



Regulation no.2201/2003



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Bucharest



Outline

- General legislativ framework;
- Brussels II bis Regulation- basic elements;
- **Jurisdiction**- matrimonial matters;
- **Jurisdiction**- parental responsibility;
- Recognition and enforcement of judgments

Why does the EU need common rules on Private International Law?



- ≈ Approximately 122 million marriages in the Union, around 16 million (13%) have a cross-border dimension.
- ≈ In 2007, approximately 140 000 (13%) of the 1 040 000 divorces that took place in the Union.



Where, what, how?



Which court will have **jurisdiction**?

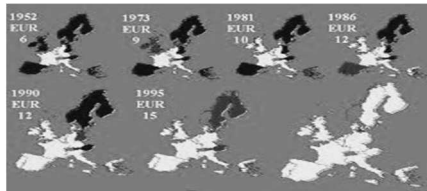
Which is the **applicable law**?

How will the judgment issued in one MS **be recognized and enforced in another MS**?

Area distinction



- Regulations on the jurisdiction, recognition and enforcement of the judgments;
- Regulations on the applicable law;
- Two in one regulations;



Legal instruments in the family matters

Matters	Jurisdiction, recognition and enforcement of the judgments	Applicable law
Divorce 	Regulation Brussels II bis- Regulation(CE) 2201/2003-	Roma III Regulation- Regulation (CE) 1259/2010 entered into force 21 iunie 2012
Parental responsibility 	Regulation Brussels II bis-	The Hague Convention of 1996 on the International Protection of Children- ; Has not been ratified yet by Belgium, Italy and Sweden; 1.01.2011;
Maintenance 	Council Regulation (EC) 4/2009- 18 iunie 2011	Hague Protocol of 23 November 2007, 1.08.2013, UK, Danemarca- do not apply.

Future



☞ Ongoing projects: Matrimonial property regimes;
Registered partnership;
Regulation (CE)650/2012

Other useful instruments



☞ **Legal Aid** (Directive 2003/8/EC)

☞ **Mediation**(Directive 2008/52/EC)

☞ **Serving Documents**
(Regulation 1393/2007)

☞ **Taking evidence**
(Regulation 1206/2001)



Parental responsibility - a definition



☞ All '**civil matters**' concerning "the attribution, exercise, delegation, restriction or termination of parental responsibility"- article 1(b) ; similar to 1996 Hague Convention

☞ **Term with wider range of meaning** than 'parental custody'



Parental responsibility-article 1(2)- not exhaustive, merely illustrative



- ☞ Rights of custody and rights of access;
- ☞ Guardianship, curatorship and other institution;
- ☞ The designation and function of any person having charge of the child's person or property;
- ☞ Placement of the child in a foster family or in institutional care;
- ☞ Measures relating to the administration, conservation or disposal of the child's property, meant for child protection;

Autonomous interpretation of terms



☞ 'civil matters' - C-435/06; C-523/07; C-92/12

☞ **C-523/07** „a decision ordering that a child be immediately taken into care and placed outside his original home is covered by the term 'civil matters', where that decision was adopted in the context of public law rules relating to child protection";

☞ **C-92/12**“a judgment ordering the placement of child in a secure institution providing therapeutic and educational care, situated in another Member State and which entails that, for her own protection, the child is deprived of her liberty for a specified period, falls within the material scope of Council Regulation No 2201/2003”

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Jurisdiction



☞ Matrimonial matters;

☞ Parental responsibility;



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JURISDICTION GROUNDS:

Art. 3. (1) a)

- **habitual residence of the spouses;**
- **last habitual residence of the spouses,**
 - insofar as one of them still resides there;
- **habitual residence of the respondent**
- **the habitual residence of any of the spouses**
 - in the event of a joint application;
- **habitual residence of the applicant,**
 - if he/she resided there for at least a year immediately before the application was made;
- **habitual residence of the applicant, if**
 - he/she resided there for at least six months immediately before the application was made **and**
 - he/she is a national of the Member State in question (in the case of UK/IE has his/her 'domicile' there);

Art. 3. (1) b)

- **nationality of both spouses** (in the case of UK/IE the 'domicile' of both spouses).

*alternative
jurisdictional
criteria*

No hierarchy!

Jurisdiction
C-168/08, Hadadi



- ✓ all the objective grounds set out in Article 3(1) **are alternatives** ;
- ✓ the grounds of jurisdiction contained in Articles 3 to 5 of the regulation are exclusive in nature;;
- ✓ the coexistence of several courts having jurisdiction is expressly provided for, **without any hierarchy** being established between them;

Jurisdiction



General rule- -

Article 8-**Habitual residence of the child**

Exception

Articles 9, 10, 12, 13

Where to start?

...specialia generalibus derogant... Art. 8 par.2



Is Article 9 applicable?



Is Article 10 applicable to the case?



Is Article 12 applicable to the case?



Differences



Lined writing area

Brussels I Regulation- Domicile- legal sense;

Brussels li bis Regulation- Habitual residence- factual relationship between a person and a place;

Habitual residence -The term is a key concept that is not defined in the Regulation



Lined writing area

C-523/07-

The term "habitual residence" shall be interpreted autonomously and it can be understood as "permanent and usual centre of interests of person chosen with the intention to live there permanently"

Criteria:

- duration, regularity, conditions and reasons for the stay on the territory of a MS and the family's move; the child's nationality; the place and conditions of attendance at school; linguistic knowledge ; the family and social relationships of the child.

Difficulties of interpretation



☞ The national court establish the habitual residence of the child, taking into account of all circumstances specific to each individual case.

☞ Differences between 'mere presence'(article 13) and 'habitual residence'(article 8)

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Particular situation



C-497/10, PPU Mercredi

Facts

- an infant two months old
- legally moved by her mother from UK to Reunion
- **The social and family environment** of the child, which is fundamental in determining the place where the child is habitually resident, comprises various factors which vary according to the age of the child.

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Habitual residence-Exceptions-



- ↻ Rights of access- exceptional cases- article 9;
- ↻ Forum of matrimonial action-article 12 (1);
- ↻ The child close ties - Forum of jurisdiction -article12(3);
- ↻ Jurisdiction of the state where the child is presently located- article 13;
- ↻ Transferring the case -article 15;
- ↻ Residual jurisdiction- article 14;

1)Special grounds of jurisdiction- article 9



- ↻ Favours the holder of access(exclusive for visitation rights);
- ↻ Applies when the child moves lawfully from one Member State to another and acquires a new habitual residence there;
- ↻ The first MS retains competence for a period of three months following the relocation;

2)The forum of matrimonial case-article 12 (1);



Applicable conditions:

- at least one of the spouses has parental responsibility;
- the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility and it is in the superior interests of the child;

3)The child close ties - Forum of jurisdiction - article12(3)



Applicable conditions:

- The child has a close link to a state (one of the holders of parental responsibility is habitually resident there or because the child is a national of that MS);
- Jurisdiction is consented by all parties and it is in the best interests of the child;

4) Jurisdiction of the state where the child is presently located-article 13



Conditions

- If no habitual residence can be established and there is no jurisdiction on the basis of article 12, the courts of the Member State where the child is present have jurisdiction.
- Examples
- When a child moves frequently between two or more MS;
- Child is unaccompanied (abandoned) and it is difficult to find evidence for habitual residence;

Transferring the case to a **better placed court**-article 15;



☞ **Applicable conditions:**

- ☞ The EU MS court must be better placed to hear the case
- ☞ The child has a particular connection with that MS;
- ☞ The transfer is in the best interests of the child;

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Two options for the court



- ☞ It may stay the case and invite the parties to introduce a request before the court of the other Member State,
- ☞ The other MS court may be directly requested;

“Lis pendens” principle



- ☞ Two cases concerning the same child and the same cause of action brought in different Member States;
- ☞ The second court must stay proceedings until the jurisdiction of the court first seised is established.
- ☞ Where the jurisdiction of the court first seised is established, the second seised court must decline jurisdiction in favour of first court.

Examples

“Lis pendens” principle



C-296/2010;

The CJEU has clarified that this rule is not applicable where the court first seised in matters of parental responsibility is seised only for the adoption of provisional measures and the court second seised of an action aiming at the same measures is the court of another Member State having jurisdiction on the substance of the matter

↻ C-195/08 PPU;

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The recognition and enforcement of judgments



↻ Based on the principle of mutual trust and minimum grounds for non-recognition;

↻ Accelerated procedure on **rights of access**(article 41) and **return of the child**(article 42)

↻ Free circulation of parental responsibility judgments throughout the EU, strongly supported by the European Court of Justice jurisprudence.

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Recognition and enforcement of judgments



3 steps required:

- ☞ Recognition- Decisions are recognized in other MS by operation of law;
- ☞ Exequatur proceeding- the declaration of enforceability;
- ☞ Enforcement of the decision-regulated by the national law;

Recognition and enforcement of judgments



- ☞ **No** review of jurisdiction of the court of origin (article 24); progress to Brussels I;
- ☞ **No** review of the substance of the judgment (article 26);

Grounds of non-recognition for judgments relating to
parental responsibility



- ☞ Contrary to public policy taking into account the best interests of the child;
- ☞ Without granting the child opportunity to a hearing;
- ☞ Infringement of any holder of parental responsibility rights (the person did not have the opportunity to be heard);
- ☞ Default of appearance;
- ☞ Irreconcilable judgments;

Enforcement proceedings



- ☞ 2 steps
- ☞ 1) Strictly formal procedure (without any possibility of opposing recognition);

- ☞ 2) Possibility of an appeal within one month period (article 33);

Special procedures- accelerated procedures



☞ Rights of access(article 41);

☞ Return of the child(article 42);

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Rights of access(article 41);



☞ "The rights of access granted in an enforceable judgment given in a MS is recognised and enforceable in another MS without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin."

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Certificate-Annex III



☞ "The judge of origin shall issue the certificate using the standard form in Annex III

(certificate concerning rights of access) only if:

☞ (a) where the judgment was given in default, the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defense, or, the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally;

☞ (b) all parties concerned were given an opportunity to be heard;

☞ (c) the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his/her age or degree of maturity;

☞ The certificate shall be issued ex officio whether there is a cross-border situation

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☞ Thank you!



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