/2002 OJ C 061 14.03.2003, p. 0076	18/09/2002	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Regulation 2003/2201
OJ L 338 23.12.2003, p. 0001-0029 Summary

Corrigendum to final act 32003R2201R(08)
OJ L 082 22.03.2013, p. 0063

Corrigendum to final act 32003R2201R(15)
OJ L 297 04.11.2016, p. 0025

Civil judicial cooperation: divorce and parental responsibility

2002/0110(CNS) - 15/04/2014 - Follow-up document

The Commission presented a report on the application of Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

Effects of intra-EU mobility on families: the growing mobility of citizens within the Union has led to an increasing number of families with an international dimension, notably families whose members are of different nationalities, live in different Member States or live in a Member State of which one or more of them are not nationals.

In 2011, there were 33.3 million foreign citizens resident in the Union-27, 6.6% of the total population. The majority, 20.5 million, were citizens of non-Union countries, while the remaining 12.8 million were citizens of other Union Member States.

According to Article 81 of the Treaty on the Functioning of the European Union, the Union adopts measures in the field of judicial cooperation in civil matters having cross-border implications. Where families break up, such cooperation is particularly necessary to **give children a secure legal environment** to maintain relations with persons who have parental responsibility over them and may live in another Member State.

Regulation No 1347/2000 laying down rules on jurisdiction, recognition and enforcement of judgments on divorce, separation and marriage annulment as well as judgments on parental responsibility for the children of both spouses was the first Union instrument adopted in the area of judicial cooperation in family law matters.

This Regulation was repealed by Regulation No 2201/20033 (commonly known as the **Brussels IIa Regulation**). It is the **cornerstone of Union judicial cooperation in matrimonial matters and matters of parental responsibility**. It applies since 1 March 2005 to all Member States except Denmark.

Avoid conflicts-of-law: the Regulation provides for uniform rules to settle conflicts of jurisdiction between Member States and facilitates the free circulation of judgments, authentic instruments and agreements in the Union by laying down provisions on their **recognition and enforcement in another Member State**.

It complements the Hague Convention of 25 October 1980 on the civil aspects of international child abduction.

This Regulation does not contain rules to determine which law applies to cross-border disputes in the fields covered by it. In 2006, the Commission proposed amendments to the Regulation as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters. **No unanimity could be reached within the Council** with regard to the rules on applicable law and the Commission therefore withdrew the 2006 proposal to amend the Regulation.

On the basis of new Commission proposals, 14 Member States agreed to establish enhanced cooperation among themselves12 and adopted Regulation (EU) No 1259/2010 laying down rules determining the law applicable to divorce and legal separation (hereafter "the Rome III Regulation"). This was the first time that enhanced cooperation was used in the Union. By its nature, an enhanced cooperation is open to the participation of all Member States with the ultimate goal that the Rome III Regulation is taken up by all Member States. Since the adoption of the Rome III Regulation two more Member States have decided to participate in the enhanced cooperation.

Purpose of the report and main conclusions: this report concerns the monitoring of the implementation of the Brussels IIa Regulation. It follows the structure of the Regulation by reviewing in separate sections the provisions on jurisdiction, recognition and enforceability of judgments and cooperation between Member States' Central Authorities. It also focuses more specifically on a number of cross-cutting issues, namely the **return of the child in cases of parental abduction, the enforcement of judgments and the placement of a child in another Member State**.

The report concluded that the Regulation is a well-functioning instrument that has brought important benefits to citizens. It has facilitated the settlement of increasing cross-border litigation in matrimonial and parental responsibility matters through a **comprehensive system of jurisdiction rules and an efficient system of cooperation between Member State Central Authorities**. It also prevents parallel proceedings and the free circulation of judgments, authentic instruments and agreements.

The provisions on the return of the child complementing the 1980 Hague Convention aimed at deterring parental child abduction between Member States are regarded as particularly useful. However, there are indications on the basis of data and preliminary feedback from experts that **existing rules could be improved**. In order to explore comprehensively the concerns identified in this report, the Commission intends to launch a further policy evaluation of the existing rules and their impact on citizens. To this end, the Commission will also launch a **public consultation**. On the basis of the evaluation and the replies to the public consultation, the Commission will take action as appropriate.

Civil judicial cooperation: divorce and parental responsibility

2002/0110(CNS) - 28/11/2002

The Council reached an agreement on the proposal for a Regulation concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and in matters of parental responsibility. This agreement constitutes an important advance in matters relating to the jurisdiction in cases of child abduction. According to the text agreed by the Council, in case of wrongful removal or retention of a child, the Courts of the Member State of origin keep their jurisdiction until the child has acquired a habitual residence in another Member State. As regard the return of the child, the text agreed provides that a Court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard. Furthermore, the Court shall, unless exceptional circumstances makes this impossible, issue its order no later than six weeks after it is seized of the application. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty establishing the European Community, Ireland and the United Kingdom have given notice of their wish to take part in the adoption and application of the proposal. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on the European Union and to the Treaty establishing the European Community, Denmark does not participate in the adoption of the Regulation, and is therefore not bound by it or subject to its application.

Civil judicial cooperation: divorce and parental responsibility

2002/0110(CNS) - 03/05/2002 - Legislative proposal

PURPOSE : the recognition and enforcement of decisions in matrimonial matters and those of parental responsibility based on common rules of jurisdiction. CONTENT : this Regulation comprehends a single instrument on divorce and parental responsibility. As regards matrimonial matters, the relevant provisions are taken over from Council Regulation 1347/2000/EC. On parental responsibility, the objective of Community action is to protect the child's best interests. This means, in particular, to give concrete expression to his or her fundamental right to maintain contact with both parents, as laid down in Aritlce 24 of the Charter of Fundamental Rights of the EU. To this end, the Commission proposes: -to extend the principle of mutual recognition to all decisions on parental responsibility; -to abolish exequatur for rights of access (corresponding to the French initiative); -matters relating to maintenance are excluded; -jurisdiction shall lie in the first place with the Member State of the child's habitual residence, except for certain cases of a change in the child's residence or pursuant to an agreement between the holders of parental responsibility; -the proposal does not prevent Member States from taking protective measures in urgent cases with regard to persons or property situated in the State; -in cases of child abduction, the courts of the Member State to which the child has been removed are able to take a provisional protective measure not to return the child, which is superseded by a judgement on custody issued by the courts of the child's former habitual residence. Should that judgement entail the return of the child, the child must be returned without any special procedure being required for recognition and enforcement in the Member State to which the child is being abducted. The child has a right to be heard. -the recognition and enforcement of judgements given in a Member State are based on the principle of mutual trust and the grounds for non-recognition must be kept to the minimum required. These relate to observing public policy in the Member State of enforcement, safeguarding the rights of defence and those of the parties, including the rights of the child, and withholding recognition of irreconcilable judgments; -no special procedure is required in the Member State of enforcement for judgments on rights of access and return that have been certified in the Member State of origin; -Denmark is not bound by the proposed Regulation.

Civil judicial cooperation: divorce and parental responsibility

2002/0110(CNS) - 05/06/2003

The Council reached political agreement on the draft Regulation concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and in matters of parental responsibility, without prejudice to finalisation of certain technical and editorial points. The Council instructed the Permanent Representatives Committee and the Committee on Civil Law Matters (Parental Responsibility) to finalise the technical aspects to enable the Council to adopt the proposal formally at its October meeting with due regard for the other political decisions taken by the Council at its meeting on 29 November 2002 and in such a way that the regulation will enter into effect the 1st of July 2004, if possible. It is recalled that the JHA Council of November 2002 reached a political agreement on matters relating to the return of the child, a key point of the Regulation. At that meeting, the Council also decided that the formal adoption of the Regulation could only take place when the Council would also adopt the Decision authorising the Member States to ratify the 1996 Hague Convention, in the interest of the Community.

Civil judicial cooperation: divorce and parental responsibility

2002/0110(CNS) - 20/11/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Mary BANOTTI (EPP-ED, Ire) making some amendments to the Commission's proposal. (Please refer to the document dated 5/11/02.) Other amendments adopted include: -the hearing of the child must take account of the age and maturity of the child and may take the form of a separate interview by an independent, qualified person; -where the procedures in the regulation have been followed, the grounds for non-recognition should not apply to judgments on the right of access and the return of the child; -in all court decisions, the child's best interests must be the primary consideration; -Member States must ensure that central authorities have adequate resources to fulfil the tasks described in the regulation.

Civil judicial cooperation: divorce and parental responsibility

2002/0110(CNS) - 27/11/2003 - Final act

PURPOSE : to extend the scope of Council Regulation 1347/2000/EC to cover all civil proceedings relating to parental responsibility by severing the link with the matrimonial proceedings. LEGISLATIVE ACT : Council Regulation 2201/2003/EC concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000/EC. CONTENT : the Council adopted the Regulation concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility. This Regulation replaces Regulation 1347/2000/EC, which is consequently repealed. In accordance with the Protocols on the position of respectively the United Kingdom and Ireland as well as Denmark, annexed to the Treaties, Ireland and the United Kingdom have given notice of their wish to take part in the adoption and application of this Regulation, whereas Denmark is not participating in its adoption and will not be bound by it or subject to its application. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to divorce, legal separation or marriage annulment; the attribution, exercise, delegation, restriction or termination of parental responsibility. The matters referred to above may, in particular, deal with rights of custody and rights of access; guardianship, curatorship and similar institutions; the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child; the placement of the child in a foster family or in institutional care; measures for the protection of the child relating to the administration, conservation or disposal of the child's property. On the other hand, this Regulation shall not apply to the establishment or contesting of a parent-child relationship; decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption; the name and forenames of the child; emancipation; maintenance obligations; trusts or succession; measures taken as a result of criminal offences committed by children. This Regulation constitutes an important step to the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. The Regulation shall apply, whatever the nature of the Court of tribunal, in civil matters relating to divorce, legal separation or marriage annulment as well as in matters relating to parental responsibility. This Regulation stipulates which courts of the Member States have jurisdiction in matters relating to the dissolution of the marriage or on parental responsibility. This means for instance that, if a spouse, living in one Member State wants to sue the other spouse, having his or her habitual residence in another Member State, the rules established by the Regulation will apply. Likewise, if a parent or any other holder of parental responsibility wishes to regulate the rights or duties relating to the person or the property of a child, jurisdiction will be determined in accordance with the Regulation. Such judgements will be recognised and enforced in all Member States in accordance with the rules laid down by the Regulation.In particular, any enforceable judgement on rights of access that have been certified by a judge shall be automatically recognised and enforceable in any Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition. Of particular importance are the rules on child abduction. The Regulation provides for complementary rules in order to obtain the return of a child to his or her habitual residence in cases where the child has been abducted in another Member State. Moreover, the return of such a child to his or her habitual residence will take place without the need for a declaration of enforceability and without any possibility of opposing its recognition where the judge of origin has delivered a certificate. The Regulation provides for cooperation between the central authorities in matters of parental responsibility. ENTRY INTO FORCE : This Regulation will enter into force on 1st August 2004 and shall apply from 1st March 2005.