

II

(Preparatory Acts)

COMMISSION

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

(1999/C 247 E/01)

COM(1999) 220 final — 1999/0110(CNS)

(Submitted by the Commission on 26 May 1999)

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 Commission,

Having regard to the opinion of the European Parliament,

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

(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 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 1998⁽¹⁾, 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;

⁽¹⁾ OJ C 221, 16.7.1998, p. 1.

- (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;
- (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 the Council Directive on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters 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 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 for divorce, legal separation or marriage annulment not 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.

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 fulfills 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 proceeding or with an equivalent document in sufficient time to enable that person to arrange or 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 fulfills 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 Article 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 de 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 de 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.