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NOTE

From:	Presidency
To:	Working Party on Civil Law Matters (Brussels IIa)
No. prev. doc.:	5572/18
No. Cion doc.:	10767/16
Subject:	Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) - Revised text of provisions on authentic instruments and agreements

Delegations will find in the Annex a revised text of the provisions on authentic instruments and agreements of the Brussels IIa proposal drawn up by the Presidency in the light of the discussions held in the Working Party on Civil Law Matters (Brussels IIa).

Deleted text in comparison to the previous Presidency text of Article 2 (5572/18) and the Commission Proposal on Articles 55 and 56 (10767/16) is marked by a strikethrough (~~strikethrough~~) and inserted text is marked in bold (**bold**).

Chapter I
SCOPE AND DEFINITIONS

Article 2
Definitions

1. For the purposes of this Regulation the following definitions apply:

(a) 'court' means any authority in any Member State with jurisdiction in the matters falling within the scope of this Regulation;

(b) 'decision' means a decision of a court of a Member State, including a decree, order or judgment, pronouncing divorce, legal separation, or marriage annulment, or concerning matters of parental responsibility;

(b1)¹ 'authentic instrument' means a document which has been formally drawn up or registered as an authentic instrument in any Member State with jurisdiction in the matters falling within the scope of this Regulation and the authenticity of which:

(i) relates to the signature and the content of the instrument; and

(ii) has been established by a public authority or other authority empowered for that purpose;²

(b2) 'agreement' means a document concluded by the parties which has been approved or registered by a public authority or other authority empowered for that purpose³ in any Member State with jurisdiction in the matters falling within the scope of this Regulation.

(c) 'Member State of origin' means the Member State in which the decision has been given, **the authentic instrument has been formally drawn up or registered, or the agreement has been approved or registered;**

(d) 'Member State of enforcement' means the Member State in which enforcement of the decision, **authentic instrument or agreement** is sought;

[...]

¹ This new provision is based on Article 2(c) of the Brussels I Recast Regulation.

² The "empowerment" referred to in (b1)(ii) is defined autonomously in accordance with the definition of "authentic instrument" used horizontally in other EU instruments (such as the Maintenance Regulation, the Succession Regulation or the Brussels I Recast Regulation).

³ The "empowerment" referred to in (b2) is defined in accordance with national law.

Chapter IV
RECOGNITION AND ENFORCEMENT

Section 5
Authentic instruments and agreements

Article 55
Authentic instruments and agreements

- ~~1. Documents which have been formally drawn up or registered as a~~ Authentic instruments and ~~agreements that~~ are enforceable in ~~the one~~ Member State **of origin** ~~and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be~~ recognised and enforced **without any declaration of enforceability being required and** under the same conditions as decisions.
- 2. The authentic instrument or agreement produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.**

Article 56
Certificate

1. The competent authority of the Member State of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex III. The certificate shall contain a summary of the enforceable obligation recorded in the authentic instrument or contained in the agreement between the parties.
2. The certificate shall be completed in the language of the authentic instrument or agreement.
3. Article 54 shall apply accordingly to the rectification and withdrawal of the certificate.

Explanation:

Based on the Member States' replies to the questionnaire on agreements (see document 7979/17 REV 1) and after the discussion in the Working Party on the scope of application of the Brussels IIa Recast Regulation held on 6 February 2018, the Presidency considers that it is now necessary to focus on these institutes [authentic instruments and agreements] before examining Chapter IV and the circulation of decisions under the Regulation.

To streamline the discussion, the Presidency would like to propose a revised text of the provisions concerning authentic instruments and agreements of Brussels IIa Recast Regulation, bearing in mind that this is a preliminary examination of the topic and, of course, the principle that "nothing is agreed until everything is agreed".

The revised text is based on Article 46 of the Brussels IIa Regulation, Articles 2 and 58 of the Brussels Ia Recast Regulation as well as on Articles 55 and 56 of the Commission Proposal for a recast of the Brussels IIa Regulation.