



Practical exercises in implementing the judicial cooperation instruments in civil and commercial matters

EU legislation

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Regulation (EC) No 1393/2007 of the European Parliament and of the Council

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Regulation (EC) No 1393/2007 of the European Parliament and of the Council
of 13 November 2007

on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(5), second indent, thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

Whereas:

(1) The Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured. To establish such an area, the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.

(2) The proper functioning of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.

(3) The Council, by an Act dated 26 May 1997 [3], drew up a Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters and recommended it for adoption by the Member States in accordance with their respective constitutional rules. That Convention has not entered into force. Continuity in the results of the negotiations for conclusion of the Convention should be ensured.

(4) On 29 May 2000 the Council adopted Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters [4]. The main content of that Regulation is based on the Convention.

(5) On 1 October 2004 the Commission adopted a report on the application of Regulation (EC) No 1348/2000. The report concludes that the application of Regulation (EC) No 1348/2000 has generally improved and expedited the transmission and the service of documents between Member States since its entry into force in 2001, but that nevertheless the application of certain provisions is not fully satisfactory.

(6) Efficiency and speed in judicial procedures in civil matters require that judicial and extrajudicial documents be transmitted directly and by rapid means between local bodies designated by the Member States. Member States may indicate their intention to designate only one transmitting or receiving agency or one agency to perform both functions, for a period of five years. This designation may, however, be renewed every five years.

(7) Speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed. Security in transmission requires that the document to be transmitted be accompanied by a standard form, to be completed in the official language or one of the official languages of the place where service is to be effected, or in another language accepted by the Member State in question.

(8) This Regulation should not apply to service of a document on the party's authorised representative in the Member State where the proceedings are taking place regardless of the place of residence of that party.

(9) The service of a document should be effected as soon as possible, and in any event within one month of receipt by the receiving agency.

(10) To secure the effectiveness of this Regulation, the possibility of refusing service of documents should be confined to exceptional situations.

(11) In order to facilitate the transmission and service of documents between Member States, the standard forms set out in the Annexes to this Regulation should be used.

(12) The receiving agency should inform the addressee in writing using the standard form that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not either in a language which he understands or in the official language or one of the official languages of the place of service. This rule should also apply to the subsequent service once the addressee has exercised his right of refusal. These rules on refusal should also apply to service by diplomatic or consular agents, service by postal services and direct service. It should be established that the service of the refused document can be remedied through the service on the addressee of a translation of the document.

(13) Speed in transmission warrants documents being served within days of receipt of the document. However, if service has not been effected after one month has elapsed, the receiving agency should inform the transmitting agency. The expiry of this period should not imply that the request be returned to the transmitting agency where it is clear that service is feasible within a reasonable period.

(14) The receiving agency should continue to take all necessary steps to effect the service of the document also in cases where it has not been possible to effect service within the month, for example, because the defendant has been away from his home on holiday or away from his office on business. However, in order to avoid an open-ended obligation for the receiving agency to take steps to effect the service of a document, the transmitting agency should be able to specify a time limit in the standard form after which service is no longer required.

(15) Given the differences between the Member States as regards their rules of procedure, the material date for the purposes of service varies from one Member State to another. Having regard to such situations and the possible difficulties that may arise, this Regulation should provide for a system where it is the law of the Member State addressed which determines the date of service. However, where according to the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant should be that determined by the law of that Member State. This double date system exists only in a limited number of Member States. Those Member States which apply this system should communicate this to the Commission, which should publish the information in the Official Journal of the European Union and make it available through the European Judicial Network in Civil and Commercial Matters established by Council Decision 2001/470/EC [5].

(16) In order to facilitate access to justice, costs occasioned by recourse to a judicial officer or a person competent under the law of the Member State addressed should correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination. The requirement of a single fixed fee should not preclude the possibility for Member States to set different fees for different types of service as long as they respect these principles.

(17) Each Member State should be free to effect service of documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.

(18) It should be possible for any person interested in a judicial proceeding to effect service of documents directly through the judicial officers, officials or other competent persons of the Member State addressed, where such direct service is permitted under the law of that Member State.

(19) The Commission should draw up a manual containing information relevant for the proper application of this Regulation, which should be made available through the European Judicial Network in Civil and Commercial Matters. The Commission and the Member States should do their utmost to ensure that this information is up to date and complete especially as regards contact details of receiving and transmitting agencies.

(20) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits [6] should apply.

(21) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [7].

(22) In particular, power should be conferred on the Commission to update or make technical amendments to the standard forms set out in the Annexes. Since those measures are of general scope and are designed to amend/delete non-essential elements of this Regulation, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(23) This Regulation prevails over the provisions contained in bilateral or multilateral agreements or arrangements having the same scope, concluded by the Member States, and in particular the Protocol annexed to the Brussels Convention of 27 September 1968 [8] and the Hague Convention of 15 November 1965 [9] in relations between the Member States party thereto. This Regulation does not preclude Member States from maintaining or concluding agreements or arrangements to expedite or simplify the transmission of documents, provided that they are compatible with this Regulation.

(24) The information transmitted pursuant to this Regulation should enjoy suitable protection. This matter falls within the scope of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [10], and of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) [11].

(25) No later than 1 June 2011 and every five years thereafter, the Commission should review the application of this Regulation and propose such amendments as may appear necessary.

(26) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(27) In order to make the provisions more easily accessible and readable, Regulation (EC) No 1348/2000 should be repealed and replaced by this Regulation.

(28) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Regulation.

(29) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there. It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).

2. This Regulation shall not apply where the address of the person to be served with the document is not known.

3. In this Regulation, the term "Member State" shall mean the Member States with the exception of Denmark.

Article 2

Transmitting and receiving agencies

1. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as "transmitting agencies", competent for the transmission of judicial or extrajudicial documents to be served in another Member State.

2. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as "receiving agencies", competent for the receipt of judicial or extrajudicial documents from another Member State.

3. A Member State may designate one transmitting agency and one receiving agency, or one agency to perform both functions. A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one such agency. The designation shall have effect for a period of five years and may be renewed at five-year intervals.

4. Each Member State shall provide the Commission with the following information:

- (a) the names and addresses of the receiving agencies referred to in paragraphs 2 and 3;
- (b) the geographical areas in which they have jurisdiction;
- (c) the means of receipt of documents available to them; and
- (d) the languages that may be used for the completion of the standard form set out in Annex I.

Member States shall notify the Commission of any subsequent modification of such information.

Article 3

Central body

Each Member State shall designate a central body responsible for:

- (a) supplying information to the transmitting agencies;
- (b) seeking solutions to any difficulties which may arise during transmission of documents for service;
- (c) forwarding, in exceptional cases, at the request of a transmitting agency, a request for service to the competent receiving agency.

A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one central body.

CHAPTER II

JUDICIAL DOCUMENTS

Section 1

Transmission and service of judicial documents

Article 4

Transmission of documents

1. Judicial documents shall be transmitted directly and as soon as possible between the agencies designated pursuant to Article 2.
2. The transmission of documents, requests, confirmations, receipts, certificates and any other papers between transmitting agencies and receiving agencies may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it is easily legible.
3. The document to be transmitted shall be accompanied by a request drawn up using the standard form set out in Annex I. The form shall be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. Each Member State shall indicate the official language or languages of the institutions of the European Union other than its own which is or are acceptable to it for completion of the form.
4. The documents and all papers that are transmitted shall be exempted from legalisation or any equivalent formality.
5. When the transmitting agency wishes a copy of the document to be returned together with the certificate referred to in Article 10, it shall send the document in duplicate.

Article 5

Translation of documents

1. The applicant shall be advised by the transmitting agency to which he forwards the document for transmission that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8.
2. The applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.

Article 6

Receipt of documents by receiving agency

1. On receipt of a document, a receiving agency shall, as soon as possible and in any event within seven days of receipt, send a receipt to the transmitting agency by the swiftest possible means of transmission using the standard form set out in Annex I.
2. Where the request for service cannot be fulfilled on the basis of the information or documents transmitted, the receiving agency shall contact the transmitting agency by the swiftest possible means in order to secure the missing information or documents.
3. If the request for service is manifestly outside the scope of this Regulation or if non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned, on receipt, to the transmitting agency, together with the notice of return using the standard form set out in Annex I.
4. A receiving agency receiving a document for service but not having territorial jurisdiction to serve it shall forward it, as well as the request, to the receiving agency having territorial jurisdiction in the same Member State if the request complies with the conditions laid down in Article 4(3) and shall inform the transmitting agency accordingly using the standard form set out in Annex I. That receiving agency shall inform the transmitting agency when it receives the document, in the manner provided for in paragraph 1.

Article 7

Service of documents

1. The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State.
2. The receiving agency shall take all necessary steps to effect the service of the document as soon as possible, and in any event within one month of receipt. If it has not been possible to effect service within one month of receipt, the receiving agency shall:
 - (a) immediately inform the transmitting agency by means of the certificate in the standard form set out in Annex I, which shall be drawn up under the conditions referred to in Article 10(2); and
 - (b) continue to take all necessary steps to effect the service of the document, unless indicated otherwise by the transmitting agency, where service seems to be possible within a reasonable period of time.

Article 8

Refusal to accept a document

1. The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not written in, or accompanied by a translation into, either of the following languages:

(a) a language which the addressee understands;

or

(b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

2. Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

3. If the addressee has refused to accept the document pursuant to paragraph 1, the service of the document can be remedied through the service on the addressee in accordance with the provisions of this Regulation of the document accompanied by a translation into a language provided for in paragraph 1. In that case, the date of service of the document shall be the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed. However, where according to the law of a Member State, a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document determined pursuant to Article 9(2).

4. Paragraphs 1, 2 and 3 shall also apply to the means of transmission and service of judicial documents provided for in Section 2.

5. For the purposes of paragraph 1, the diplomatic or consular agents, where service is effected in accordance with Article 13, or the authority or person, where service is effected in accordance with Article 14, shall inform the addressee that he may refuse to accept the document and that any document refused must be sent to those agents or to that authority or person respectively.

Article 9

Date of service

1. Without prejudice to Article 8, the date of service of a document pursuant to Article 7 shall be the date on which it is served in accordance with the law of the Member State addressed.

2. However, where according to the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be that determined by the law of that Member State.

3. Paragraphs 1 and 2 shall also apply to the means of transmission and service of judicial documents provided for in Section 2.

Article 10

Certificate of service and copy of the document served

1. When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form set out in Annex I and addressed to the transmitting agency, together with, where Article 4(5) applies, a copy of the document served.

2. The certificate shall be completed in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated that it can accept. Each Member State shall indicate the official language or languages of the institutions of the European Union other than its own which is or are acceptable to it for completion of the form.

Article 11

Costs of service

1. The service of judicial documents coming from a Member State shall not give rise to any payment or reimbursement of taxes or costs for services rendered by the Member State addressed.

2. However, the applicant shall pay or reimburse the costs occasioned by:

(a) recourse to a judicial officer or to a person competent under the law of the Member State addressed;

(b) the use of a particular method of service.

Costs occasioned by recourse to a judicial officer or to a person competent under the law of the Member State addressed shall correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination. Member States shall communicate such fixed fees to the Commission.

Section 2

Other means of transmission and service of judicial documents

Article 12

Transmission by consular or diplomatic channels

Each Member State shall be free, in exceptional circumstances, to use consular or diplomatic channels to forward judicial documents, for the purpose of service, to those agencies of another Member State which are designated pursuant to Articles 2 or 3.

Article 13

Service by diplomatic or consular agents

1. Each Member State shall be free to effect service of judicial documents on persons residing in another Member State, without application of any compulsion, directly through its diplomatic or consular agents.

2. Any Member State may make it known, in accordance with Article 23(1), that it is opposed to such service within its territory, unless the documents are to be served on nationals of the Member State in which the documents originate.

Article 14

Service by postal services

Each Member State shall be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.

Article 15

Direct service

Any person interested in a judicial proceeding may effect service of judicial documents directly through the judicial officers, officials or other competent persons of the Member State addressed, where such direct service is permitted under the law of that Member State.

CHAPTER III

EXTRAJUDICIAL DOCUMENTS

Article 16

Transmission

Extrajudicial documents may be transmitted for service in another Member State in accordance with the provisions of this Regulation.

CHAPTER IV

FINAL PROVISIONS

Article 17

Implementing rules

Measures designed to amend non-essential elements of this Regulation relating to the updating or to the making of technical amendments to the standard forms set out in Annexes I and II shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 18(2).

Article 18

Committee

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 19

Defendant not entering an appearance

1. Where a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and the defendant has not appeared, judgment shall not be given until it is established that:

(a) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or

(b) the document was actually delivered to the defendant or to his residence by another method provided for by this Regulation;

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

2. Each Member State may make it known, in accordance with Article 23(1), that the judge, notwithstanding the provisions of paragraph 1, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

(a) the document was transmitted by one of the methods provided for in this Regulation;

(b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;

(c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities or bodies of the Member State addressed.

3. Notwithstanding paragraphs 1 and 2, the judge may order, in case of urgency, any provisional or protective measures.

4. When a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiry of the time for appeal from the judgment if the following conditions are fulfilled:

(a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and

(b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Member State may make it known, in accordance with Article 23(1), that such application will not be entertained if it is filed after the expiry of a time to be stated by it in that communication, but which shall in no case be less than one year following the date of the judgment.

5. Paragraph 4 shall not apply to judgments concerning the status or capacity of persons.

Article 20

Relationship with agreements or arrangements to which Member States are party

1. This Regulation shall, in relation to matters to which it applies, prevail over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States, and in particular Article IV of the Protocol to the Brussels Convention of 1968 and the Hague Convention of 15 November 1965.

2. This Regulation shall not preclude individual Member States from maintaining or concluding agreements or arrangements to expedite further or simplify the transmission of documents, provided that they are compatible with this Regulation.

3. Member States shall send to the Commission:

(a) a copy of the agreements or arrangements referred to in paragraph 2 concluded between the Member States as well as drafts of such agreements or arrangements which they intend to adopt; and

(b) any denunciation of, or amendments to, these agreements or arrangements.

Article 21

Legal aid

This Regulation shall not affect the application of Article 23 of the Convention on civil procedure of 17 July 1905, Article 24 of the Convention on civil procedure of 1 March 1954 or Article 13 of the Convention on international access to justice of 25 October 1980 between the Member States party to those Conventions.

Article 22

Protection of information transmitted

1. Information, including in particular personal data, transmitted under this Regulation shall be used by the receiving agency only for the purpose for which it was transmitted.
2. Receiving agencies shall ensure the confidentiality of such information, in accordance with their national law.
3. Paragraphs 1 and 2 shall not affect national laws enabling data subjects to be informed of the use made of information transmitted under this Regulation.
4. This Regulation shall be without prejudice to Directives 95/46/EC and 2002/58/EC.

Article 23

Communication and publication

1. Member States shall communicate to the Commission the information referred to in Articles 2, 3, 4, 10, 11, 13, 15 and 19. Member States shall communicate to the Commission if, according to their law, a document has to be served within a particular period as referred to in Articles 8(3) and 9(2).
2. The Commission shall publish the information communicated in accordance with paragraph 1 in the Official Journal of the European Union with the exception of the addresses and other contact details of the agencies and of the central bodies and the geographical areas in which they have jurisdiction.
3. The Commission shall draw up and update regularly a manual containing the information referred to in paragraph 1, which shall be available electronically, in particular through the European Judicial Network in Civil and Commercial Matters.

Article 24

Review

No later than 1 June 2011, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation, paying special attention to the effectiveness of the agencies designated pursuant to Article 2 and to the practical application of Article 3(c) and Article 9. The report shall be accompanied if need be by proposals for adaptations of this Regulation in line with the evolution of notification systems.

Article 25

Repeal

1. Regulation (EC) No 1348/2000 shall be repealed as from the date of application of this Regulation.
2. References made to the repealed Regulation shall be construed as being made to this Regulation and should be read in accordance with the correlation table in Annex III.

Article 26

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

It shall apply from 13 November 2008 with the exception of Article 23 which shall apply from 13 August 2008.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 13 November 2007.

For the European Parliament

The President

H.-G. Pöttering

For the Council

The President

M. LOBO ANTUNES

[1] OJ C 88, 11.4.2006, p. 7.

[2] Opinion of the European Parliament of 4 July 2006 (OJ C 303 E, 13.12.2006, p. 69), Council Common Position of 28 June 2007 (OJ C 193 E, 21.8.2007, p. 13) and Position of the European Parliament of 24 October 2007.

[3] OJ C 261, 27.8.1997, p. 1. On the same day as the Convention was drawn up the Council took note of the explanatory report on the Convention which is set out on page 26 of the aforementioned Official Journal.

[4] OJ L 160, 30.6.2000, p. 37.

[5] OJ L 174, 27.6.2001, p. 25.

[6] OJ L 124, 8.6.1971, p. 1.

[7] OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

[8] Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ L 299, 31.12.1972, p. 32; consolidated version, OJ C 27, 26.1.1998, p. 1).

[9] Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

[10] OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

[11] OJ L 201, 31.7.2002, p. 37. Directive as amended by Directive 2006/24/EC (OJ L 105, 13.4.2006, p. 54).

Council Regulation (EC) No 2201/2003

Council Regulation (EC) No 2201/2003

of 27 November 2003

concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(1) thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Having regard to the opinion of the European Economic and Social Committee(3),

Whereas:

(1) The European Community has set the objective of creating an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) The Tampere European Council endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area, and identified visiting rights as a priority.

(3) Council Regulation (EC) No 1347/2000(4) sets out rules on jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility for the children of both spouses rendered on the occasion of the matrimonial proceedings. The content of this Regulation was substantially taken over from the Convention of 28 May 1998 on the same subject matter(5).

(4) On 3 July 2000 France presented an initiative for a Council Regulation on the mutual enforcement of judgments on rights of access to children(6).

(5) In order to ensure equality for all children, this Regulation covers all decisions on parental responsibility, including measures for the protection of the child, independently of any link with a matrimonial proceeding.

(6) Since the application of the rules on parental responsibility often arises in the context of matrimonial proceedings, it is more appropriate to have a single instrument for matters of divorce and parental responsibility.

(7) The scope of this Regulation covers civil matters, whatever the nature of the court or tribunal.

(8) As regards judgments on divorce, legal separation or marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties and should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures.

(9) As regards the property of the child, this Regulation should apply only to measures for the protection of the child, i.e. (i) the designation and functions of a person or body having charge of the child's property, representing or assisting the child, and (ii) the administration, conservation or disposal of the child's property. In this context, this Regulation should, for instance, apply in cases where the parents are in dispute as regards the administration of the child's property. Measures relating to the child's property which do not concern the protection of the child should continue to be governed by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(7).

(10) This Regulation is not intended to apply to matters relating to social security, public measures of a general nature in matters of education or health or to decisions on the right of asylum and on immigration. In addition it does not apply to the establishment of parenthood, since this is a different matter from the attribution of parental responsibility, nor to other questions linked to the status of persons. Moreover, it does not apply to measures taken as a result of criminal offences committed by children.

(11) Maintenance obligations are excluded from the scope of this Regulation as these are already covered by Council Regulation No 44/2001. The courts having jurisdiction under this Regulation will generally have jurisdiction to rule on maintenance obligations by application of Article 5(2) of Council Regulation No 44/2001.

(12) The grounds of jurisdiction in matters of parental responsibility established in the present Regulation are shaped in the light of the best interests of the child, in particular on the criterion of proximity. This means that jurisdiction should 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.

(13) In the interest of the child, this Regulation allows, by way of exception and under certain conditions, that the court having jurisdiction may transfer a case to a court of another Member State if this court is better placed to hear the case. However, in this case the second court should not be allowed to transfer the case to a third court.

(14) This Regulation should have effect without prejudice to the application of public international law concerning diplomatic immunities. Where jurisdiction under this Regulation cannot be exercised by reason of the existence of diplomatic immunity in accordance with international law, jurisdiction should be exercised in accordance with national law in a Member State in which the person concerned does not enjoy such immunity.

(15) Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters(8) should apply to the service of documents in proceedings instituted pursuant to this Regulation.

(16) This Regulation should not prevent the courts of a Member State from taking provisional, including protective measures, in urgent cases, with regard to persons or property situated in that State.

(17) In cases of wrongful removal or retention of a child, the return of the child should be obtained without delay, and to this end the Hague Convention of 25 October 1980 would continue to apply as complemented by the provisions of this Regulation, in particular Article 11. The courts of the Member State to or in which the child has been wrongfully removed or retained should be able to oppose his or her return in specific, duly justified cases. However, such a decision could be replaced by a subsequent decision by the court of the Member State of habitual residence of the child prior to the wrongful removal or retention. Should that judgment entail the return of the child, the return should take place without any special

procedure being required for recognition and enforcement of that judgment in the Member State to or in which the child has been removed or retained.

(18) Where a court has decided not to return a child on the basis of Article 13 of the 1980 Hague Convention, it should inform the court having jurisdiction or central authority in the Member State where the child was habitually resident prior to the wrongful removal or retention. Unless the court in the latter Member State has been seised, this court or the central authority should notify the parties. This obligation should not prevent the central authority from also notifying the relevant public authorities in accordance with national law.

(19) The hearing of the child plays an important role in the application of this Regulation, although this instrument is not intended to modify national procedures applicable.

(20) The hearing of a child in another Member State may take place under the arrangements laid down in Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters(9).

(21) The recognition and enforcement of judgments given in a Member State should be based on the principle of mutual trust and the grounds for non-recognition should be kept to the minimum required.

(22) Authentic instruments and agreements between parties that are enforceable in one Member State should be treated as equivalent to "judgments" for the purpose of the application of the rules on recognition and enforcement.

(23) The Tampere European Council considered in its conclusions (point 34) that judgments in the field of family litigation should be "automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement". This is why judgments on rights of access and judgments on return that have been certified in the Member State of origin in accordance with the provisions of this Regulation should be recognised and enforceable in all other Member States without any further procedure being required. Arrangements for the enforcement of such judgments continue to be governed by national law.

(24) The certificate issued to facilitate enforcement of the judgment should not be subject to appeal. It should be rectified only where there is a material error, i.e. where it does not correctly reflect the judgment.

(25) Central authorities should cooperate both in general matter and in specific cases, including for purposes of promoting the amicable resolution of family disputes, in matters of parental responsibility. To this end central authorities shall participate in the European Judicial Network in civil and commercial matters created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters(10).

(26) The Commission should make publicly available and update the lists of courts and redress procedures communicated by the Member States.

(27) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission(11).

(28) This Regulation replaces Regulation (EC) No 1347/2000 which is consequently repealed.

(29) For the proper functioning of this Regulation, the Commission should review its application and propose such amendments as may appear necessary.

(30) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.

(31) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation and is therefore not bound by it nor subject to its application.

(32) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(33) This Regulation recognises the fundamental rights and observes the principles of the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure respect for the fundamental rights of the child as set out in Article 24 of the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THE PRESENT REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Regulation shall apply, whatever the nature of the court or tribunal, in civil matters relating to:

- (a) divorce, legal separation or marriage annulment;
- (b) the attribution, exercise, delegation, restriction or termination of parental responsibility.

2. The matters referred to in paragraph 1(b) may, in particular, deal with:

- (a) rights of custody and rights of access;
- (b) guardianship, curatorship and similar institutions;
- (c) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;
- (d) the placement of the child in a foster family or in institutional care;
- (e) measures for the protection of the child relating to the administration, conservation or disposal of the child's property.

3. This Regulation shall not apply to:

- (a) the establishment or contesting of a parent-child relationship;
- (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- (c) the name and forenames of the child;

- (d) emancipation;
- (e) maintenance obligations;
- (f) trusts or succession;
- (g) measures taken as a result of criminal offences committed by children.

Article 2

Definitions

For the purposes of this Regulation:

1. the term "court" shall cover all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation pursuant to Article 1;
2. the term "judge" shall mean the judge or an official having powers equivalent to those of a judge in the matters falling within the scope of the Regulation;
3. the term "Member State" shall mean all Member States with the exception of Denmark;
4. the term "judgment" shall mean a divorce, legal separation or marriage annulment, as well as a judgment relating to parental responsibility, pronounced by a court of a Member State, whatever the judgment may be called, including a decree, order or decision;
5. the term "Member State of origin" shall mean the Member State where the judgment to be enforced was issued;
6. the term "Member State of enforcement" shall mean the Member State where enforcement of the judgment is sought;
7. the term "parental responsibility" shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgment, by operation of law or by an agreement having legal effect. The term shall include rights of custody and rights of access;
8. the term "holder of parental responsibility" shall mean any person having parental responsibility over a child;
9. the term "rights of custody" shall include rights and duties relating to the care of the person of a child, and in particular the right to determine the child's place of residence;
10. the term "rights of access" shall include in particular the right to take a child to a place other than his or her habitual residence for a limited period of time;
11. the term "wrongful removal or retention" shall mean a child's removal or retention where:
 - (a) it is in breach of rights of custody acquired by judgment or by operation of law or by an agreement having legal effect under the law of the Member State where the child was habitually resident immediately before the removal or retention;

and

- (b) provided that, at the time of removal or retention, the rights of custody were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. Custody shall be considered to be exercised jointly when, pursuant to a judgment or by operation of law, one holder of parental responsibility cannot decide on the child's place of residence without the consent of another holder of parental responsibility.

CHAPTER II

JURISDICTION

SECTION 1

Divorce, legal separation and marriage annulment

Article 3

General jurisdiction

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.

2. For the purpose of this Regulation, "domicile" shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.

Article 4

Counterclaim

The court in which proceedings are pending on the basis of Article 3 shall also have jurisdiction to examine a counterclaim, insofar as the latter comes within the scope of this Regulation.

Article 5

Conversion of legal separation into divorce

Without prejudice to Article 3, a court of a Member State that has given a judgment on a legal separation shall also have jurisdiction for converting that judgment into a divorce, if the law of that Member State so provides.

Article 6

Exclusive nature of jurisdiction under Articles 3, 4 and 5

A spouse who:

- (a) is habitually resident in the territory of a Member State; or
- (b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her "domicile" in the territory of one of the latter Member States,

may be sued in another Member State only in accordance with Articles 3, 4 and 5.

Article 7

Residual jurisdiction

1. Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5, jurisdiction shall be determined, in each Member State, by the laws of that State.
2. As against a respondent who is not habitually resident and is not either a national of a Member State or, in the case of the United Kingdom and Ireland, does not have his "domicile" within the territory of one of the latter Member States, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.

SECTION 2

Parental responsibility

Article 8

General jurisdiction

1. The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.
2. Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.

Article 9

Continuing jurisdiction of the child's former habitual residence

1. Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child's former habitual residence shall, by way of exception to Article 8, retain jurisdiction during a three-month period following the move for the purpose of modifying a judgment on access rights issued in that Member State before the child moved, where the holder of access rights pursuant to the judgment on access rights continues to have his or her habitual residence in the Member State of the child's former habitual residence.
2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the courts of the Member State of the child's new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.

Article 10

Jurisdiction in cases of child abduction

In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention;

or

(b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

- (i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;
- (ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);
- (iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);
- (iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.

Article 11

Return of the child

1. Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter "the 1980 Hague Convention"), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.
2. When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.
3. A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.
Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.
4. A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.
5. 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.
6. If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.
7. Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify

it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

8. Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.

Article 12

Prorogation of jurisdiction

1. The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

(a) at least one of the spouses has parental responsibility in relation to the child;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

2. The jurisdiction conferred in paragraph 1 shall cease as soon as:

(a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

(b) in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

(c) the proceedings referred to in (a) and (b) have come to an end for another reason.

3. The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;

and

(b) the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.

4. Where the child has his or her habitual residence in the territory of a third State which is not a contracting party to the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, jurisdiction under this Article shall be deemed to be in the child's interest, in particular if it is found impossible to hold proceedings in the third State in question.

Article 13

Jurisdiction based on the child's presence

1. Where a child's habitual residence cannot be established and jurisdiction cannot be determined on the basis of Article 12, the courts of the Member State where the child is present shall have jurisdiction.

2. Paragraph 1 shall also apply to refugee children or children internationally displaced because of disturbances occurring in their country.

Article 14

Residual jurisdiction

Where no court of a Member State has jurisdiction pursuant to Articles 8 to 13, jurisdiction shall be determined, in each Member State, by the laws of that State.

Article 15

Transfer to a court better placed to hear the case

1. By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

(a) stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or

(b) request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2. Paragraph 1 shall apply:

(a) upon application from a party; or

(b) of the court's own motion; or

(c) upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

A transfer made of the court's own motion or by application of a court of another Member State must be accepted by at least one of the parties.

3. The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

(a) has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or

(b) is the former habitual residence of the child; or

(c) is the place of the child's nationality; or

(d) is the habitual residence of a holder of parental responsibility; or

(e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

4. The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5. The courts of that other Member State may, where due to the specific circumstances of the case, this is in the best interests of the child, accept jurisdiction within six weeks of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

6. The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.

SECTION 3

Common provisions

Article 16

Seising of a Court

1. A court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Article 17

Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 18

Examination as to admissibility

1. Where a respondent habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

2. Article 19 of Regulation (EC) No 1348/2000 shall apply instead of the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

3. Where the provisions of Regulation (EC) No 1348/2000 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 19

Lis pendens and dependent actions

1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.

Article 20

Provisional, including protective, measures

1. In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.
2. The measures referred to in paragraph 1 shall cease to apply when the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate.

CHAPTER III

RECOGNITION AND ENFORCEMENT

SECTION 1

Recognition

Article 21

Recognition of a judgment

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.
2. In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.
3. Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised.

The local jurisdiction of the court appearing in the list notified by each Member State to the Commission pursuant to Article 68 shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

4. Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.

Article 22

Grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment

A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;
- (b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or her defence unless it is determined that the respondent has accepted the judgment unequivocally;
- (c) if it is irreconcilable with a judgment given in proceedings between the same parties in the Member State in which recognition is sought; or
- (d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Article 23

Grounds of non-recognition for judgments relating to parental responsibility

A judgment relating to parental responsibility shall not be recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;
- (b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;
- (c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;
- (d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;
- (e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;
- (f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

or

- (g) if the procedure laid down in Article 56 has not been complied with.

Article 24

Prohibition of review of jurisdiction of the court of origin

The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Articles 22(a) and 23(a) may not be applied to the rules relating to jurisdiction set out in Articles 3 to 14.

Article 25

Differences in applicable law

The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

Article 26

Non-review as to substance

Under no circumstances may a judgment be reviewed as to its substance.

Article 27

Stay of proceedings

1. A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

2. A court of a Member State in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the Member State of origin by reason of an appeal.

SECTION 2

Application for a declaration of enforceability

Article 28

Enforceable judgments

1. A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland or in Northern Ireland only when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 29

Jurisdiction of local courts

1. An application for a declaration of enforceability shall be submitted to the court appearing in the list notified by each Member State to the Commission pursuant to Article 68.

2. The local jurisdiction shall be determined by reference to the place of habitual residence of the person against whom enforcement is sought or by reference to the habitual residence of any child to whom the application relates.

Where neither of the places referred to in the first subparagraph can be found in the Member State of enforcement, the local jurisdiction shall be determined by reference to the place of enforcement.

Article 30

Procedure

1. The procedure for making the application shall be governed by the law of the Member State of enforcement.
2. The applicant must give an address for service within the area of jurisdiction of the court applied to. However, if the law of the Member State of enforcement does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem.
3. The documents referred to in Articles 37 and 39 shall be attached to the application.

Article 31

Decision of the court

1. The court applied to shall give its decision without delay. Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application.
2. The application may be refused only for one of the reasons specified in Articles 22, 23 and 24.
3. Under no circumstances may a judgment be reviewed as to its substance.

Article 32

Notice of the decision

The appropriate officer of the court shall without delay bring to the notice of the applicant the decision given on the application in accordance with the procedure laid down by the law of the Member State of enforcement.

Article 33

Appeal against the decision

1. The decision on the application for a declaration of enforceability may be appealed against by either party.
2. The appeal shall be lodged with the court appearing in the list notified by each Member State to the Commission pursuant to Article 68.
3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.
4. If the appeal is brought by the applicant for a declaration of enforceability, the party against whom enforcement is sought shall be summoned to appear before the appellate court. If such person fails to appear, the provisions of Article 18 shall apply.
5. An appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him or at his residence. No extension of time may be granted on account of distance.

Article 34

Courts of appeal and means of contest

The judgment given on appeal may be contested only by the proceedings referred to in the list notified by each Member State to the Commission pursuant to Article 68.

Article 35

Stay of proceedings

1. The court with which the appeal is lodged under Articles 33 or 34 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged in the Member State of origin, or if the time for such appeal has not yet expired. In the latter case, the court may specify the time within which an appeal is to be lodged.
2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

Article 36

Partial enforcement

1. Where a judgment has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.
2. An applicant may request partial enforcement of a judgment.

SECTION 3

Provisions common to Sections 1 and 2

Article 37

Documents

1. A party seeking or contesting recognition or applying for a declaration of enforceability shall produce:
 - (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;and
 - (b) the certificate referred to in Article 39.
2. In addition, in the case of a judgment given in default, the party seeking recognition or applying for a declaration of enforceability shall produce:
 - (a) the original or certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document;or
 - (b) any document indicating that the defendant has accepted the judgment unequivocally.

Article 38

Absence of documents

1. If the documents specified in Article 37(1)(b) or (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.
2. If the court so requires, a translation of such documents shall be furnished. The translation shall be certified by a person qualified to do so in one of the Member States.

Article 39

Certificate concerning judgments in matrimonial matters and certificate concerning judgments on parental responsibility

The competent court or authority of a Member State of origin shall, at the request of any interested party, issue a certificate using the standard form set out in Annex I (judgments in matrimonial matters) or in Annex II (judgments on parental responsibility).

SECTION 4

Enforceability of certain judgments concerning rights of access and of certain judgments which require the return of the child

Article 40

Scope

1. This Section shall apply to:

(a) rights of access;

and

(b) the return of a child entailed by a judgment given pursuant to Article 11(8).

2. The provisions of this Section shall not prevent a holder of parental responsibility from seeking recognition and enforcement of a judgment in accordance with the provisions in Sections 1 and 2 of this Chapter.

Article 41

Rights of access

1. The rights of access referred to in Article 40(1)(a) granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law of a judgment granting access rights, the court of origin may declare that the judgment shall be enforceable, notwithstanding any appeal.

2. The judge of origin shall issue the certificate referred to in paragraph 1 using the standard form in Annex III (certificate concerning rights of access) only if:

(a) where the judgment was given in default, the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defense, or, the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally;

(b) all parties concerned were given an opportunity to be heard;

and

(c) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The certificate shall be completed in the language of the judgment.

3. Where the rights of access involve a cross-border situation at the time of the delivery of the judgment, the certificate shall be issued ex officio when the judgment becomes enforceable,

even if only provisionally. If the situation subsequently acquires a cross-border character, the certificate shall be issued at the request of one of the parties.

Article 42

Return of the child

1. The return of a child referred to in Article 40(1)(b) entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child mentioned in Article 11(b)(8), the court of origin may declare the judgment enforceable.

2. The judge of origin who delivered the judgment referred to in Article 40(1)(b) shall issue the certificate referred to in paragraph 1 only if:

(a) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity;

(b) the parties were given an opportunity to be heard; and

(c) the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

In the event that the court or any other authority takes measures to ensure the protection of the child after its return to the State of habitual residence, the certificate shall contain details of such measures.

The judge of origin shall of his or her own motion issue that certificate using the standard form in Annex IV (certificate concerning return of the child(ren)).

The certificate shall be completed in the language of the judgment.

Article 43

Rectification of the certificate

1. The law of the Member State of origin shall be applicable to any rectification of the certificate.

2. No appeal shall lie against the issuing of a certificate pursuant to Articles 41(1) or 42(1).

Article 44

Effects of the certificate

The certificate shall take effect only within the limits of the enforceability of the judgment.

Article 45

Documents

1. A party seeking enforcement of a judgment shall produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

and

(b) the certificate referred to in Article 41(1) or Article 42(1).

2. For the purposes of this Article,

- the certificate referred to in Article 41(1) shall be accompanied by a translation of point 12 relating to the arrangements for exercising right of access,

- the certificate referred to in Article 42(1) shall be accompanied by a translation of its point 14 relating to the arrangements for implementing the measures taken to ensure the child's return.

The translation shall be into the official language or one of the official languages of the Member State of enforcement or any other language that the Member State of enforcement expressly accepts. The translation shall be certified by a person qualified to do so in one of the Member States.

SECTION 5

Authentic instruments and agreements

Article 46

Documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgments.

SECTION 6

Other provisions

Article 47

Enforcement procedure

1. The enforcement procedure is governed by the law of the Member State of enforcement.

2. Any judgment delivered by a court of another Member State and declared to be enforceable in accordance with Section 2 or certified in accordance with Article 41(1) or Article 42(1) shall be enforced in the Member State of enforcement in the same conditions as if it had been delivered in that Member State.

In particular, a judgment which has been certified according to Article 41(1) or Article 42(1) cannot be enforced if it is irreconcilable with a subsequent enforceable judgment.

Article 48

Practical arrangements for the exercise of rights of access

1. The courts of the Member State of enforcement may make practical arrangements for organising the exercise of rights of access, if the necessary arrangements have not or have not sufficiently been made in the judgment delivered by the courts of the Member State having jurisdiction as to the substance of the matter and provided the essential elements of this judgment are respected.

2. The practical arrangements made pursuant to paragraph 1 shall cease to apply pursuant to a later judgment by the courts of the Member State having jurisdiction as to the substance of the matter.

Article 49

Costs

The provisions of this Chapter, with the exception of Section 4, shall also apply to the determination of the amount of costs and expenses of proceedings under this Regulation and to the enforcement of any order concerning such costs and expenses.

Article 50

Legal aid

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedures provided for in Articles 21, 28, 41, 42 and 48 to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement.

Article 51

Security, bond or deposit

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the following grounds:

(a) that he or she is not habitually resident in the Member State in which enforcement is sought; or

(b) that he or she is either a foreign national or, where enforcement is sought in either the United Kingdom or Ireland, does not have his or her "domicile" in either of those Member States.

Article 52

Legalisation or other similar formality

No legalisation or other similar formality shall be required in respect of the documents referred to in Articles 37, 38 and 45 or in respect of a document appointing a representative ad litem.

CHAPTER IV

COOPERATION BETWEEN CENTRAL AUTHORITIES IN MATTERS OF PARENTAL RESPONSIBILITY

Article 53

Designation

Each Member State shall designate one or more central authorities to assist with the application of this Regulation and shall specify the geographical or functional jurisdiction of each. Where a Member State has designated more than one central authority, communications shall normally be sent direct to the relevant central authority with jurisdiction. Where a communication is sent to a central authority without jurisdiction, the latter shall be responsible for forwarding it to the central authority with jurisdiction and informing the sender accordingly.

Article 54

General functions

The central authorities shall communicate information on national laws and procedures and take measures to improve the application of this Regulation and strengthening their

cooperation. For this purpose the European Judicial Network in civil and commercial matters created by Decision No 2001/470/EC shall be used.

Article 55

Cooperation on cases specific to parental responsibility

The central authorities shall, upon request from a central authority of another Member State or from a holder of parental responsibility, cooperate on specific cases to achieve the purposes of this Regulation. To this end, they shall, acting directly or through public authorities or other bodies, take all appropriate steps in accordance with the law of that Member State in matters of personal data protection to:

(a) collect and exchange information:

(i) on the situation of the child;

(ii) on any procedures under way; or

(iii) on decisions taken concerning the child;

(b) provide information and assistance to holders of parental responsibility seeking the recognition and enforcement of decisions on their territory, in particular concerning rights of access and the return of the child;

(c) facilitate communications between courts, in particular for the application of Article 11(6) and (7) and Article 15;

(d) provide such information and assistance as is needed by courts to apply Article 56; and

(e) facilitate agreement between holders of parental responsibility through mediation or other means, and facilitate cross-border cooperation to this end.

Article 56

Placement of a child in another Member State

1. Where a court having jurisdiction under Articles 8 to 15 contemplates the placement of a child in institutional care or with a foster family and where such placement is to take place in another Member State, it shall first consult the central authority or other authority having jurisdiction in the latter State where public authority intervention in that Member State is required for domestic cases of child placement.

2. The judgment on placement referred to in paragraph 1 may be made in the requesting State only if the competent authority of the requested State has consented to the placement.

3. The procedures for consultation or consent referred to in paragraphs 1 and 2 shall be governed by the national law of the requested State.

4. Where the authority having jurisdiction under Articles 8 to 15 decides to place the child in a foster family, and where such placement is to take place in another Member State and where no public authority intervention is required in the latter Member State for domestic cases of child placement, it shall so inform the central authority or other authority having jurisdiction in the latter State.

Article 57

Working method

1. Any holder of parental responsibility may submit, to the central authority of the Member State of his or her habitual residence or to the central authority of the Member State where the

child is habitually resident or present, a request for assistance as mentioned in Article 55. In general, the request shall include all available information of relevance to its enforcement. Where the request for assistance concerns the recognition or enforcement of a judgment on parental responsibility that falls within the scope of this Regulation, the holder of parental responsibility shall attach the relevant certificates provided for in Articles 39, 41(1) or 42(1).

2. Member States shall communicate to the Commission the official language or languages of the Community institutions other than their own in which communications to the central authorities can be accepted.

3. The assistance provided by the central authorities pursuant to Article 55 shall be free of charge.

4. Each central authority shall bear its own costs.

Article 58

Meetings

1. In order to facilitate the application of this Regulation, central authorities shall meet regularly.

2. These meetings shall be convened in compliance with Decision No 2001/470/EC establishing a European Judicial Network in civil and commercial matters.

CHAPTER V

RELATIONS WITH OTHER INSTRUMENTS

Article 59

Relation with other instruments

1. Subject to the provisions of Articles 60, 63, 64 and paragraph 2 of this Article, this Regulation shall, for the Member States, supersede conventions existing at the time of entry into force of this Regulation which have been concluded between two or more Member States and relate to matters governed by this Regulation.

2. (a) Finland and Sweden shall have the option of declaring that the Convention of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden comprising international private law provisions on marriage, adoption and guardianship, together with the Final Protocol thereto, will apply, in whole or in part, in their mutual relations, in place of the rules of this Regulation. Such declarations shall be annexed to this Regulation and published in the Official Journal of the European Union. They may be withdrawn, in whole or in part, at any moment by the said Member States.

(b) The principle of non-discrimination on the grounds of nationality between citizens of the Union shall be respected.

(c) The rules of jurisdiction in any future agreement to be concluded between the Member States referred to in subparagraph (a) which relate to matters governed by this Regulation shall be in line with those laid down in this Regulation.

(d) Judgments handed down in any of the Nordic States which have made the declaration provided for in subparagraph (a) under a forum of jurisdiction corresponding to one of those laid down in Chapter II of this Regulation, shall be recognised and enforced in the other Member States under the rules laid down in Chapter III of this Regulation.

3. Member States shall send to the Commission:

- (a) a copy of the agreements and uniform laws implementing these agreements referred to in paragraph 2(a) and (c);
- (b) any denunciations of, or amendments to, those agreements or uniform laws.

Article 60

Relations with certain multilateral conventions

In relations between Member States, this Regulation shall take precedence over the following Conventions in so far as they concern matters governed by this Regulation:

- (a) the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors;
- (b) the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages;
- (c) the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations;
- (d) the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;

and

- (e) the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

Article 61

Relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children

As concerns the relation with the Hague Convention of 19 October 1996 on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, this Regulation shall apply:

- (a) where the child concerned has his or her habitual residence on the territory of a Member State;
- (b) as concerns the recognition and enforcement of a judgment given in a court of a Member State on the territory of another Member State, even if the child concerned has his or her habitual residence on the territory of a third State which is a contracting Party to the said Convention.

Article 62

Scope of effects

1. The agreements and conventions referred to in Articles 59(1), 60 and 61 shall continue to have effect in relation to matters not governed by this Regulation.
2. The conventions mentioned in Article 60, in particular the 1980 Hague Convention, continue to produce effects between the Member States which are party thereto, in compliance with Article 60.

Article 63

Treaties with the Holy See

1. This Regulation shall apply without prejudice to the International Treaty (Concordat) between the Holy See and Portugal, signed at the Vatican City on 7 May 1940.
2. Any decision as to the invalidity of a marriage taken under the Treaty referred to in paragraph 1 shall be recognised in the Member States on the conditions laid down in Chapter III, Section 1.
3. The provisions laid down in paragraphs 1 and 2 shall also apply to the following international treaties (Concordats) with the Holy See:
 - (a) "Concordato lateranense" of 11 February 1929 between Italy and the Holy See, modified by the agreement, with additional Protocol signed in Rome on 18 February 1984;
 - (b) Agreement between the Holy See and Spain on legal affairs of 3 January 1979.
4. Recognition of the decisions provided for in paragraph 2 may, in Italy or in Spain, be subject to the same procedures and the same checks as are applicable to decisions of the ecclesiastical courts handed down in accordance with the international treaties concluded with the Holy See referred to in paragraph 3.
5. Member States shall send to the Commission:
 - (a) a copy of the Treaties referred to in paragraphs 1 and 3;
 - (b) any denunciations of or amendments to those Treaties.

CHAPTER VI

TRANSITIONAL PROVISIONS

Article 64

1. The provisions of this Regulation shall apply only to legal proceedings instituted, to documents formally drawn up or registered as authentic instruments and to agreements concluded between the parties after its date of application in accordance with Article 72.
2. Judgments given after the date of application of this Regulation in proceedings instituted before that date but after the date of entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter III of this Regulation if jurisdiction was founded on rules which accorded with those provided for either in Chapter II or in Regulation (EC) No 1347/2000 or in a convention concluded between the Member State of origin and the Member State addressed which was in force when the proceedings were instituted.
3. Judgments given before the date of application of this Regulation in proceedings instituted after the entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter III of this Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings.
4. Judgments given before the date of application of this Regulation but after the date of entry into force of Regulation (EC) No 1347/2000 in proceedings instituted before the date of entry into force of Regulation (EC) No 1347/2000 shall be recognised and enforced in accordance with the provisions of Chapter III of this Regulation provided they relate to divorce, legal separation or marriage annulment or parental responsibility for the children of both spouses on the occasion of these matrimonial proceedings and that jurisdiction was founded on rules which accorded with those provided for either in Chapter II of this Regulation or in Regulation (EC) No 1347/2000 or in a convention concluded between the Member State of

origin and the Member State addressed which was in force when the proceedings were instituted.

CHAPTER VII

FINAL PROVISIONS

Article 65

Review

No later than 1 January 2012, and every five years thereafter, the Commission shall present to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Regulation on the basis of information supplied by the Member States. The report shall be accompanied if need be by proposals for adaptations.

Article 66

Member States with two or more legal systems

With regard to a Member State in which two or more systems of law or sets of rules concerning matters governed by this Regulation apply in different territorial units:

- (a) any reference to habitual residence in that Member State shall refer to habitual residence in a territorial unit;
- (b) any reference to nationality, or in the case of the United Kingdom "domicile", shall refer to the territorial unit designated by the law of that State;
- (c) any reference to the authority of a Member State shall refer to the authority of a territorial unit within that State which is concerned;
- (d) any reference to the rules of the requested Member State shall refer to the rules of the territorial unit in which jurisdiction, recognition or enforcement is invoked.

Article 67

Information on central authorities and languages accepted

The Member States shall communicate to the Commission within three months following the entry into force of this Regulation:

- (a) the names, addresses and means of communication for the central authorities designated pursuant to Article 53;
- (b) the languages accepted for communications to central authorities pursuant to Article 57(2);

and

- (c) the languages accepted for the certificate concerning rights of access pursuant to Article 45(2).

The Member States shall communicate to the Commission any changes to this information.

The Commission shall make this information publicly available.

Article 68

Information relating to courts and redress procedures

The Member States shall notify to the Commission the lists of courts and redress procedures referred to in Articles 21, 29, 33 and 34 and any amendments thereto.

The Commission shall update this information and make it publicly available through the publication in the Official Journal of the European Union and any other appropriate means.

Article 69

Amendments to the Annexes

Any amendments to the standard forms in Annexes I to IV shall be adopted in accordance with the consultative procedure set out in Article 70(2).

Article 70

Committee

1. The Commission shall be assisted by a committee (committee).
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. The committee shall adopt its rules of procedure.

Article 71

Repeal of Regulation (EC) No 1347/2000

1. Regulation (EC) No 1347/2000 shall be repealed as from the date of application of this Regulation.
2. Any reference to Regulation (EC) No 1347/2000 shall be construed as a reference to this Regulation according to the comparative table in Annex V.

Article 72

Entry into force

This Regulation shall enter into force on 1 August 2004.

The Regulation shall apply from 1 March 2005, with the exception of Articles 67, 68, 69 and 70, which shall apply from 1 August 2004.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 27 November 2003.

For the Council

The President

R. Castelli

- (1) OJ C 203 E, 27.8.2002, p. 155.
- (2) Opinion delivered on 20 September 2002 (not yet published in the Official Journal).
- (3) OJ C 61, 14.3.2003, p. 76.
- (4) OJ L 160, 30.6.2000, p. 19.
- (5) At the time of the adoption of Regulation (EC) No 1347/2000 the Council took note of the explanatory report concerning that Convention prepared by Professor Alegria Borrás (OJ C 221, 16.7.1998, p. 27).
- (6) OJ C 234, 15.8.2000, p. 7.

(7) OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 1496/2002 (OJ L 225, 22.8.2002, p. 13).

(8) OJ L 160, 30.6.2000, p. 37.

(9) OJ L 174, 27.6.2001, p. 1.

(10) OJ L 174, 27.6.2001, p. 25.

(11) OJ L 184, 17.7.1999, p. 23.

Council Regulation (EU) No 1259/2010

Council Regulation (EU) No 1259/2010

of 20 December 2010

implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(3) thereof,

Having regard to Council Decision 2010/405/EU of 12 July 2010 authorising enhanced cooperation in the area of the law applicable to divorce and legal separation [1],

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. For the gradual establishment of such an area, the Union must adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

(2) Pursuant to Article 81 of the Treaty on the Functioning of the European Union, those measures are to include measures aimed at ensuring the compatibility of the rules applicable in the Member States concerning conflict of laws.

(3) On 14 March 2005 the Commission adopted a Green Paper on applicable law and jurisdiction in divorce matters. The Green Paper launched a wide-ranging public consultation on possible solutions to the problems that may arise under the current situation.

(4) On 17 July 2006 the Commission proposed a Regulation amending Council Regulation (EC) No 2201/2003 [2] as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters.

(5) At its meeting in Luxembourg on 5 and 6 June 2008, the Council concluded that there was a lack of unanimity on the proposal and that there were insurmountable difficulties that made unanimity impossible both then and in the near future. It established that the proposal's objectives could not be attained within a reasonable period by applying the relevant provisions of the Treaties.

(6) Belgium, Bulgaria, Germany, Greece, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia subsequently addressed a request to the Commission indicating that they intended to establish enhanced cooperation between

themselves in the area of applicable law in matrimonial matters. On 3 March 2010, Greece withdrew its request.

(7) On 12 July 2010 the Council adopted Decision 2010/405/EU authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.

(8) According to Article 328(1) of the Treaty on the Functioning of the European Union, when enhanced cooperation is being established, it is to be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It is also to be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions. The Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible. This Regulation should be binding in its entirety and directly applicable only in the participating Member States in accordance with the Treaties.

(9) This Regulation should create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal separation in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.

(10) The substantive scope and enacting terms of this Regulation should be consistent with Regulation (EC) No 2201/2003. However, it should not apply to marriage annulment.

This Regulation should apply only to the dissolution or loosening of marriage ties. The law determined by the conflict-of-laws rules of this Regulation should apply to the grounds for divorce and legal separation.

Preliminary questions such as legal capacity and the validity of the marriage, and matters such as the effects of divorce or legal separation on property, name, parental responsibility, maintenance obligations or any other ancillary measures should be determined by the conflict-of-laws rules applicable in the participating Member State concerned.

(11) In order to clearly delimit the territorial scope of this Regulation, the Member States participating in the enhanced cooperation should be specified.

(12) This Regulation should be universal, i.e. it should be possible for its uniform conflict-of-laws rules to designate the law of a participating Member State, the law of a non-participating Member State or the law of a State which is not a member of the European Union.

(13) This Regulation should apply irrespective of the nature of the court or tribunal seized. Where applicable, a court should be deemed to be seized in accordance with Regulation (EC) No 2201/2003.

(14) In order to allow the spouses to choose an applicable law with which they have a close connection or, in the absence of such choice, in order that that law might apply to their divorce or legal separation, the law in question should apply even if it is not that of a participating Member State. Where the law of another Member State is designated, the network created by Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters [3], could play a part in assisting the courts with regard to the content of foreign law.

(15) Increasing the mobility of citizens calls for more flexibility and greater legal certainty. In order to achieve that objective, this Regulation should enhance the parties' autonomy in the

areas of divorce and legal separation by giving them a limited possibility to choose the law applicable to their divorce or legal separation.

(16) Spouses should be able to choose the law of a country with which they have a special connection or the law of the forum as the law applicable to divorce and legal separation. The law chosen by the spouses must be consonant with the fundamental rights recognised by the Treaties and the Charter of Fundamental Rights of the European Union.

(17) Before designating the applicable law, it is important for spouses to have access to up-to-date information concerning the essential aspects of national and Union law and of the procedures governing divorce and legal separation. To guarantee such access to appropriate, good-quality information, the Commission regularly updates it in the Internet-based public information system set up by Council Decision 2001/470/EC.

(18) The informed choice of both spouses is a basic principle of this Regulation. Each spouse should know exactly what are the legal and social implications of the choice of applicable law. The possibility of choosing the applicable law by common agreement should be without prejudice to the rights of, and equal opportunities for, the two spouses. Hence judges in the participating Member States should be aware of the importance of an informed choice on the part of the two spouses concerning the legal implications of the choice-of-law agreement concluded.

(19) Rules on material and formal validity should be defined so that the informed choice of the spouses is facilitated and that their consent is respected with a view to ensuring legal certainty as well as better access to justice. As far as formal validity is concerned, certain safeguards should be introduced to ensure that spouses are aware of the implications of their choice. The agreement on the choice of applicable law should at least be expressed in writing, dated and signed by both parties. However, if the law of the participating Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal rules, those rules should be complied with. For example, such additional formal rules may exist in a participating Member State where the agreement is inserted in a marriage contract. If, at the time the agreement is concluded, the spouses are habitually resident in different participating Member States which lay down different formal rules, compliance with the formal rules of one of these States would suffice. If, at the time the agreement is concluded, only one of the spouses is habitually resident in a participating Member State which lays down additional formal rules, these rules should be complied with.

(20) An agreement designating the applicable law should be able to be concluded and modified at the latest at the time the court is seized, and even during the course of the proceeding if the law of the forum so provides. In that event, it should be sufficient for such designation to be recorded in court in accordance with the law of the forum.

(21) Where no applicable law is chosen, and with a view to guaranteeing legal certainty and predictability and preventing a situation from arising in which one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he considers more favourable to his own interests, this Regulation should introduce harmonised conflict-of-laws rules on the basis of a scale of successive connecting factors based on the existence of a close connection between the spouses and the law concerned. Such connecting factors should be chosen so as to ensure that proceedings relating to divorce or legal separation are governed by a law with which the spouses have a close connection.

(22) Where this Regulation refers to nationality as a connecting factor for the application of the law of a State, the question of how to deal with cases of multiple nationality should be left to national law, in full observance of the general principles of the European Union.

(23) If the court is seized in order to convert a legal separation into divorce, and where the parties have not made any choice as to the law applicable, the law which applied to the legal separation should also apply to the divorce. Such continuity would promote predictability for the parties and increase legal certainty. If the law applied to the legal separation does not provide for the conversion of legal separation into divorce, the divorce should be governed by the conflict-of-laws rules which apply in the absence of a choice by the parties. This should not prevent the spouses from seeking divorce on the basis of other rules in this Regulation.

(24) In certain situations, such as where the applicable law makes no provision for divorce or where it does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the court seized should nevertheless apply. This, however, should be without prejudice to the public policy clause.

(25) Considerations of public interest should allow courts in the Member States the opportunity in exceptional circumstances to disregard the application of a provision of foreign law in a given case where it would be manifestly contrary to the public policy of the forum. However, the courts should not be able to apply the public policy exception in order to disregard a provision of the law of another State when to do so would be contrary to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof, which prohibits all forms of discrimination.

(26) Where this Regulation refers to the fact that the law of the participating Member State whose court is seized does not provide for divorce, this should be interpreted to mean that the law of this Member State does not have the institute of divorce. In such a case, the court should not be obliged to pronounce a divorce by virtue of this Regulation.

Where this Regulation refers to the fact that the law of the participating Member State whose court is seized does not deem the marriage in question valid for the purposes of divorce proceedings, this should be interpreted to mean, *inter alia*, that such a marriage does not exist in the law of that Member State. In such a case, the court should not be obliged to pronounce a divorce or a legal separation by virtue of this Regulation.

(27) Since there are States and participating Member States in which two or more systems of law or sets of rules concerning matters governed by this Regulation coexist, there should be a provision governing the extent to which this Regulation applies in the different territorial units of those States and participating Member States or to different categories of persons of those States and participating Member States.

(28) In the absence of rules designating the applicable law, parties choosing the law of the State of the nationality of one of them should at the same time indicate which territorial unit's law they have agreed upon in case the State whose law is chosen comprises several territorial units each of which has its own system of law or a set of rules in respect of divorce.

(29) Since the objectives of this Regulation, namely the enhancement of legal certainty, predictability and flexibility in international matrimonial proceedings and hence the facilitation of the free movement of persons within the Union, cannot be sufficiently achieved by the Member States and can therefore, by reasons of the scale and effects of this Regulation be better achieved at Union level, the Union may adopt measures, by means of enhanced cooperation where appropriate, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of

proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(30) This Regulation respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, and in particular by Article 21 thereof, which states that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. This Regulation should be applied by the courts of the participating Member States in observance of those rights and principles,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE, RELATION WITH REGULATION (EC) No 2201/2003, DEFINITIONS AND UNIVERSAL APPLICATION

Article 1

Scope

1. This Regulation shall apply, in situations involving a conflict of laws, to divorce and legal separation.
2. This Regulation shall not apply to the following matters, even if they arise merely as a preliminary question within the context of divorce or legal separation proceedings:
 - (a) the legal capacity of natural persons;
 - (b) the existence, validity or recognition of a marriage;
 - (c) the annulment of a marriage;
 - (d) the name of the spouses;
 - (e) the property consequences of the marriage;
 - (f) parental responsibility;
 - (g) maintenance obligations;
 - (h) trusts or successions.

Article 2

Relation with Regulation (EC) No 2201/2003

This Regulation shall not affect the application of Regulation (EC) No 2201/2003.

Article 3

Definitions

For the purposes of this Regulation:

1. "participating Member State" means a Member State which participates in enhanced cooperation on the law applicable to divorce and legal separation by virtue of Decision 2010/405/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union;
2. the term "court" shall cover all the authorities in the participating Member States with jurisdiction in the matters falling within the scope of this Regulation.

Article 4

Universal application

The law designated by this Regulation shall apply whether or not it is the law of a participating Member State.

CHAPTER II

UNIFORM RULES ON THE LAW APPLICABLE TO DIVORCE AND LEGAL SEPARATION

Article 5

Choice of applicable law by the parties

1. The spouses may agree to designate the law applicable to divorce and legal separation provided that it is one of the following laws:

(a) the law of the State where the spouses are habitually resident at the time the agreement is concluded; or

(b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or

(c) the law of the State of nationality of either spouse at the time the agreement is concluded; or

(d) the law of the forum.

2. Without prejudice to paragraph 3, an agreement designating the applicable law may be concluded and modified at any time, but at the latest at the time the court is seized.

3. If the law of the forum so provides, the spouses may also designate the law applicable before the court during the course of the proceeding. In that event, such designation shall be recorded in court in accordance with the law of the forum.

Article 6

Consent and material validity

1. The existence and validity of an agreement on choice of law or of any term thereof, shall be determined by the law which would govern it under this Regulation if the agreement or term were valid.

2. Nevertheless, a spouse, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence at the time the court is seized if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.

Article 7

Formal validity

1. The agreement referred to in Article 5(1) and (2), shall be expressed in writing, dated and signed by both spouses. Any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing.

2. However, if the law of the participating Member State in which the two spouses have their habitual residence at the time the agreement is concluded lays down additional formal requirements for this type of agreement, those requirements shall apply.

3. If the spouses are habitually resident in different participating Member States at the time the agreement is concluded and the laws of those States provide for different formal requirements, the agreement shall be formally valid if it satisfies the requirements of either of those laws.

4. If only one of the spouses is habitually resident in a participating Member State at the time the agreement is concluded and that State lays down additional formal requirements for this type of agreement, those requirements shall apply.

Article 8

Applicable law in the absence of a choice by the parties

In the absence of a choice pursuant to Article 5, divorce and legal separation shall be subject to the law of the State:

(a) where the spouses are habitually resident at the time the court is seized; or, failing that

(b) where the spouses were last habitually resident, provided that the period of residence did not end more than 1 year before the court was seized, in so far as one of the spouses still resides in that State at the time the court is seized; or, failing that

(c) of which both spouses are nationals at the time the court is seized; or, failing that

(d) where the court is seized.

Article 9

Conversion of legal separation into divorce

1. Where legal separation is converted into divorce, the law applicable to divorce shall be the law applied to the legal separation, unless the parties have agreed otherwise in accordance with Article 5.

2. However, if the law applied to the legal separation does not provide for the conversion of legal separation into divorce, Article 8 shall apply, unless the parties have agreed otherwise in accordance with Article 5.

Article 10

Application of the law of the forum

Where the law applicable pursuant to Article 5 or Article 8 makes no provision for divorce or does not grant one of the spouses equal access to divorce or legal separation on grounds of their sex, the law of the forum shall apply.

Article 11

Exclusion of renvoi

Where this Regulation provides for the application of the law of a State, it refers to the rules of law in force in that State other than its rules of private international law.

Article 12

Public policy

Application of a provision of the law designated by virtue of this Regulation may be refused only if such application is manifestly incompatible with the public policy of the forum.

Article 13

Differences in national law

Nothing in this Regulation shall oblige the courts of a participating Member State whose law does not provide for divorce or does not deem the marriage in question valid for the purposes of divorce proceedings to pronounce a divorce by virtue of the application of this Regulation.

Article 14

States with two or more legal systems — territorial conflicts of laws

Where a State comprises several territorial units each of which has its own system of law or a set of rules concerning matters governed by this Regulation:

(a) any reference to the law of such State shall be construed, for the purposes of determining the law applicable under this Regulation, as referring to the law in force in the relevant territorial unit;

(b) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;

(c) any reference to nationality shall refer to the territorial unit designated by the law of that State, or, in the absence of relevant rules, to the territorial unit chosen by the parties or, in absence of choice, to the territorial unit with which the spouse or spouses has or have the closest connection.

Article 15

States with two or more legal systems — inter-personal conflicts of laws

In relation to a State which has two or more systems of law or sets of rules applicable to different categories of persons concerning matters governed by this Regulation, any reference to the law of such a State shall be construed as referring to the legal system determined by the rules in force in that State. In the absence of such rules, the system of law or the set of rules with which the spouse or spouses has or have the closest connection applies.

Article 16

Non-application of this Regulation to internal conflicts of laws

A participating Member State in which different systems of law or sets of rules apply to matters governed by this Regulation shall not be required to apply this Regulation to conflicts of laws arising solely between such different systems of law or sets of rules.

CHAPTER III

OTHER PROVISIONS

Article 17

Information to be provided by participating Member States

1. By 21 September 2011 the participating Member States shall communicate to the Commission their national provisions, if any, concerning:

(a) the formal requirements applicable to agreements on the choice of applicable law pursuant to Article 7(2) to (4); and

(b) the possibility of designating the applicable law in accordance with Article 5(3).

The participating Member States shall inform the Commission of any subsequent changes to these provisions.

2. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through appropriate means, in particular through the website of the European Judicial Network in civil and commercial matters.

Article 18

Transitional provisions

1. This Regulation shall apply only to legal proceedings instituted and to agreements of the kind referred to in Article 5 concluded as from 21 June 2012.

However, effect shall also be given to an agreement on the choice of the applicable law concluded before 21 June 2012, provided that it complies with Articles 6 and 7.

2. This Regulation shall be without prejudice to agreements on the choice of applicable law concluded in accordance with the law of a participating Member State whose court is seized before 21 June 2012.

Article 19

Relationship with existing international conventions

1. Without prejudice to the obligations of the participating Member States pursuant to Article 351 of the Treaty on the Functioning of the European Union, this Regulation shall not affect the application of international conventions to which one or more participating Member States are party at the time when this Regulation is adopted or when the decision pursuant to the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union is adopted and which lay down conflict-of-laws rules relating to divorce or separation.

2. However, this Regulation shall, as between participating Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

Article 20

Review clause

1. By 31 December 2015, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied, where appropriate, by proposals to adapt this Regulation.

2. To that end, the participating Member States shall communicate to the Commission the relevant information on the application of this Regulation by their courts.

CHAPTER IV

FINAL PROVISIONS

Article 21

Entry into force and date of application

This Regulation shall enter into force on the day following its publication in the Official Journal of the European Union.

It shall apply from 21 June 2012, with the exception of Article 17, which shall apply from 21 June 2011.

For those participating Member States which participate in enhanced cooperation by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the Treaty on the Functioning of the European Union, this Regulation shall apply as from the date indicated in the decision concerned.

This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.

Done at Brussels, 20 December 2010.

For the Council

The President

J. Schauvliege

[1] OJ L 189, 22.7.2010, p. 12.

[2] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (OJ L 338, 23.12.2003, p. 1).

[3] OJ L 174, 27.6.2001, p. 25.

Council Regulation (EC) No 4/2009

of 18 December 2008

on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the European Economic and Social Committee [2],

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, among others, measures relating to judicial cooperation in civil matters having cross-border implications, in so far as necessary for the proper functioning of the internal market.

(2) In accordance with Article 65(b) of the Treaty, these measures must aim, inter alia, to promote the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.

(3) In this respect, the Community has among other measures already adopted Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [3], Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters [4], Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters [5], Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes [6], Council Regulation (EC) No 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility [7], Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims [8], and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) [9].

(4) The European Council in Tampere on 15 and 16 October 1999 invited the Council and the Commission to establish special common procedural rules to simplify and accelerate the settlement of cross-border disputes concerning, inter alia, maintenance claims. It also called for the abolition of intermediate measures required for the recognition and enforcement in the requested State of a decision given in another Member State, particularly a decision relating to a maintenance claim.

(5) A programme of measures for the enforcement of the principle of mutual recognition of decisions in civil and commercial matters [10], common to the Commission and to the Council, was adopted on 30 November 2000. That programme provides for the abolition of

the exequatur procedure for maintenance claims in order to boost the effectiveness of the means by which maintenance creditors safeguard their rights.

(6) The European Council meeting in Brussels on 4 and 5 November 2004 adopted a new programme called "The Hague Programme: strengthening freedom, security and justice in the European Union" (hereinafter referred to as The Hague Programme) [11].

(7) At its meeting on 2 and 3 June 2005, the Council adopted a Council and Commission Action Plan [12] which implements The Hague Programme in concrete actions and which mentions the necessity of adopting proposals on maintenance obligations.

(8) In the framework of The Hague Conference on Private International Law, the Community and its Member States took part in negotiations which led to the adoption on 23 November 2007 of the Convention on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter referred to as the 2007 Hague Convention) and the Protocol on the Law Applicable to Maintenance Obligations (hereinafter referred to as the 2007 Hague Protocol). Both those instruments should therefore be taken into account in this Regulation.

(9) A maintenance creditor should be able to obtain easily, in a Member State, a decision which will be automatically enforceable in another Member State without further formalities.

(10) In order to achieve this goal, it is advisable to create a Community instrument in matters relating to maintenance obligations bringing together provisions on jurisdiction, conflict of laws, recognition and enforceability, enforcement, legal aid and cooperation between Central Authorities.

(11) The scope of this Regulation should cover all maintenance obligations arising from a family relationship, parentage, marriage or affinity, in order to guarantee equal treatment of all maintenance creditors. For the purposes of this Regulation, the term "maintenance obligation" should be interpreted autonomously.

(12) In order to take account of the various ways of resolving maintenance obligation issues in the Member States, this Regulation should apply both to court decisions and to decisions given by administrative authorities, provided that the latter offer guarantees with regard to, in particular, their impartiality and the right of all parties to be heard. Those authorities should therefore apply all the rules of this Regulation.

(13) For the reasons set out above, this Regulation should also ensure the recognition and enforcement of court settlements and authentic instruments without affecting the right of either party to such a settlement or instrument to challenge the settlement or instrument before the courts of the Member State of origin.

(14) It should be provided in this Regulation that for the purposes of an application for the recognition and enforcement of a decision relating to maintenance obligations the term "creditor" includes public bodies which are entitled to act in place of a person to whom maintenance is owed or to claim reimbursement of benefits provided to the creditor in place of maintenance. Where a public body acts in this capacity, it should be entitled to the same services and the same legal aid as a creditor.

(15) In order to preserve the interests of maintenance creditors and to promote the proper administration of justice within the European Union, the rules on jurisdiction as they result from Regulation (EC) No 44/2001 should be adapted. The circumstance that the defendant is habitually resident in a third State should no longer entail the non-application of Community rules on jurisdiction, and there should no longer be any referral to national law. This Regulation should therefore determine the cases in which a court in a Member State may exercise subsidiary jurisdiction.

(16) In order to remedy, in particular, situations of denial of justice this Regulation should provide a forum necessitatis allowing a court of a Member State, on an exceptional basis, to hear a case which is closely connected with a third State. Such an exceptional basis may be deemed to exist when proceedings prove impossible in the third State in question, for example because of civil war, or when an applicant cannot reasonably be expected to initiate or conduct proceedings in that State. Jurisdiction based on the forum necessitatis should, however, be exercised only if the dispute has a sufficient connection with the Member State of the court seised, for instance the nationality of one of the parties.

(17) An additional rule of jurisdiction should provide that, except under specific conditions, proceedings to modify an existing maintenance decision or to have a new decision given can be brought by the debtor only in the State in which the creditor was habitually resident at the time the decision was given and in which he remains habitually resident. To ensure proper symmetry between the 2007 Hague Convention and this Regulation, this rule should also apply as regards decisions given in a third State which is party to the said Convention in so far as that Convention is in force between that State and the Community and covers the same maintenance obligations in that State and in the Community.

(18) For the purposes of this Regulation, it should be provided that in Ireland the concept of "domicile" replaces the concept of "nationality" which is also the case in the United Kingdom, subject to this Regulation being applicable in the latter Member State in accordance with Article 4 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community.

(19) In order to increase legal certainty, predictability and the autonomy of the parties, this Regulation should enable the parties to choose the competent court by agreement on the basis of specific connecting factors. To protect the weaker party, such a choice of court should not be allowed in the case of maintenance obligations towards a child under the age of 18.

(20) It should be provided in this Regulation that, for Member States bound by the 2007 Hague Protocol, the rules on conflict of laws in respect of maintenance obligations will be those set out in that Protocol. To that end, a provision referring to the said Protocol should be inserted. The 2007 Hague Protocol will be concluded by the Community in time to enable this Regulation to apply. To take account of a scenario in which the 2007 Hague Protocol does not apply to all the Member States a distinction for the purposes of recognition, enforceability and enforcement of decisions needs to be made in this Regulation between the Member States bound by the 2007 Hague Protocol and those not bound by it.

(21) It needs to be made clear in this Regulation that these rules on conflict of laws determine only the law applicable to maintenance obligations and do not determine the law applicable to the establishment of the family relationships on which the maintenance obligations are based. The establishment of family relationships continues to be covered by the national law of the Member States, including their rules of private international law.

(22) In order to ensure swift and efficient recovery of a maintenance obligation and to prevent delaying actions, decisions in matters relating to maintenance obligations given in a Member State should in principle be provisionally enforceable. This Regulation should therefore provide that the court of origin should be able to declare the decision provisionally enforceable even if the national law does not provide for enforceability by operation of law and even if an appeal has been or could still be lodged against the decision under national law.

(23) To limit the costs of proceedings subject to this Regulation, the greatest possible use of modern communications technologies, particularly for hearing parties, would be helpful.

(24) The guarantees provided by the application of rules on conflict of laws should provide the justification for having decisions relating to maintenance obligations given in a Member State bound by the 2007 Hague Protocol recognised and regarded as enforceable in all the other Member States without any procedure being necessary and without any form of control on the substance in the Member State of enforcement.

(25) Recognition in a Member State of a decision relating to maintenance obligations has as its only object to allow the recovery of the maintenance claim determined in the decision. It does not imply the recognition by that Member State of the family relationship, parentage, marriage or affinity underlying the maintenance obligations which gave rise to the decision.

(26) For decisions on maintenance obligations given in a Member State not bound by the 2007 Hague Protocol, there should be provision in this Regulation for a procedure for recognition and declaration of enforceability. That procedure should be modelled on the procedure and the grounds for refusing recognition set out in Regulation (EC) No 44/2001. To accelerate proceedings and enable the creditor to recover his claim quickly, the court seised should be required to give its decision within a set time, unless there are exceptional circumstances.

(27) It would also be appropriate to limit as far as possible the formal enforcement requirements likely to increase the costs to be borne by the maintenance creditor. To that end, this Regulation should provide that a maintenance creditor ought not to be required to have a postal address or an authorised representative in the Member State of enforcement, without this otherwise affecting the internal organisation of the Member States in matters relating to enforcement proceedings.

(28) In order to limit the costs of enforcement proceedings, no translation should be required unless enforcement is contested, and without prejudice to the rules applicable to service of documents.

(29) In order to guarantee compliance with the requirements of a fair trial, this Regulation should provide for the right of a defendant who did not enter an appearance in the court of origin of a Member State bound by the 2007 Hague Protocol to apply for a review of the decision given against him at the stage of enforcement. However, the defendant must apply for this review within a set period which should start no later than the day on which, in the enforcement proceedings, his property was first made non-disposable in whole or in part. That right to apply for a review should be an extraordinary remedy granted to the defendant in default and not affecting the application of any extraordinary remedies laid down in the law of the Member State of origin provided that those remedies are not incompatible with the right to a review under this Regulation.

(30) In order to speed up the enforcement in another Member State of a decision given in a Member State bound by the 2007 Hague Protocol it is necessary to limit the grounds of refusal or of suspension of enforcement which may be invoked by the debtor on account of the cross-border nature of the maintenance claim. This limitation should not affect the grounds of refusal or of suspension laid down in national law which are not incompatible with those listed in this Regulation, such as the debtor's discharge of his debt at the time of enforcement or the unattachable nature of certain assets.

(31) To facilitate cross-border recovery of maintenance claims, provision should be made for a system of cooperation between Central Authorities designated by the Member States. These Authorities should assist maintenance creditors and debtors in asserting their rights in another

Member State by submitting applications for recognition, enforceability and enforcement of existing decisions, for the modification of such decisions or for the establishment of a decision. They should also exchange information in order to locate debtors and creditors, and identify their income and assets, as necessary. Lastly, they should cooperate with each other by exchanging general information and promoting cooperation amongst the competent authorities in their Member States.

(32) A Central Authority designated under this Regulation should bear its own costs, except in specifically determined cases, and should provide assistance for all applicants residing in its Member State. The criterion for determining a person's right to request assistance from a Central Authority should be less strict than the connecting factor of "habitual residence" used elsewhere in this Regulation. However, the "residence" criterion should exclude mere presence.

(33) In order to provide full assistance to maintenance creditors and debtors and to facilitate as much as possible cross-border recovery of maintenance, the Central Authorities should be able to obtain a certain amount of personal information. This Regulation should therefore oblige the Member States to ensure that their Central Authorities have access to such information through the public authorities or administrations which hold the information concerned in the course of their ordinary activities. It should however be left to each Member State to decide on the arrangements for such access. Accordingly, a Member State should be able to designate the public authorities or administrations which will be required to supply the information to the Central Authority in accordance with this Regulation, including, if appropriate, public authorities or administrations already designated in the context of other systems for access to information. Where a Member State designates public authorities or administrations, it should ensure that its Central Authority is able to access the requisite information held by those bodies as provided for in this Regulation. A Member State should also be able to allow its Central Authority to access requisite information from any other legal person which holds it and controls its processing.

(34) In the context of access to personal data and the use and transmission thereof, the requirements of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [13], as transposed into the national law of the Member States, should be complied with.

(35) For the purposes of the application of this Regulation it is however necessary to define the specific conditions of access to personal data and of the use and transmission of such data. In this context, the opinion of the European Data Protection Supervisor [14] has been taken into consideration. Notification of the data subject should take place in accordance with national law. It should however be possible to defer the notification to prevent the debtor from transferring his assets and thus jeopardising the recovery of the maintenance claim.

(36) On account of the costs of proceedings it is appropriate to provide for a very favourable legal aid scheme, that is, full coverage of the costs relating to proceedings concerning maintenance obligations in respect of children under the age of 21 initiated via the Central Authorities. Specific rules should therefore be added to the current rules on legal aid in the European Union which exist by virtue of Directive 2003/8/EC thus setting up a special legal aid scheme for maintenance obligations. In this context, the competent authority of the requested Member State should be able, exceptionally, to recover costs from an applicant having received free legal aid and lost the case, provided that the person's financial situation so permits. This would apply, in particular, where someone well-off had acted in bad faith.

(37) In addition, for maintenance obligations other than those referred to in the preceding recital, all parties should be guaranteed the same treatment in terms of legal aid at the time of enforcement of a decision in another Member State. Accordingly, the provisions of this Regulation on continuity of legal aid should be understood as also granting such aid to a party who, while not having received legal aid in the proceedings to obtain or amend a decision in the Member State of origin, did then benefit from such aid in that State in the context of an application for enforcement of the decision. Similarly, a party who benefited from free proceedings before an administrative authority listed in Annex X should, in the Member State of enforcement, benefit from the most favourable legal aid or the most extensive exemption from costs or expenses, provided that he shows that he would have so benefited in the Member State of origin.

(38) In order to minimise the costs of translating supporting documents the court seized should only require a translation of such documents when this is necessary, without prejudice to the rights of the defence and the rules applicable concerning service of documents.

(39) To facilitate the application of this Regulation, Member States should be obliged to provide the Commission with the names and contact details of their Central Authorities and with other information. That information should be made available to practitioners and to the public through publication in the Official Journal of the European Union or through electronic access to the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC. Furthermore, the use of forms provided for in this Regulation should facilitate and speed up communication between the Central Authorities and make it possible to submit applications electronically.

(40) The relationship between this Regulation and the bilateral or multilateral conventions and agreements on maintenance obligations to which the Member States are party should be specified. In this context it should be stipulated that Member States which are party to the Convention of 23 March 1962 between Sweden, Denmark, Finland, Iceland and Norway on the recovery of maintenance by the Member States may continue to apply that Convention since it contains more favourable rules on recognition and enforcement than those in this Regulation. As regards the conclusion of future bilateral agreements on maintenance obligations with third States, the procedures and conditions under which Member States would be authorised to negotiate and conclude such agreements on their own behalf should be determined in the course of discussions relating to a Commission proposal on the subject.

(41) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits [15] should apply.

(42) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [16].

(43) In particular, the Commission should be empowered to adopt any amendments to the forms provided for in this Regulation in accordance with the advisory procedure provided for in Article 3 of Decision 1999/468/EC. For the establishment of the list of the administrative authorities falling within the scope of this Regulation, and the list of authorities competent to certify the right to legal aid, the Commission should be empowered to act in accordance with the management procedure provided for in Article 4 of that Decision.

(44) This Regulation should amend Regulation (EC) No 44/2001 by replacing the provisions of that Regulation applicable to maintenance obligations. Subject to the transitional provisions of this Regulation, Member States should, in matters relating to maintenance

obligations, apply the provisions of this Regulation on jurisdiction, recognition, enforceability and enforcement of decisions and on legal aid instead of those of Regulation (EC) No 44/2001 as from the date on which this Regulation becomes applicable.

(45) Since the objectives of this Regulation, namely the introduction of a series of measures to ensure the effective recovery of maintenance claims in cross-border situations and thus to facilitate the free movement of persons within the European Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article this Regulation does not go beyond what is necessary to achieve those objectives.

(46) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland has given notice of its wish to take part in the adoption and application of this Regulation.

(47) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. This is, however, without prejudice to the possibility for the United Kingdom of notifying its intention of accepting this Regulation after its adoption in accordance with Article 4 of the said Protocol.

(48) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application, without prejudice to the possibility for Denmark of applying the amendments made here to Regulation (EC) No 44/2001 pursuant to Article 3 of the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [17],

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope of application

1. This Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.
2. In this Regulation, the term "Member State" shall mean Member States to which this Regulation applies.

Article 2

Definitions

1. For the purposes of this Regulation:

1. the term "decision" shall mean a decision in matters relating to maintenance obligations given by a court of a Member State, whatever the decision may be called, including a decree, order, judgment or writ of execution, as well as a decision by an officer of the court

determining the costs or expenses. For the purposes of Chapters VII and VIII, the term "decision" shall also mean a decision in matters relating to maintenance obligations given in a third State;

2. the term "court settlement" shall mean a settlement in matters relating to maintenance obligations which has been approved by a court or concluded before a court in the course of proceedings;

3. the term "authentic instrument" shall mean:

(a) a document in matters relating to maintenance obligations which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

(i) relates to the signature and the content of the instrument, and

(ii) has been established by a public authority or other authority empowered for that purpose; or,

(b) an arrangement relating to maintenance obligations concluded with administrative authorities of the Member State of origin or authenticated by them;

4. the term "Member State of origin" shall mean the Member State in which, as the case may be, the decision has been given, the court settlement has been approved or concluded, or the authentic instrument has been established;

5. the term "Member State of enforcement" shall mean the Member State in which the enforcement of the decision, the court settlement or the authentic instrument is sought;

6. the term "requesting Member State" shall mean the Member State whose Central Authority transmits an application pursuant to Chapter VII;

7. the term "requested Member State" shall mean the Member State whose Central Authority receives an application pursuant to Chapter VII;

8. the term "2007 Hague Convention Contracting State" shall mean a State which is a contracting party to the Hague Convention of 23 November 2007 on the International Recovery of Child Support and other Forms of Family Maintenance (hereinafter referred to as the 2007 Hague Convention) to the extent that the said Convention applies between the Community and that State;

9. the term "court of origin" shall mean the court which has given the decision to be enforced;

10. the term "creditor" shall mean any individual to whom maintenance is owed or is alleged to be owed;

11. the term "debtor" shall mean any individual who owes or who is alleged to owe maintenance.

2. For the purposes of this Regulation, the term "court" shall include administrative authorities of the Member States with competence in matters relating to maintenance obligations provided that such authorities offer guarantees with regard to impartiality and the right of all parties to be heard and provided that their decisions under the law of the Member State where they are established:

(i) may be made the subject of an appeal to or review by a judicial authority; and

(ii) have a similar force and effect as a decision of a judicial authority on the same matter.

These administrative authorities shall be listed in Annex X. That Annex shall be established and amended in accordance with the management procedure referred to in Article 73(2) at the request of the Member State in which the administrative authority concerned is established.

3. For the purposes of Articles 3, 4 and 6, the concept of "domicile" shall replace that of "nationality" in those Member States which use this concept as a connecting factor in family matters.

For the purposes of Article 6, parties which have their "domicile" in different territorial units of the same Member State shall be deemed to have their common "domicile" in that Member State.

CHAPTER II

JURISDICTION

Article 3

General provisions

In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

- (a) the court for the place where the defendant is habitually resident, or
- (b) the court for the place where the creditor is habitually resident, or
- (c) the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties, or
- (d) the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties.

Article 4

Choice of court

1. The parties may agree that the following court or courts of a Member State shall have jurisdiction to settle any disputes in matters relating to a maintenance obligation which have arisen or may arise between them:

- (a) a court or the courts of a Member State in which one of the parties is habitually resident;
- (b) a court or the courts of a Member State of which one of the parties has the nationality;
- (c) in the case of maintenance obligations between spouses or former spouses:
 - (i) the court which has jurisdiction to settle their dispute in matrimonial matters; or
 - (ii) a court or the courts of the Member State which was the Member State of the spouses' last common habitual residence for a period of at least one year.

The conditions referred to in points (a), (b) or (c) have to be met at the time the choice of court agreement is concluded or at the time the court is seised.

The jurisdiction conferred by agreement shall be exclusive unless the parties have agreed otherwise.

2. A choice of court agreement shall be in writing. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to "writing".

3. This Article shall not apply to a dispute relating to a maintenance obligation towards a child under the age of 18.

4. If the parties have agreed to attribute exclusive jurisdiction to a court or courts of a State party to the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [18], signed on 30 October 2007 in Lugano (hereinafter referred to as the Lugano Convention), where that State is not a Member State, the said Convention shall apply except in the case of the disputes referred to in paragraph 3.

Article 5

Jurisdiction based on the appearance of the defendant

Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction.

Article 6

Subsidiary jurisdiction

Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5 and no court of a State party to the Lugano Convention which is not a Member State has jurisdiction pursuant to the provisions of that Convention, the courts of the Member State of the common nationality of the parties shall have jurisdiction.

Article 7

Forum necessitatis

Where no court of a Member State has jurisdiction pursuant to Articles 3, 4, 5 and 6, the courts of a Member State may, on an exceptional basis, hear the case if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the dispute is closely connected.

The dispute must have a sufficient connection with the Member State of the court seised.

Article 8

Limit on proceedings

1. Where a decision is given in a Member State or a 2007 Hague Convention Contracting State where the creditor is habitually resident, proceedings to modify the decision or to have a new decision given cannot be brought by the debtor in any other Member State as long as the creditor remains habitually resident in the State in which the decision was given.

2. Paragraph 1 shall not apply:

(a) where the parties have agreed in accordance with Article 4 to the jurisdiction of the courts of that other Member State;

(b) where the creditor submits to the jurisdiction of the courts of that other Member State pursuant to Article 5;

(c) where the competent authority in the 2007 Hague Convention Contracting State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or give a new decision; or

(d) where the decision given in the 2007 Hague Convention Contracting State of origin cannot be recognised or declared enforceable in the Member State where proceedings to modify the decision or to have a new decision given are contemplated.

Article 9

Seising of a court

For the purposes of this Chapter, a court shall be deemed to be seised:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or
- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Article 10

Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation it shall declare of its own motion that it has no jurisdiction.

Article 11

Examination as to admissibility

1. Where a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.
2. Article 19 of Regulation (EC) No 1393/2007 shall apply instead of the provisions of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.
3. Where the provisions of Regulation (EC) No 1393/2007 are not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 12

Lis pendens

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 13

Related actions

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.

2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.

3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 14

Provisional, including protective, measures

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Regulation, the courts of another Member State have jurisdiction as to the substance of the matter.

CHAPTER III

APPLICABLE LAW

Article 15

Determination of the applicable law

The law applicable to maintenance obligations shall be determined in accordance with the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations (hereinafter referred to as the 2007 Hague Protocol) in the Member States bound by that instrument.

CHAPTER IV

RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF DECISIONS

Article 16

Scope of application of this Chapter

1. This Chapter shall govern the recognition, enforceability and enforcement of decisions falling within the scope of this Regulation.

2. Section 1 shall apply to decisions given in a Member State bound by the 2007 Hague Protocol.

3. Section 2 shall apply to decisions given in a Member State not bound by the 2007 Hague Protocol.

4. Section 3 shall apply to all decisions.

SECTION 1

Decisions given in a Member State bound by the 2007 Hague Protocol

Article 17

Abolition of exequatur

1. A decision given in a Member State bound by the 2007 Hague Protocol shall be recognised in another Member State without any special procedure being required and without any possibility of opposing its recognition.

2. A decision given in a Member State bound by the 2007 Hague Protocol which is enforceable in that State shall be enforceable in another Member State without the need for a declaration of enforceability.

Article 18

Protective measures

An enforceable decision shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State of enforcement.

Article 19

Right to apply for a review

1. A defendant who did not enter an appearance in the Member State of origin shall have the right to apply for a review of the decision before the competent court of that Member State where:

(a) he was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence; or

(b) he was prevented from contesting the maintenance claim by reason of force majeure or due to extraordinary circumstances without any fault on his part;

unless he failed to challenge the decision when it was possible for him to do so.

2. The time limit for applying for a review shall run from the day the defendant was effectively acquainted with the contents of the decision and was able to react, at the latest from the date of the first enforcement measure having the effect of making his property non-disposable in whole or in part. The defendant shall react promptly, in any event within 45 days. No extension may be granted on account of distance.

3. If the court rejects the application for a review referred to in paragraph 1 on the basis that none of the grounds for a review set out in that paragraph apply, the decision shall remain in force.

If the court decides that a review is justified for one of the reasons laid down in paragraph 1, the decision shall be null and void. However, the creditor shall not lose the benefits of the interruption of prescription or limitation periods, or the right to claim retroactive maintenance acquired in the initial proceedings.

Article 20

Documents for the purposes of enforcement

1. For the purposes of enforcement of a decision in another Member State, the claimant shall provide the competent enforcement authorities with:

(a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;

(b) the extract from the decision issued by the court of origin using the form set out in Annex I;

(c) where appropriate, a document showing the amount of any arrears and the date such amount was calculated;

(d) where necessary, a transliteration or a translation of the content of the form referred to in point (b) into the official language of the Member State of enforcement or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where the application is made, in

accordance with the law of that Member State, or into another language that the Member State concerned has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the completion of the form.

2. The competent authorities of the Member State of enforcement may not require the claimant to provide a translation of the decision. However, a translation may be required if the enforcement of the decision is challenged.

3. Any translation under this Article must be done by a person qualified to do translations in one of the Member States.

Article 21

Refusal or suspension of enforcement

1. The grounds of refusal or suspension of enforcement under the law of the Member State of enforcement shall apply in so far as they are not incompatible with the application of paragraphs 2 and 3.

2. The competent authority in the Member State of enforcement shall, on application by the debtor, refuse, either wholly or in part, the enforcement of the decision of the court of origin if the right to enforce the decision of the court of origin is extinguished by the effect of prescription or the limitation of action, either under the law of the Member State of origin or under the law of the Member State of enforcement, whichever provides for the longer limitation period.

Furthermore, the competent authority in the Member State of enforcement may, on application by the debtor, refuse, either wholly or in part, the enforcement of the decision of the court of origin if it is irreconcilable with a decision given in the Member State of enforcement or with a decision given in another Member State or in a third State which fulfils the conditions necessary for its recognition in the Member State of enforcement.

A decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of the second subparagraph.

3. The competent authority in the Member State of enforcement may, on application by the debtor, suspend, either wholly or in part, the enforcement of the decision of the court of origin if the competent court of the Member State of origin has been seised of an application for a review of the decision of the court of origin pursuant to Article 19.

Furthermore, the competent authority of the Member State of enforcement shall, on application by the debtor, suspend the enforcement of the decision of the court of origin where the enforceability of that decision is suspended in the Member State of origin.

Article 22

No effect on the existence of family relationships

The recognition and enforcement of a decision on maintenance under this Regulation shall not in any way imply the recognition of the family relationship, parentage, marriage or affinity underlying the maintenance obligation which gave rise to the decision.

SECTION 2

Decisions given in a Member State not bound by the 2007 Hague Protocol

Article 23

Recognition

1. A decision given in a Member State not bound by the 2007 Hague Protocol shall be recognised in the other Member States without any special procedure being required.
2. Any interested party who raises the recognition of a decision as the principal issue in a dispute may, in accordance with the procedures provided for in this Section, apply for a decision that the decision be recognised.
3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

Article 24

Grounds of refusal of recognition

A decision shall not be recognised:

- (a) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought. The test of public policy may not be applied to the rules relating to jurisdiction;
- (b) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the decision when it was possible for him to do so;
- (c) if it is irreconcilable with a decision given in a dispute between the same parties in the Member State in which recognition is sought;
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a third State in a dispute involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

A decision which has the effect of modifying an earlier decision on maintenance on the basis of changed circumstances shall not be considered an irreconcilable decision within the meaning of points (c) or (d).

Article 25

Staying of recognition proceedings

A court of a Member State in which recognition is sought of a decision given in a Member State not bound by the 2007 Hague Protocol shall stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

Article 26

Enforceability

A decision given in a Member State not bound by the 2007 Hague Protocol and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, it has been declared enforceable there.

Article 27

Jurisdiction of local courts

1. The application for a declaration of enforceability shall be submitted to the court or competent authority of the Member State of enforcement notified by that Member State to the Commission in accordance with Article 71.

2. The local jurisdiction shall be determined by reference to the place of habitual residence of the party against whom enforcement is sought, or to the place of enforcement.

Article 28

Procedure

1. The application for a declaration of enforceability shall be accompanied by the following documents:

(a) a copy of the decision which satisfies the conditions necessary to establish its authenticity;

(b) an extract from the decision issued by the court of origin using the form set out in Annex II, without prejudice to Article 29;

(c) where necessary, a transliteration or a translation of the content of the form referred to in point (b) into the official language of the Member State of enforcement or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where the application is made, in accordance with the law of that Member State, or into another language that the Member State concerned has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the completion of the form.

2. The court or competent authority seised of the application may not require the claimant to provide a translation of the decision. However, a translation may be required in connection with an appeal under Articles 32 or 33.

3. Any translation under this Article must be done by a person qualified to do translations in one of the Member States.

Article 29

Non-production of the extract

1. If the extract referred to in Article 28(1)(b) is not produced, the competent court or authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.

2. In the situation referred to in paragraph 1, if the competent court or authority so requires, a translation of the documents shall be produced. The translation shall be done by a person qualified to do translations in one of the Member States.

Article 30

Declaration of enforceability

The decision shall be declared enforceable without any review under Article 24 immediately on completion of the formalities in Article 28 and at the latest within 30 days of the completion of those formalities, except where exceptional circumstances make this impossible. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 31

Notice of the decision on the application for a declaration

1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State of enforcement.
2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the decision, if not already served on that party.

Article 32

Appeal against the decision on the application for a declaration

1. The decision on the application for a declaration of enforceability may be appealed against by either party.
2. The appeal shall be lodged with the court notified by the Member State concerned to the Commission in accordance with Article 71.
3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.
4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 11 shall apply even where the party against whom enforcement is sought is not habitually resident in any of the Member States.
5. An appeal against the declaration of enforceability shall be lodged within 30 days of service thereof. If the party against whom enforcement is sought has his habitual residence in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be 45 days and shall run from the date of service, either on him in person or at his residence. No extension may be granted on account of distance.

Article 33

Proceedings to contest the decision given on appeal

The decision given on appeal may be contested only by the procedure notified by the Member State concerned to the Commission in accordance with Article 71.

Article 34

Refusal or revocation of a declaration of enforceability

1. The court with which an appeal is lodged under Articles 32 or 33 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 24.
2. Subject to Article 32(4), the court seised of an appeal under Article 32 shall give its decision within 90 days from the date it was seised, except where exceptional circumstances make this impossible.
3. The court seised of an appeal under Article 33 shall give its decision without delay.

Article 35

Staying of proceedings

The court with which an appeal is lodged under Articles 32 or 33 shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

Article 36

Provisional, including protective measures

1. When a decision must be recognised in accordance with this Section, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a declaration of enforceability under Article 30 being required.

2. The declaration of enforceability shall carry with it by operation of law the power to proceed to any protective measures.

3. During the time specified for an appeal pursuant to Article 32(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 37

Partial enforceability

1. Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the competent court or authority shall give it for one or more of them.

2. An applicant may request a declaration of enforceability limited to parts of a decision.

Article 38

No charge, duty or fee

In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

SECTION 3

Common provisions

Article 39

Provisional enforceability

The court of origin may declare the decision provisionally enforceable, notwithstanding any appeal, even if national law does not provide for enforceability by operation of law.

Article 40

Invoking a recognised decision

1. A party who wishes to invoke in another Member State a decision recognised within the meaning of Article 17(1) or recognised pursuant to Section 2 shall produce a copy of the decision which satisfies the conditions necessary to establish its authenticity.

2. If necessary, the court before which the recognised decision is invoked may ask the party invoking the recognised decision to produce an extract issued by the court of origin using the form set out in Annex I or in Annex II, as the case may be.

The court of origin shall also issue such an extract at the request of any interested party.

3. Where necessary, the party invoking the recognised decision shall provide a transliteration or a translation of the content of the form referred to in paragraph 2 into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where the recognised decision is invoked, in accordance with the law of that Member

State, or into another language that the Member State concerned has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the completion of the form.

4. Any translation under this Article must be done by a person qualified to do translations in one of the Member States.

Article 41

Proceedings and conditions for enforcement

1. Subject to the provisions of this Regulation, the procedure for the enforcement of decisions given in another Member State shall be governed by the law of the Member State of enforcement. A decision given in a Member State which is enforceable in the Member State of enforcement shall be enforced there under the same conditions as a decision given in that Member State of enforcement.

2. The party seeking the enforcement of a decision given in another Member State shall not be required to have a postal address or an authorised representative in the Member State of enforcement, without prejudice to persons with competence in matters relating to enforcement proceedings.

Article 42

No review as to substance

Under no circumstances may a decision given in a Member State be reviewed as to its substance in the Member State in which recognition, enforceability or enforcement is sought.

Article 43

No precedence for the recovery of costs

Recovery of any costs incurred in the application of this Regulation shall not take precedence over the recovery of maintenance.

CHAPTER V

ACCESS TO JUSTICE

Article 44

Right to legal aid

1. Parties who are involved in a dispute covered by this Regulation shall have effective access to justice in another Member State, including enforcement and appeal or review procedures, in accordance with the conditions laid down in this Chapter.

In cases covered by Chapter VII, effective access to justice shall be provided by the requested Member State to any applicant who is resident in the requesting Member State.

2. To ensure such effective access, Member States shall provide legal aid in accordance with this Chapter, unless paragraph 3 applies.

3. In cases covered by Chapter VII, a Member State shall not be obliged to provide legal aid if and to the extent that the procedures of that Member State enable the parties to make the case without the need for legal aid, and the Central Authority provides such services as are necessary free of charge.

4. Entitlements to legal aid shall not be less than those available in equivalent domestic cases.

5. No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings concerning maintenance obligations.

Article 45

Content of legal aid

Legal aid granted under this Chapter shall mean the assistance necessary to enable parties to know and assert their rights and to ensure that their applications, lodged through the Central Authorities or directly with the competent authorities, are fully and effectively dealt with. It shall cover as necessary the following:

- (a) pre-litigation advice with a view to reaching a settlement prior to bringing judicial proceedings;
- (b) legal assistance in bringing a case before an authority or a court and representation in court;
- (c) exemption from or assistance with the costs of proceedings and the fees to persons mandated to perform acts during the proceedings;
- (d) in Member States in which an unsuccessful party is liable for the costs of the opposing party, if the recipient of legal aid loses the case, the costs incurred by the opposing party, if such costs would have been covered had the recipient been habitually resident in the Member State of the court seised;
- (e) interpretation;
- (f) translation of the documents required by the court or by the competent authority and presented by the recipient of legal aid which are necessary for the resolution of the case;
- (g) travel costs to be borne by the recipient of legal aid where the physical presence of the persons concerned with the presentation of the recipient's case is required in court by the law or by the court of the Member State concerned and the court decides that the persons concerned cannot be heard to the satisfaction of the court by any other means.

Article 46

Free legal aid for applications through Central Authorities concerning maintenance to children

1. The requested Member State shall provide free legal aid in respect of all applications by a creditor under Article 56 concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21.
2. Notwithstanding paragraph 1, the competent authority of the requested Member State may, in relation to applications other than those under Article 56(1)(a) and (b), refuse free legal aid if it considers that, on the merits, the application or any appeal or review is manifestly unfounded.

Article 47

Cases not covered by Article 46

1. Subject to Articles 44 and 45, in cases not covered by Article 46, legal aid may be granted in accordance with national law, particularly as regards the conditions for the means test or the merits test.
2. Notwithstanding paragraph 1, a party who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in

any proceedings for recognition, enforceability or enforcement, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the Member State of enforcement.

3. Notwithstanding paragraph 1, a party who, in the Member State of origin, has benefited from free proceedings before an administrative authority listed in Annex X, shall be entitled, in any proceedings for recognition, enforceability or enforcement, to benefit from legal aid in accordance with paragraph 2. To that end, he shall present a statement from the competent authority in the Member State of origin to the effect that he fulfils the financial requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Competent authorities for the purposes of this paragraph shall be listed in Annex XI. That Annex shall be established and amended in accordance with the management procedure referred to in Article 73(2).

CHAPTER VI

COURT SETTLEMENTS AND AUTHENTIC INSTRUMENTS

Article 48

Application of this Regulation to court settlements and authentic instruments

1. Court settlements and authentic instruments which are enforceable in the Member State of origin shall be recognised in another Member State and be enforceable there in the same way as decisions, in accordance with Chapter IV.
2. The provisions of this Regulation shall apply as necessary to court settlements and authentic instruments.
3. The competent authority of the Member State of origin shall issue, at the request of any interested party, an extract from the court settlement or the authentic instrument using the forms set out in Annexes I and II or in Annexes III and IV as the case may be.

CHAPTER VII

COOPERATION BETWEEN CENTRAL AUTHORITIES

Article 49

Designation of Central Authorities

1. Each Member State shall designate a Central Authority to discharge the duties which are imposed by this Regulation on such an authority.
2. Federal Member States, Member States with more than one system of law or Member States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a Member State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that Member State. If a communication is sent to a Central Authority which is not competent, the latter shall be responsible for forwarding it to the competent Central Authority and for informing the sender accordingly.
3. The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by each Member State to the Commission in accordance with Article 71.

Article 50

General functions of Central Authorities

1. Central Authorities shall:

(a) cooperate with each other, including by exchanging information, and promote cooperation amongst the competent authorities in their Member States to achieve the purposes of this Regulation;

(b) seek as far as possible solutions to difficulties which arise in the application of this Regulation.

2. Central Authorities shall take measures to facilitate the application of this Regulation and to strengthen their cooperation. For this purpose the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC shall be used.

Article 51

Specific functions of Central Authorities

1. Central Authorities shall provide assistance in relation to applications under Article 56 and shall in particular:

(a) transmit and receive such applications;

(b) initiate or facilitate the institution of proceedings in respect of such applications.

2. In relation to such applications Central Authorities shall take all appropriate measures:

(a) where the circumstances require, to provide or facilitate the provision of legal aid;

(b) to help locate the debtor or the creditor, in particular pursuant to Articles 61, 62 and 63;

(c) to help obtain relevant information concerning the income and, if necessary, other financial circumstances of the debtor or creditor, including the location of assets, in particular pursuant to Articles 61, 62 and 63;

(d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;

(e) to facilitate the ongoing enforcement of maintenance decisions, including any arrears;

(f) to facilitate the collection and expeditious transfer of maintenance payments;

(g) to facilitate the obtaining of documentary or other evidence, without prejudice to Regulation (EC) No 1206/2001;

(h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;

(i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures which are territorial in nature and the purpose of which is to secure the outcome of a pending maintenance application;

(j) to facilitate the service of documents, without prejudice to Regulation (EC) No 1393/2007.

3. The functions of the Central Authority under this Article may, to the extent permitted under the law of the Member State concerned, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that Member State. The designation of any such public bodies or other bodies, as well as their contact details and the extent of their functions, shall be communicated by each Member State to the Commission in accordance with Article 71.

4. Nothing in this Article or in Article 53 shall impose an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested Member State.

Article 52

Power of attorney

The Central Authority of the requested Member State may require a power of attorney from the applicant only if it acts on his behalf in judicial proceedings or before other authorities, or in order to designate a representative so to act.

Article 53

Requests for specific measures

1. A Central Authority may make a request, supported by reasons, to another Central Authority to take appropriate specific measures under points (b), (c), (g), (h), (i) and (j) of Article 51(2) when no application under Article 56 is pending. The requested Central Authority shall take such measures as are appropriate if satisfied that they are necessary to assist a potential applicant in making an application under Article 56 or in determining whether such an application should be initiated.

2. Where a request for measures under Article 51(2)(b) and (c) is made, the requested Central Authority shall seek the information requested, if necessary pursuant to Article 61. However, the information referred to in points (b), (c) and (d) of Article 61(2) may be sought only when the creditor produces a copy of the decision, court settlement or authentic instrument to be enforced, accompanied by the extract provided for in Articles 20, 28 or 48, as appropriate.

The requested Central Authority shall communicate the information obtained to the requesting Central Authority. Where that information was obtained pursuant to Article 61, this communication shall specify only the address of the potential defendant in the requested Member State. In the case of a request with a view to recognition, declaration of enforceability or enforcement, the communication shall, in addition, specify merely whether the debtor has income or assets in that State.

If the requested Central Authority is not able to provide the information requested it shall inform the requesting Central Authority without delay and specify the grounds for this impossibility.

3. A Central Authority may also take specific measures at the request of another Central Authority in relation to a case having an international element concerning the recovery of maintenance pending in the requesting Member State.

4. For requests under this Article, the Central Authorities shall use the form set out in Annex V.

Article 54

Central Authority costs

1. Each Central Authority shall bear its own costs in applying this Regulation.

2. Central Authorities may not impose any charge on an applicant for the provision of their services under this Regulation save for exceptional costs arising from a request for a specific measure under Article 53.

For the purposes of this paragraph, costs relating to locating the debtor shall not be regarded as exceptional.

3. The requested Central Authority may not recover the costs of the services referred to in paragraph 2 without the prior consent of the applicant to the provision of those services at such cost.

Article 55

Application through Central Authorities

An application under this Chapter shall be made through the Central Authority of the Member State in which the applicant resides to the Central Authority of the requested Member State.

Article 56

Available applications

1. A creditor seeking to recover maintenance under this Regulation may make applications for the following:

- (a) recognition or recognition and declaration of enforceability of a decision;
- (b) enforcement of a decision given or recognised in the requested Member State;
- (c) establishment of a decision in the requested Member State where there is no existing decision, including where necessary the establishment of parentage;
- (d) establishment of a decision in the requested Member State where the recognition and declaration of enforceability of a decision given in a State other than the requested Member State is not possible;
- (e) modification of a decision given in the requested Member State;
- (f) modification of a decision given in a State other than the requested Member State.

2. A debtor against whom there is an existing maintenance decision may make applications for the following:

- (a) recognition of a decision leading to the suspension, or limiting the enforcement, of a previous decision in the requested Member State;
- (b) modification of a decision given in the requested Member State;
- (c) modification of a decision given in a State other than the requested Member State.

3. For applications under this Article, the assistance and representation referred to in Article 45(b) shall be provided by the Central Authority of the requested Member State directly or through public authorities or other bodies or persons.

4. Save as otherwise provided in this Regulation, the applications referred to in paragraphs 1 and 2 shall be determined under the law of the requested Member State and shall be subject to the rules of jurisdiction applicable in that Member State.

Article 57

Application contents

1. An application under Article 56 shall be made using the form set out in Annex VI or in Annex VII.

2. An application under Article 56 shall as a minimum include:

- (a) a statement of the nature of the application or applications;
- (b) the name and contact details, including the address, and date of birth of the applicant;

- (c) the name and, if known, address and date of birth of the defendant;
 - (d) the name and the date of birth of any person for whom maintenance is sought;
 - (e) the grounds upon which the application is based;
 - (f) in an application by a creditor, information concerning where the maintenance payment should be sent or electronically transmitted;
 - (g) the name and contact details of the person or unit from the Central Authority of the requesting Member State responsible for processing the application.
3. For the purposes of paragraph 2(b), the applicant's personal address may be replaced by another address in cases of family violence, if the national law of the requested Member State does not require the applicant to supply his or her personal address for the purposes of proceedings to be brought.
4. As appropriate, and to the extent known, the application shall in addition in particular include:
- (a) the financial circumstances of the creditor;
 - (b) the financial circumstances of the debtor, including the name and address of the employer of the debtor and the nature and location of the assets of the debtor;
 - (c) any other information that may assist with the location of the defendant.
5. The application shall be accompanied by any necessary supporting information or documentation including, where appropriate, documentation concerning the entitlement of the applicant to legal aid. Applications under Article 56(1)(a) and (b) and under Article 56(2)(a) shall be accompanied, as appropriate, only by the documents listed in Articles 20, 28 and 48, or in Article 25 of the 2007 Hague Convention.

Article 58

Transmission, receipt and processing of applications and cases through Central Authorities

1. The Central Authority of the requesting Member State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application.
2. The Central Authority of the requesting Member State shall, when satisfied that the application complies with the requirements of this Regulation, transmit the application to the Central Authority of the requested Member State.
3. The requested Central Authority shall, within 30 days from the date of receipt of the application, acknowledge receipt using the form set out in Annex VIII, and inform the Central Authority of the requesting Member State what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information. Within the same 30-day period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application.
4. Within 60 days from the date of acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application.
5. Requesting and requested Central Authorities shall keep each other informed of:
 - (a) the person or unit responsible for a particular case;
 - (b) the progress of the case;

and shall provide timely responses to enquiries.

6. Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

7. Central Authorities shall employ the most rapid and efficient means of communication at their disposal.

8. A requested Central Authority may refuse to process an application only if it is manifest that the requirements of this Regulation are not fulfilled. In such a case, that Central Authority shall promptly inform the requesting Central Authority of its reasons for refusal using the form set out in Annex IX.

9. The requested Central Authority may not reject an application solely on the basis that additional documents or information are needed. However, the requested Central Authority may ask the requesting Central Authority to provide these additional documents or this information. If the requesting Central Authority does not do so within 90 days or a longer period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application. In this case, it shall promptly notify the requesting Central Authority using the form set out in Annex IX.

Article 59

Languages

1. The request or application form shall be completed in the official language of the requested Member State or, if there are several official languages in that Member State, in the official language or one of the official languages of the place of the Central Authority concerned, or in any other official language of the institutions of the European Union which that Member State has indicated it can accept, unless the Central Authority of that Member State dispenses with translation.

2. The documents accompanying the request or application form shall not be translated into the language determined in accordance with paragraph 1 unless a translation is necessary in order to provide the assistance requested, without prejudice to Articles 20, 28, 40 and 66.

3. Any other communication between Central Authorities shall be in the language determined in accordance with paragraph 1 unless the Central Authorities agree otherwise.

Article 60

Meetings

1. In order to facilitate the application of this Regulation, Central Authorities shall meet regularly.

2. These meetings shall be convened in compliance with Decision 2001/470/EC.

Article 61

Access to information for Central Authorities

1. Under the conditions laid down in this Chapter and by way of exception to Article 51(4), the requested Central Authority shall use all appropriate and reasonable means to obtain the information referred to in paragraph 2 necessary to facilitate, in a given case, the establishment, the modification, the recognition, the declaration of enforceability or the enforcement of a decision.

The public authorities or administrations which, in the course of their ordinary activities, hold, within the requested State, the information referred to in paragraph 2 and which control

the processing thereof within the meaning of Directive 95/46/EC shall, subject to limitations justified on grounds of national security or public safety, provide the information to the requested Central Authority at its request in cases where the requested Central Authority does not have direct access to it.

Member States may designate the public authorities or administrations able to provide the requested Central Authority with the information referred to in paragraph 2. Where a Member State makes such a designation, it shall ensure that its choice of authorities and administrations permits its Central Authority to have access, in accordance with this Article, to the information requested.

Any other legal person which holds within the requested Member State the information referred to in paragraph 2 and controls the processing thereof within the meaning of Directive 95/46/EC shall provide the information to the requested Central Authority at the latter's request if it is authorised to do so by the law of the requested Member State.

The requested Central Authority shall, as necessary, transmit the information thus obtained to the requesting Central Authority.

2. The information referred to in this Article shall be the information already held by the authorities, administrations or persons referred to in paragraph 1. It shall be adequate, relevant and not excessive and shall relate to:

- (a) the address of the debtor or of the creditor;
- (b) the debtor's income;
- (c) the identification of the debtor's employer and/or of the debtor's bank account(s);
- (d) the debtor's assets.

For the purpose of obtaining or modifying a decision, only the information listed in point (a) may be requested by the requested Central Authority.

For the purpose of having a decision recognised, declared enforceable or enforced, all the information listed in the first subparagraph may be requested by the requested Central Authority. However, the information listed in point (d) may be requested only if the information listed in points (b) and (c) is insufficient to allow enforcement of the decision.

Article 62

Transmission and use of information

1. The Central Authorities shall, within their Member State, transmit the information referred to in Article 61(2) to the competent courts, the competent authorities responsible for service of documents and the competent authorities responsible for enforcement of a decision, as the case may be.

2. Any authority or court to which information has been transmitted pursuant to Article 61 may use this only to facilitate the recovery of maintenance claims.

Except for information merely indicating the existence of an address, income or assets in the requested Member State, the information referred to in Article 61(2) may not be disclosed to the person having applied to the requesting Central Authority, subject to the application of procedural rules before a court.

3. Any authority processing information transmitted to it pursuant to Article 61 may not store such information beyond the period necessary for the purposes for which it was transmitted.

4. Any authority processing information communicated to it pursuant to Article 61 shall ensure the confidentiality of such information, in accordance with its national law.

Article 63

Notification of the data subject

1. Notification of the data subject of the communication of all or part of the information collected on him shall take place in accordance with the national law of the requested Member State.

2. Where there is a risk that it may prejudice the effective recovery of the maintenance claim, such notification may be deferred for a period which shall not exceed 90 days from the date on which the information was provided to the requested Central Authority.

CHAPTER VIII

PUBLIC BODIES

Article 64

Public bodies as applicants

1. For the purposes of an application for recognition and declaration of enforceability of decisions or for the purposes of enforcement of decisions, the term "creditor" shall include a public body acting in place of an individual to whom maintenance is owed or one to which reimbursement is owed for benefits provided in place of maintenance.

2. The right of a public body to act in place of an individual to whom maintenance is owed or to seek reimbursement of benefits provided to the creditor in place of maintenance shall be governed by the law to which the body is subject.

3. A public body may seek recognition and a declaration of enforceability or claim enforcement of:

(a) a decision given against a debtor on the application of a public body which claims payment of benefits provided in place of maintenance;

(b) a decision given between a creditor and a debtor to the extent of the benefits provided to the creditor in place of maintenance.

4. The public body seeking recognition and a declaration of enforceability or claiming enforcement of a decision shall upon request provide any document necessary to establish its right under paragraph 2 and to establish that benefits have been provided to the creditor.

CHAPTER IX

GENERAL AND FINAL PROVISIONS

Article 65

Legalisation or other similar formality

No legalisation or other similar formality shall be required in the context of this Regulation.

Article 66

Translation of supporting documents

Without prejudice to Articles 20, 28 and 40, the court seised may require the parties to provide a translation of supporting documents which are not in the language of proceedings only if it deems a translation necessary in order to give a decision or to respect the rights of the defence.

Article 67

Recovery of costs

Without prejudice to Article 54, the competent authority of the requested Member State may recover costs from an unsuccessful party having received free legal aid pursuant to Article 46, on an exceptional basis and if his financial circumstances so allow.

Article 68

Relations with other Community instruments

1. Subject to Article 75(2), this Regulation shall modify Regulation (EC) No 44/2001 by replacing the provisions of that Regulation applicable to matters relating to maintenance obligations.
2. This Regulation shall replace, in matters relating to maintenance obligations, Regulation (EC) No 805/2004, except with regard to European Enforcement Orders on maintenance obligations issued in a Member State not bound by the 2007 Hague Protocol.
3. In matters relating to maintenance obligations, this Regulation shall be without prejudice to the application of Directive 2003/8/EC, subject to Chapter V.
4. This Regulation shall be without prejudice to the application of Directive 95/46/EC.

Article 69

Relations with existing international conventions and agreements

1. This Regulation shall not affect the application of bilateral or multilateral conventions and agreements to which one or more Member States are party at the time of adoption of this Regulation and which concern matters governed by this Regulation, without prejudice to the obligations of Member States under Article 307 of the Treaty.
2. Notwithstanding paragraph 1, and without prejudice to paragraph 3, this Regulation shall, in relations between Member States, take precedence over the conventions and agreements which concern matters governed by this Regulation and to which Member States are party.
3. This Regulation shall not preclude the application of the Convention of 23 March 1962 between Sweden, Denmark, Finland, Iceland and Norway on the recovery of maintenance by the Member States which are party thereto, since, with regard to the recognition, enforceability and enforcement of decisions, that Convention provides for:
 - (a) simplified and more expeditious procedures for the enforcement of decisions relating to maintenance obligations, and
 - (b) legal aid which is more favourable than that provided for in Chapter V of this Regulation.

However, the application of the said Convention may not have the effect of depriving the defendant of his protection under Articles 19 and 21 of this Regulation.

Article 70

Information made available to the public

The Member States shall provide within the framework of the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC the following information with a view to making it available to the public:

- (a) a description of the national laws and procedures concerning maintenance obligations;
- (b) a description of the measures taken to meet the obligations under Article 51;

(c) a description of how effective access to justice is guaranteed, as required under Article 44, and

(d) a description of national enforcement rules and procedures, including information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods.

Member States shall keep this information permanently updated.

Article 71

Information on contact details and languages (modelled on Article 25 of Regulation (EC) No 861/2007)

1. By 18 September 2010, the Member States shall communicate to the Commission:

(a) the names and contact details of the courts or authorities with competence to deal with applications for a declaration of enforceability in accordance with Article 27(1) and with appeals against decisions on such applications in accordance with Article 32(2);

(b) the redress procedures referred to in Article 33;

(c) the review procedure for the purposes of Article 19 and the names and contact details of the courts having jurisdiction;

(d) the names and contact details of their Central Authorities and, where appropriate, the extent of their functions, in accordance with Article 49(3);

(e) the names and contact details of the public bodies or other bodies and, where appropriate, the extent of their functions, in accordance with Article 51(3);

(f) the names and contact details of the authorities with competence in matters of enforcement for the purposes of Article 21;

(g) the languages accepted for translations of the documents referred to in Articles 20, 28 and 40;

(h) the languages accepted by their Central Authorities for communication with other Central Authorities referred to in Article 59.

The Member States shall apprise the Commission of any subsequent changes to this information.

2. The Commission shall publish the information communicated in accordance with paragraph 1 in the Official Journal of the European Union, with the exception of the addresses and other contact details of the courts and authorities referred to in points (a), (c) and (f).

3. The Commission shall make all information communicated in accordance with paragraph 1 publicly available through any other appropriate means, in particular through the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC.

Article 72

Amendments to the forms

Any amendment to the forms provided for in this Regulation shall be adopted in accordance with the advisory procedure referred to in Article 73(3).

Article 73

Committee

1. The Commission shall be assisted by the committee established by Article 70 of Regulation (EC) No 2201/2003.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

Article 74

Review clause

By five years from the date of application determined in the third subparagraph of Article 76 at the latest, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation, including an evaluation of the practical experiences relating to the cooperation between Central Authorities, in particular regarding those Authorities' access to the information held by public authorities and administrations, and an evaluation of the functioning of the procedure for recognition, declaration of enforceability and enforcement applicable to decisions given in a Member State not bound by the 2007 Hague Protocol. If necessary the report shall be accompanied by proposals for adaptation.

Article 75

Transitional provisions

1. This Regulation shall apply only to proceedings instituted, to court settlements approved or concluded, and to authentic instruments established after its date of application, subject to paragraphs 2 and 3.

2. Sections 2 and 3 of Chapter IV shall apply:

(a) to decisions given in the Member States before the date of application of this Regulation for which recognition and the declaration of enforceability are requested after that date;

(b) to decisions given after the date of application of this Regulation following proceedings begun before that date, in so far as those decisions fall within the scope of Regulation (EC) No 44/2001 for the purposes of recognition and enforcement.

Regulation (EC) No 44/2001 shall continue to apply to procedures for recognition and enforcement under way on the date of application of this Regulation.

The first and second subparagraphs shall apply *mutatis mutandis* to court settlements approved or concluded and to authentic instruments established in the Member States.

3. Chapter VII on cooperation between Central Authorities shall apply to requests and applications received by the Central Authority as from the date of application of this Regulation.

Article 76

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Articles 2(2), 47(3), 71, 72 and 73 shall apply from 18 September 2010.

Except for the provisions referred to in the second paragraph, this Regulation shall apply from 18 June 2011, subject to the 2007 Hague Protocol being applicable in the Community by that date. Failing that, this Regulation shall apply from the date of application of that Protocol in the Community.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 18 December 2008.

For the Council

The President

M. Barnier

[1] Opinion given on 13 December 2007 (not yet published in the Official Journal) and opinion given on 4 December 2008 following re-consultation (not yet published in the Official Journal).

[2] Opinion given following non-obligatory consultation (OJ C 185, 8.8.2006, p. 35).

[3] OJ L 12, 16.1.2001, p. 1.

[4] OJ L 174, 27.6.2001, p. 25.

[5] OJ L 174, 27.6.2001, p. 1.

[6] OJ L 26, 31.1.2003, p. 41.

[7] OJ L 338, 23.12.2003, p. 1.

[8] OJ L 143, 30.4.2004, p. 15.

[9] OJ L 324, 10.12.2007, p. 79.

[10] OJ C 12, 15.1.2001, p. 1.

[11] OJ C 53, 3.3.2005, p. 1.

[12] OJ C 198, 12.8.2005, p. 1.

[13] OJ L 281, 23.11.1995, p. 31.

[14] OJ C 242, 7.10.2006, p. 20.

[15] OJ L 124, 8.6.1971, p. 1.

[16] OJ L 184, 17.7.1999, p. 23.

[17] OJ L 299, 16.11.2005, p. 62.

[18] OJ L 339, 21.12.2007, p. 3.