



EUROPEAN COMMISSION
Legal Service

Brussels, 17.08.2001
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NOTE TO THE ATTENTION OF [REDACTED]

RE: REPLY FROM LEGAL REVISERS GROUP

TO THE INTERSERVICE CONSULTATION LAUNCHED BY JALA.3

Note signed by: mr J.A.fORTESCUE

Deadline for replies:

Dated: 27.07.01

Reference:

WP n°:

Title: Proposal for a Council Regulation on jurisdiction and the recognition and enforcement of judgments in matters of parental responsibility

-
- ☐ No comments
- ☐ Favourable opinion
- ☐ Favourable opinion subject to account being taken of the following comments
- ☐ Favourable opinion subject to account being taken of the attached modifications
- ☐ Unfavourable opinion (see attached comments)
- ☒ Suspended opinion (see attached comments)

Contact: [REDACTED]

Comments

Our group has received the above proposal on consultation for the 17th of August. Since it has not been possible to contact neither you nor Miss Korodima, we have not been able to complete our revision and present a version in a track-changes form. Several problems have been stated in this document which need to be discussed with you and the expert of the DG.

For the time being, we would like to express our concerns as to different points and ask you to consider them as soon as possible once you have come back from your holidays.

1. The title as it stays is misleading as being very similar to the title of Regulation 1347/2000; can this new act be considered as an amendment to Regulation 1347/2000? And if

not what is the exact relationship between those two Regulations? Article 15 (2) and (3), Article 19 and Article 22(1), point(b) and (3) are not clear at all on this point.

As a matter of fact it seems that a far better approach would be to merge the two Regulations into one and repeal Regulation 1347/2000. This seems to offer at least three advantages:

- a) from a logistic point of view it would be far better;
- b) it would avoid the actual inconsistencies and ambiguities between the two Regulations dealing , more or less, with the same matter;
- c) for the citizen, the Community legislation would present itself in a much more transparent way.

Further comments on the proposal:

- 2. Some comments on the recitals result from the mere application of logistic rules and do, therefore, not need to be discussed.

In the enacting part, the sections should be given a title or the subdivision into sections should be abandoned.

3. Article 1

The first sentence of para 2 can remain as a new subparagraph of para 1 and the definition of the term "court" should be removed from Article 1 and placed under Article 2 after a slight reformulation. Para 3 should also be transferred to Article 2 and transformed to a definition.

4. Article 2

A new structure is necessary including in particular the following definitions :a) Member State, b) court , c) holder of parental responsibility.

Would it not be useful to define also the term "habitual residence" and "present"?

5. Article 3

What is meant by "without prejudice"?

6. Article 4

Instead of "Articles 3-8" read : "Articles 3 and 5-8 etc". Furthermore, the functioning of the conditions is not clear:

a)... and b)... unless c)...? Is this wanted as it stays? Another possibility would seem to be to transform c) to a second paragraph to read as follows: "2. Para (1) shall not apply if the child is ..."

7. Article 5

para 1 should begin : "In case of child abduction the courts..."

The splitting of para 2 in two subparagraphs might help both to the understanding of this paragraph and of para 3, e.i. : put a period after the word jurisdiction and start an new subparagraph reading:

"The first subparagraph shall not apply if the child has ...and a) ...or b)..."

In para 3, the words "pursuant to paragraph 2" should be replaced by "pursuant to paragraph 2, first subparagraph" in case the above mentioned splitting takes place.

8. Article 6

If the word "Prorogation" in the title has a temporal sense it would seem more clear to have the para (1) to read as follows:

"1. The courts of a Member State shall continue to have jurisdiction ..."

9. Article 7

Is it not necessary to determine at what moment the child "is present" in the whole procedure? Unless the term "present" is defined under Article 2 as suggested.

10. Article 9

Para 2 could read:

"2. The courts of the MS where the child is present shall prescribe a time period, not exceeding two months, during which the courts of a MS...seized. If those courts are not seized during the time period prescribed, the provisional measures referred to in para 1 shall cease to apply."

11. Article 10

The wording of paragraph 2 is rather elliptical and needs to be reformulated.

12. Article 12

Is the term "respondent" used in para (1) the correct term or should it read "defendant"? cf Reg. 1347/2000.

Para 2: is the reference to Article 19 of Regulation 1348/2000 correct? If yes a recital should explain the link made between the two acts.

13. Article 13

In para 1 the word "another" on the fourth line does not seem to be appropriate; it could be deleted.

14. Article 14

The number of existing para 2 could be deleted, so that para 1 has two subparagraphs.

Para 3 would take the number 2.

Under a) and b) the conditions "provided that ...etc" seem to be superfluous.

15. Article 15

Paragraphs 2 and 3 are not in conformity with the rules of legal drafting. The aim of those provisions is not clear at all. Is the intention an amendment of Regulation 1347/2000? If that's the case it should be presented in a different way and be reflected in the title of the act.

16. Article 16

There is no need of two separate paragraphs, subparagraphs are sufficient. A slight reformulation of the second one might be useful.

17. The words "transitional" should be deleted in the title of this chapter

18. Article 19

The aim of this provision is very unclear! It seems to reflect the fact that the present regulation is partly a Regulation amending Reg. 1347/2000 without daring to speak its name.

19. Article 21

In para 2, chapters should be replaced by the numbers of the corresponding Articles.

20. Article 22

Para 1(b) is bad technique from a legistic point of view since it imposes here an obligation related to an other act.

Para 2 , should the chnanges not be communicated "immediately"?

Para 3, why should the information under (a) not be published in the Official Journal?

21. Article 23

The second paragraph should read: "...Article 22, which shall apply from the twentieth day..."

☐ Attachment

Copies: