



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION (EC)

**on jurisdiction and the recognition and enforcement of judgments in
matrimonial matters and in matters of parental responsibility for joint child**

(presented by the Commission)

EXPLANATORY MEMORANDUM

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1. GENERAL

1.1 Context

By Article 2 of the Treaty on European Union, the Member States set themselves 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 and litigants can assert their rights, enjoying facilities equivalent to those they enjoy in the courts of their own country.

To establish such an area the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market. Reinforcement of judicial cooperation in civil matters, which many believe has developed too slowly, represents a fundamental stage in the creation of a European judicial area which will bring tangible benefits for every Union citizen¹.

The sound operation of the internal market creates a need to recognise and enforce judgments in matrimonial matters and in matters of parental responsibility. To this end, rapid procedures and legal certainty are of the essence at a time when the increasing frequency of family relations between persons having different nationalities or residing in different Member States inevitably leads to a growth in litigation.

1.2 Negotiation of the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters

The need to draw up a Convention extending the 1968 Brussels Convention to matrimonial matters, initially excluded from its scope, was under consideration in the European Union for a long time.

At its meeting in Brussels on 10 and 11 December 1993 the European Council considered that the entry into force of the Treaty opened up new prospects for the European citizen, requiring additional work to be carried out in respect of certain aspects of the citizen's family life.

Following the meeting of the European Council on 10 and 11 December 1993, the Greek Presidency circulated a questionnaire to the Member States to identify the general outline of what the Convention should contain. In the light of the replies received, a synthesis was drawn up and used as a basis for the instruction to draw up a draft convention given by the European Council in June 1994. In the second half of 1994 the German Presidency presented a draft convention covering only divorce, legal separation and marriage annulment. The decision was subsequently taken to include parental responsibility for the children of both spouses within the scope of the convention.

¹ Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, point 16: OJ C 19, 23.1.1999.

On 28 May 1998, the Council adopted the Act drawing up the Convention signed the same day by the Representatives of all the Member States. The Act was accompanied by a series of Declarations².

2. PROPOSAL FOR COUNCIL REGULATION

As the Convention of 28 May 1998 was not ratified before the Amsterdam Treaty entered into force, its provisions are not applicable. The Convention was one of only two instruments relating to judicial cooperation adopted under the Maastricht Treaty. Its purpose is to remove difficulties encountered by the public in their daily life. Transposing it into a Community instrument will have the effect, among others, of ensuring that it enters into operation on the same early date, known to all.

2.1 Subject-matter

The purpose of this proposal for a Regulation is to uniformise the rules of private international law in the Member States relating to jurisdiction and to improve the recognition and enforcement of judgments in relation to dissolution of the marriage link. It replaces the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters, while ensuring continuity in the results of the negotiations. The Commission has incorporated the substance of the Convention in the proposal for a Regulation.

2.2 Legal basis

The subject-matter covered by the Convention is now within the ambit of Article 65 of the Treaty; the legal basis for this proposal for a Directive is Article 61(c) of that Treaty.

The form chosen for the instrument – a regulation – is warranted by the need to apply strictly defined and harmonised rules to jurisdiction and the recognition and enforcement of judgments, for otherwise the cross-border recognition of judgments will simply not work. These rules constitute a set of precise, unconditional provisions that are directly and uniformly applicable in a mandatory way and, by their very nature, require no action by the Member States to transpose them into national law.

The instrument falls to be adopted by the procedure of Article 67 of the Treaty, which provides that, during a transitional period of five years, the Council is to act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

The new Title IV of the EC Treaty, which applies to the matters covered by this proposal for a Directive, is not applicable in the United Kingdom and Ireland, unless they “opt in” in the manner provided by the Protocol annexed to the Treaties. At the Council meeting (Justice and Home Affairs) held on

² OJ C 221, 16.7.1998, p. 27.

12 March 1999, these two Member States announced their intention of being fully associated with Community activities in relation to judicial cooperation in civil matters. It will be for them to embark on the procedure of Article 3 of the Protocol in due course.

Title IV of the EC Treaty is likewise not applicable in Denmark, by virtue of the relevant Protocol. But Denmark may waive its opt-out at any time. Denmark has so far given no notice of its intention of embarking on the procedure of Article 3 of the Protocol in due course.

The proposal has been drafted on the basis of the current situation. If the Regulation were to be applicable in one or more of these Member States, the requisite adjustments will have to be made.

3. JUSTIFICATION FOR PROPOSAL IN TERMS OF PROPORTIONALITY AND SUBSIDIARITY PRINCIPLES

What are the objectives of the proposed measure in relation to the obligations imposed on the Community?

The objectives of the proposal are to improve and expedite the free movement of judgments in matrimonial matters and in matters of parental responsibility within the internal market. These objectives are part of the Union's objective of establishing an area of freedom, security and justice within which the free movement of persons is assured and litigants can assert their rights, enjoying facilities equivalent to those they enjoy in the courts of their own country. To establish such an area the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market.

Does the measure satisfy the criteria of subsidiarity?

Its objectives cannot be attained by the Member States acting alone and must therefore, by reason of the cross-border impact, be attained at Community level.

Are the means deployed at Community level proportional to the objectives?

The proposed instrument is confined to the minimum needed for the attainment of these objectives and does not exceed what is necessary for that purpose.

4. INDIVIDUAL PROVISIONS

4.1 General objective

Like the Convention it is to replace, the Regulation fills a gap in the application of the 1968 Brussels Convention, Article 1 of which expressly excludes matters relating to the law of persons; it takes over its essential structure and most of its fundamental principles.

The Regulation seeks to:

- (1) introduce uniform modern standards for jurisdiction on annulment, divorce and separation and to facilitate the rapid and automatic recognition among Member States of judgments on such matters given in the Member States;
- (2) lay down rules of jurisdiction concerning parental responsibility over the children of both spouses on the occasion of such proceedings and therefore simplifying the formalities governing the rapid and automatic recognition and enforcement of the relevant judgments.

The Regulation contains rules of direct international jurisdiction, i.e. rules which must be respected by the court of origin prior to a judgment in matrimonial proceedings. Such provisions do not, however, affect the distribution of territorial jurisdiction within each State or the situations of States the legal systems of which have not been unified.

The proposed Regulation, like the Convention, allows for specific schemes (Articles 38 and 42).

4.2 Continuity

The Commission has incorporated the substance of the Convention in the proposal for a Directive to ensure continuity in the results of the negotiations, but has omitted such provisions as would be incompatible with the nature of the proposed instrument and the new framework for judicial cooperation in civil matters post-Amsterdam.

Given the close correspondence between the provisions of the Convention and of the Regulation, the survey of the provisions of the Directive is modelled on the explanatory report to the Convention, approved by the Council on 28 May 1998³.

4.3 Adaptation

But the obvious differences between the two types of instrument warrant departures from the Convention in a number of respects:

- jurisdiction of the Court of Justice: unlike Article 45 of the Convention, the Regulation does not need to confer jurisdiction on the Court of Justice, given the provisions of Articles 220 and ff. of the EC Treaty, which will apply here subject to Article 68;
- the agreements to amplify or facilitate the application of the Regulation: for the sake of clarity, the corresponding provisions of the Convention, viz. Articles 38(3) and (4) (in part) and 41 have been adapted and regrouped in Article 41;

³ OJ C 221, 16.7.1998, p. 27.

- reservations: by their very nature Regulations are directly applicable in their entirety in all Member States and reservations are not in place. Article 46(1) must accordingly disappear, but the special schemes in Articles 38(2) (Nordic Agreement) and 42 (Concordats) are maintained. The Member States concerned by the declarations referred to in Article 46(2) and (3), namely Ireland and Italy, will have, if they see fit, to ask for the Declarations concerning them to be recorded in the Council Minutes if they participate in the Regulation;
- formal provisions: Articles 47 to 50 of the Convention would be out of place in a Community instrument. Articles 249 and 254 of the Treaty are fully applicable to the entry into force of the Regulation. The Commission, acting under Article 211 of the Treaty, will fully assume the role of proposing amendments if need be;
- Article 43, which permits the signing of bilateral agreements not to recognise judgments given against nationals of non-member countries on grounds of excess of jurisdiction would be out of place in a Community instrument. Such agreements by their very nature affect the Community rules of recognition and, after adoption of the Regulation, will be within the exclusive powers of the Community without the need for an express provision to that effect. Articles 16(1) and (2) and 43 of the Convention have accordingly been dropped in the Regulation;
- certain provisions of the Convention are left out of the Regulation to take account of the position of the United Kingdom, Ireland and Denmark:
 - Article 2 took account of the specific features of certain domestic legal orders by offering alternative criteria of nationality or of domicile in the sense in which the word is used in the United Kingdom and Ireland. In the absence of an opt-in, the reference has been omitted from Article 2 and from all other provisions referring to it;
 - Articles 19(2), 20(2) and 27(2), which contained specific provisions for the United Kingdom and Ireland;
 - in Articles 21, 26, 28 and 29, the references to courts and redress procedures in the United Kingdom, Ireland and Denmark;
 - Article 31(2), which contained specific provisions for Denmark.

4.4 Concordance table

1998 Convention	Proposed Regulation
Preamble	Deleted
	Recital 1 (objective)
	Recital 2 (subject-matter of proposition)
	Recital 3 (area)
	Recital 4 (unification)
	Recital 5 (subsidiarity and proportionality)
	Recital 6 (continuity)
	Recital 7 (scope)
	Recital 8 (procedures)
	Recital 9 (scope)
	Recital 10 (parental responsibility)
	Recital 11 (criteria for jurisdiction)
	Recital 12 (ditto, parental responsibility)
	Recital 13 (decision)
	Recital 14 (recognition/registration)
	Recital 15 (review of decision)
	Recital 16 (recognition for registration)
	Recital 17 (Nordic Agreement)
	Recital 18 (Concordats)
	Recital 19 (agreements between Member States)
	Recital 20 (amendment of list of courts and redress procedures)
	Recital 21 (review)
	Recital 22 (situation of UK/Irl)

Art. 1	Art. 1
Art.2	Art. 2 ⁴
Art.3	Art. 3
Art.4	Art. 4
Art.5	Art.5
Art.6	Art.6
Art.7	Art.7 ⁵
Art.8	Art.8 ⁶
Art.9	Art.9
Art.10	Art.10 ⁷
Art.11	Art.11
Art.12	Art.12
Art.13	Art.13
Art.14	Art.14
Art.15	Art.15
Art.16 (non-recognition and findings of fact)	Art.16 (no review of original court's jurisdiction) ⁸
Art.17	Art.17
Art.18	Art.18
Art.19	Art.19 ⁹
Art.20	Art.20 ¹⁰
Art.21	Art.21 ¹¹
Art.22	Art.22
Art.23	Art.23
Art.24	Art.24

⁴ Amended, see above point 4.3, sixth indent.

⁵ Amended, see above point 4.3, sixth indent.

⁶ Amended, see above point 4.3, sixth indent.

⁷ Amended, see commentary on Article 10.

⁸ Amended, see above point 4.3, fifth indent.

⁹ Amended, see above point 4.3, sixth indent.

¹⁰ Amended, see above point 4.3, sixth indent.

¹¹ Amended, see above point 4.3, sixth indent.

Art.25	Art.25
Art.26	Art.26 ¹²
Art.27	Art.27 ¹³
Art.28	Art.28 ¹⁴
Art.29	Art.29 ¹⁵
Art.30	Art.30
Art.31	Art.31 ¹⁶
Art.32	Art.32
Art.33	Art.33
Art.34	Art.34
Art.35	Art.35
Art.36	Art.36
Art.37	Art.37 ¹⁷
Art.38	Art.38 ¹⁸
Art.39	Art.39
Art.40	Art.40
Art.41	Art.41 ¹⁹
Art.42	Art.42
Art.43 Non-recognition and non-enforcement of judgments pursuant to Article 8	²⁰
Art.44 Member States with two or more legal systems	Art.43 Member States with two or more legal systems
Art.45 Court of Justice	²¹
Art.46 Declarations and reservations	²²

¹² Amended, see above point 4.3, sixth indent.
¹³ Amended, see above point 4.3, sixth indent.
¹⁴ Amended, see above point 4.3, sixth indent.
¹⁵ Amended, see above point 4.3, sixth indent.
¹⁶ Amended, see above point 4.3, sixth indent.
¹⁷ Amended, see commentary on Article 37.
¹⁸ Amended, see above point 4.3, second indent.
¹⁹ Amended, see above point 4.3, second indent.
²⁰ Deleted, see above point 4.3, fifth indent.
²¹ Deleted, see above point 4.3, first indent.

Art. 47 Adoption and entry into force	Art. 46 Entry into force ²³
Art. 48 Accession	Deleted ²⁴
Art. 49 Amendments	Art.44 Review and Art.45 Amendment of list of courts and redress procedures ²⁵
Art. 50 Depositary and publications	Deleted ²⁶

4.5 Individual Articles

Chapter I - Scope

Article 1

Article 1 defines both the type of proceedings to which the Regulation applies and their subject matter. In addition to civil judicial proceedings, the scope of the Regulation also includes other non-judicial proceedings occurring in matrimonial matters in certain States. Administrative procedures officially recognised in a Member State are therefore included. This excludes all merely religious proceedings. Paragraph 2 specifies that the reference to 'courts' includes all the authorities, judicial or otherwise, with jurisdiction in matrimonial matters.

The Regulation is confined to proceedings relating to the marriage link as such, i.e. annulment, divorce and legal separation. So the recognition of divorce and annulment rulings affects only the dissolution and annulment of the marriage link. Despite the fact that they may be interrelated, the Regulation does not affect issues such as, for example, fault of the spouses, property consequences of the marriage, the maintenance obligation or other possible accessory measures (such as the right to a name, etc.).

The question of parental responsibility had to be included in the scope of the Regulation, since in some States the legal system requires that the decision on matrimonial matters includes parental responsibility. The Regulation does not cover parental responsibility issues linked to the matrimonial proceedings when those take place. The concept of 'parental responsibility' has to be defined by the legal system of the Member State in which responsibility is under consideration. But it will be confined to the children of both spouses, in view of the fact that the context is that of measures relating to parental responsibility taken in close conjunction with divorce, separation or annulment proceedings.

The decision to restrict the scope of the Regulation as regards parental responsibility to judgments concerning the 'children of both spouses' will not, however, prevent Member States from deciding in future to apply jurisdictional criteria identical to

²² Deleted, see above point 4.3, third indent.

²³ See above point 4.3, fourth indent.

²⁴ See above point 4.3, fourth indent.

²⁵ See above point 4.3, fourth indent.

²⁶ See above point 4.3, fourth indent.

those laid down in Article 3 to 'children of the family' not included in the former category. The jurisdictional criteria applicable to such children will not be affected by the Regulation and it will therefore be internal law that will govern jurisdiction and the recognition and enforcement of judgments relating to such children.

Chapter II - Jurisdiction

Section 1 - General provisions

Article 2 - Divorce, judicial separation and annulment of marriage

The forums of jurisdiction adopted are designed to meet objective requirements, are in line with the interests of the parties, involve flexible rules to deal with mobility and are intended to meet individuals' needs.

Only objective grounds appear in Article 2 and they are subject to the examination as to jurisdiction provided for in Article 9. The grounds in Article 2 are therefore set out as alternatives and inclusion in either (a) or (b) is not to be interpreted as an order of precedence. The grounds set out in this Article are the only ones which can be used for the matter covered; the list is therefore exhaustive and closed.

The grounds for determining the jurisdiction of a State's courts to rule on matrimonial matters coming within the scope of the Regulation are based on the principle of a genuine connection between the person and a Member State. The grounds adopted are based on the principle of a genuine connection between the person and a Member State. The grounds in point (a) of paragraph 1 include the following:

- that international jurisdiction should lie with the courts of the place in which the spouses are habitually resident at the time of application;
- the jurisdiction of the courts of the State in which the spouses were last habitually resident, in so far as one of them still resides there;
- place in which the respondent is habitually resident;
- in the event of a joint application, the application may be made to the authorities of the place in which either spouse is habitually resident.

In addition to these criteria, there are two others applicable in exceptional cases, based on the forum actoris in conjunction with other conditions. Consequently, the following are also accepted:

- jurisdiction may lie with the courts of the Member State in which the applicant is habitually resident if he or she resided there for at least a year;
- jurisdiction enjoyed by the courts of the Member State in which the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made, provided that that State is the State of nationality.

Article 3 - Parental responsibility

Article 3 determines where and under what conditions authorities of the State, the judicial bodies of which have jurisdiction in matrimonial proceedings in accordance with the grounds set out in Article 2, have jurisdiction in a matter relating to parental responsibility over a child of both spouses. Article 3 thus comprises three paragraphs.

Article 3(1) establishes jurisdiction in a matter relating to parental responsibility over a child of both spouses where the child is habitually resident in the Member State whose authorities also exercise jurisdiction in the matrimonial proceedings. It needs to be made clear that in no case does that provision mean that it must be the same authorities in the State concerned who rule on the matrimonial issue and on the parental responsibility: the rule is intended only to establish that the authorities deciding on both matters are authorities of the same State.

Article 3(2) sets out the conditions under which the authorities of the Member State exercising jurisdiction on the divorce also have jurisdiction to decide on parental responsibility where the child is resident not in that State but in another Member State. Both of the following conditions have to be met: at least one of the spouses must have parental responsibility in relation to the child and the jurisdiction of the courts must have been accepted by the spouses and must be in the best interests of the child.

Article 3(3) determines when the jurisdiction conferred by paragraphs 1 and 2 will cease, listing three alternative events any of which will cause it to cease.

Subparagraph (a) deals with the basic assumption that the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final, that is to say that no further appeal or review of any kind is possible. Once that happens, and without prejudice to subparagraph (b), Article 3(1) and (2) no longer apply. Parental responsibility will then have to be determined either by national law or by the relevant international Conventions.

In addition to this well-known situation, and without prejudice to the residual rule in subparagraph (c), subparagraph (b) adds another situation where, on the date on which the judgment on the matrimonial proceedings becomes final, in the sense that such a judgment cannot be the subject of any sort of appeal, proceedings in relation to parental responsibility are still pending and provides that jurisdiction will not cease until a judgment in the responsibility proceedings has become final; in any event in this situation jurisdiction on parental responsibility may be exercised even if the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final.

Subparagraph (c) deals with the residual or concluding situation where the proceedings have come to an end for another reason (for example, the application for divorce is withdrawn or one of the spouses dies).

Article 4 - International child abduction

One of the risks, and perhaps the major risk, to which the child of both spouses is exposed when a marriage breaks down is being taken out of the country by one of the parents, with all the stability and protection problems which that entails. This Regulation on matrimonial matters, which involve questions of protection for the child of both spouses at times of crisis, may have a negative effect on the return of the child if appropriate steps are not taken. That is the purpose of Article 4 of the Regulation.

This Article establishes a special rule of jurisdiction to the effect that the jurisdiction conferred by Article 3 must be exercised within the limits established in the 1980 Hague Convention²⁷, and particularly Articles 3 and 16 thereof. That safeguards the lawful habitual residence as the ground of jurisdiction where, as a result of wrongful removal or retention, there has in fact been a change in habitual residence.

Article 5 - Counterclaim

This Article contains the classic rule on counterclaims, giving jurisdiction to the court in which the initial proceedings are pending should a counterclaim be made, provided the subject of both the initial proceedings and the counterclaim come within the scope of the Regulation. This provision has to be seen in conjunction with Article 11 in order to differentiate between the situations covered by each Article although in practice they may in many cases produce identical effects.

Article 6 - Conversion of legal separation into divorce

The conversion of legal separation into divorce is fairly frequent in some legal systems. In some States separation is an obligatory step prior to divorce and a stated period of time must usually elapse between the separation and the divorce. That distinction is, however, unknown in other legal systems.

In such instances, in accordance with the provisions of the Regulation it is possible to obtain the divorce either before the courts of the State having jurisdiction under Article 2 or before the courts of the State in which the separation was obtained, it being clearly understood that the fact that conversion is possible does not itself depend on the Regulation but is a possibility allowed under the internal law of the State in question.

Article 7 - Exclusive nature of jurisdiction under Articles 2 to 6

Only the criteria listed in Articles 2 to 6 may be used, as alternatives and without any order of precedence. However, this Article is intended to emphasise the exclusive nature of the grounds contained in earlier Articles for determining the jurisdiction of a State's authorities. It should be noted that the exclusive nature of the jurisdiction established refers only to matrimonial matters and questions of parental responsibility connected with such cases and does not therefore affect the rules of jurisdiction in matters of protection of minors where they are independent of the matrimonial

²⁷ Convention of the Hague of 25.10.1980 on the civil aspects of international child abduction.

proceedings. The exclusive nature should be understood without prejudice to the rules laid down in Articles 8(1) and 38(2).

Where the grounds under Article 2 are either the spouse's habitual residence or his or her nationality, an application may be made to a court only in accordance with the rules laid down in the earlier Articles.

Article 8 - Residual jurisdiction

Following the provision in Article 7 (exclusive nature of jurisdiction under Articles 2 to 6), this Article deals with arrangements existing in the national legal system which can be used only in the context of this Article. For some States, when one of the spouses resides in a non-member State and none of the jurisdictional criteria of the Regulation is met, jurisdiction should be determined in accordance with the law applicable in the Member State in question. To deal with that situation, the solution adopted is an assimilatory one whereby the applicant who is a 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. The prerequisite for applying that provision is that the respondent does not have his habitual residence in a Member State and is not a national of a Member State according to the criteria applicable to the case.

Such jurisdiction is termed 'residual' in view of its nature and the place it occupies in relation to the grounds of jurisdiction established by the Regulation.

Taking into account the grounds of jurisdiction laid down in Articles 2 to 6 of the Regulation, paragraph 1 sets the boundary between grounds of an exclusive nature established by the Regulation and the principle of applying internal rules of jurisdiction, thus demonstrating the geographical limits of the Regulation. The requirements set out in Article 8(2) must be examined in the following sense:

- (a) the applicant must be a national of a Member State habitually resident in another Member State. Hence the principle of assimilation between citizens of Member States for the purposes of paragraph 1;
- (b) the respondent must meet two conditions: on the one hand he or she must be habitually resident outside the Member States; on the other hand, he or she must not be a national of a Member State. Both conditions are concurrent, otherwise the situation would be one requiring application of one of the grounds in Article 2.

Section 2 - Examination as to jurisdiction and admissibility

Article 9 - Examination as to jurisdiction

Examination as to jurisdiction carried out automatically by the court of origin, without any need for any party to request it is of particular importance, bearing in mind the major differences between internal regulations in the Member States and the interplay of choice-of-law rules applicable.

Article 10 - Examination as to admissibility

The purpose of this provision is to guarantee the right of defence. It is not sufficient to examine jurisdiction alone, as provided for in the previous Article; it is also necessary to establish a similar rule for examining admissibility, involving staying 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. The intention is that court can thus satisfy itself that international jurisdiction is well founded and so avoid possible causes of refusal of recognition wherever possible.

The Directive on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters²⁸ will replace the provisions described in paragraph 2 one it is transposed by the Member States. Until then, the provisions of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters will apply if the document instituting the proceedings has had to be transmitted abroad in pursuance of the Directive.

Section 3 - *Lis pendens* and dependent actions

Article 11 - *Lis pendens* and dependent actions

The difference in rules governing matrimonial proceedings in the Member States raises the need for changes to the *lis pendens* rules in the Brussels Convention of 1968. In particular, certain Member States have no provision for annulment of marriage or for judicial separation. The difference in rules between the Member States also affects the very notion of *lis pendens*. The notion is more restricted in some States, requiring the same subject-matter, the same cause of action and the same parties, and broader in others, which require only the same cause of action and the same parties.

Paragraph 1 contains the traditional *lis pendens* rule, that is to say the *prior temporis* rule applicable to all proceedings covered by the Regulation, provided the subject-matter and cause of action are the same between the same parties. To avoid the risk of negative conflict of jurisdiction, it is stipulated that 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.

Paragraph 2 contains an innovation designed specifically to deal with the differences in legislation between the various Member States on the admissibility of proceedings for separation, divorce or marriage annulment. The provision in that paragraph therefore relates to what are called 'dependent actions' and could be termed 'false *lis pendens*'. It provides that even where the subject-matter and cause of action are not the same, two applications from the same parties generate a false *lis pendens* situation in which it is possible to apply the "*prior temporis*" rule. However, unlike

paragraph 1, which also applies to parental responsibility, paragraph 2 is deliberately confined to divorce, judicial separation and annulment of marriage.

Paragraph 3 sets out the consequences of the acceptance of jurisdiction by the court first seised. The provision contains a general rule, which is that the court second seised shall decline jurisdiction in favour of that court. It also contains a special rule whereby the party who brought the relevant action before the court second seised may, if he so wishes, bring that action before the court which claims jurisdiction because it was seised earlier.

The first words in the second paragraph of paragraph 3, 'in that case', must therefore be interpreted as meaning that only when the court second seised declines jurisdiction does the party have the possibility of bringing the action before the court having claimed jurisdiction because it was first seised.

Section 4 - Provisional and protective measures

Article 12

As regards the rule on provisional and protective measures, it must be observed that it is not subject to the jurisdictional rules of the Regulation because it refers to proceedings encountered within its scope and is based on national law jurisdiction. The provision makes it clear that such measures may be adopted in one State even though the court of another State has jurisdiction to hear the case. Moreover, this Article applies only to urgent cases.

As to the content of the provision, it should be noted that although provisional and protective measures may be adopted in connection with proceedings within the scope of the Regulation and are applicable only in urgent cases, they relate to both persons and to property and therefore touch on matters not covered by the Regulation, in the case of actions provided for in national rules. The measures to be adopted are very broad since they can affect both persons and assets in the State in which they are adopted, something which is very necessary in matrimonial disputes. The Regulation says nothing about the type of measures or about their connection with the matrimonial proceedings. These measures, accordingly, affect even matters that do not come within the scope of the Regulation. This is a rule which enshrines national law jurisdiction, thereby derogating from the rules laid down in the first part of the Regulation. The provision makes it clear that such measures may be adopted in one State even though the court of another State has jurisdiction to hear the case. The measures will, of course, cease to apply once the court having jurisdiction gives a judgment on the basis of one of the grounds of jurisdiction set out in the Regulation and that judgment is recognised (or enforced) under the Regulation. Other measures relating to matters excluded from the scope of the Regulation will continue to apply until appropriate judgments are given by a court with jurisdiction for, for example, marriage contracts.

The rule laid down in this Article is confined to establishing territorial effects in the State in which the measures are adopted.

Chapter III - Recognition and enforcement

Article 13 - Meaning of the term 'judgment'

The provisions in this Article aim to define what is meant by a 'judgment', for the purposes of recognition and enforcement. Thus, in addition to the general definition in paragraph 1, paragraph 2 makes it clear that the provisions of Chapter III shall also apply to the determination of the amount of costs and expenses of proceedings and any order concerning such costs and expenses. For the purposes of this Article account must be taken of the fact that it also covers judgments given by the bodies referred to in Article 1(2).

The word 'judgment' refers only to positive decisions, that is to say those that do grant a divorce, legal separation or marriage annulment.

As regards decisions on parental responsibility that come within the scope of the Regulation and are subject to the jurisdictional rules laid down in Article 3, some positive judgments may have negative effects with regard to parental responsibility for a person different from the person in whose favour the judgment was given. Clearly a judgment of that sort comes within the scope of the Regulation.

It is for national legislation to determine what is meant by measures relating 'to parental responsibility'.

In relation to costs, the provision in Article 38(1) needs to be taken into account.

To take account of differing national systems, paragraph 3 applies the same treatment to 'documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also settlements which have been approved by a court in the course of proceedings and are enforceable in the Member State in which they were concluded' as to the 'judgments' referred to in paragraph 1.

Section 1 - Recognition

Article 14 - Recognition

This Article establishes the principle of automatic recognition that does not imply any specific procedure of judgments to which Article 13 applies. The main effect of automatic recognition is that no procedures are required for the updating of civil status documents in another Member State, the existence of a final judgment given in another Member State being sufficient for the purpose. The recognition involved is therefore not judicial but is equivalent to recognition for the purposes of civil-status records.

That is an important change and it will be much appreciated by European citizens since that is the effect most frequently sought and, once the Regulation enters into force, updating civil-status records without the need for any additional decision will save time and money.

It should be noted that the judgment must be a final one against which no further appeal lies in the Member State of origin.

Article 15 - Grounds of non-recognition

Paragraph 1 sets out the grounds of non-recognition of judgments relating to a divorce, legal separation or marriage annulment, while paragraph 2 sets out the grounds of non-recognition of judgments relating to parental responsibility given on the occasion of matrimonial proceedings. The reason for the division is that, although both types of judgment are closely connected with the matrimonial proceedings, they may have been given by different authorities, depending on the internal distribution of jurisdiction within the State of origin. Another reason for the division may be that the objective of the matrimonial proceedings and the objective of the parental-responsibility proceedings differ in such a way that the grounds for non-recognition cannot be the same in both cases.

In line with normal practice, the first ground of non-recognition of judgments relating to a divorce, legal separation or marriage annulment is the fact that it is manifestly contrary to public policy in the State in which recognition is sought. But it needs to be borne in mind, too, that Article 18 of this Regulation prevents a judgment being reviewed as to its substance, Article 17 prohibits non-recognition of a foreign judgment 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 and Article 16(3) states that the test of public policy may not be applied to the rules relating to jurisdiction.

Paragraph 1(b) includes the ground of non-recognition where the judgment was given in default of appearance, if the respondent was not notified properly and in good time to defend himself. But the judgment must be recognised, as is the normal consequence of the proper operation of the Regulation, where the respondent has accepted it unequivocally, as for instance by remarrying.

Irreconcilability of the judgment with other judgments is dealt with in two separate provisions, points (c) and (d) of paragraph 1. There is no requirement for the objective and the ground to be identical.

Point (c) refers to irreconcilability with a judgment given in proceedings between the same parties in the Member State in which recognition is sought, regardless of whether the judgment in the latter State predates or postdates the judgment given in the State of origin.

Point (d) relates to cases in which the judgment, whether given in another Member State or in a non-member State between the same parties, meets two conditions:

- (a) it was given earlier, and
- (b) it fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Paragraph 2 covers the grounds of non-recognition of judgments relating to parental responsibility understood in the broad sense and therefore including not only court judgments but also decisions of whatever kind by whatever authority provided that they are closely connected with the divorce.

The provision on public policy, which also appears in paragraph 2(a) makes it impossible to refuse recognition purely because the judgment is manifestly contrary to public policy and requires that consideration be given to taking the best interests of the child into account as well. Default of appearance is dealt with in point (c) and the comments on point (b) of paragraph 1 also apply.

The grounds of non-recognition include (in point (d)) the fact that the child was not given an opportunity to be heard or that any person claiming that the judgment infringes his or her parental responsibility was not given an opportunity to be heard.

Finally, points (e) and (f) deal with non-recognition on grounds of irreconcilability with another judgment and lay down different rules, depending on whether the judgment is given in the Member State in which recognition is sought or in another Member State or in the non-member State of the habitual residence of the child. Solely with regard to parental responsibility, the judgment with which the judgment for which recognition is sought is irreconcilable must have been given later since earlier judgments will have been taken into account in the judgment connected with the divorce. The objective is to prevent the contradiction which could result, for instance, between a judgment given in another Member State regarding divorce and custody and a judgment given in the forum denying paternity.

Article 16 - Prohibition of review of jurisdiction of court of origin

The court in which recognition is sought may not review the jurisdiction of the court of origin nor may it apply the test of public policy to the rules relating to jurisdiction set out in Articles 2 to 8.

Article 17 - Differences in applicable law

This provision is to be seen in conjunction with Article 15(1)(a). It is designed to meet the concerns of States with more tolerant internal provisions on divorce who fear that the judgments given by their courts might not be recognised in another State because they are based on grounds unknown in the legislation of the State in which recognition is sought. The provision therefore limits indiscriminate use of public policy.

The 'law' of the Member State in which recognition is sought includes both internal substantive provisions and private international law provisions.

Article 18 - Non-review as to substance

This is the classic prohibition on review as to substance at the time of recognition or enforcement. It is a necessary rule in order not to subvert the meaning of the *exequatur* procedure, which does not mean allowing the court in the State in which recognition is sought to rule again on the ruling made by the court in the State of origin.

The object of the provision is to prevent the measures from being reviewed in the *exequatur* procedure, although it may in no case lead to their being set in stone.

The basic principle is that the Member State in which recognition is sought may not review the original judgment, which is the logical consequence of a double Convention. However, a change in circumstances may lead to a need for revision of the protective measures, as always happens when we are dealing with situations which, despite having a degree of permanence in time, may need modification, which would be the responsibility of the competent authority regarding parental responsibility.

Article 19 - Stay of proceedings

This provision must be seen in conjunction with Article 14(2), providing that automatic recognition and in particular the updating of civil-status records do not require any special procedure if the judgment of the State of origin is one against which no further appeal lies under the law of that Member State.

This Article allows the court of a Member State in which recognition is sought to stay the proceedings if an ordinary appeal against the judgment has been lodged. For stay of enforcement, see Article 27.

Section 2 - Enforcement

Article 20 - Enforceable judgments

This provision governs the need for *exequatur* if a judgment given in one Member State is to be enforced in another. All that is required is that the courts listed decide, on the application of any interested party, on the possibility of enforcement in the State in which recognition is sought, a possibility which can only be refused on the grounds listed in Articles 15 and 16. While, for matrimonial matters, recognition procedures are sufficient, in view of the limited scope of the Regulation and the fact that recognition includes amendment of civil-status records, rules for enforcement are necessary in relation to the exercise of parental responsibility for a child of both spouses.

'Interested party', for the purposes of the application, covers not only the spouses or children but must also include the public authority (Public Prosecutor's Office or similar authority) in States where that is possible.

The purpose of this provision is solely to make it possible to enforce a judgment given in another State in relation to parental responsibility since the procedure for enforcement in the strict sense is governed by each State's internal law. Thus, once *exequatur* has been obtained in a State, that State's internal law will govern the practical measures for enforcement.

The various provisions which follow are intended to establish a procedure common to all the Member States for obtaining *exequatur* which will replace the relevant provisions in internal legislation or in other Conventions.

Article 21 - Jurisdiction of local courts

This provision is divided into three paragraphs: the first governs the type of authority with international jurisdiction for enforcement and the other two refer to the court having local jurisdiction within that State. These provisions are applicable to recognition, via Article 14(3), as well as to enforcement. The intention is to make matters easier for the European citizen, who will know from the beginning which court is to be seised.

Paragraph 1 lists the authorities having international jurisdiction. The solution is to distinguish between two separate scenarios, depending on whether the application is for enforcement or for recognition.

Thus, what constitutes the general rule is stated first, i.e. the rule concerning an application for *exequatur*. Paragraph 2(a) provides that jurisdiction will lie with the local court of the place of the habitual residence of the person against whom enforcement is sought or of the place of habitual residence of any child to whom the application relates. It was noted, however, that there could be situations in which neither the person against whom enforcement was sought nor the child was habitually resident in a Member State, and point (b) provides that in such cases jurisdiction lies with the local court of the place of enforcement.

In the second scenario, where there was action to have a judgment given in another Member State recognised or not recognised, paragraph 3 leaves the matter to the internal legislation of the State in which the application is made.

Article 22 - Procedure for enforcement

This Article and those following it govern the various aspects of the procedure to be followed for enforcement of judgments.

The arrangements are based on a procedure at the request of a party which will be a Community one, that is to say that the same procedure, which will be fast and simple, will apply in all Member States, which is an undoubted advantage. This provision deals with the action to be taken by the applicant.

In the first place, it provides that the detailed rules for submitting the application will be determined in accordance with the internal law of the State in which enforcement is sought (paragraph 1). This means that national legislation must be consulted for the information to appear in the application, the number of copies to be submitted to the court, the authority with which they are to be deposited, the language in which they are to be drawn up and also whether or not a lawyer or any other representative or agent needs to be involved.

Paragraph 2 also requires that the applicant give an address for service or else appoint a representative *ad litem* within the area of jurisdiction of the court applied to. That provision is of interest both as to the notice of the judgment to the applicant (Article 24) and the appeal against the judgment granting *exequatur*, which will be contradictory (Article 26). Finally, paragraph 3 requires that the documents referred to in Articles 33 and 34 be attached to the application.

Article 23 - Decision of the Court

Paragraph 1 establishes the unilateral, *ex parte*, nature of the *exequatur* procedure, in which the person against whom enforcement is sought will not be entitled to make any submissions on the application, even in exceptional cases, since such submissions would systematically change the procedure from a unilateral into a contradictory one. The rights of defence are respected by allowing the person against whom enforcement is sought to appeal against the decision granting enforcement.

The court may rule only on enforcement and may not at this stage review custody measures: Article 39 would prevent that. The court must give its decision 'without delay' but no time limit is set since such a limit does not exist in judicial practice and no sanction would be possible if it were not met. Since the general rule is the grant of *exequatur* on the basis of the mutual confidence created by the assumption that all courts within the Community will have applied the Regulation correctly, the procedure in this instance remains unilateral and rapid given that there is provision for appeal in the later Articles of the Regulation in cases in which there are problems. This provision stipulates that the application may be refused only for one of the reasons specified in Article 15 and that under no circumstances may a foreign judgment be reviewed as to its substance (paragraph 3).

Article 24 - Notice of the decision

This Article provides that the application will be notified in accordance with the law of the State in which enforcement is sought. It illustrates the importance of an address for service or appointment of a representative *ad litem* (see Article 22) and has implications for the lodging of appeals referred to in the Articles that follow.

Article 25 - Appeal against the enforcement decision

This Article provides that if enforcement is authorised, the person against whom enforcement is sought may appeal against the decision.

Since normal operation of the Regulation leads to the grant of *exequatur*, it is logical that the time allowed for appeal should be brief, just one month (paragraph 1). If the person against whom enforcement is sought is resident in a Member State other than that in which the decision authorising enforcement was given, the time for appealing is to be two months from the date of service, either on him or at his residence. No extension of time may be granted on account of distance.

Article 26 - Courts of appeal and means of contest

Paragraph 1 lists the courts of appeal against a judgment authorising enforcement. In this case, the procedure in contradictory matters will be followed, unlike the application and original judgment for which the procedure is unilateral. It should be emphasised that the sole requirement established by the Regulation is that the appeal procedure be contradictory, in contrast to the original judgment which is decided by unilateral procedure. This topic needs to be taken into account particularly with regard to the language differences, which must not, under any circumstances, equate 'contradictory' with 'contentious'. In some States the term means contentious as well as contradictory, whereas such is not the case in others. Hence, although the procedure must always be contradictory, whether or not it is also contentious will

depend on internal law, in the same way as the law of the forum determines the procedure (*lex fori regit processum*).

The only means of contesting a judgment given on appeal is in cassation or by any other top-level appeal procedure in States which do not have a cassation system. The objective of limiting the avenues of appeal in this way is to avoid unnecessary appeals which could be unfounded delaying manoeuvres. The ultimate purpose is to safeguard the objective of the Regulation which is to facilitate free movement of judgments.

Article 27 - Stay of proceedings

In some cases it may happen that the judgment in the court of origin is enforceable even though an appeal has been initiated or the time limit for appeal has not come to an end. In such circumstances, it is desirable to avoid complicating the situation which would result from the grant of *exequatur* of the judgment. This provision therefore provides that the court with which the appeal is lodged may stay the proceedings if an ordinary appeal has been lodged against the decision in the Member State of origin or if the time for such appeal has not yet expired, but is not obliged to do so. The stay of proceedings can only take place on the application of the appellant.

For stay of recognition, see Article 19.

Article 28 - Court of appeal against a judgment refusing enforcement

In parallel with the establishment of an appeal procedure for cases in which enforcement is granted, there is also a possibility of appeal by the applicant when enforcement is refused, and paragraph 1 lists the courts of appeal having jurisdiction. However, unlike the first case, there is no time limit for this appeal. The reason is that, if the applicant's application has been rejected, he has the right to appeal when he thinks fit and when, for example, he is able to assemble the relevant documentation. Once again, the objective of the Regulation denotes the difference in the procedure to be followed: the normal consequence is for the judgment to be enforced and, accordingly, after the first decision, taken rapidly by the unilateral procedure, every opportunity must be given for this aim to be achieved.

The fact that the procedure is contradictory and the need to protect the rights of the party against whom enforcement was requested have led to a provision in paragraph 2 that the person against whom enforcement is sought be summoned to appear and, if he fails to appear, the provisions of Article 10 (examination as to jurisdiction) will apply, whether he resides in a Member State or in a non-member State.

Article 29 - Contest of the appeal decision

As in Article 26(2), only the limited procedures indicated are available to contest the appeal decision.

Article 30 - Partial enforcement

This Article deals with two separate issues.

Paragraph 1 deals with the case where a judgment has been given in respect of several matters and enforcement cannot be authorised for all of them; in that case the court will authorise enforcement for one or more of them.

The second hypothesis, in paragraph 2, is that the applicant may request only partial enforcement of a judgment.

Article 31 - Legal aid

If the applicant has benefited in the State of origin from complete or partial legal aid or exemption from costs or expenses he will also be entitled, in the State in which enforcement is sought, to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the State addressed.

Article 32 - Bond or deposit

This Article repeats the now well-established principle that no security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition or enforcement of a judgment given in another Member State (*cautio judicatum solvi*).

Section 3 - Common provisions

Article 33 - Documents

Paragraph 1 refers to the documents which must be produced in any event by a party seeking or contesting recognition or applying for enforcement of a judgment. All enforcement treaties require a copy of the judgment which satisfies the conditions necessary to establish its authenticity in accordance with the *locus regit actum* rule, that is to say the law of the place in which the judgment was given. Where appropriate, a document must also be produced showing that the applicant is in receipt of legal aid in the State of origin.

Paragraph 2 refers to the documents which must be produced in the case of a judgment given in default. In cases of non-recognition, proof must be provided in the required form that the written application or a similar document was notified or, in the case of a judgment in divorce, legal separation or marriage annulment proceedings, that the respondent has unequivocally accepted the content of the judgment.

Paragraph 2(b) is worded in such a way as to be consistent with Article 15(1)(b) and (2)(c).

Finally, paragraph 3 states the document to be produced, in addition to those provided for in paragraphs 1 and 2, for updating the civil-status records. Given that the civil-status records authenticate the data registered in them, it is also necessary to produce a document indicating that the judgment is no longer subject to a further appeal under the law of the Member State of origin.

Article 34 - Other documents

In addition to the documents required under Article 33, the party applying for enforcement must also produce documents which establish that, according to the law of the Member State of origin, the judgment is enforceable and has been served.

Article 35 - Absence of documents

In order to facilitate attainment of its objective, this Article allows the court to specify a time for the production of documents, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production (e.g. where documents have been destroyed). This possibility is allowed only for documents specified in Article 33(1)(b) and (2) and does not apply to those in paragraph 3 for updating the civil-status records. A copy of the judgment in question is therefore always necessary.

This provision must be seen in conjunction with the provision in Article 22 regarding the consequences if the application for *exequatur* is not supported by the documents required in earlier Articles. If, despite the mechanisms put in place, the documents presented were insufficient and the court did not succeed in obtaining the information desired, it could declare the application inadmissible.

In line with the simplification aimed at in the Regulation, a translation will be necessary only if the court so requires. In addition, the translation can be certified by a person qualified to do so in any of the Member States and not necessarily in the State of origin or the State in which enforcement is sought.

Article 36 - Legalisation and similar formalities

No legalisation or other similar formality is required for the documents referred to in Articles 33, 34 and 35(2) or for a document appointing a representative *ad litem* in the proceedings for obtaining *exequatur*.

Chapter IV - Transitional provisions

Article 37

The general rule is that the Regulation applies only to legal proceedings instituted, to documents formally drawn up or registered as authentic instruments and to settlements which have been approved by a court in the course of proceedings after its entry into force.

As the instrument is now a Regulation, that will be the same date in the Member State of origin and the Member State addressed.

There is, however, provision for the possibility of allowing a judgment to benefit from the system in the Regulation, even if the action was brought before its entry into force, if jurisdiction was founded on rules which accorded with those provided for either in Chapter II 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.

The provision that the rules of jurisdiction applied 'accorded with those provided for in Chapter II' means that the court in the State addressed will have to examine the jurisdiction of the court of origin, which could not have been examined at the request of the respondent in the State of origin on the basis of the Regulation.

Article 37 will not therefore apply where proceedings were instituted and the judgment given before the date of entry into force of the Regulation, even if the rules of jurisdiction applied by the court of origin are in accordance with Chapter II. Where recognition of such a judgment was covered by a bilateral or multilateral convention, the situation is governed by Article 40(2).

Chapter V - General provisions

Article 38 - Relation with other conventions

Paragraph 1 contains the general rule that this Regulation shall, for the Member States which are parties to it, supersede bilateral or multilateral conventions existing between the Member States. It does not list the Conventions which exist. The reason is that in relation to other conventions this Regulation is the basic instrument on the matters covered by it (Article 1). Conventions which apply in part to these matters are dealt with in Articles 39 and 40.

Finland and Sweden are party to the Agreement of 6 February 1931 between Denmark, Finland, Iceland, Norway and Sweden which contains rules of international private law concerning marriage, adoption and custody. That Agreement was amended most recently by an Agreement adopted in Stockholm in 1973. As a result of the political agreement reached in December 1997 within the European Union, Article 38(2) refers to this particular situation, enabling the Nordic Member States to continue applying the Nordic Agreement in their mutual relations. However, the conditions laid down in that Article must be fulfilled.

Under Article 38(2)(a) of the Regulation, each one of the Nordic Member States will have the right to declare that the 1931 Nordic Agreement will apply in whole or in part in their mutual relations in place of the rules contained in this Regulation.

Paragraph 2(b) affirms the principle of non-discrimination on grounds of nationality on a declaratory basis, as Article 6 of the EC Treaty applies in all matters governed by the Treaty and therefore by the Regulation. It will be monitored by the Court of Justice.

The Commission considers that Member States wishing to exercise this right should reiterate the Declaration annexed to the Regulation, which is reproduced in a footnote²⁹.

Paragraph (c) is included to guarantee that the rules governing jurisdiction included in any future agreement between the Nordic Member States concerning the matters included in the Regulation comply with this Regulation.

A judgment handed down in a Nordic Member State pursuant to the Nordic Agreement shall also be recognised and enforced in the other Member States in accordance with the rules contained in Chapter III of this Regulation, provided that the grounds of jurisdiction used by the Nordic court correspond to those laid down in Chapter II.

Member States are to notify the Commission of such agreements and of any changes and denunciations.

The utility of preserving this exception will be considered in the report to be presented by the Commission (Article 45).

Article 39 - Relation with certain multilateral conventions

This provision contains the general rule that this Regulation takes precedence over other international conventions to which the Member States are party in so far as they concern matters governed by this Regulation.

The text adopted means that this Regulation takes precedence and that it must therefore be compulsory to apply it in place of such other agreements.

It should be pointed out that not all the Member States are party to all the conventions mentioned in this Article and that their inclusion in the list does not mean that the Member States are recommended to accede to them. The provision is simply a practical statement of the relationship between this Regulation and other Treaty texts.

²⁹ Declaration, to be annexed to the Convention by any of the Nordic Member States entitled to make a Declaration within the meaning of Article 38(2).
The application of 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, is in line with Article K.7 of the Treaty in that the Convention does not prevent the establishment of closer cooperation between two or more Member States in so far as such cooperation does not conflict with, or impede, that provided for in the Convention.
They undertake no longer to apply Article 7(2) of the 1931 Nordic Agreement in their mutual relations and to review at an early date the rules of jurisdiction applicable in the framework of that Agreement in the light of the principle set out in Article 38(2)(b) of the Convention.
The grounds for refusal used in the context of the uniform laws are in practice applied in a manner consistent with those laid down in Title III of this Convention.

Article 40 - Extent of effects

This Article lays down a rule for the application of the international conventions referred to in Articles 38(1) and 39 both in relation to matters to which this Regulation does not apply (paragraph 1) and in respect of judgments given before the entry into force of this Regulation (paragraph 2) but does not provide for any transitional rule on the latter issue, without prejudice to what is laid down in Article 37, allowing recognition under this Regulation for judgments given by virtue of a ground of jurisdiction recognised in the Regulation.

Article 41 - Agreements between Member States

Article 41 combines the provisions of Articles 38(3) and 41 of the Convention. Paragraph 1 provides that two or more Member States may conclude conventions to amplify this Regulation or facilitate its application. This provision for practical application measures will be valid so long as Community measures have not been taken to that end.

The exercise of this right is subject to Commission monitoring: a copy of draft agreements must be notified to it. It must also be notified of denunciations and changes. By their nature, agreements to amplify the Regulation cannot derogate from Chapters II and III.

Article 42 - Treaties with the Holy See

This Article deals with agreements with non-member countries, in practice the exclusive jurisdiction of ecclesiastical courts to annul canonical marriages. Portugal would in fact violate the international obligations it assumed under the Concordat if it applied the rules in Articles 2 *et seq.* recognising the jurisdiction of civil courts to annul Portuguese canonical marriages.

The safeguarding of the Concordat, in accordance with Article 42(1), thus confers on Portugal the option of not recognising such jurisdiction nor any judgments to annul the marriages referred to which these courts might hand down.

Secondly, in accordance with paragraph 2, annulment judgments pronounced pursuant to the rules of the Concordat or the Portuguese Civil Code are recognised in the Member States once they have been incorporated into the Portuguese legal system.

The situation in Portugal is different from that in Spain and Italy where the ecclesiastical courts' jurisdiction to declare annulment is not exclusive but concurrent and there is a particular procedure for recognition in the civil system. For that reason, a separate paragraph refers to those Concordats and stipulates that judgments given under them will enjoy the same system of recognition, although there is no exclusive jurisdiction.

In Spain there is an Agreement with the Holy See on legal affairs of 3 January 1979. Separation and divorce are matters for the civil courts. The ecclesiastical courts' exclusive jurisdiction in relation to annulment disappeared after the entry into force of the 1978 Constitution; the civil courts and the ecclesiastical courts now have alternative jurisdiction and there is provision for recognition of civil effects. In such

cases, in addition to the 1979 Agreement mentioned above, account needs to be taken of Article 80 of the Civil Code and the second additional Provision to Law 30/1981 of 7 July 1981, which amends the rules on matrimony in the Civil Code and determines the procedure to be followed in annulment, separation and divorce cases. The consequences of these provisions are as follows:

- (1) canonical decisions and judgments only produce civil effects if both parties consent and neither contests;
- (2) there having been no contest, the ordinary court determines whether the canonical judgment has civil effects or not and, if it does, proceeds to enforce it in accordance with the Civil Code provisions on annulment and dissolution cases;
- (3) annulment cases in canon law and in civil law do not coincide. For that reason, there is discussion as to whether canonical judgments 'which accord with State law' can be considered effective in the civil order;
- (4) Article 80 of the Civil Code refers to Article 954 of the Code of Civil Procedure, regarding the conditions for enforcing foreign judgments. Such reference is relevant to default of appearance by the respondent. The essential issue is whether or not one of the parties has opposed the application to give the canonical judgments and decisions on marriage annulment civil effect.

The Agreement of 18 February 1984 between the Italian Republic and the Holy See amended the 'Concordato Lateranense' of 11 February 1929. Article 8(2) provides that marriage annulment judgments by the ecclesiastical courts which are enforceable will produce effects in Italy by decision of the 'Corte d'appello' having jurisdiction, provided that:

- (a) the ecclesiastical court had jurisdiction over the case in that it was a marriage celebrated in accordance with the requirements laid down by that Article;
- (b) the procedure before the ecclesiastical courts afforded the parties the right to appear and to be defended, in accordance with the fundamental principles of the Italian legal system;
- (c) the conditions required by Italian legislation for declaring foreign judgments effective have been met. Although Law 218 of 31 May 1995 on the reform of the Italian system of private international law (Article 73) derogated from Articles 796 *et seq.* of the 'Codice di Procedura Civile' (Code of Civil Procedure), in practice it is understood that, pursuant to Article 2 thereof (international agreements), those Articles remain in force for recognition of ecclesiastical judgments on annulment of marriages.

Article 43 - Member States with two or more legal systems

This provision takes direct account of cases in which there are two or more systems of law or sets of rules from the point of view of court procedure. However, the only grounds included are the ones relating to matters included in this Regulation.

Chapter VI - Final provisions

Article 44 - Review

This is a new provision, departing from the Convention. It will be for the Commission, acting in accordance with Article 211 of the EC Treaty, to monitor the application of the Regulation. After five years the Commission will, if the need arises, produce proposals for amendments in the light of a report which it makes on the application of the Regulation, and in particular on special arrangements (Articles 38 and 42), and application agreements between the Member States pursuant to Article 41.

Article 45 - Amendment of list of courts and redress procedures

Amendment of the list of courts and redress procedures constitutes a measure implementing the Regulation. Given the manner in which the corresponding provision of the Convention was framed, the Council reserved the right to exercise implementing powers itself direct, contrary to the general rule in Article 202 of the EC Treaty. The Commission is of course ready to receive notification of any amendments and to arrange for their publication in *the Official Journal of the European Communities*.

Article 46 - Entry into force

This is a new provision, departing from the Convention.

It states when the Regulation will enter into force, in accordance with Article 254 of the Treaty.

Proposal for a

COUNCIL REGULATION (EC)

on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission¹,

Having regard to the Opinion of the European Parliament²,

Having regard to the Opinion of the Economic and Social Committee³,

- (1) Whereas the Member States have set themselves 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; whereas to establish such an area the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market;
- (2) Whereas the sound operation of the internal market entails the need to improve and expedite the free movement of judgments in civil matters;
- (3) Whereas this is a subject now falling within the ambit of Article 65 of the Treaty;
- (4) Whereas differences between national rules governing jurisdiction and enforcement hamper the free movement of persons and the sound operation of the internal market; whereas there are accordingly grounds for enacting provisions to unify the rules of conflict of jurisdiction in matrimonial matters and in matters of parental responsibility so as to simplify the formalities for rapid and automatic recognition and enforcement of judgments;
- (5) Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Regulation

¹ OJ C
² OJ C
³ OJ C

confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose;

- (6) Whereas the Council, by Act dated 28 May 1998⁴, concluded a Convention on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and recommended it for adoption by the Member States in accordance with their respective constitutional requirements; whereas continuity in the results of the negotiations for conclusion of the Convention should be ensured; whereas the content of this Regulation is substantially taken over from it;
- (7) Whereas, in order to attain the objective of free movement of judgments in matrimonial matters and in matters of parental responsibility within the Community, it is necessary and appropriate that the cross-border recognition of jurisdiction and judgments in relation to the dissolution of matrimonial ties and to responsibility for the children of both spouses be governed by a mandatory, and directly applicable, Community legal instrument;
- (8) Whereas the scope of this Regulation should include civil proceedings and other non-judicial proceedings occurring in matrimonial matters in certain States, and excludes purely religious procedures; whereas it should therefore be provided that the reference to 'courts' includes all the authorities, judicial or otherwise, with jurisdiction in matrimonial matters;
- (9) Whereas this Regulation should be confined to proceedings relating to the dissolution or annulment of matrimonial ties as such; whereas the recognition of divorce and annulment rulings affects only the dissolution of matrimonial ties; whereas, despite the fact that they may be interrelated, the Regulation does not affect issues such as the fault of the spouses, property consequences of the marriage, the maintenance obligation or any other ancillary measures;
- (10) Whereas the Regulation covers parental responsibility issues that are closely linked to proceedings for divorce, separation or annulment; whereas the concept of 'parental responsibility' has to be defined by the legal system of the Member State in which responsibility is under consideration, but it will apply only to children of both spouses;
- (11) Whereas the grounds for jurisdiction accepted in this Regulation are based on the rule that there must be a real link between the party concerned and the Member State exercising jurisdiction; whereas the decision to include certain grounds corresponds to the fact that they exist in different national legal systems and are accepted by the other Member States;
- (12) Whereas one of the risks to be considered in relation to the protection of the children of both spouses in a marital crisis is that one of the parents will move the child internationally; whereas the lawful habitual residence is accordingly maintained as the criterion for jurisdiction in cases where, because the child has been moved or has not been returned without lawful reason, there has been a *de facto* change in the habitual residence;

⁴ OJ C 221, 16.7.1998, p. 1.

- (13) Whereas the word 'judgment' refers only to positive decisions, that is to say those that lead to divorce, legal separation or marriage annulment; whereas those documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State are treated as equivalent to such 'judgments';
- (14) Whereas the recognition and enforcement of judgments given in a Member State are based on the principle of mutual trust; whereas the grounds for non-recognition are kept to the minimum required; whereas, nonetheless, means of redress should be available in order to ensure observance of public policy in the State addressed and to safeguard the rights of the defence and those of the parties, so as to withhold recognition of irreconcilable judgments;
- (15) Whereas the State addressed should review neither the jurisdiction of the State of origin nor the findings of fact;
- (16) Whereas no procedures may be required for the updating of civil-status documents in one Member State where a final judgment has been given in another Member State;
- (17) Whereas the Convention concluded by the Nordic States in 1931 should be capable of application within the limits set by this Regulation;
- (18) Whereas Spain, Italy and Portugal had concluded Concordats before these matters were brought within the ambit of the Treaty; whereas it is necessary to ensure that these States do not breach their international commitments in relation to the Holy See;
- (19) Whereas the Member States should remain free to agree among themselves on practical measures for the application of the Regulation so long as no Community measures have been taken to that end;
- (20) Whereas the Council reserves the power to decide on changes to the list of courts enjoying jurisdiction, at the request of the relevant Member State;
- (21) Whereas, no later than five years after the date of the entry into force of this Regulation, the Commission must review its application and propose such amendments as may appear necessary;
- (22) Whereas, in accordance with Articles 1 and 2 of the Protocols on the position of the United Kingdom and Ireland and on the position of Denmark, those Member States are not participating in the adoption of this Regulation; whereas this Regulation is accordingly not binding on the United Kingdom, Ireland or Denmark, nor is it applicable in their regard,

HAS ADOPTED THIS REGULATION:

Chapter I - SCOPE

Article 1

1. This Regulation shall apply to:
 - (a) civil proceedings relating to divorce, legal separation or marriage annulment;
 - (b) civil proceedings relating to parental responsibility for the children of both spouses on the occasion of the matrimonial proceedings referred to in (a).
2. Other proceedings officially recognised in a Member State shall be regarded as equivalent to judicial proceedings. The term 'court' shall cover all the authorities with jurisdiction in these matters in the Member States.

Chapter II - JURISDICTION

SECTION 1 - GENERAL PROVISIONS

Article 2

Divorce, legal separation and marriage annulment

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, in so far 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 a national of the Member State in question;

- (b) of nationality of both spouses.

Article 3

Parental responsibility

1. The Courts of a Member State exercising jurisdiction by virtue of Article 2 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in a matter relating to parental responsibility over a child of both spouses where the child is habitually resident in that Member State.
2. Where the child is not habitually resident in the Member State referred to in paragraph 1, the courts of that State shall have jurisdiction in such a matter if the child is habitually resident in one of the Member States and:
 - (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 by the spouses and is in the best interests of the child.
3. The jurisdiction conferred by paragraphs 1 and 2 shall cease as soon as:
 - (a) the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final, or
 - (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, or
 - (c) the proceedings referred to in (a) and (b) have come to an end for another reason.

Article 4

Child abduction

The courts with jurisdiction within the meaning of Article 3 shall exercise their jurisdiction in conformity with the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, and in particular Articles 3 and 16 thereof.

Article 5

Counterclaim

The court in which proceedings are pending on the basis of Articles 2 to 4 shall also have jurisdiction to examine a counterclaim, in so far as the latter comes within the scope of this Regulation.

Article 6

Conversion of legal separation into divorce

Without prejudice to Article 2, a court of a Member State which 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 7

Exclusive nature of jurisdiction under Articles 2 to 6

A spouse who:

- (a) is habitually resident in the territory of a Member State; or
- (b) is a national of a Member State,

may be sued in another Member State only in accordance with Articles 2 to 6.

Article 8

Residual jurisdiction

1. Where no court of a Member State has jurisdiction pursuant to Articles 2 to 6, 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 a national of a Member State, 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 - EXAMINATION AS TO JURISDICTION
AND ADMISSIBILITY**

Article 9

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 10

Examination as to admissibility

1. Where a respondent 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. The national provisions transposing Council Directive .../EC of 19.. on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters⁵ shall apply in lieu of the provisions of paragraph 1 if the document commencing the action has had to be transmitted abroad pursuant to that Directive.

Until the national provisions transposing that Directive enter into force, the provisions of the Convention of the Hague of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document commencing the action has had to be transmitted abroad pursuant to that Convention.

SECTION 3 - LIS PENDENS AND DEPENDENT ACTIONS

Article 11

1. Where proceedings involving the same cause of action and 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 involving the same cause of action and 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.
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.

⁵ OJL

SECTION 4 - PROVISIONAL AND PROTECTIVE MEASURES

Article 12

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.

Chapter III - RECOGNITION AND ENFORCEMENT

Article 13

Meaning of "judgment"

1. For the purposes of this Regulation, 'judgment' means a divorce, legal separation or marriage annulment pronounced by a court of a Member State, as well as a judgment relating to the parental responsibility of the spouses given on the occasion of such matrimonial proceedings, whatever the judgment may be called, including a decree, order or decision.
2. The provisions of this Chapter 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.
3. For the purposes of implementing this Regulation, documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also settlements which have been approved by a court in the course of proceedings and are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as the judgments referred to in paragraph 1.

SECTION 1 - RECOGNITION

Article 14

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 up-dating 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. Any interested party may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be or not be recognised.
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 15

Grounds of non-recognition

1. 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 duly served with the document which instituted the proceedings or with an equivalent document in sufficient time 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;
 - (d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-member country 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.
2. A judgment relating to the parental responsibility of the spouses given on the occasion of matrimonial proceedings as referred to in Article 13 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) if the person in default was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time 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; or
- (f) if it is irreconcilable with a later judgment relating to parental responsibility given in another Member State or in the non-member country 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.

Article 16

Prohibition of review of jurisdiction of 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 Article 15(1)(a) and (2)(a) may not be applied to the rules relating to jurisdiction set out in Articles 2 to 8.

Article 17

Differences in applicable law

The recognition of a judgment relating to a divorce, legal separation or a marriage annulment 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 18

Non-review as to substance

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

Article 19

Stay of proceedings

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.

SECTION 2 - ENFORCEMENT

Article 20

Enforceable judgments

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

Article 21

Jurisdiction of local courts

1. The application shall be submitted to the local courts having jurisdiction, as follows:
 - in Belgium, the ‘Tribunal de première instance’ or the ‘Rechtbank van eerste aanleg’ or the ‘erstinstanzliche Gericht’,
 - in the Federal Republic of Germany, the ‘Familiengericht’,
 - in Greece, the ‘Μονομελές Πρωτοδικείο’,
 - in Spain, the ‘Juzgado de Primera Instancia’,
 - in France, the presiding Judge of the ‘Tribunal de grande instance’,
 - in Italy, the ‘Corte d'appello’,
 - in Luxembourg, the presiding Judge of the ‘Tribunal d'arrondissement’,
 - in the Netherlands, the presiding Judge of the ‘arrondissementsrechtbank’,
 - in Austria, the ‘Bezirksgericht’,
 - in Portugal, the ‘Tribunal de Comarca’ or ‘Tribunal de Família’,
 - in Finland, the ‘käräjäoikeus/tingsrätt’,
 - in Sweden, the ‘Svea hovrätt’.
2. The jurisdiction of local courts in relation to an application for enforcement shall be determined by reference to the place of the habitual residence of the person against whom enforcement is sought or by reference to the place of 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 where enforcement is sought, the jurisdiction of local courts is determined by reference to the place of enforcement.
3. In relation to procedures referred to in Article 14(3), the jurisdiction of local courts shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

Article 22

Procedure for enforcement

1. The procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.

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 in which enforcement is sought 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 33 and 34 shall be attached to the application.

Article 23

Decision of the court

1. The court applied to shall give its decision without delay. The person against whom enforcement is sought shall not 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 15 and 16.
3. Under no circumstances may a judgment be reviewed as to its substance.

Article 24

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 in which enforcement is sought.

Article 25

Appeal against the enforcement decision

1. If enforcement is authorised, the person against whom enforcement is sought may appeal against the decision within one month of service thereof.
2. If that person is habitually resident in a Member State other than that in which the decision authorising enforcement 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 26

Courts of appeal and means of contest

1. An appeal against the judgment authorising enforcement shall be lodged, in accordance with the rules governing procedure in contradictory matters, with the courts listed below:
 - in Belgium, the ‘Tribunal de première instance’ or the ‘Rechtbank van eerste aanleg’ or the ‘erstinstanzliche Gericht’,
 - in the Federal Republic of Germany, the ‘Oberlandesgericht’,

- in Greece, the 'Εφετείο',
- in Spain, the 'Audiencia Provincial',
- in France, the 'Cour d'appel',
- in Italy, the 'Corte d'appello',
- in Luxembourg, the 'Cour d'appel',
- in the Netherlands, the 'arrondissementsrechtbank',
- in Austria, the 'Bezirksgericht',
- in Portugal, the 'Tribunal da Relação',
- in Finland, the 'Hovioikeus/Hovrätt',
- in Sweden, the 'Svea hovrätt'.

2. The judgment given on appeal may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in the Federal Republic of Germany, by a 'Rechtsbeschwerde',
- in Austria, by a 'Revisionsrekurs',
- in Portugal, by a 'recurso restrito à matéria de direito',
- in Finland, by an appeal to 'Korkein oikeus/högsta domstolen',
- in Sweden, by an appeal to the 'Högsta domstolen'.

Article 27

Stay of proceedings

The court with which the appeal is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment 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.

Article 28

Court of appeal against a judgment refusing enforcement

1. If the application for enforcement is refused, the applicant may appeal to the courts listed below:
 - in Belgium, the ‘Tribunal de première instance’ or the ‘Rechtbank van eerste aanleg’ or the ‘erstinstanzliche Gericht’,
 - in the Federal Republic of Germany, the ‘Oberlandesgericht’,
 - in Greece, the ‘Εφετείο’,
 - in Spain, the ‘Audiencia Provincial’,
 - in France, the ‘Cour d’appel’,
 - in Italy, the ‘Corte d’appello’,
 - in Luxembourg, the ‘Cour d’appel’,
 - in the Netherlands, the ‘gerechtshof’,
 - in Austria, the ‘Bezirksgericht’,
 - in Portugal, the ‘Tribunal da Relação’,
 - in Finland, the ‘Hovioikeus/Hovrätt’,
 - in Sweden, the ‘Svea hovrätt’.
2. The person against whom enforcement is sought shall be summoned to appear before the appellate court. If such person fails to appear, the provisions of Article 10 shall apply.

Article 29

Contest of the appeal decision

A judgment given on appeal provided for in Article 28 may be contested only:

- in Belgium, Greece, Spain, France, Italy, Luxembourg and in the Netherlands, by an appeal in cassation,
- in the Federal Republic of Germany, by a ‘Rechtsbeschwerde’,
- in Austria, by a ‘Revisionsrekurs’,
- in Portugal, by a ‘recurso restrito à matéria de direito’,

- in Finland, by an appeal to 'Korkein oikeus/högsta domstolen',
- in Sweden, by an appeal to the 'Högsta domstolen'.

Article 30

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.

Article 31

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 to 24, 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 addressed.

Article 32

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 ground that he or she is a foreign national or that he or she is not habitually resident in the Member State in which enforcement is sought.

SECTION 3 - COMMON PROVISIONS

Article 33

Documents

1. A party seeking or contesting recognition or applying for enforcement of a judgment shall produce:
 - (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
 - (b) where appropriate, a document showing that the applicant is in receipt of legal aid in the Member State of origin.

2. In addition, in the case of a judgment given in default, the party seeking recognition or applying for enforcement 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.
3. A person requiring the updating of the civil-status records of a Member State, as referred to in Article 14(2), shall also produce a document indicating that the judgment is no longer subject to a further appeal under the law of the Member State where the judgment was given.

Article 34

Other documents

A party applying for enforcement shall produce, besides the documents referred to in Article 33, documents of whatever nature which establish that, according to the law of the Member State of origin, the judgment is enforceable and has been served.

Article 35

Absence of documents

1. If the documents specified in Article 33(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 36

Legalisation or other similar formality

No legalisation or other similar formality shall be required in respect of the documents referred to in Articles 33, 34 and 35(2) or in respect of a document appointing a representative *ad litem*.

Chapter IV - TRANSITIONAL PROVISIONS

Article 37

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 settlements which have been approved by a court in the course of proceedings after its entry into force.
2. Judgments given after the date of entry into force of this Regulation in proceedings instituted before that date shall be recognised and enforced in accordance with the provisions of Chapter III if jurisdiction was founded on rules which accorded with those provided for either in Chapter II of this Regulation 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 V - GENERAL PROVISIONS

Article 38

Relation with other Conventions

1. Subject to the provisions of Articles 37, 40 and paragraph 2 of this Article, this Regulation shall, for the Member States which are parties to it, 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. 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 Communities*. They may be withdrawn, in whole or in part, at any moment by the said Member States.

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

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

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

3. Member States shall send to the Commission:
 - (a) a copy of the agreements and uniform laws implementing these agreements referred to in the first and third subparagraphs of paragraph 2;
 - (b) any denunciations of, or amendments to, those agreements or uniform laws.

Article 39

Relation with certain multilateral conventions

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

- the Hague Convention of 5 October 1961 concerning the Powers of Authorities and the Law Applicable in respect of the Protection of Minors,
- the Luxembourg Convention of 8 September 1967 on the Recognition of Decisions Relating to the Validity of Marriages,
- the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations,
- the European Convention of 20 May 1980 on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children,
- 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, provided that the child concerned is habitually resident in a Member State.

Article 40

Extent of effects

1. The agreements and conventions referred to in Articles 38(1) and 39 shall continue to have effect in relation to matters to which this Regulation does not apply.
2. They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic before the entry into force of this Regulation.

Article 41

Agreements between Member States

1. Two or more Member States may conclude agreements or arrangements to amplify this Regulation or to facilitate its application.

Member States shall send to the Commission:

- (a) a copy of the draft agreements; and
 - (b) any denunciations of, or amendments to, these agreements.
2. In no circumstances may the agreements or arrangements derogate from Chapters II or III.

Article 42

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.
3. The provisions laid down in paragraphs 1 and 2 shall also apply to the following International Treaties (Concordats) with the Holy See:
 - 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,
 - Agreement between the Holy See and Spain on legal affairs of 3 January 1979.
4. 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.

Article 43

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 shall refer to the territorial unit designated by the law of that State;
- (c) any reference to the authority of a Member State having received an application for divorce or legal separation or for marriage annulment shall refer to the authority of a territorial unit which has received such an application;
- (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.

Chapter VI - FINAL PROVISIONS

Article 44

Review

No later than five years after the date of the entry into force of this Regulation, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Regulation, and in particular Articles 38, 41, 42 and 44 thereof. The report shall be accompanied if need be by proposals for adaptations.

Article 45

Amendment of lists of courts and redress procedures

The lists of courts and redress procedures in Articles 21(1), 26(1) and (2) and 29 may be amended by decision of the Council.

Article 46

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

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