



COMMISSION EUROPÉENNE

SERVICE JURIDIQUE

Bruxelles, le 5 juillet 2004
JUR(2004) 70425 -

*Avis du Service juridique**

**NOTE A L'ATTENTION DE M. JONATHAN FAULL,
DIRECTEUR GENERAL DG JAI**

Objet: Consultation interservices sur une proposition de règlement modifiant le règlement n°2201/2003 du Conseil pour tenir compte du concordat entre Malte et le Vatican

Ref. : Votre note JAI.C.1/ME/ic – D/04/4300
SJ CONS (04) 5915 du 22.06.04

1. Le Service Juridique a pris note de la consultation en objet et peut donner son accord sur la proposition de règlement concernée, sous réserve de prise en compte des amendements proposés. Une version en track-changes est jointe en annexe, qui tient également compte des amendements légistiques et rédactionnels proposés par les juristes-linguistes sur la base notamment du « Joint Practical Guide »).
2. Vous noterez en particulier les points suivants :
 - la base juridique unique de cette proposition est l'article 57 de l'Acte d'adhésion, et non les articles 61c et 67.1 CE. Ces deux bases sont d'ailleurs incompatibles, au sens de la jurisprudence de la Cour, l'une prévoyant l'adoption par le Conseil à la majorité qualifiée, l'autre la procédure de codécision ;
 - un considérant (6) a été ajouté pour indiquer clairement l'objectif de la proposition ;
 - l'entrée en vigueur de ce règlement ne peut intervenir avant l'entrée en vigueur du règlement n° 2201/2003. Il est suggéré de prévoir que ce règlement entrera en vigueur à la même date que le règlement n°2201/2003.

Copies:



EXPLANATORY MEMORANDUM

1. Council Regulation (EC) No- 1347/2000 (“the Brussels II Regulation”)¹ provides for the mutual recognition of judgments in matrimonial matters. It is, as a general rule, limited to civil proceedings and does not apply to decisions ~~to~~-issued by religious authorities.
2. As an exception to this rule, Article 40 stipulates that decisions taken by ecclesiastical courts in Spain, Italy and Portugal pursuant to the ~~Treaties~~-treaties between these Member States and the Holy See (referred to as “Concordats”) are recognised in other Member States pursuant to the rules of the Regulation. These ~~Treaties~~-treaties give the ecclesiastical courts in the Member States concerned competence to annul canonical marriages.
3. Article 40 was amended in Annex II of the ~~Treaty~~-2003 Act of Accession so as to mention the Agreement~~Treaty~~ between Malta and the Holy See on the recognition of civil effects to canonical marriages and to decisions of ecclesiastical authorities and tribunals on those marriages of 3 February 1993.
4. The wording of Article 40 is reproduced in Article 63 Council Regulation (EC) No- 2201/2203², which will repeal and replace “the Brussels II Regulation”. ~~This~~ Regulation (EC) No 2201/2003 will enter into force on 1 August 2004 and apply from 1 March 2005 in all Member States, except Denmark.
5. Malta has requested that Article 63 of Regulation (EC) No- 2201/2003 be amended so as to mention its Treaty with the Holy See. However, since the Regulation was adopted prior to Malta’s accession to the European Union, it was agreed to introduce the amendment pursuant to Article 57 of the ~~Treaty~~-2003 Act of Accession. This provision foresees a simplified procedure whereby amendments of acts that are adopted prior to accession shall be decided by the Council by qualified majority on proposal from the Commission.

¹ Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, (OJ L 160, of 30.06.2000, p. 19).

² Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, (OJ L 338, 23.12.2003, p. 1).

Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, as regards the Treaties-treaties with the Holy See mentioned in Article 63

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Treaty-Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular Article 57(2) thereof,

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

Whereas:

- (1) Article 40 of Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses⁽²⁾ stipulates-provides that decisions as to the invalidity of a marriage taken under the Treaties between the Holy See and Portugal, Italy and Spain (Concordats) shall-are to be recognised in the Member States on the conditions laid down in Chapter III of the-that Regulation;
- (2) Article 40 of Council Regulation (EC) No 1347/2000 was amended by Annex II of the Treaty- 2003 Act of Accession so as to mention Malta's Agreement with the Holy See on the recognition of civil effects to canonical marriages and to decisions of ecclesiastical authorities and tribunals on those marriages of 3 February 1993, with the second Additional Protocol of 6 January 1995;
- (3) Council Regulation (EC) No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000⁽³⁾, was adopted on 27 November 2003. This-Regulation (EC) No 2201/2003 will enter into force on 1 August 2004 and apply from on 1 March 2005 in all Member States with the exception of Denmark;—.

¹ OJ L ...

² OJ L 160, of 30.06.2000, p. 19.

³ OJ L 338, of 23.12.2003, p. 1.

- (4) Malta has requested that Article 63 of ~~Council~~ Regulation (EC) No 2201/2003, which corresponds to Article 40 of ~~Council~~ Regulation (EC) 1347/2000, be amended so as to mention its Agreement with the Holy See;—.
- (5) Article 57 of the ~~Treaty~~ 2003 Act of Accession provides that acts adopted prior to accession which require adaptation by reason of accession may be adapted through a simplified procedure whereby the Council acts by qualified majority on a proposal from the Commission;.
- (6) It is justified to take account of Malta's request and to amend Regulation (EC) No 2201/2003 accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 63 of Regulation (EC) No 2201/2003 ~~of 27 November 2003~~ is amended as follows:

- (1) ~~The following~~In paragraph 3, the following point (c) is added:
- “ 3(c) Agreement between the Holy See and Malta on the recognition of civil effects to canonical marriages and to decisions of ecclesiastical authorities and tribunals on those marriages of 3 February 1993, with the second Additional Protocol of 6 January 1995”.
- (2) Paragraph 4 is replaced by the following:
- “4. Recognition of the decisions provided for in paragraph 2 may, in Spain, Italy, ~~Spain~~ or Malta, be subject to the same procedures and the same checks as are applicable to decisions of the ecclesiastical courts handed down in accordance with the international treaties concluded with the Holy See referred to in paragraph 3.”

Article 2

This Regulation shall enter into force on 1 August 2004 ~~on the twentieth day following that of its publication in the Official Journal of the European Communities.~~

This Regulation shall ~~enter into application~~ ~~on~~ apply from 1 March 2005.

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

Done at Brussels, [...]

For the Council
The President
[...]