CEELI INSTITUTE

ADVANCING THE RULE OF LAW

APPLICATION OF EU INSTRUMENTS IN CIVIL JUSTICE

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Application of Council Regulations (EC) No. 2201/2003(EU), on recognition and enforcement of judgments in matrimonial and parental matters (Brussels IIa)

Application of Council Regulations (EU) 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes

Application of Council Regulations (EU) 2016/1104 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships

Regulation (EU) 2016/1191 on promoting free movement of citizens by simplifying the requirements for presenting certain public documents in the EU

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INTRODUCTION

The Treaty of Amsterdam has provided a legal framework that has allowed for adoption of laws in the area of private international law that developed into an independent field of the EU law, linked to national law and setting minimal procedural standards at the EU level in certain legal areas. They allow for harmonization of rules important to ensure legal certainty and predictability, principle of mutual trust and mutual recognition of judicial decisions in Member States that take form in the area of cross-border cooperation between courts and judicial authorities. Equality of EU Member States presupposes unanimous recognition of legal instruments of all Member States and unanimous application in their territories. Yet, two exceptions exist to this rule:

1. Denmark and Ireland that, pursuant to their agreement with the EU in accordance with the Treaty on the Functioning of the European Union, have different positions in respect of adoption and application of EU legal instruments.

2. Enhanced cooperation mechanism laying down that the legal instruments adopted within this model are directly applicable and fully binding only in those Members States that adopted those instruments. All the other Member States shall be deemed “third states” in terms of those instruments.

More and more couples in the European Union have different nationalities and/or different habitual residences and property in several Member States or third countries. One of the fundamental goals of the European Union is to preserve and develop the area of freedom, security and justice (AFSJ) that ensures free movement of persons, as set out in the Article 1 of the Preamble of the Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (hereinafter: Matrimonial Property Regulation) and the Article 1 of the Preamble of the Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships (hereinafter: Registered Partnerships Property Regulation).

Following several years of consultations, in 2011, the Commission adopted a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and a proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships. Given the resistance of certain Member States, in 2015, the Council concluded that the Member States could not reach an agreement in that respect. In spring 2016, seventeen EU Members States, namely: Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden addressed requests to the Commission indicating that they wished to establish enhanced cooperation between themselves in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and regarding the property consequences of registered partnerships. Cyprus indicated its wish to participate in the establishment of the enhanced cooperation, which was approved by the Commission. The enhanced cooperation mechanism is open to all Member States in the future.

These Regulations, in the part addressing matrimonial property regime, complement the existing Acquis regulating relations in marriage or unions equivalent or comparable to marriage. The Regulations were preceded by the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (“Bruxelles II bis”), the Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (“Rome III”) and the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (“Maintenance Regulation”).

In addition to the Matrimonial Property Regulation no. 2016/1103, the Commission adopted the Commission Implementing Regulation (EU) 2018/1935 of 7 December 2018 establishing the forms referred to in Council Regulation (EU) 2016/1103. In relation to the Registered Partnerships Property Regulation no. 2016/1104, the Commission adopted the Commission Implementing Regulation (EU) 2018/1990 of 11 December 2018 establishing the forms referred to in Council Regulation (EU) 2016/1104.

Since the Matrimonial Property Regulation and the Registered Partnerships Property Regulation represent the so-called Twin Regulations that lay down almost identical provisions, they shall be addressed jointly in this Manual. Explicit reference shall be made in case of any differences.

SCOPE OF APPLICATION

TEMPORAL SCOPE OF APPLICATION - Article 69, Paragraph 1 of the Regulation no. 2016/1103 and Article 69, Paragraph 1 of the Regulation no. 2016/1104.

Both Regulations apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 29 January 2019.

Pursuant to Article 69, Paragraph 2 of both Regulations, even if the proceedings in the Member State of origin were instituted before 29 January 2019, decisions given after that date shall be recognised and enforced in accordance with Chapter IV as long as the rules of jurisdiction applied comply with those set out in Chapter II. Chapter III shall apply only to spouses who marry or who specify the law applicable to the matrimonial property regime after 29 January 2019.

By way of exception to these provisions, Articles 63 and 64 of both Regulations (information made available to the public and information the Member States shall communicate to the Commission) shall apply as of 29 April 2018. Furthermore, Articles 65 and 67 (establishment and subsequent amendment of the list of other authorities and legal professionals and the committee procedure) shall apply as of 29 July 2016.

TERRITORIAL SCOPE OF APPLICATION

Regulations shall apply only in the Member States covered by the enhanced cooperation mechanism, namely: Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain and Sweden.

MATERIAL SCOPE OF APPLICATION – Article 1 of both Regulations (not identical)

Regulation no. 2016/1103 shall apply to "matrimonial property regimes". Regulation no. 2016/1104 shall apply to "matters of the property consequences of registered partnerships".

Both make explicit reference that they "shall not apply to revenue, customs or administrative matters". This points to the private law aspect of the relations regulated therein. They lay down the list of relations explicitly excluded from their scope, either because they are regulated differently or because they do not fall within the EU competences. The lists are identical in both Regulations.

In respect of the derogation listed under (d), the interpretation provided in the *Mankopf* case shall apply (delimitation of scope of application of the Succession Regulation no. 650/2012 from the scope of application of the Matrimonial Property Regulation no. 2016/1103 and the Registered Partnerships Property Regulation no. 2016/1104).[1]

[1] ECJ, C-558/16, *Mahnkopf*, EU:C:2018:138, Items 40 and 41.

In terms of derogations listed under (g) and (h) of both Regulations (the nature of rights in rem relating to a property and recording in a register of rights), the analogous ECJ interpretation in the *Kubicka*[2] case shall apply.

Item 17 of the Preamble of the Regulation no. 2016/1103 does not define 'marriage', and this term is defined by the national laws of the Member States (national law shall apply). The term "marriage" may encompass a same-sex marriage and this may be problematic given that not all Member States that apply the Regulation recognize same-sex marriages. In terms of interpretation of the term, legal professionals give priority to the national law (lex fori).

Item 18 of the Preamble of the Regulation no. 2016/1103 points to autonomous interpretation of the term "matrimonial property regime". It covers all civil-law aspects of matrimonial property regimes (both the daily management of matrimonial property and the liquidation of the regime, for example as a result of the couple's separation or divorce), any property relationships between the spouses and in their relations with third parties, resulting directly from the matrimonial relationship, or the dissolution thereof. In addition, it also covers not only rules from which the spouses may not derogate but also any optional rules to which the spouses may agree in accordance with the applicable law, as well as any default rules of the applicable law. **Article 3, Paragraph 1, Item (a) of the Registered Partnerships Property Regulation no. 2016/ 1104 lays down a partially autonomous definition of the term "registered partnership"** which further refers to a specific applicable law.

"Registered partnership" means the regime governing the shared life of two people which is provided for in law, the registration of which is mandatory under that law and which fulfils the legal formalities required by that law for its creation (presupposes monogamous relationship, includes same-sex partnerships). The ECJ interpretation in the *Coman* case (cross-border family reunification of same-sex spouses) may cover the application of these Regulations in a Member State whose national law does not recognize same-sex marriages (e.g. Croatia).

These Regulations, in particular the Registered Partnerships Property Regulation no. 2016/1104, may not apply to property consequences of the informal (unregistered) community of partners, either opposite sex or same-sex, because it makes explicit reference to the "registration" of the joint life regime as an important element of the definition of its material scope.

JURISDICTION

The issue of jurisdiction is covered in Chapter II of both Regulations. It includes provisions on jurisdiction for the subject matter of the case, provisional measures, lis pedens and related actions, as well as provisions on examination as to jurisdiction and admissibility.

2 ECJ, C-218/16, *proceedings brought by Aleksandra Kubicka*, 12 October 2017, EU:C:2017:755.

3 ECJ, C-673/16, Relu Adrian Coman, Robert Clabourn Hamilton, Asociaţia Accept v Inspectoratul General pentru Imigrări, Ministerul Afacerilor Interne, 5 June 2018, EU:C:2018:385.

JURISDICTION BY ATTRACTION IN RELATION TO SUCCESSION – Article 4 of both Regulations

Where a court of a Member State is **seized in matters of the succession of a spouse** pursuant to Regulation (EU) No 650/2012, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime or property consequences of the registered partnership arising in connection with that succession case (concentration of proceedings in one Member State). Jurisdiction as to the substance of the matter and local jurisdiction are regulated in accordance with the national law of the Member State (in other words, the same court or other authority shall not necessarily have jurisdiction for these two types of proceedings).

This provision is **primary** and **exclusive**, so if the succession proceedings are brought in one Member State, the State in question shall also have jurisdiction for cases in relation to property relations of spouses or registered partners and in this case, authorities of other Member States shall declare of its own motion that they have no jurisdiction in accordance with Article 15 of both Regulations.

JURISDICTION BY ATTRACTION IN MATRIMONIAL/PARTNERSHIPS PROCEEDINGS – Article 5, Paragraph 1 of the Regulation no. 2016/1103 – where a court of a Member State is seised to rule on an application for divorce, legal separation or marriage annulment pursuant to the Bruxelles II bis Regulation no 2201/2003, the courts of that State shall have jurisdiction to rule on matters of the matrimonial property regime arising in connection with that application. Jurisdiction criteria from the Bruxelles II bis Regulation - the so-called unconditional attraction- the so-called "strict jurisdiction requirements" (Article 3, Paragraph 1, Item (a) first, second, third and fourth indents and Article 3, Paragraph 1, Item (b)),other requirements pursuant to an agreement between spouses about such jurisdiction (Article 3, Paragraph 1, Item a, fifth and sixth indents and Articles 5 and 7 – the so-called "lenient jurisdiction requirements".

Article 5, Paragraph 1, of the Regulation no. 2016/1104 – Where a court of a Member State is seised to rule on the dissolution or annulment of a registered partnership, the courts of that State shall have jurisdiction to rule on the property consequences of the registered partnership arising in connection with that case of dissolution or annulment where the partners so agree. In other words, jurisdiction in accordance with this Article presupposes partners' agreement.

Article 5, Paragraph 3 of the Regulation no. 2016/1103 and Article 5, Paragraph 2 of the Regulation no. 2016/1104:

If the agreement between the parties is concluded before the court is seised to rule on matters of matrimonial property regimes, the agreement shall comply with the provision on the agreement of prorogation of jurisdiction pursuant to the Article 7 (the parties may conclude an agreement with subsequent consent). The consent may be given orally in terms of agreeing with the court transcript, but may not be given tacitly because tacit prorogation is regulated in Article 8 of both Regulations.

JURISDICTION IN "OTHER CASES" covers:

a) a case provided for in the provisions of Articles 4 and 5 but no Member State court has jurisdiction on that ground or

b) a case different from the cases provided for in these provisions.

Jurisdiction in other cases shall be determined on the basis of **cascade criteria, arranged hierarchically:**

I. PROROGATION OF JURISDICTION – Article 7, Paragraph 1 of the Regulation no. 2016/1103, **the parties may agree** on exclusive jurisdiction of the court:

1. of Member State whose law is applicable pursuant to Article 22 (chosen applicable law) or Article 26, Paragraph 1, Item (a) (the law of the spouses' first common habitual residence after the conclusion of the marriage) or Article 26, Paragraph 1, Item (b) (the law of the spouses' common nationality at the time of the conclusion of the marriage) or

2. Member State of the conclusion of the marriage.

Article 7, Paragraph 1 of the Regulation no. 2016/1104, **the parties may agree** on exclusive jurisdiction of the court:

1. of Member State whose law is applicable pursuant to Article 22 (chosen applicable law) or

2. Member State under whose law the registered partnership was created.

Pursuant to **Article 7, Paragraph 2** of both Regulations, t**he agreement on prorogation** shall be **expressed in writing and dated and signed by the parties** (any communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing).

II. JURISDICTION WITHOUT PROROGATION – Article 7 of both Regulations, in the absence of choice-of-law agreement between the parties points to application of cascade criteria **in a cordance with the Article 6 of both Regulations:**

1. court of the Member State of **spouses' / registered partners' first common habitual residence** at the time the court is seised, or, failing that:

2. court of the Member State of the spouses'/registered partners' **last common habitual residence** insofar as one of them still resides there at the time the court is seised; or, failing that:

3. court of the Member State in whose territory **the respondent is habitually resident** at the time the court is seized; or failing that

4. court of the Member State of the spouses'/registered partners' **common nationality** at the time the court is seized.[4]

In respect of registered partnerships, an additional, fifth, objective criterion applies – **under whose law the registered partnership was created.**[5]

As well as other EU Regulations in the field of family law, these Regulations do not lay down the definition of habitual residence, so autonomous definition shall apply, on case-by-case basis and in line with the well-established case law of the European Court of Justice (ECJ). On the other hand, nationality is defined pursuant to the provisions of the law of a state whose nationality is claimed by the party. If a party has several nationalities, all of them are equally relevant for determining jurisdiction, also in line with the ECJ interpretaion in the *Hadadi*[6] case.

IMPLIED PROROGATION – Article 8 of both Regulations - applies if a defendant enters an appearance and does not contest the jurisdiction.

It applies only in favour of the court of a Member State whose law is applicable pursuant to Article 22 or 26, Paragraph 1, Items a) and b) of the Matrimonial Property Regulation or Article 22 or 26, Paragraph 1, Items a) and b) of the Registered Partnerships Property Regulation.

It is inadmissible in respect of jurisdiction pursuant to Article 4 and Article 5, Paragraph 1 of both Regulations. **Article 8, Paragraph 2 of both Regulations- protective provision** - protects procedural interests of the defendant - before assuming jurisdiction in accordance with the implied prorogation principle, the court shall ensure that the defendant is informed of his right to contest the jurisdiction and of the consequences of entering or not entering an appearance.

ALTERNATIVE JURISDICTION – Article 9, Paragraph 1 of both Regulations, if a court of the Member State that has jurisdiction holds that, under its private international law, the marriage or registered partnership in question is not recognised, it may decline jurisdiction. In this case, **Article 9, Paragraph 2 of both Regulations** shall apply - courts of any other Member State may have jurisdiction if the parties agree to confer jurisdiction in accordance with Article 7 of both Regulations. In the absence of agreement between the parties, courts of any other Member State shall assume jurisdiction, pursuant to Article 6 or Article 8. In case of matrimonial property regime, the courts of the Member State in which marriage was concluded shall have jurisdiction.

Article 9, Paragraph 3 of both Regulations - alternative jurisdiction shall not apply when the parties have obtained a divorce, legal separation or marriage annulment which is capable of being recognised in the Member State where the action was brought.

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4 Article 6 of the Matrimonial Property Regulation.

5 Article 6 of the Registered Partnerships Property Regulation.

6 ECJ, C-168/08, *Laszlo Hadadi (Hadady) v. Csilla Marta Mesko, married name Hadadi (Hadady), 16 June 2009, EU:C:2009:474.*

SUBSIDIARY JURISDICTION–Article 10 of both Regulations, where no court of a Member State has jurisdiction pursuant to Article 4, 5, 6, 7 or 8, or when all the courts pursuant to Article 9 have declined jurisdiction and no court has jurisdiction pursuant to Article 9, Paragraph 2 on alternative jurisdiction, the courts of a Member State shall have jurisdiction in so far as immoveable property of one or both spouses are located in the territory of that Member State (*forum rei sitae*). In accordance with this provision, the court seised shall have jurisdiction to rule only in respect of the immoveable property in question.

FORUM NECESSITATIS – Article 11 of both Regulations - where no court of a Member State has jurisdiction pursuant to any of the previous Articles, the courts of a Member State may, on an exceptional basis, rule on a matrimonial property regime or the property consequences of a registered partnership if proceedings cannot reasonably be brought or conducted or would be impossible in a third State with which the case is closely connected and the case must have a sufficient connection with the Member State of the court seised.

COUNTERCLAIMS – Article 12 of both Regulations - The court in which proceedings are pending pursuant to Article 4, 5, 6, 7 or 8, Article 9, Paragraph 2 or Article 10 or 11 of the Regulation no. 2016/1103 and Article 4, 5, 6, 7, 8, 10 or 11 of the Regulation no. 2016/1104, shall also have jurisdiction to rule on a counterclaim if it falls within the scope of this Regulation.

SEISING OF A COURT AND COORDINATION OF JURISDICTION - Article 14 of both Regulations – sets out three scenarios in which a court shall be deemed to be seised, in order to determine jurisdiction in each individual case.

EXAMINATION AS TO JURISDICTION AND ADMISSIBILITY – Article 15 of both Regulations – the court of the Member State **shall declare of its own motion that it has no jurisdiction.**

Article 16, Paragraph 1 of both Regulations lay down the rules on examining admissibility (where a defendant habitually resident in a State other than the Member State where the action was brought does not enter an appearance, the court having jurisdiction pursuant to this Regulation shall stay the proceedings so long as it is not shown that the defendant has been able **to receive the document instituting the proceedings** or an equivalent document **in time** to arrange for his defence, or that all necessary steps have been taken to this end). For service of documents from one Member State to another, the Council Regulation (EC) 1393/2007 shall apply. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad shall apply.

Notwithstanding the previous provisions, the judge may, in urgent cases, issue an order for application of any provisional or protective measures.

Application for *restitutio in integrum* may be lodged within a reasonable period after the defendant became aware of the content of the judgement. A Member State may set the deadline provided that that period is not less than one year since the date of pronouncement of judgement.

LIS PEDENS – Article 17 of both Regulations - any court hearing the case can send a request to another court hearing the case to give information about the date when it was seised, and the latter court shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. Any court other than the court first seised shall decline jurisdiction in favour of that court (in accordance with the Article 29 of the Bruxelles I bis Regulation no. 1215/2012). Pursuant to the ECJ case law, the term "same cause of action" in relation to the Bruxelles I bis Regulation, does not mean that these are necessarily the same applications. It suffices that the applications share the same essence, for example an application concerning payment based on a contract or an application to establish that the contract has not been concluded[7] (may also apply to provision of the Article 17 of both Regulations).

RELATED ACTIONS – Article 18 of both Regulations - shall apply in the absence of identity of the parties or the subject matter of the case but the actions are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable decisions resulting from separate proceedings. In this case, any court other than the court first seised may stay the proceedings. Where the actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof (in accordance with the Article 29 of the Bruxelles I bis Regulation[8] no. 1215/2012). The ECJ has already provided its interpretation of related actions within the Bruxelles I bis Regulation so these decisions may apply to interpretation of related actions within the meaning of these two Regulations as well.

PROVISIONAL, INCLUDING PROTECTIVE, MEASURES - Article 19 of both Regulations - competent courts shall be those of a Member State that have jurisdiction as to the substance of the matter. In addition, competent courts may be those of another Member State if such applications are provided for by law of that Member State. Interpretations in relation to the application of the Article 35 of the Bruxelles I bis Regulation may apply to interpretation of the Article 19 of the Regulations 2016/1103 and 2016/1104.

7 ECJ, C-144/86, *Gubisch Maschinenfabrik KG v. Giulia Palumba*, 8 December 1987, EU: C:1987:528.

8 ECJ, C-406/92, *The owners of the cargo lately laden on board the ship „Tatry" v. the owners of the ship „Maciej Rataj"*, 6 December 1994, EU:C:1994:400.

APPLICABLE LAW - Chapter III of both Regulations

GENERAL ISSUES IN TERMS OF APPLICABLE LAW

TEMPORAL SCOPE OF APPLICATION - Article 69, Paragraph 3 of both Regulations

The Regulation no. 2016/1103 shall apply:

a) to the matrimonial property regime of the spouses who marry on or after **29 January 2019**

b) to the matrimonial property regime of the spouses who married before **29 January 2019** but the spouses concluded an agreement on the choice of applicable law on or after **29 January 2019.**

The Regulation no. 2016/1104 shall apply:

a) to the property regime of registered partnerships if registered on or after **29 January 2019**

b) to the property regime of registered partnerships if registered before **29 January 2019** but the partners concluded an agreement on the choice of applicable law on or after **29 January 2019**

TERRITORIAL CONFLICTS OF LAWS – Article 33 of both Regulations – shall apply to states with more than one legal system in their territorial units (e.g. Germany, Spain, UK and USA). In this case, the internal conflict-of-laws rules of the state in question shall apply. In the absence of such rules, the choice between the following rules shall be made (no **hierarchical order**):

a) if the reference to the applicable law is based on the habitual residence of the spouses/partners, the law of the territorial unit where the spouses/partners have their **habitual residence** shall apply

b) if the reference to the applicable law is based on the **nationality** of the spouses/partners, the law of the territorial unit with which the spouses have the closest connection shall apply

c) if the reference to the applicable law is based on **other elements** as connecting factors, the law of the territorial unit in which the relevant element is located shall apply (for example, if the connecting factor is the law of the state under whose rules the registered partnership was established, and the state has more than one legal system (e.g. USA), the law of the respective US federal state where the partnership was registered shall apply).

INTER-PERSONAL CONFLICTS OF LAW – Article 34 of both Regulations – shall apply to states with two or more systems of law or sets of rules applicable to different categories of persons - **inter-personal conflict of law** (for example castes in India, subject to different rules) - personal law that covers the subject-matter in question determined by the internal conflict-of-law rules in that country shall apply. In the absence of such rules, the system of law or the set of rules with which the spouses have the closest connection shall apply.

EXCLUSION OF RENVOI – Both regulations exclude the application of renvoi or further referral – the law of any State specified by Regulations means the application of the rules of law in force in that State other than its rules of private international law.

PRINCIPLE OF UNIVERSALITY AND UNITY – Article 20 and Article 21 of both Regulations – general application of the law that, in accordance with provisions of both Regulations, is considered applicable, including third countries (any country in the world). The applicable law shall apply to all assets falling under that regime, regardless of where the assets are located (Member States or/and third countries).

SCOPE OF THE APPLICABLE LAW – Article 27 of both Regulations – a **non-exhaustive list** of proceedings that the Regulation applies to is provided.

Article 28, Paragraph 1 of both Regulations - Notwithstanding Article 27, Paragraph 1, Item (f) of both Regulations, the law applicable to the matrimonial property regime between the spouses may not be invoked by a spouse against a third party in a dispute between the third party and either or both of the spouses unless the third party knew or, in the exercise of due diligence, should have known of that law.

Article 28, Paragraph 2 of both Regulations - provides **exhaustive list** of when the third party is deemed to possess the knowledge of the applicable law pursuant to Paragraph 1.

Article 28, Paragraph 3 of both Regulations - sets the criteria for applicable law if conditions by virtue of Paragraphs and 2 have been met.

ADAPTATION OF RIGHTS IN REM – Where the law of the Member State does not know a specific subjective right in rem, which is part of the law applicable to the matrimonial property regime/ property consequences of the registered partnership, that subjective right shall, to the extent possible, be adapted to the closest equivalent right under the law of that State in which it is unknown. In that case, aims and the interests pursued by the specific right in rem and the effects attached to it must be taken into account.

EXCEPTIONS TO THE APPLICATION OF THE APPLICABLE LAW – Articles 30 and 31 of both Regulations – regulate the application of overriding mandatory provisions (**rules of direct application**) of the law of the forum, the respect for which is regarded as crucial by a Member State for safeguarding its public interests (political, social or economic). They shall be applicable irrespective of the law otherwise applicable pursuant to both Regulations (ECJ case law - *de Silva Martinis*[9] case).

[9] ECJ, C-149/18, *Agostinho da Silva Martins v. Dekra Claims Services Portugal SA,* 31 January 2019, EU:C:2019:84

The application of a provision of the law of any State specified by the Regulations may be refused only if such application is manifestly incompatible with the **public policy** (ordre public) of the forum (ECJ case law - *Krombach*[10] case).

CONNECTIONS TO DETERMINE APPLICABLE LAW:

CHOICE OF LAW BY THE PARTIES – primary link

Article 22, Paragraph 1 of the Regulation no. 2016/1103 – the spouses or future spouses may agree to designate, or to change, the applicable law, but this rule is limited to the choice of **one of the following two laws:**

a) the law of the State where the spouses or future spouses, or one of them, was **habitually resident** at the time the choice-of-law agreement was concluded or

b) the law of a State of nationality of either spouse or future spouse at the time the agreement was concluded.

Article 22, Paragraph 1 of the Regulation no. 2016/1104 – the partners or future partners may agree to designate, or to change, the applicable law, but this rule is limited to the choice of **one of the following three laws:**

a) the law of the State where the partners or future partners, or one of them, was **habitually resident** at the time the choice-of-law agreement was concluded or

b) the law of a State of **nationality** of either partner or future partners at the time the agreement was concluded or

c) the law of the State under whose law **the registered partnership was created** (sometimes the only option).

Article 22, Paragraph 2 of both Regulations sets down the rules on **retroactive application** or change of the applicable law but only if such change had been agreed on (a change of the law applicable shall have prospective effect only). Any retroactive change of the applicable law under paragraph 2 shall not adversely affect the rights of third parties deriving from that law (**Article 22, Paragraph 3 of both Regulations**).

Both Regulations regulate formal validity of agreement on the change of law, consent and formal validity of matrimonial property agreement / partnership property agreement (**Article 23 of both Regulations**). **The agreement on a choice of applicable law is formally valid** if expressed **in writing, dated and signed** (communication by electronic means which provides a durable record of the agreement shall be deemed equivalent to writing). It may include

[10] ECJ, C-7/98, *Dieter Krombach v. André Bamberski,* 28 March 2000, EU:C:2000:164

additional formal requirements under national law of the Member State in which both spouses/partners have their habitual residence at the time the agreement is concluded (if the spouses/partners are habitually resident in different Member States, the agreement shall be formally valid if it satisfies the requirements of either of those laws).

The **existence and material validity of an agreement on choice of law** or of any term thereof, shall be determined by the law which would govern it pursuant to Article 22 if the agreement or term were valid.

The exemption to this rule is laid down in the **Article 24, Paragraph 2 of both Regulations**.

The Article 25 of both Regulations – in order to have **formally valid agreements on property relations in a marriage/registered partnership,** basic (written form, date, signature by both parties) and additional (identical as in the Article 22 of both Regulations) requirements have to be met.

APPLICABLE LAW IN THE ABSENCE OF CHOICE BY THE PARTIES

Article 26, Paragraph 1 of the Regulation no. 2016/1103 – criteria to determine the applicable law (**exhaustive list**):

a) of the spouses' first common habitual residence after the conclusion of the marriage; or, failing that

b) of the spouses' common nationality at the time of the conclusion of the marriage; or, failing that, or if the spouses have more than one common nationality at the time of the conclusion of the marriage, (for example, if one or both of them have dual nationality) only points (a) and (c) of paragraph 1 shall apply

c) with which the spouses jointly have the closest connection at the time of the conclusion of the marriage, taking into account all the circumstances.

Exemption – either spouse has the right to ask the judicial authority not to apply the law under Article 26 (1) (a) of the Regulation, but rather the law of another State, but the spouse has to demonstrate that two requirements have been met **cumulatively:**

a) the spouses had their last common habitual residence in that other State for a significantly longer period of time than in the State designated pursuant to point (a) and

b) both spouses had relied on the law of that other State in arranging or planning their property relations.

In that case, the law of that other State shall apply from the time of the conclusion of the marriage, and in case one spouse disagrees, from the establishment of the last common habitual residence and shall not adversely affect the rights of third parties.

In the absence of a choice-of-law agreement by **registered partners**, the competent authority implementing the Regulation no. **2016/1104** shall apply the law of the State under whose law the registered partnership was created, pursuant to **Article 26, Paragraph 1 of the Regulation.**

As an **exception**, a situation identical to the one for **spouses** pursuant to Article 26, Paragraph 2 of the Matrimonial Property Regulation no. 2016/1103 has been provided for.

RECOGNITION AND ENFORCEMENT

The recognition regime in the Regulation no. 2016/1103 and Regulation no. 2016/1104 is a combination of models deriving from the Regulation Bruxelles II bis no. 2201/2003, Regulation no4/2009 on Maintenance Obligations and Regulation no650/2012 on succession.

SCOPE OF APPLICATION IN RESPECT OF RECOGNITION

Temporal, territorial and material scope of application of the Regulation no. 2016/1103 and Regulation no. 2016/1104 - autonomous interpretation

Article 3, Paragraph 1, Item (ii) (d) of both Regulations - ”decision” shall mean any decision in a matter of a matrimonial / registered partnerships property regime given by a court of a Member State, whatever the decision may be called, including a decision on the determination of costs or expenses by an officer of the court

Article 3, Paragraph 2 of both Regulations - “court” shall mean any judicial authority and all other authorities and legal professionals with competence in matters of matrimonial / registered partnerships property regimes which exercise judicial functions or act by delegation of power by a judicial authority or under its control.

The facilitated regime of recognition shall thus apply only for decisions given by other Member States within the framework of the scope of these Regulations. Decisions of all other states shall be deemed to be decisions of the so-called third countries whose decisions are recognized and regulated by the national law.

RECOGNITION

NATURE OF PROCEEDINGS AND SUBJECT MATTER OF RECOGNITION Article 36 of both Regulations – automatic recognition – only in respect of Members States that apply both Regulations.

A decision given in a Member State shall be recognised in the other Member States without any special procedure being required (any interested party may apply for the decision to be **recognised** in accordance with the procedures provided for in Articles 44-57 of both Regulations).

The subject matter of the recognition may be a decision which is still not final (not final in the Member State of the origin of the decision). Such a decision may be recognized and enforced in accordance with the rules of both Regulations. A court of a Member State in which recognition is sought of a decision given in another Member State may stay the proceedings if an ordinary appeal against the decision has been lodged in the Member State of origin.

As a rule, decisions given in a Member State and enforceable in that State shall be enforceable in another Member State when, on the application of any interested party, they have been declared enforceable there in accordance with the procedure provided for in Articles 44 to 57.

GROUNDS OF NON-RECOGNITION

Four reasons as grounds for non-recognition, typical of all previous EU regulations governing civil matters:

a) if it is contrary to **public policy** (*ordre public*) ECJ case law - the *Coman*[11] case.

b) in case of procedural irregularities in the Member State of the origin of decision

c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is sought

d) if it is irreconcilable with an earlier decision given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Under no circumstances shall the court of recognition **go beyond the four possible grounds of non-recognition** pursuant to Article 37 of both Regulations.

Article 39 of both Regulations - the public policy clause may not be spread to the domain of revision and challenging of the jurisdiction of the court that handed down the decision (cases: *P v.Q,*[12] and *Liberato*[13]).

Article 40 of both Regulations lays down that under no circumstances may a decision given in a Member State be reviewed as to its substance.

11 ECJ, C-673/16, Coman, EU:C:2018:385.
12 ECJ, C-455/15, P v. Q, 19 November 2015, EU:C:2015:763
13 ECJ, C-386/17, Stefano Liberato v. Luminite Luise Grigorescu, 16 January 2019, EU:C:2019:24.

TERRITORIAL AND MATERIAL JURISDICTION

The basic rule is to choose the alternative between:

a) according to the domicile/residence of the party against whom enforcement is sought, or

b) according to the place of enforcement.

The territorial jurisdiction shall be determined in accordance with the national law. Pursuant to the Article 64, every Member State shall communicate to the Commission the courts or authorities with competence to deal with applications for a declaration of enforceability. Information about the courts or authorities that the parties should communicate with in respect of the enforcement procedure is available at the e-justice.europa.eu[14] portal.

ENFORCEMENT PROCEDURE

Both Regulations lay down the **two-phased enforcement procedure**.

1. the first part is carried out *ex parte*

2. the second stage is adversarial

The procedure is governed by the law of the Member State of enforcement.

Regulations set down certain rules for the enforcement procedure.

Article 45 of both Regulations – the applicant **shall not be required** to have a postal address or an authorised representative in the Member State of enforcement but the application shall be accompanied by the following documents:

a) a copy of the decision which satisfies the conditions necessary to establish its authenticity

b) the attestation - issued by the court or competent authority of the Member State of origin using the standardized form from the Regulation.

Article 46 of both Regulations – if the attestation is not produced, the court or competent authority shall specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production. The court may require of the applicant translation of the decision.

14 *https://e-justice.europa.eu/content_matters_of_matrimonial_property_regimes-559-hr-hr.do?member=1*

Article 47 of both Regulations – the decision shall be declared enforceable immediately on completion of the formalities as described above without any review. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

Article 48 of both Regulations – the decision on the application for a declaration of enforceability – brought to the notice of the applicant and the party against whom enforcement is sought - in accordance with the national law.

Article 49 of both Regulations – the decision on the application for a declaration of enforceability may be appealed by either party (the competent court shall be the court communicated to the Commission by the Member State). The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters. If the party against whom enforcement is sought does not enter into proceedings before the appellate court in relation to the appeal lodged by the applicant, the court 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.

As a rule, an appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is not habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him/her or at his/her residence. No extension of time may be granted on account of distance.

The decision given on appeal may be contested only in those Member States that have appropriate legal mechanisms in place, by the procedure communicated by the Member State concerned to the Commission pursuant to Article 64. In Member States that have these mechanisms in place, the court with which an appeal is lodged shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Article 37. It shall give its decision without delay. The court with which an appeal is lodged under Article 49 or Article 50 shall, on the application of the party against whom enforcement is sought, stay the proceedings if the enforceability of the decision is suspended in the Member State of origin by reason of an appeal.

Where a decision has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court shall declare partial enforceability for one or several matters. An applicant may request a declaration of enforceability limited to parts of a decision. The applicant may make use of all available legal mechanisms of the Member State of enforcement if prior to issuing a declaration of enforceability it is necessary to ensure temporary insurance of the object of enforcement. Declaration of enforceability encompasses by law competences concerning protective measures. During the time specified for an appeal pursuant to Article 49, Paragraph 5, against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

LEGAL AID

Legal aid available in the Member State of enforcement, shall, in accordance with the national law, be available to the applicant in the enforcement procedure. (Council Directive no. 2003/8/EC of 27 January 2003). The party may submit an application for legal aid in several Member States: in the Member State of enforcement or the Member State where he is domiciled or resident. Pursuant to Article 56 of both Regulations, no security, bond or deposit, however described, shall be required of a party who in one Member State applies for recognition, enforceability or enforcement of a decision given in another Member State.
Article 57 of both Regulations sets down that, in proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the Member State of enforcement.

AUTHENTIC INSTRUMENTS AND COURT SETTLEMENTS

The Chapter V of both Regulations provides for and guarantees recognition and enforcement in all Member States of authentic instruments in matters of the matrimonial property regime or property consequences of the registered partnerships.

Article 58, Paragraph 1 of both Regulations links the evidentiary effects of authentic documents to the country of origin. An authentic instrument established in a Member State shall have **the same evidentiary effects** in another Member State. A Member State may derogate from this rule if it is contrary to public policy (ordre public) in the Member State concerned. In that sense, reference should be made to the nature and the scope of the evidentiary effects of the authentic instrument in the Member State of origin. An authentic instrument which is enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party in accordance with the procedure provided for in Articles 44 to 57. A person wishing to use an authentic instrument in another Member State may ask the authority establishing the authentic instrument in the Member State of origin to fill in the form describing the evidentiary effects which the authentic instrument produces in the Member State of origin. The forms have been published in implementing regulations no. 2018/1935 and 2018/1990.

Article 58, Paragraph 2 of both Regulations lays down that any challenge relating to the authenticity of an authentic instrument shall be made before the courts of the Member State of origin and shall be decided upon under the law of that State.

Item 59 of the Preamble of the Regulation no. 2016/1103 and Item 58 of the Regulation no. 2016/1104 introduce the autonomous definition of the **"authenticity" of an instrument** – comprises the following elements: originality of a document, formal requirements, competence of the authorities that issued a document and the procedure by which the document was created, as well as facts recorded in the document by the authority.

The authentic instrument challenged shall not produce any evidentiary effect in another Member State for as long as the challenge is pending before the competent court. If the challenge concerns only a specific matter relating to the legal acts or legal relationships recorded in the authentic instrument, the authentic instrument in question should not produce any evidentiary effects in a Member State other than the Member State of origin with regard to the matter being challenged as long as the challenge is pending. An authentic instrument which has been declared invalid as a result of a challenge should cease to produce any evidentiary effects.

Item 60 of the Preamble of the Regulation no. 2016/1103 and Item 59 of the Regulation no. 2016/1104 define the notion **"legal acts or legal relationships recorded in an authentic instrument"** and covers the material content recorded in an authentic instrument.

Should an authority, in application of this Regulation, be presented with two incompatible authentic instruments, it should assess the question as to which authentic instrument, if any, should be given priority taking into account the circumstances of the particular case. In the event of incompatibility between an authentic instrument and a decision, regard should be had to the grounds of non-recognition of decisions under this Regulation.

If a question relating to the legal acts or legal relationships recorded in an authentic instrument is raised as an incidental question in proceedings before a court of a Member State, the court having jurisdiction over the subject matter decide about that question within its proceedings.

Regulations respect different national regimes of issuing decisions on division of matrimonial / registered partnerships property, taking into account the possibility that parties resolve their matter through a court settlement. Court settlements which are enforceable in the Member State of origin shall be declared enforceable in another Member State on the application of any interested party. The court which approved the settlement or before which it was concluded shall issue an attestation using the form established. The application is lodged in accordance with the procedure provided for in Articles 44 to 57.

In principle, no **legalisation** or other similar formality shall be required in respect of public instruments issued in a Member State.

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 („Bruxelles IIa")

CUSTODY

SCOPE OF B II bis IN REALTION TO MATTERS OF CUSTODY

Council Regulation (EC) No 2201/2003 of 27 November 2003 (hereinafter: Regulation) shall apply to civil matters relating to "the attribution, exercise, delegation, restriction or termination of parental responsibility" (Article 1, Paragraph 1, Item (b) of the Regulation), whatever the nature of the relevant court or tribunal[15]. This item has defined the material scope of the Regulation.

In proceedings in relation to parental responsibility, courts shall base their jurisdiction on provisions on jurisdiction in the Regulation. By the same token, recognition and enforcement of judgements in these cases shall also be based on relevant provisions in the Regulation.

Article 1, Paragraph 2 of the Regulation lays down the substance of parental responsibility (custody and right to access, guardianship, curatorship and similar institutions, representations of the child and disposal of child's property, the placement of the child in institutional care - non-exhaustive list).

Article 1, Paragraph 3 of the Regulation individually sets out the cases is which the Regulation "shall not apply" (the establishment or contesting of a parent-child relationship, decisions on adoption, the name and forenames of the child, emancipation, maintenance obligations, trust or successions, measures taken as a result of criminal offences committed by children - exhaustive list)

The Article 2 includes autonomous definitions of terms, for example: „court, „judge", „Member State", „judgement", "Member State of origin", "Member State of enforcement", "parental responsibility", "holder of parental responsibility", "rights of custody", "rights of access" and "wrongful removal or retention".

The Regulation provides a very wide definition of the term "parental responsibility" that shall mean all rights and duties relating to the person or the property of a child which are given to a natural or legal person by judgement, by operation of law or by an agreement having legal effect. This also includes rights of custody and rights of access.

By providing autonomous definitions of terms, the Regulation aims to prevent different interpretations thereof in national frameworks and different Member States.

15 Pursuant to Article 2, Item 1 of the BU II bis, the term 'court' shall mean all the authorities in the Member States with jurisdiction in the matters falling within the scope of this Regulation.

The Regulation does not define maximum age of the child that it applies to and it is interpreted in line with the national law of the relevant Member State.

This has been amended by the 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). Article 2, Paragraph 2, Item 6 sets out that ‚child' means any person below the age of 18 years.

This Regulation is applicable in all EU Member States, apart from Denmark, (Article 72), even though the Regulation itself does not contain the provision on territorial scope. Since this Manual was prepared after the United Kingdom's withdrawal from the European Union, it does not include provisions regulating proceedings in relation to UK because they do not apply any more.

CHAPTER II - INTERNATIONAL JURISDICTION

The Regulation regulates matters of international jurisdiction. Local jurisdiction is regulated in line with the provisions of national law of Member States.

In accordance with the Regulation, the guiding principle to establish jurisdiction is habitual residence of the child - the Regulation does not lay down the definition of habitual residence and it is determined in line with relevant autonomous elements.

Issues of nationality and domicile in relation to custody proceedings, unlike divorce or marriage annulment proceedings, are covered only indirectly in relation to provisions on prorogation of jurisdiction in Article 12 and transfer of jurisdiction (Article 15).

The Regulation comprises all the necessary provisions on jurisdictions in matters of parental responsibility. These provisions shall take precedence over provisions of national law.[16]

GENERAL JURISDICTION - Article 8, Paragraph 1 - The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State[17] at the time the court is seised (it is considered that the fact that the court and the child come from the same territory will contribute to the court rendering the judgement in child's best interest).

16 ECJ: Case 25/79 *Sanicentral v René Collin* (1979) ECR 3423, Paragraph 5, Case 288/82 *Duijnstee v Goderbauer* (1983) ECR 3663, Paragraphs 13-14; C-432/93 *Société d'Informatique Service Réalisation Organization v Ampersand Software BV* (1995) ECR I-2269.

17 ECJ: C-523/07 Applicant A (2009) ECR I-2805 and C-497/10 PPU Mercredi v. Chaffe (2010) ECR I-14309. (non-exhaustive list of elements that the national court must take into consideration when establishing habitual residence of the child in Member State: a certain degree of child's integration in his/her new family and social environment, in particular the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State).

As a rule, the court retains its jurisdiction (perpetuatio fori) even where a child moves lawfully from one Member State to another and acquires a new habitual residence there. In other words, the change of child's habitual residence during the proceedings does not bring about the change of jurisdiction.

By way of exception to these provisions, rules on retention of jurisdiction referred to in Article 9, as well as rules on jurisdiction in cases of child abduction referred to in Article 10, prorogation of jurisdiction referred to in Article 12 and transfer of jurisdiction referred to in Article 15 of the Regulation shall apply.

SPECIFIC JURISDICTION - Article 9 - Continuing jurisdiction of the child's former habitual residence

Where a child moves lawfully from one Member State to another and acquires a new habitual residence there, the courts of the Member State of the child's former habitual residence, may bring a new judgement on access rights, provided that the following conditions have been met:

- court of Member State of origin must previously render a judgement on rights of access; the removal of the child must be "rightful" (lawful); the request for modification of initial judgement must be submitted within three months of the date of removal of the child; a child must acquire habitual residence in the state where he/she has been removed within three months from the date of removal; the holder of rights of access must have habitual residence in the Member State[17] of origin of judgement; the holder of rights of access must not accept the change of jurisdiction (participate in proceedings before a court of Member State of the child's new habitual residence, without contesting its jurisdiction).

JURISDICTION IN CASES OF CHILD ABDUCTION - Articles 10 and 11 of the **Regulation** - make reference to application of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter 'the 1980 Hague Convention') and include provisions on courts' jurisdiction (autonomous and wider term than the usual definition of the term "court"). The Convention is applicable in all EU Member States, so the Regulation only complements the 1980 Hague Convention with provisions on direct international jurisdiction and procedures in case of child abduction on EU territory.

Articles 10 and 11 of the Regulation[18] lay down provisions on court procedures in case of wrongful removal or retention of the child, by precluding the continuing child's habitual residence in the Member State where the child has been taken in the fore-mentioned manner, as well as further procedures when the court issues its judgement refusing the request for child's return, which allows for gradual unification among Member States.

Article 10 of the Regulation sets down the rule that, under certain conditions, in case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction.

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18 ECJ in relation to Articles 10 and 11 of B II a/bis: C- 211/10 PPU Povse v. Alpago (2010) ECR I-6673, C- 497/10 PPU Mercredi v. Chaffe (2010) ECR I-14309 and C-195/08 Rinau (2008) ECR I-5271.

Article 11 of the Regulation ensures unified procedures of authorities of all EU Member States. When seised, the court must take into account several elements:

- **determine whether removal or retention is lawful or wrongful**

In case of joint parental responsibility, removal of a child without consent of the other holder of parental responsibility shall be considered wrongful retention[19].

- **issue a judgement on child's return whenever it finds that the child's interest will be protected after his/her return**

In accordance with the provisions of the 1980 Hague Convention, the court is not bound to decide on child's return to the Member State of origin if it finds that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation (Article 13, Paragraph 1 of the 1980 Hague Convention). The court must ascertain that the authorities of that state have taken required steps to secure such protection[20].

- **both the child and the applicant for the return of the child must be given an opportunity to be heard**

Both the 1980 Hague Convention and the Regulation lay down the obligation of the court before which the proceedings for the return of the child are brought to give the opportunity to hear the child, unless "this appears inappropriate having regard to his or her age or degree of maturity" (Article 11, Item 2 of the Regulation).

The Regulation 2019/1111 does not refer to the term "to hear a child" any more, but to allow a child "to express his or her (their) views or "the establishment of child's views".

- **the court is bound to issue a judgement no later than six weeks** after the applicatio for return of the child is lodged. Objective justification must be given if this deadline is not met.

Provision of the Article 11, Item 4 of the Regulation narrows the scope of application of the Article 13 (b) of the 1980 Hague Convention.

If the court refuses the return of the child whatsoever, pursuant to the Article 11, Item 6 of the Regulation, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents[21], to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law.

19 Practice Guide, note 6, p. 54.

20 Practice Guide, note 6, pp. 54 and 55.

21 For instance: reports of the centre for social welfare or other documents that the judge used to form his/her opinion, but it is at the discretion of a judge who has issued a judgement in each individual case.

Article 11, Item 7 of the Regulation bounds the court of the Member State from which the child was wrongfully removed, that, once it receives the documents of the court that has issued an order on non-return pursuant to the Article 13 of the 1980 Hague Convention, to notify it to the parties within one month from the date of the order, and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child. To meet this criterion, only one party from the Article 11, Item 7 of the BU II may apply for review of custody.

PROROGATION OF JURISDICTION - Article 12, Paragraph 1 - allows to combine proceedings involving the same parties and factual circumstances. This applies to prorogation of jurisdiction if proceedings in matrimonial matters have already been instituted. In such a case, the court exercising jurisdiction on matrimonial matters shall also have jurisdiction in matters relating to parental responsibility where: the proceedings relating to matrimonial matters were brought before a court of a Member State; at least one of the spouses has parental responsibility in relation to the child; 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 at the time the court is seised; and is in the superior interests of the child.[22]

The jurisdiction established in this manner shall cease (Article 12, Paragraph 2 of the Regulation) if the judgement allowing or refusing the application for divorce, legal separation or marriage annulment has become final; a judgement in the proceedings in relation to parental responsibility has become final, in those cases where proceedings in relation to parental responsibility are still pending on the date when the judgement in relation to matrimonial matters has become final; or if the proceedings in relation to matrimonial matters or parental responsibility have come to an end for another reason.

Article 12, Paragraph 3 of the Regulation allows for **prorogation of jurisdiction irrespective of matrimonial matters**, for proceedings in relation to **parental responsibility**, if matrimonial proceedings have not been instituted and the child does not have habitual residence in that Member State, but has a substantial connection with it;[23] the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interest of the child (these three conditions must be met in a **cumulative manner**).

For example, if the child who is a national of EU Member State is habitually resident abroad in a non-EU Member State that is not a contracting party to the 1996 Hague Convention, jurisdiction of the court of the Member State of which the child is a national may be determined by reference to the nationality of that child, provided that other given conditions are met (child's best interest and agreement of all the parties). In these cases, it shall be deemed that jurisdiction, pursuant to the Article 12, is in the child's best interest (Article 12, Paragraph 4 of the Regulation).

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22 If the child is habitually resident in a third State where the scope of BU II bis or the 1996 Hague Convention do not apply, jurisdiction established under the Article 12 shall be deemed to be in the child's best interest, in particular if it is found impossible to hold proceedings in the third State (Article 12, Paragraph 4 of BU II bis).

23 Substantial connection shall mean, in particular, the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State (Article 12, Paragraph 3, Item a).

JURISDICTION BASED ON THE CHILD'S PRESENCE - Article 13 of the Regulation shall apply if child's habitual residence cannot be established and jurisdiction of the court of the relevant Member State cannot be prorogated. In these cases, the only option is to determine the jurisdiction of the court of the Member State where the child is present (Article 13, Paragraph 1).[24] In accordance with the Explanatory Memorandum of the EC Commission[25], this Article shall not apply in case of a child habitually resident in a third State.

Article 13, Paragraph 2 of the Regulation lays down this type of jurisdiction in case of refugee children or children internationally displaced because of disturbances occurring in their country.

RESIDUAL JURISDICTION - Article 14 of the Regulation, as the last provision determining jurisdiction in the hierarchy of provisions, sets down the procedure where no court of a Member State has jurisdiction pursuant to Articles 8 to 13. In this case, courts or other authorities of Member States shall determine their jurisdiction by the laws of that State.

TRANSFER TO A COURT BETTER PLACED TO HEAR THE CASE - Article 15 of the Regulation lays down that, **by way of exception**, the courts of a Member State having jurisdiction as to the substance of the matter may, transfer jurisdiction to a court of another Member State if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child (Article 15, Paragraph 1 of the Regulation).

Jurisdiction may be transferred in relation to **the entire case** or **the part thereof** (Article 15, Paragraph 1, Item a) of the Regulation).

Transfer may occur (Article 15, Paragraph 2 of the Regulation) upon application from a party, of the court's own motion (*ex officio*), provided that at least one of the parties agrees to it or upon application from a court of another Member State with which the child has a particular connection, provided that at least one of the parties agrees to it. If all the afore-mentioned conditions have been met, the court of the Member State of origin may:

- stay the case or the part thereof and invite the parties to introduce a request for transfer of case or the part thereof to the court of that other Member State, within the time limit that the court sets, or request a court of that other Member State to assume jurisdiction.

If the parties fail to institute proceedings before the court of other Member State **by that time**, the court of a Member State having jurisdiction as to the substance of the matter shall continue to exercise jurisdiction in accordance with Articles 8 to 14 (Article 15, Paragraph 4 of the Regulation). The same applies in the case if the court to which the request for transfer was submitted declines jurisdiction or does not assume jurisdiction **within six weeks** of their seisure (Article 15, Paragraph 5 of the Regulation).

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24 ECJ: C- 479/10 PPU Mercredi v. Chaffe (2010) ECR I-14309.

25 Explanatory Memorandum of the EC Commission, COM (2001) 505 final, p. 9.

If the requested court assumes jurisdiction and accepts the transfer of the case, the court submitting the request, pursuant to the Article 15 of the Regulation, shall decline jurisdiction. Once a case has been transferred to the court of another Member State, it cannot be further transferred to a third court.

Article 15, Paragraph 3 of the Regulation defines when the child shall be considered to have "a particular connection to a Member State:" if that Member State has become the habitual residence of the child after the court having jurisdiction as to the substance of the matter was seised; or when the child had former habitual residence in that Member State or if the child is the national of that Member State or when the holder of parental responsibility is the national of that Member State or if the property of the child is located in that Member State and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of this property.

In that sense, Item 4 stands out as important, whereby the nationality of the holder of parental responsibility represents a link, since the holder does not necessarily mean a parent, so the relevant nationality refers to that of the holder of parental responsibility rather than a parent. Both courts must be convinced that a transfer is in the best interests of the child. The judges should co-operate to assess this on the basis of the "specific circumstances of the case".[26]

COMMON PROVISIONS

Compelling norms laid down in the Chapter II regulate international jurisdiction of courts and other authorities of EU Member States, seising of the court, examination as to jurisdiction and admissibility, lis pendens and dependent actions and, finally, provisional, including protective, measures. These provisions are significant in cases when parties institute dependent actions in different Member States.

Article 16 - Seising of the court - a court shall be deemed to be seised at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent (Paragraph 1) or if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court (Paragraph 2).

The Regulation **autonomously** sets the time when the court shall be deemed to be seised because Member States have different legal rules determining such time and this rules avoids the possibility that parties use differences in national legislation to their advantage (*forum shopping*).

26 Practice Guide, note 6, p. 34.

Article 17 - 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. Exceptions are procedures in cases from Articles 12, 13 and 14 of the Regulation.

Court takes into consideration jurisdiction ex officio during the entire proceedings. In other words, it may declare that it has no jurisdiction in any phase of the proceedings.

Article 18 - Examination as to admissibility

After it determines its jurisdiction in a given case, the court shall examine the admissibility of the claim ex officio.

If the respondent habitually resident in a non-EU Member State does not enter into legal proceedings, the court 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 (Paragraph 1).

For service of documents from one Member State to another, the Council Regulation (EC) No 1348/2000 shall apply[27] - Regulation on Service of Documents (Paragraph 2). The Regulation has been repealed and replaced by a new Regulation - Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000[28].

For other types of service of documents, the Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Article 18, Paragraph 3) shall apply. If it is not applicable either, national law shall apply.

Article 19 - Lis pendens and dependent actions

The Regulation sets down several criteria applied to establish international jurisdiction, so it was also necessary to regulate the issue of lis pedens and dependent actions.

The Regulation does not unify the rule on lis pedens. The rules apply to proceedings instituted in EU Member States only, and not in the “third States” (non-EU Member States).

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27 Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters, OJ EC L 169/37, 30. 6 2000.

28 Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (service of documents), and repealing Council Regulation (EC) N0 1348/2000, OJ L 324/79, 10. 12. 2007).

Paragraph 2 shall apply where proceedings relating to parental responsibility relating to **the same child and involving the same cause of action**, 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. In this way, situations in which both courts refuse their jurisdiction (negative conflict of jurisdiction) are avoided.

Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court (Paragraph 3).

In relation to lis pedens with a third State, the rules of international procedural law of the court examining lis pedens (*lex fori*) shall apply because the Regulation does not contain the rules covering such situations.

Article 20 - Provisional, including protective, measures in urgent cases in respect of persons or assets, the courts of Member States that do not have jurisdiction as to the substance of the matter in accordance with provisions of the Regulation may institute the proceedings and take provisional, including protective, measures[29], but this does not exclude the possibility that the court having jurisdiction as to the substance of the matter takes provisional and protective measures in relation to the substance of the matter[30] (Paragraph 2 Article 20 of the Regulation). These measures are governed by the law of the court of the Member State where the action was brought.

These judgements take effect only in the state of the court that has taken such measures and they shall cease to apply when the court of the Member State having jurisdiction as to the substance of the matter has taken the measures it considers appropriate, i.e. once its judgement is recognized and declared final pursuant to provisions of the Regulation (C523/07 - a provisional measure may be decided by a national court under Article 20 of the Regulation if the following conditions are satisfied: the measure must be urgent, it must be taken in respect of persons in the Member State concerned and it must be provisional).

Taking measures and their binding nature are established in accordance with the national law. The national court that has taken such measure shall notify the court having jurisdiction as to the substance of the matter about the measure.

RECOGNITION AND ENFORCEMENT

One of the fundamental goals in respect of recognition of foreign judgements in all instruments of private international law of the EU is to allow “free movement of judgements” and creation of the “single judicial area” within the “area of freedom, security and justice (AFSJ)”. For this

29 ECJ : case C-523/07 *Applicant A* (2009) ECR I-2805; case C-403/09 PPU *Detiček v. Sgueglia* (2009) ECR I-12193, case C-296/10 *Purrucker v. Vallés Péres* (2010) ECR I-11163.

30 The Regulation does not stipulate the nature or type of measures that may be taken so the relevant state can take any measure in accordance with the law of that State in relation to persons or their property on the territory of that State.

reason, the Regulation (Article 21, Paragraph 1) lays down the procedure of recognition in which a judgement given in a Member State shall be recognised in the other Member States without any special procedure being required (ipso iure).

Pursuant to Article 2, Paragraph 2 and Article 3, Paragraph 1 of the Regulation, this rule applies to decisions of judicial and administrative bodies in matrimonial matters and matters of parental responsibility regardless of what the judgement may be called (decree, order or decision). Pursuant to Article 46 of the Regulation, documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgements.

Since judgements in matters of parental responsibility issued in one Member State are recognized in another Member State, without any special procedure, it shall not be required for updating the civil-status records of a Member State (Article 21, Paragraph 2 of the Regulation). The judgement for which registration in records is requested must be final in accordance with the law of the Member State of origin (Member State of the court that has issued the judgement).

This Regulation is particular in the way that it sets down two separate procedures for recognition and enforcement.

One is traditional (standard) procedure, whereas the other one is expedited procedure, commonly known as the “fast track” procedure.

The standard recognition procedure shall apply to judgements in matrimonial matters and the majority of judgements in relation to parental responsibility. On the other hand, the expedited procedure shall apply to judgements in relation to rights of access and judgements requiring return of the child.[31]

Article 21, Paragraph 1 - Standard recognition procedure - Judgements in matrimonial matters and matters in relation to parental responsibility given in a Member State shall be recognised in the other Member States without any special procedure being required (*ipso iure*).

Article 21, Paragraph 3 - Judicial procedure of recognition - any interested party may apply for a decisionthat the judgement be recognised, regardless of whether the recognition procedure is required for such a judgement or not.

The party seeking recognition shall submit a copy of the judgement which satisfies the conditions necessary to establish its authenticity and the certificate (certificate on enforceability of the order) using the form set out in Annex II (judgements on parental

31 ECJ: C-195/08 PPU *Rinau v. Rinau* (2008) ECR I-5271, C-403/09 *Detiček v. Sgueglia* (2009) ECR I-12193, C-211/10 *Povse v. Alpago* (2010) ECR I-6673 i C-491/10 *Aguirre Zaraga v. Pelz.*

responsibility), issued by the court of the Member State of origin upon the application of any interested party.

In the case of a judgement given in default (the party did not enter into proceedings), the party seeking recognition or applying for a declaration of enforceability shall produce 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 any document indicating that the defendant has acceptedthe judgement unequivocally (Article 37 of the Regulation).

If the party fails to produce the above-mentioned documents, 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 (Article 38, Paragraph 1 of the Regulation).

„any interested party" - does not necessarily mean the parties to the proceedings in which the judgement was issued. The decision on who can be deemed such a party is governed by the national law of the Member State where the action was brought.

Provisions of the Regulation in relation to declaration of enforceability shall apply on the proceedings. The decision whether the judgement shall be recognized or not is governed by the national law of the Member State where the action was brought. By its legal nature, a judgement on recognition or non-recognition is declaratory and takes effect between parties to the proceedings (*inter partes*).

Article 23 - Grounds of non-recognition for judgements relating to parental responsibility - The list of grounds of non-recognition for judgements relating to parental responsibility:

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) where it was given **in default of appearance if the person in default** was not 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 defence** unless it is determined that such person has accepted the judgement unequivocally

d) on the request of any person claiming that the judgement 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 judgement** relating to parental responsibility **given in the Member State in which recognition is sought**

f) **if it is irreconcilable with a later judgement** relating to parental responsibility **given in another Member State or in the non-Member State of the habitua residence of the child provided that** the later judgement fulfils the conditions necessary for its recognition in the Member State in which recognition is sought

g) **if the procedure laid down in Article 56 of the Regulation** in relation to the placement of a child in institutional care or with a foster family in another Member State **has not been complied with**.

The court takes into consideration the listed grounds of its own motion (ex officio).

Article 24 - Prohibition of review of jurisdiction of the court of the Member State of origin in relation to custody - given the EU principle of mutual trust in Member States' judicial systems, the authorities of the Member State in which recognition is sought shall not review the jurisdiction of the court of the Member State of origin of the judgement on parental responsibility, irrespective of the way it has established its jurisdiction, i.e. on the basis of provisions on jurisdiction of the Regulation or national rules on international jurisdiction, even if it did not have jurisdiction for issuing a judgement to be recognized.In addition, the court of a Member State in which recognition is sought shall not review jurisdiction of court of Member State of origin of the judgement in relation to matters of public policy referred to in Articles 22(a) and 23(a) of the Regulation.

Article 26 - Non-review as to substance of judgement in relation to custody - Also, under no circumstances shall a judgement be reviewed as to its substance.

Article 27 - Stay of proceedings - If an **ordinary appeal** against the judgement to be recognized has been lodged in the Member State of judgement, the court of a Member State in which recognition is sought **may** stay the proceedings. In accordance with the ECJ case-law, the relevant appeal is the one that "by its nature may lead to the annulment or modification of judgement to be recognized and enforced" and that, in accordance with the national law of the Member State of origin, shall be lodged within the specified time. This provision shall also apply to the procedure for establishment of recognition or non-recognition and recognition as a preliminary reference.

A court of a Member State in which recognition is sought of a judgment given in Ireland may stay the proceedings if enforcement is suspended in the Member State of origin by reason of an appeal.

APPLICATION FOR A DECLARATION OF ENFORCEABILITY

Article 28 - Enforceable judgements - A judgement on the exercise of parental responsibility enforceable in a Member State in which it was given (as proved by the official declaration issued by the authorities of the Member State of origin of the judgement - the declaration of

enforceability)[32] and has been served, shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there (Paragraph 1).The Paragraph 2 does not apply given the United Kingdom's withdrawal from the European Union.

Article 29 - Jurisdiction of local courts - An application for a declaration of enforceability shall be submitted to the court appearing in the list that each Member State had to submit to the Commission pursuant to Article 68 of the Regulation[33]. The local jurisdiction shall be determined by reference to the place of habitual residence of the person against whom enforcement is sought or by reference to the habitual residence of any child to whom the application relates. Where neither of the places can be found in the Member State of enforcement, the local jurisdiction shall be determined by reference to the place of enforcement (Paragraph 2).

Article 30 - Procedure - The procedure for making the application for a declaration of enforceability shall be governed by the law of the Member State of enforcement.
The only party to the procedure is the applicant (Article 31, Paragraph 1, phrase 2 of the Regulation) and the procedure shall be from one party only (*ex parte*). The applicant must give an address for service within the area of jurisdiction of the court applied to, but if the law of the Member State of enforcement does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem. The documents referred to in the Regulation (Article 30, Paragraph 3) shall be attached to the application.

Article 31 - Decision of the court - The decision on the application for a declaration of enforceability shall be given without delay. The application may be refused only for one of the reasons specified in provisions of the Article 23 of the Regulation (as listed from a) to g)) and Article 24 (prohibition of review of jurisdiction). At this stage of the proceedings, the applicant shall be the only party. Neither the person against whom enforcement is sought, nor the child, shall be entitled to make any submissions on the application

Article 32 - 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 of enforcement. If the decision was declared enforceable, enforcement shall be carried out by the law of the relevant Member State.

Article 36 - Partial enforcement - Where a judgement has been given in respect of several matters (e.g. judgement on parental responsibility in respect of three children) and

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32 The party seeking enforcement shall submit a copy of the judgement which satisfies the conditionsnecessary to establish its authenticity and the certificate using the form set out in Annex II (judgements on parental responsibility), issued by the court of the Member State of origin upon the application of any interested party. If the party fails to produce the above-mentioned documents, 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 (Article 38 of the Regulation).

33 The list covers only the courts having jurisdiction. The court having local jurisdiction is the court in the place of habitual residence of the person against whom enforcement is sought or the habitual residence of any child to whom the application relates. If nether of the two places is in the Member State in which enforcement is sought, the court having the local jurisdiction is the court in the place of enforcement (Article 29, Paragraph 2) of the Regulation).

enforcement cannot be authorised for all of them (e.g. an appeal has been lodged suspending enforcement in respect of two children), the court shall authorise enforcement for one or more of them. An applicant may request partial enforcement of a judgement. Objective cumulation of applications shall be prerequisite for partial enforcement, provided that enforcement may be allowed for one application at least.

Articles 33-35 - Appeal procedures - Either party may lodge an **appeal against the decision on the application for a declaration of enforceability**. For each Member State, the appeal shall be lodged with the court that it notified to the Commission. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters. If the party against whom enforcement is sought does not enter into proceedings before the appellate court in relation to the appeal lodged by the applicant, the court 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.

If the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another, the Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 shall apply. Where the provisions of Regulation (EC) No1393/2007 are not applicable, the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply.

An appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is not habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him/her or at his/her residence. No extension of time may be granted on account of distance.

No appeal may be lodged against the judgement refusing the declaration of enforceability of a certain judgement. The judgement given on appeal may be contested only by the parties to the proceedings, rather than third parties. It may be contested only by the proceedings referred to in the list notified by each Member State to the Commission.

The first or second instance court with which the appeal is lodged may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged in the Member State of origin, or if the time for such appeal has not yet expired (Paragraph 1, Article 35 of the Regulation). Where the judgement was given in Ireland, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal, for the purposes of Paragraph 1 (Paragraph 2, Article 35 of the Regulation).

Articles 37 to 39 - Common provisions for recognition and enforcement - A party contesting or seeking recognition or applying for a declaration of enforceability shall, together with the application, produce a copy of the judgement which satisfies the conditions necessary to establish its authenticity and the certificate referred to in Article 39 of the Regulation.

Where the judgement was given in default of appearance, the person defaulting shall, together with the application, produce 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 any document indicating that the defendant has accepted the judgement unequivocally (Article 37 of the Regulation).

If the documents specified in Article 37(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. 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 38 of the Regulation).

The competent court or authority of a Member State of origin shall, at the request of any interested party, issue a certificate using the standard form set out in Annex II for judgements on parental responsibility. (Article 39 of the Regulation).

EXPEDITED PROCEDURE OF RECOGNITION - shall apply only to judgements in relation to rights of access and judgements requiring return of the wrongfully removed or retained child. This procedure allows for direct recognition and enforcement of judgements concerned.

Article 41 - Judgements on rights of access - A judgement on the rights of access which is enforceable in a Member State of origin shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition. The judgement shall be accompanied with the certificate on enforceability issued using the form set out in Annex III of the Regulation that the court shall issue only if 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 defence, or, if 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, if all parties concerned were given an opportunity to be heard and the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

Even if national law does not provide for enforceability by operation of law of a judgement granting access rights, the court of origin may declare that the judgement shall be enforceable, notwithstanding any appeal.

If the judgements on the rights of access is issued in proceedings that involve a cross-border situation at the time of the delivery of the judgement, the certificate shall be issued ex officio when the judgement becomes enforceable, even if only provisionally.

If the situation subsequently acquires a cross-border character, the certificate shall be issued at the request of one of the parties.

Article 42 - Judgements requiring the return of the wrongfully removed or retained child - The judgement given in a Member State requiring the return of the child which is enforceable in the Member State of origin, shall be recognized and enforceable in another Member State under the same conditions as set out in the Article 41 of the Regulation provided that the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity, the parties were given an opportunity to be heard; and the court has taken into account in issuing its judgement the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

In the event that the court or any other authority takes measures to ensure the protection of the child after its return to the State of habitual residence, the certificate shall contain details of such measures. The judge of origin shall of his or her own motion issue that certificate using the standard form in Annex IV (certificate concerning return of the child(ren)) (Article 42, Paragraph 2 of the Regulation).

Other provisions

Article 43 of the Regulation lays down the possibility to rectify the certificate (Annexes III and IV) whereby the law of the Member State of origin shall be applicable to any rectification thereof. No appeal shall lie against the issuing of a certificate.

The enforcement procedure is governed by the law of the Member State of enforcement. Any judgement declared to be enforceable or certified (in relation to judgements on rights of access or return of the child) shall be enforced in the Member State of enforcement under the same conditions as if it had been delivered in that Member State (Article 47 of the Regulation).

The same rules apply to the documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties (Article 46 of the Regulation).

The courts of the Member State of enforcement may make practical arrangements for organising the exercise of rights of access, if the necessary arrangements have not or have not sufficiently been made in the judgement delivered by the courts of the Member State having jurisdiction as to the substance of the matter and provided the essential elements of this judgement are respected.

The practical arrangements made pursuant to Paragraph 1 shall cease to apply pursuant to a later judgement by the courts of the Member State having jurisdiction as to the substance of the matter Article 48 of the Regulation).

Articles 49 to 52 of the Regulation lay down provisions on costs, legal aid, security, bond or deposit and legalisation or other similar formality.

COOPERATION BETWEEN CENTRAL AUTHORITIES IN MATTERS OF PARENTAL RESPONSIBILITY

Member States' central authorities that cooperate have been set out in the Hague Conventions. In addition, they have been identified as a successful cooperation model in the Regulation as well.

Each Member State shall designate one or more central authorities to assist with the application of the Regulation and shall specify the geographical or functional jurisdiction of each.

On the other hand, the Practical Guide[34] points to the ideal situation in that respect, namely, that the authorities designated "coincide with the authorities designated under the 1980 Hague Convention".

Member States shall notify the Commission on all potential changes in terms of procedures and organization of central authorities. The Commission shall make this information publicly available. The information is available at the website "e-justice.europa.eu".

The Regulation prescribes that central authorities shall communicate information on national laws and procedures and take measures to improve the application of this Regulation and strengthening their cooperation. For this purpose the European Judicial Network in civil and commercial matters created by shall be used (Articles 54 and 58).

DELIMITATION OF SCOPE OF REGULATION AND 1996 HAGUE CONVENTION

Given that EU legal instruments take precedence over all other multilateral and bilateral agreements, the Regulation shall, for the Member States, supersede conventions existing at the time of entry into force of the Regulation which have been concluded between two or more Member States and relate to matters governed by the Regulation (Article 59 of the Regulation). The Article 60 of the Regulation lists these conventions.

The Article 61 of the Regulation covers the relation with the 1996 Hague Convention in a way that the Regulation shall take precedence under these conditions: where the child concerned has his or her habitual residence on the territory of a Member State; as concerns the recognition and enforcement of a judgement given in a court of a Member State on the territory of another Member State, even if the child concerned has his or her habitual residence on the territory of a third State which is a contracting Party to the said Convention.

If the child does not have habitual residence on the territory of a Member State, the Regulation shall not take precedence over the 1996 Hague Convention, so the Article 6, Paragraph 2 of the 1996 Hague Convention (stipulating the jurisdiction based on the child's presence on the

34 Practice Guide, note 6, p. 83.

territory of of a State which is a contracting Party to the said Convention) may apply, rather than the Article 13 of the Regulation (also stipulating jurisdiction based on the child's presence, but in the EU Member State).

Judgements issued in accordance with the 1996 Hague Convention are not subject to ECJ interpretations.

Practice Guide for the application of the Regulation provides additional explanations in terms of relationship between the Regulation and the 1996 Hague Convention. It should be emphasised that the provisions of the 1996 Hague Convention on the applicable law shall apply in all cases because the Regulation does not lay down such provisions.[35]

DELIMITATION OF SCOPE OF REGULATION AND 1980 HAGUE CONVENTION

Given the existence of the 1980 Hague Convention and its importance in application, in particular by taking into account that all EU Member States are also contracting Parties to the 1980 Hague Convention, the Regulation only complements the provisions of the 1980 Hague Convention. Therefore, the Regulation does not set down a legal basis for delivering a judgement on order or refusal of a child in case of wrongful removal or retention, but refers to the application of Articles 12 and 13 of the 1980 Hague Convention, even if the case involves two EU Member States.

(see clarifications in this Manual in relation to Articles 10 and 11 of the Regulation).

Council Regulation (EC) No 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 (EC) No 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) (hereinafter: Regulation) shall apply as of 1 August 2022 in all EU Member States, apart from Denmark (Item 96 of the Preamble).

The Regulation does not lay down any significant modifications in so far as they relate to marriage.

Significant modifications cover parental responsibility and international child abduction, as the name of the Regulation clearly indicates.

35 Given that the BU II does not lay down provisions on applicable law, pursuant to the Articles 61 and 62 of the BU II bis, the 1996 Hague Convention shall continue to have effect in relation to matters not governed by the BU II bis. For that reason, the provisions of the 1996 Hague Convention on applicable law shall apply alongside the provisions of the BU II bis on jurisdiction, recognition and enforcement.

The Preamble contains 98 items (as opposed to the Preamble of the Brusells IIa with only 33 items). The majority of them cover protection and ensuring protection of child's rights and wellbeing and makes direct reference to the Article 24 of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child of 20 November 1989 (Item 19 of the Preamble).

The Preamble also prescribes the grounds for its non-application in case of procedures listed in the Article 1, Paragraph 4.

In particular, the Regulation clarifies the child's right to be provided with an opportunity to express his or her views in proceedings (Item 2 of the Preamble).

The fact that the terminology used in the Brusells IIa ("hearing") has been modified clearly points to the significance of this principle because expressing views represents the child's right, rather than an obligation, with conditions that should be met in the process of determining views, as opposed to the "hearing" that, in a legal sense, implies obligations and a degree of legal "strictness".

Furthermore, as opposed to the Brusells IIa, the Regulation provides a detailed explanation of the relation of the Regulation and the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter: the 1980 Hague Convention) and the relation with another very important instrument of the private international law from the area of family law, 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 (hereinafter: "the 1996 Hague Convention").

The Regulation introduces a new feature by defining the "child" as any person below the age of 18 years in the Article 2.

In relation to custody, the Regulation does not include a provision on prorogation of jurisdiction and this represents a significant modification. Prorogation of jurisdiction is regulated by referring to the choice of court agreement (Article 10 of the Regulation).

Significant modification has been made in the sense of the Article 15 of Brusells IIa (Articles 12 and 13 on transfer of jurisdiction in the 2019 Regulation).

In addition, the Regulation addresses provisional, including protective, measures in urgent cases in proceedings in relation to custody, separately from those in proceedings in relation to divorce or marriage annulment because they are not covered by common provisions.

The Regulation lays down a new provision in terms of incidental questions (Article 16).

In addition to the Preamble, the right of the child to express his or her views is addressed in the Article 21 as well.

A special Chapter - CHAPTER III deals with international child abduction, emphasising the importance of the relevant provisions.

The Chapter, covering Articles 22 to 29, prescribes the proceedings in case of wrongfully removed or retained child. The same topic was addressed in the Article 11 of the Brusells IIa Regulation.

The new provisions complement the rules of the1980 Hague Convention in relation to the Member States, in particular the procedures carried out by the central authority and court (timeframe of six weeks), refers to the alternative dispute resolution, repeatedly lays down the child's right to express his or her views, regulates the proceedings for return of the child and enforcement of decisions ordering child's return (proceedings within the timeframe of six weeks).

The procedure following a court refusal to return the child under point (b) of Article 13, Paragraph 1 and Article 13, Paragraph 2 of the 1980 Hague Convention is set down in detail (Article 29).

The part prescribing the proceedings in relation to recognition of judgements of one Member State in another Member State is complemented by provisions on the documents accompanying the application.

A significant modification has been made in terms of judgements in relation to parental responsibility that are not subject to declaration of enforceability provided that the same judgements became enforceable in the Member State of origin. The same rule was applicable only to judgements on rights of access and return of the child in case of child abduction in the Brusells IIa Regulation.

The entire chapter on recognition and enforcement has been modified, but mostly in terms of technical details, i.e. the sequence of provisions in the relevant Chapter was rearranged. Also, some of them were complemented. In terms of content, the modifications have mostly been made in relation to judgements on parental responsibility.

Provisions on cooperation in matters in relation to parental responsibility have also been complemented.

Two new chapters have been added - Chapter VI - General provisions, setting down the rules on communication between courts, collection and transmission of information, notification of the data subject, non-disclosure of information and languages, as well as Chapter VII - Delegated Acts.

That being said, it follows that the main focus of this recast of the Brusells IIa was to expand and establish mutual trust between authorities of Member States in order to expedite proceedings in matters of parental responsibility and accompanying proceedings, by complying with the principle of the child's best interest, as clearly indicated by assigning the right to the child to express his or her views and detailed elaboration of proceedings in case of international child abduction.

Cross-border divorce proceedings under the Brussels IIa Regulation

1. Legal basis and sources of law for cross-border divorce proceedings within the EU

Legal basis for any EU regulation in the field of international family law is provided for by the Treaty on the Functioning of the European Union.

According to the article 81(1) the European Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

According to the article 81(3) „measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament."

Sources of law for EU cross-border divorce cases are:

- **Brussels IIa Regulation**

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIa Regulation)
The Brussels IIa Regulation is applicable in all EU Member States except Denmark. In the domain of matrimonial matters it governs jurisdiction and recognition of judgments on divorce, legal separation or marriage annulment.

- **Rome III Regulation**

Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (Rome III Regulation)

The Rome III Regulation is currently applicable in 17 EU Member States. Croatia and the Czech Republic do not take part in the enhanced cooperation.

- **International agreements**

For example the Agreement between the ex-Yugoslavia and ex-Czechoslovakia on judicial cooperation in civil, family and criminal matters (Belgrade, 20 January 1964).

Bilateral agreements are relevant only in the matters that are not covered by the EU law (e.g. conflict-of-laws rules in the Member States that do not apply the Rome III Regulation).

- **National private international law acts**

National private international law acts are relevant only in the matters that are not covered by the EU Regulations or international agreements.

Procedural steps in a cross-border divorce case

- **Jurisdiction:** Courts apply the Brussels IIa Regulation
- **Applicable law:** Courts apply either Rome III Regulation or international agreements or private international law acts
- **Recognition of decisions:** Courts apply the Brussels IIa Regulation

2. Scope of the Brussels IIa Regulation

Temporal scope

The Regulation in principle applies as of 1 March 2005 (see Article 72), or as of the accession of a new Member State to the EU.

Geographical scope

The Regulation applies in all European Union Member States with the exception of Denmark (see Recital 31).

Substantive scope

Regarding matrimonial matters, the Regulation applies to divorce, legal separation or marriage annulment. It does not provide for any definition of terms such as “marriage” or “spouse”. Concerning divorce, legal separation or marriage annulment, Brussels IIa Regulation applies only to the dissolution of matrimonial ties and does not deal with issues such as grounds for divorce, property consequences of the marriage or any other ancillary measures.

Case law: C-294/15 Mikolajczyk[36]

(Admissibility of the action for annulment of the marriage brought by a third party following the death of one of the spouses)

36 *https://curia.europa.eu/juris/document/document.jsf?docid=184506&text=&dir=&doclang=EN&part=1&occ=first&mode=DOC&pageIndex=0&cid=2143070*

Ruling:

Brussels IIa Regulation must be interpreted as meaning that an action for annulment of marriage brought by a third party following the death of one of the spouses falls within the scope of the Regulation.

The fifth and sixth indents of Article 3(1)(a) of the Brussels IIa Regulation must be interpreted as meaning that a person other than one of the spouses who brings an action for annulment of marriage may not rely on the grounds of jurisdiction set out in those provisions.

3. Rules on jurisdiction

a) General jurisdiction – Article 3

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, insofar 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 either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her „domicile“ there;*

(b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the „domicile“ of both spouses.

Comment:

Even though the rules in Article 3 provide for a large array of jurisdictions (there are seven different connecting factors), the Regulation does not formally allow for a choice of court. The competence rules are alternative which means that if more than one is fulfilled the applicant is free to choose.

Rules on jurisdiction are based mainly on the habitual residence of the spouses or their nationality. There is no hierarchy among the different connecting factors.

Case law: C-168/08 Hadadi (Hadady)[37]

(Jurisdiction in matters relating to divorce: Relevant connecting factors and their possible concurrence: habitual residence x nationality)

Ruling:

Where spouses each hold the nationality of the same two Member States, Article 3(1)(b) of Brussels IIa Regulation precludes the jurisdiction of the courts of one of those Member States from being rejected on the ground that the applicant does not put forward other links with that State. On the contrary, the courts of those Member States of which the spouses hold the nationality have jurisdiction under that provision and the spouses may seise the court of the Member State of their choice.

b) Exclusive nature of jurisdiction - Article 6

A spouse who:

(a) is habitually resident in the territory of a Member State; or

(b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her „domicile" in the territory of one of the latter Member States, may be sued in another Member State only in accordance with Articles 3, 4 and 5.

37 *https://curia.europa.eu/juris/document/document.jsf?text=&docid=72471&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8504905*

c) Residual jurisdiction – Article 7

1. *Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5, 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 either a national of a Member State or, in the case of the United Kingdom and Ireland, does not have his „domicile" within the territory of one of the latter Member States, 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.*

Comment:

Rules in articles 6 and 7 of the Regulation exclude application of national rules on jurisdiction if the respondent is habitually resident in the territory of a Member State or is a citizen of a Member State. Furthermore, national rules on jurisdiction are applicable if, and only if, there is no competent court in any Member State of the EU based on Articles 3 to 6 of the Brussels IIa Regulation.

Case law: C-68/07 Sundenlind Lopez[38]

(Jurisdiction in divorce proceedings: Respondent not a national or a resident of a Member State. National rules providing for exorbitant jurisdiction)

Ruling:

Articles 6 and 7 of the Brussels IIa Regulation are to be interpreted as meaning that where, in divorce proceedings, a respondent is not habitually resident in a Member State and is not a national of a Member State, the courts of a Member State cannot base their jurisdiction to hear the petition on their national law, if the courts of another Member State have jurisdiction under Article 3 of that regulation.

38 *https://curia.europa.eu/juris/document/document.jsf?docid=70753&text=&dir=&doclang=EN&part=1&occ=first&mode=DOC&pageIndex=0&cid=5899712*

4. Seising of a court

Seising of a Court - Article 16

1. A court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Comment:

As the Regulation provides for a large variety of connecting factors for jurisdiction which often creates situations where two competing spouses rush to different courts in order to initiate proceedings in the Member State they consider more favourable, rules on seising of the court are of utmost relevance. Article 16 in connection with the Article 19 (Lis pendens and dependent actions) gives answer to the question as to when the proceedings are initiated and what are the steps courts have to follow if proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States. In such a case the court second seised shall of its own motion stay its proceedings until the jurisdiction of the court first seised is established.

Case law: C-173/16 M.H. v. M.H[39]

(Jurisdiction in matrimonial matters: Article 16(1)(a) — Determination of the time when a court is seised. Concept of 'the time when the document instituting the proceedings or an equivalent document is lodged with the court')

39 *https://curia.europa.eu/juris/document/document.jsf?docid=181565&text=&dir=&doclang=EN&part=1&occ=first&mode=DOC&pageIndex=0&cid=5901634*

Ruling:

Article 16(1)(a) of the Brussels IIa Regulation must be interpreted to the effect that the 'time when the document instituting the proceedings or an equivalent document is lodged with the court', within the meaning of that provision, is the time when that document is lodged with the court concerned, even if under national law lodging that document does not of itself immediately initiate proceedings.

5. Recognition of a judgment

Recognition of a judgment – Article 21

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 updating 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. *Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised. The local jurisdiction of the court appearing in the list notified by each Member State to the Commission pursuant to Article 68 shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.*

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.*

Grounds of non-recognition for judgments relating to divorce, legal separation or marriage annulment – Article 22

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 served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or herdefence 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; or

(d) if it is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.

Comment:

Recognition of judgments on divorce, legal separation or marriage annulment within the EU under Brussels IIa Regulation should be almost automatic – no special procedure is required. The same applies for updating the civil-status records of a Member State. There is only a limited number of grounds of non-recognition, such as a) public policy clause, b) minimum procedural safeguards, c) irreconcilability with an earlier judgment given in the Member State of recognition, and, finally, d) irreconcilability with an earlier foreign judgment recognisable in the Member State of recognition.

Regulation (EU) 2016/1191 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union

1. Applicability and aim of the Regulation

Regulation *(EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012* **is applicable from 16 February 2019.**

2. Scope of the Regulation

This Regulation applies to public documents issued by the authorities of a Member State in accordance with its national law which have to be presented to the authorities of another Member State and the primary purpose of which is to establish one or more of the following facts:

(a) birth;

(b) a person being alive;

(c) death;

(d) name;

(e) marriage, including capacity to marry and marital status;

(f) divorce, legal separation or marriage annulment;

(g) registered partnership, including capacity to enter into a registered partnership and registered partnership status;

(h) dissolution of a registered partnership, legal separation or annulment of a registered partnership;

(i) parenthood;

(j) adoption;

(k) domicile and/or residence;

(l) nationality;

(m) absence of a criminal record, provided that public documents concerning this fact are issued for a citizen of the Union by the authorities of that citizen‘s Member State of nationality.

Furthermore, the Regulation also applies to public documents the presentation of which may be required of citizens of the Union residing in a Member State of which they are not nationals when those citizens wish to vote or stand as candidates in elections to the European Parliament or in municipal elections in their Member State of residence.

3. Developments in the circulation of public documents within the EU

The Regulation brings developments in the circulation of public documents within the EU in two directions: a) exemption from legalisation or similar formality, b) establishment of multilingual standard forms.

a) Exemption from the legalisation and similar formality

The Regulation removes the requirement for higher verification (so-called superlegalization) of documents, as well as for verification by an apostille clause according to the Convention on the Abolition of the Requirement of Verification of Foreign Public Documents (the so-called Hague Apostille Convention). Public documents issued in one of the EU Member States, including their (first) certified copies or electronic versions, are to circulate within the European Union without the need for any further verification.

However, verification in the form of an apostille clause is not repealed or prohibited by the Regulation. Upon request, it is possible to continue to verify registration and other documents. The respective administrative authorities of the Member States shall provide the public with the necessary information as to in which case public documents should be exempt from verification.

Note: Documents issued by private individuals are excluded from the scope of the Regulation due to their different legal nature.

b) Establishment of multilingual standard forms

The Regulation introduces multilingual standard forms for the most commonly used types of public documents. They are intended to minimize the requirements and costs of obtaining official translations of public documents. Multilingual standard forms are not issued automatically, but only at the request of an authorized person. The form is usually attached to the public document by the authority which issued it, and must bear the date of issue, signature, stamp or seal.

The purpose of multilingual standard forms is to facilitate the translation of public documents in normal situations. The forms contain only basic data from the document. For a number of public documents whose content cannot be duly taken into account in the multilingual standard form, such as certain categories of court decisions, a complete official translation of the document will continue to be attached unless the translation requirement is removed by other legislation (such as divorce judgments in accordance with Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility).

In the case of foreign language registration documents which contain, in addition to basic information, other sections containing notes or other texts proving certain facts affecting the proceedings, it will be necessary to attach either an official translation of the whole document or at least the part not covered by the multilingual form.

The category of public documents for which the multilingual form will be issued is at the discretion of individual EU Member States. In general, these will be those public documents that have a standardized form.

The multilingual standard form may only be used in another Member State and must be submitted with the public document to which it is attached.

If a Member State allows the production of a certified copy of public document instead of the original, the authorities of that Member State must accept a certified copy issued in the Member State where the public document was issued.

Specimens of multilingual standard forms are given in the annex to the public document regulation. These are forms supplemented by a multilingual glossary of standard item names. The translation of a foreign language document using the form must be done in the official language (one of the official languages) of the state in whose territory the document will be submitted.

4. Exchange of information and cooperation between Member States

Where the authorities of a Member State in which a public document or its certified copy is presented have a reasonable doubt as to the authenticity of that public document or its certified copy they shall communicate and consult each other through the Internal Market Information System (‘IMI’).

Zuzana Fišerová

Ms. Fišerová currently works as the Director of the International Department for Civil Matters at the Ministry of Justice of the Czech Republic. She has graduated at the Law Faculty and the Faculty of Philosophy of the Charles University in Prague. Since 2005 she has been working on various positions at the Ministry of Justice of the Czech Republic. In January 2012 she was appointed Director General responsible for the international relations. Since 2015 she has been heading International Department for Civil Matters. She represents the Czech Republic in various organisations and committees (Committee on civil law in the Council of EU, European judicial network in civil and commercial matters, Committee for legal cooperation of the Council of Europe, the Board of Trustees of the Academy of European Law, the Hague conference on private international law etc.). She has rich experience in teaching private international law (especially family law) and cross-border judicial cooperation in civil and commercial matters. She is regularly giving lectures for judges at Judicial Academy of the Czech Republic or Judicial Academy of the Slovak Republic. She also often participates in conferences and seminars organised by Czech Bar association or by Notary Chamber of the Czech Republic. She has experience as lecturer for EJTN and for Academy of European Law (ERA). Finally yet importantly, she teaches private international law at the Law Faculty of the Charles University in Prague.

Tijana Kokić

Judge Kokić had worked as judge at the Zagreb municipal civil court since 1998, since 2010 as a judge in family matters at the court, and later as the head of the court‘s family department. Since 2017, she has been the European Judicial Network contact judge for Croatia in family matters, and since 2019 the IHNJ liaison judge. She has graduated from the Zagreb University Faculty of Law and has wide experience in family law-related programs on national and international level.

CEELI Institute (www.ceeliinstitute.org)

The CEELI Institute is an independent not-for-profit organization based in Prague that is dedicated to providing trainings and education for legal professionals. Now in its second decade, CEELI has trained over 10,000 judges, prosecutors and lawyers from over 50 countries in subjects ranging from court efficiency, to anti-corruption investigations, to judicial ethics, to human rights. CEELI has organized programs in the countries of the EU including Central and Eastern Europe, former Soviet countries, Middle East and North Africa and South Asia.

Association of Croatian Judges

Association of Croatian Judges (Udruga hrvatskih sudaca - UHS) was founded in 1991 and it is the only judicial association in Croatia. It has 1,185 member judges divided into 21 local branches. The objectives of the Association are to promote constitutionality and legality as a top legal and ethical values, protection of the independence of the judiciary, dignity of judges and the judicial profession, promotion of the professional interests and training of judges.

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