Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast)

COUNCIL REGULATION (EU) 2019/1111

of 25 June 2019

on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction

(recast)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinions of the European Parliament[(1)],

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

Acting in accordance with a special legislative procedure,

Whereas:

(1) On 15 April 2014, the Commission adopted a report on the application of Council Regulation (EC) No 2201/2003[(3)]. The report concluded that Regulation (EC) No 2201/2003 is a well-functioning instrument that has brought important benefits to citizens, but that the existing rules could be improved. A number of amendments are to be made to that Regulation. In the interests of clarity, that Regulation should be recast.

(2) This Regulation establishes uniform jurisdiction rules for divorce, legal separation and marriage annulment as well as for disputes about parental responsibility with an international element. It facilitates the circulation of decisions, as well as of authentic instruments and certain agreements, in the Union by laying down provisions on their recognition and enforcement in other Member States. Moreover, this Regulation clarifies the child's right to be provided with an opportunity to express his or her views in proceedings to which he or she is subject and also contains provisions complementing the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention') in relations between Member States. Therefore, this Regulation should help to strengthen legal certainty and increase flexibility, to ensure that access to court proceedings is improved and to ensure that such proceedings are made more efficient.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2019/1111. (See end of Document for details)*

(3) The smooth and correct functioning of a Union area of justice with respect for the Member States' different legal systems and traditions is vital for the Union. In that regard, mutual trust in one another's justice systems should be further enhanced. The Union has set itself the objective of creating, maintaining and developing an area of freedom, security and justice, in which the free movement of persons and access to justice are ensured. With a view to implementing that objective, the rights of persons, in particular children, in legal procedures should be reinforced in order to facilitate the cooperation of judicial and administrative authorities and the enforcement of decisions in family law matters with cross-border implications. The mutual recognition of decisions in civil matters should be enhanced, access to justice should be simplified and exchanges of information between the authorities of the Member States should be improved.

(4) To this end, the Union is to adopt, among others, measures in the field of judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market. The term 'civil matters' should be interpreted autonomously, in accordance with the established case-law of the Court of Justice of the European Union ('the Court of Justice'). It should be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of this Regulation and, second, to the general principles which stem from the corpus of the national legal systems. The term 'civil matters' should therefore be interpreted as capable of extending also to measures which, from the point of view of the legal system of a Member State, might fall under public law. It should cover, in particular, all applications, measures or decisions in matters of 'parental responsibility' within the meaning of this Regulation, in accordance with its objectives.

(5) This Regulation covers 'civil matters', which includes civil court proceedings and the resulting decisions as well as authentic instruments and certain extra-judicial agreements in matrimonial matters and matters of parental responsibility. Moreover, the term 'civil matters' should cover applications, measures or decisions as well as authentic instruments and certain extra-judicial agreements concerning the return of a child under the 1980 Hague Convention, which, according to the case-law of the Court of Justice and in line with Article 19 of the 1980 Hague Convention, are not proceedings on the substance of parental responsibility but closely related to it and addressed by certain provisions of this Regulation.

(6) In order to facilitate the circulation of decisions as well as of authentic instruments and certain agreements in matrimonial matters and matters of parental responsibility, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of decisions be governed by a legal instrument of the Union which is binding and directly applicable.

(7) In order to ensure equality for all children, this Regulation should cover all decisions on parental responsibility, including measures for the protection of the child, independent of any link with matrimonial proceedings or other proceedings.

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

(9) As regards decisions on divorce, legal separation or marriage annulment, this Regulation should apply only to the dissolution of matrimonial ties. It should not deal with issues such as the grounds for divorce, property consequences of the marriage or any other ancillary measures. Decisions refusing the dissolution of matrimonial ties should not be covered by its provisions on recognition.

(10) As regards the property of the child, this Regulation should apply only to measures for the protection of the child, namely the designation and functions of a person or body having charge of the child's property, representing or assisting the child, and the administration, conservation or disposal of the child's property. In this context, this Regulation should, for instance, apply in cases where the object of the proceedings is the designation of a person or body administering the child's property. Measures relating to the child's property which do not concern the protection of the child should continue to be governed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council[(4)]. However, it should be possible for the provisions of this Regulation on jurisdiction over incidental questions to apply in such cases.

(11) Any type of placement of a child in foster care, that is, according to national law and procedure, with one or more individuals, or institutional care, for example in an orphanage or a children's home, in another Member State should fall within the scope of this Regulation unless expressly excluded, which is for example the case for placement with a view to adoption, placement with a parent or, where applicable, with any other close relative as declared by the receiving Member State. As a result, also 'educational placements' ordered by a court or arranged by a competent authority with the agreement of the parents or the child or upon their request following deviant behaviour of the child should be included. Only a placement – be it educational or punitive – ordered or arranged following an act of the child which, if committed by an adult, could amount to a punishable act under national criminal law, regardless of whether in the particular case this could lead to a conviction, should be excluded.

(12) This Regulation should not apply to the establishment of parenthood, since that is a different matter from the attribution of parental responsibility, nor should it apply to other questions linked to the status of persons.

(13) Maintenance obligations are excluded from the scope of this Regulation, as those obligations are already covered by Council Regulation (EC) No 4/2009[(5)]. In addition to the courts for the place where the defendant, or the creditor, is habitually resident, the courts having jurisdiction under this Regulation in matrimonial matters should generally have jurisdiction to decide on ancillary spousal or post-marital maintenance obligations by application of point (c) of Article 3 of that Regulation. The courts having jurisdiction under this Regulation in matters of parental responsibility generally have jurisdiction to decide on ancillary child maintenance obligations by application of point (d) of Article 3 of that Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2019/1111. (See end of Document for details)*

(14) According to the case-law of the Court of Justice, the term 'court' should be given a broad meaning so as to also cover administrative authorities, or other authorities, such as notaries, who or which exercise jurisdiction in certain matrimonial matters or matters of parental responsibility. Any agreement approved by the court following an examination of the substance in accordance with national law and procedure should be recognised or enforced as a 'decision'. Other agreements which acquire binding legal effect in the Member State of origin following the formal intervention of a public authority or other authority as communicated to the Commission by a Member State for that purpose should be given effect in other Member States in accordance with the specific provisions on authentic instruments and agreements in this Regulation. This Regulation should not allow free circulation of mere private agreements. However, agreements which are neither a decision nor an authentic instrument, but have been registered by a public authority competent to do so, should circulate. Such public authorities might include notaries registering agreements, even where they are exercising a liberal profession.

(15) In relation to 'authentic instrument', the term 'empowerment' in this Regulation is to be interpreted autonomously in accordance with the definition of 'authentic instrument' used horizontally in other Union instruments and in light of the purposes of this Regulation.

(16) Although return proceedings under the 1980 Hague Convention are not proceedings on the substance of parental responsibility, decisions ordering the return of a child pursuant to the 1980 Hague Convention should benefit from recognition and enforcement under Chapter IV of this Regulation where they need to be enforced in another Member State due to a further abduction after return was ordered. This is without prejudice to the possibility of starting new proceedings for the return of a child under the 1980 Hague Convention with regard to the further abduction. Moreover, this Regulation should continue to apply to other aspects in situations of wrongful removal or retention of a child, for example the jurisdiction provisions for the court of the Member State of habitual residence, and the recognition and enforcement provisions for any orders made by that court.

(17) This Regulation should, like 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 ('the 1996 Hague Convention'), apply to all children up to the age of 18 years even in cases where they have acquired capacity before that age under the law governing their personal status, for example through emancipation by reason of marriage. This should avoid an overlap with the scope of the Hague Convention of 13 January 2000 on the International Protection of Adults which applies from the age of 18 years onwards and, at the same time, prevent gaps between those two instruments. The 1980 Hague Convention, and consequently also Chapter III of this Regulation, which complements the application of the 1980 Hague Convention in relations between Member States, should continue to apply to children up to the age of 16 years.

(18) For the purposes of this Regulation, a person should be deemed to have 'rights of custody' where, pursuant to a decision, by operation of law or by an agreement having

legal effect under the law of the Member State where the child is habitually resident, a holder of parental responsibility cannot decide on the child's place of residence without the consent of that person, regardless of the terms used under national law. In some legal systems which retain the language of 'custody' and 'access', the non-custodial parent might in fact retain important responsibilities for decisions concerning the child which go beyond a mere right of access.

(19) The grounds of jurisdiction in matters of parental responsibility are shaped in the light of the best interests of the child and should be applied in accordance with them. Any reference to the best interests of the child should be interpreted in light of Article 24 of the Charter of Fundamental Rights of the European Union ('the Charter') and the United Nations Convention on the Rights of the Child of 20 November 1989 ('UN Convention on the Rights of the Child') as implemented by national law and procedure.

(20) To safeguard the best interests of the child, jurisdiction should in the first place be determined according to the criterion of proximity. Consequently, jurisdiction should lie with the Member State of the habitual residence of the child, except for certain situations set out in this Regulation, for instance, where there is a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.

(21) Where no proceedings in matters of parental responsibility are yet pending and the habitual residence of the child changes following a lawful relocation, jurisdiction should follow the child in order to maintain the proximity. For proceedings already pending, legal certainty and the efficiency of justice justify maintaining this jurisdiction until those proceedings have resulted in a final decision or have otherwise come to an end. The court before which proceedings are pending should, however, be entitled in certain circumstances to transfer jurisdiction to the Member State where the child is living following a lawful relocation.

(22) In cases of the wrongful removal or retention of a child, and without prejudice to a possible choice of court pursuant to this Regulation, the courts of the Member State of the habitual residence of the child should retain their jurisdiction until a new habitual residence in another Member State has been established and some specific conditions are fulfilled. Member States which have concentrated jurisdiction should consider enabling the court seised with the return application under the 1980 Hague Convention to exercise also the jurisdiction agreed upon or accepted by the parties pursuant to this Regulation in matters of parental responsibility where agreement of the parties was reached in the course of the return proceedings. Such agreements should include agreements both on the return and the non-return of the child. If non-return is agreed, the child should remain in the Member State of the new habitual residence and jurisdiction for any future custody proceedings there should be determined on the basis of the new habitual residence of the child.

(23) Under specific conditions laid down by this Regulation, it should be possible for jurisdiction in matters of parental responsibility also to be established in a Member State where proceedings for divorce, legal separation or marriage annulment are pending between the parents, or in another Member State with which the child has a substantial connection and which the parties have either agreed upon in advance, at the latest at the