



# Training of lawyers on EU Civil Law (TRADICIL)

**Arcadia Hinescu**

**Jurisdiction, recognition and enforcement of  
decisions in matrimonial matters and matters of  
parental responsibility**

**Bucharest, 23 May 2025**



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## LEGAL FRAME

Council regulation (EU) No. 2201/2003 on jurisdiction and the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, repealing Council Regulation (EC) No 1347/2000 (**Brussels II bis**)

- Up to July 31, 2022

**Council regulation (EU) 2019/1111** on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (**Brussels II ter**)

- In force as of August 1, 2022

All the CJUE jurisprudence on Brussels II bis remain a legal interpretation base to be used for Brussel II ter

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## APPLICABILITY Material Scope

### MATRIMONIAL MATTERS

**YES**– divorce, legal separation, marriage annulment

**NO** – ground for divorce, property of the spouses, maintenance obligations, decisions refusing the dissolution of matrimonial ties

### PARENTAL RESPONSIBILITY MATTERS


**YES** - custody, access, guardianship, curatorship, people that have in charge the person or property of a child/representing/assisting a child, placement of a child in foster care, measures for the protection of the child as regards the management, preservation and disposal of the assets of the child

**NO** – Filiation, adoption, the name and forenames of a child, emancipation, maintenance obligations (EU Regulation 4/2009), trusts or succession, measures following criminal law offences of children

**OTHER SPECIAL REGULATIONS APPLY** to the excluded matters

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## APPLICABILITY Territorial Scope

Between all the EU Member States, except for Denmark, which did not take part in the adoption of the Regulation, therefore it is bound to it

As of 1 January 2021, the United Kingdom is no longer an EU Member State. However, in the field of civil justice, pending procedures and proceedings initiated before the end of the transition period will continue under EU law. Until the end of 2025, the United Kingdom can continue to be selected in online (dynamic) forms for the purpose of these proceedings and procedures. An exception to this rule are the Public documents forms, in which the UK should not be selected.

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## APPLICABILITY Temporal Scope

Since August 1, 2022 (Art. 105 (2))


Transitional provisions – Art. 100

- Regulation (EC) No 2201/2003 shall continue to apply to decisions given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to agreements which have become enforceable in the Member State where they were concluded before 1 August 2022
- Brussel II ter applies only to legal proceedings instituted, and to authentic instruments formally drawn up or registered and to agreements registered on or after 1 August 2022.



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## JURISDICTION FOR MATRIMONIAL MATTERS – 1.1

**COURT** = means any authority in any Member State with jurisdiction in the matters falling within the scope of this Regulation (ex. judicial authority, administrative authority, **notary**)

**Jurisdiction (n.n. general)** shall lie with the courts of the Member State:

1. In whose territory:

- (i) the spouses are habitually resident
- (ii) the spouses were last habitually resident, insofar as one of them still resides there,
- (iii) the respondent is habitually resident,
- (iv) in the event of a joint application, either of the spouses is habitually resident,
- (v) the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- (vi) the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is a national of the Member State in question; or

2. the nationality of both spouses. (Art. 3)

No hierarchical link

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## JURISDICTION FOR MATRIMONIAL MATTERS – 1.2

### Habitual residence

- Not defined, a factual concept identified with the place where a person live and/or has the center of gravity of life

C-289/20 – a spouse who divides his or her time between two Member States may have his or her habitual residence in only one of those Member States, with the result that only the courts of the Member State in which that habitual residence is situated have jurisdiction to rule on the application for the dissolution of matrimonial ties

### Nationality

Hadadi C-168/08 – dual nationality of spouses determine jurisdiction based in both Member States. Thus, the courts of those Member States of which the spouses hold the nationality have jurisdiction for matrimonial matter and the spouses may seise the court of the Member State of their choice.

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## JURISDICTION FOR MATRIMONIAL MATTERS – 1.3

### Residual jurisdiction – Art. 6

1. When no court of a Member State has jurisdiction, it shall be determined, in each Member State, by the laws of that State.
2. A spouse who is habitually resident in the territory of a Member State; or a national of a Member State, may be sued in another Member State only in accordance with the provisions of the Brussels II ter (Art. 3, 4 and 5)
3. As against a respondent who is not habitually resident in and is not a national of a Member State, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.



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## JURISDICTION FOR PARENTAL RESPONSIBILITY – 2.1

### DEFINITIONS

**Parental responsibility** = all rights and duties relating to the person or the property of a child which are given to a natural / legal person by a decision, by operation of law/ by an agreement having legal effect, including rights of custody and rights of access

**Holder of parental responsibility'** = any person/institution/other body having parental responsibility for a child

**Rights of custody** = rights and duties relating to the care of the person of a child and in particular the right to determine the place of residence of a child

**Rights of access** = rights of access to a child, including the right to take a child to a place other than his or her habitual residence for a limited period of time

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## JURISDICTION FOR PARENTAL RESPONSIBILITY – 2.2

### General jurisdiction (Art. 7)

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 at the time the court is seised.

**Choice of court** - The courts of a Member State shall have jurisdiction in matters of parental responsibility where the following conditions are met:

(a) the child has a substantial connection with that Member State, in particular by virtue of the fact that:

- (i) at least one of the holders of parental responsibility is habitually resident in that Member State;
- (ii) that Member State is the former habitual residence of the child; or
- (iii) the child is a national of that Member State;

(b) the parties, as well as any other holder of parental responsibility have:

- (i) agreed freely upon the jurisdiction, at the latest at the time the court is seised; or
- (ii) expressly accepted the jurisdiction in the course of the proceedings and the court has ensured that all the parties are informed of their right not to accept the jurisdiction; and
- (c) the exercise of jurisdiction is in the best interests of the child.

2. A choice of court agreement pursuant to the above shall be in writing, dated and signed by the parties concerned or included in the court record in accordance with national law and procedure. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.

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## JURISDICTION FOR PARENTAL RESPONSIBILITY – 2.3

Exemples of criteria for habitual residence – the presence, the social integration, length and regularity of the stay

**CJEU case law – UD C-393/18 – PPU** - The habitual residence of a child, corresponds to the place where that child has its de facto centre of interests. That place must be determined in the light of all the circumstances of each individual case. In certain exceptional situations, the global assessment of all the circumstances may lead to the view that the child has, de facto, the centre of its interests in a place in which it has never been physically present. The physical presence of the child is therefore not a prerequisite for the purpose of establishing the child's habitual residence there. The circumstance that the mother of an infant, who has actual custody of that infant, was compelled by the father to give birth in a third State and to remain there with the infant after its birth, placing them, where that is the case, in a situation contrary to the fundamental rights breaching the Charter of Fundamental Rights of the European Union, constitutes a relevant factor for the purposes of determining the child's habitual residence. In such a situation, the infant can, however, be habitually resident in a Member State, notwithstanding the fact that it has never been physically present there, only in so far as its mother has her de facto centre of interests there, this being a matter which it is for the referring court to ascertain. In this regard, particular importance attaches to any indicia demonstrating that the mother has family, social and cultural connections in that Member State, as well as to any tangible manifestations of the mother's intention to live there with the child following its birth.

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## JURISDICTION FOR PARENTAL RESPONSIBILITY – 2.4

### **Jurisdiction based on presence of the child – Art. 11**

Where the habitual residence of a child cannot be established and jurisdiction cannot be determined, the courts of the Member State where the child is present shall have jurisdiction. This apply to refugee children or children internationally displaced because of disturbances occurring in their Member State of habitual residence.

### **Transfer of jurisdiction – Art. 12 - 13**


- To another Member State court having jurisdiction as to the substance of the matter may or if it is considered that a court of another Member State with which the child has a particular connection would be better placed to assess the best interests of the child in the particular case
- 6-week time limit for the acceptance of the jurisdiction

### **Residual jurisdiction – Art. 14**

Where no court of a Member State has jurisdiction pursuant to Articles 7 to 11, jurisdiction shall be determined, in each Member State, by the laws of that Member State.

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## JURISDICTION COMMON PROVISIONS 3

### Art. 17 – 20

- The Courts review their jurisdiction *ex officio*
- If a court of a Member State is seised of a case over which it has no jurisdiction as to the substance of the matter under Brussels II ter and over which a court of another Member State has jurisdiction as to the substance of the matter under this Regulation, it shall declare of its own motion that it has no jurisdiction
- If the proceedings relating to marital/parental responsibility matters between the same parties are instituted 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. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of the court first seised.
- the child who is capable of forming his or her own views with a genuine and effective opportunity to express his or her views, either directly, or through a representative or an appropriate body.
- Where the court, in accordance with national law and procedure, gives a child an opportunity to express his or her views, the court shall give due weight to the views of the child in accordance with his or her age and maturity.

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## Recognition and Enforceability of the Decisions – Main Principles


Any decision of a Court of a Member State in matrimonial / parental responsibility matter:

- shall be recognized in another Member State automatically, without any special procedure to be followed
- Which is enforceable in a Member State shall be enforceable also in other Member State without any declaration of enforceability being required
- Does not apply exequatur (the intermediate procedure required to obtain the cross-border enforcement)



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## Recognition of the Court Decision

No special procedure for recognition as it automatically recognized, still for this purpose there are several documents to be produced for recognition (Art. 31)

- a copy of the decision which satisfies the conditions necessary to establish its authenticity / a certificate from the court regarding the decision after the model in Annex II/III of Brussels II ter
- a translation of the above document, if required by the relevant court

The recognition procedure can be suspended of the decision if (i) an ordinary appeal against that decision has been lodged in the Member State of origin or (ii) an application has been submitted for a decision that there are no grounds for refusal of recognition or for a decision that the recognition is to be refused on the basis of one of those grounds (Art. 33).

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## Enforceability of the Court Decision – 1

**RULE:** the decision in matters of parental responsibility given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

**Brussel II bis** provided that a judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State (...) shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

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## Enforceability of the Court Decision - 2

For the purpose enforceability there are several documents to be produced for recognition (Art. 31)

- a copy of the decision which satisfies the conditions necessary to establish its authenticity / a certificate from the court regarding the decision after the model in Annex II/III of Brussels II ter
- a translation of the above document, if required by the relevant court

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## Enforceability of the Court Decision - 3

### Cases for refusing the enforceability of a Court decision in matrimonial matters (Art. 38)

The recognition of a decision relating to a divorce, legal separation or marriage annulment shall be refused:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked;
- (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 her defence unless it is determined that the respondent has accepted the decision unequivocally;
- (c) if it is irreconcilable with a decision given in proceedings between the same parties in the Member State in which recognition is invoked; or
- (d) if it is irreconcilable with an earlier decision given in another Member State or in a non-Member State between the same parties, provided that the earlier decision fulfils the conditions necessary for its recognition in the Member State in which recognition is invoked.

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## Enforceability of the Court Decision - 4

### Cases for refusing the enforceability of a Court decision in parent responsibility matters (Art. 38)

The recognition of a decision relating to a divorce, legal separation or marriage annulment shall be refused:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is invoked, taking into account the best interests of the child;
- (b) 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 decision unequivocally;
- (c) upon application by any person claiming that the decision infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;
- (d) if and to the extent that it is irreconcilable with a later decision relating to parental responsibility given in the Member State in which recognition is invoked;
- (e) if and to the extent that it is irreconcilable with a later decision relating to parental responsibility given in another Member State or in the non-Member State of the habitual residence of the child provided that the later decision fulfils the conditions necessary for its recognition in the Member State in which recognition is invoked; or
- (f) if the procedure in Article 82 has not been complied with.





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**Tiberiu Popescu-Negreanu**  
**International child abduction**  
**Bucharest, 23 May 2025**



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## LEGAL FRAMEWORK

### INTERNATIONAL AND EU Legislation

- **The Hague Convention of 25 October 1980** on the Civil aspects of International Child Abduction, (*ratified by Romania with the Law no. 100/1992, published in the Official Gazette no. 243 of 30 September 1992*);
- **The Hague Convention of 19th October 1996** on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (*ratified by Romania with Law no. 361/2007, published in the Official Gazette no. 895 of 28 December 2007*)
- **Council Regulation (EU) 2019/1111** on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (fully applicable on 1 August 2022);

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## LEGAL FRAMEWORK

### ROMANIAN Legislation

- **Law No. 100/1992 on the accession of Romania to the Hague Convention** of 25 October 1980 on the civil aspects of international child abduction.
- **Law no. 369/2004 on the application** of the 1980 Hague Convention on the civil aspects of international child abduction.
- **Order 3573/C/2014 for the approval of the Regulation on the modalities of exercising the powers of the Ministry of Justice in its capacity as central authority**, designated by Law no. 100/1992 for Romania's accession to the Hague Convention of 25 October 1980 on the civil aspects of international child abduction.
- **Civil Procedure Code**, Law no. 134/2010.

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## DEFINITION

The removal or the retention of a child is to be considered wrongful where:

- a) it is in breach of **rights of custody** attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which **the child was habitually resident immediately before the removal or retention**; and
- b) at the time of removal or retention those rights were **actually exercised**, either jointly or alone, or **would have been so exercised** but for the removal or retention.

*(Article 3 of The Hague Convention of 25 October 1980)*

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## RIGHTS OF CUSTODY

- Attributed to a person, an institution or any other body.
- Defined by the national Law of the State of the child's habitual residence.
- Includes rights relating to the care of the person of the child, the right to determine the child place of residence.
- Derived from a judicial or administrative decision or from an agreement.
- At the time of the removal or retention was actually exercised or would have been exercised.

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## DOMAIN

### ❖ The Hague Convention of 1980

- Applies to Contracting State
- Child under 16 years
- Who has the habitual residence in a Contracting State immediately (less than one year) before the removal or retention

### ❖ Council regulation (EU) 2019/1111

- Applies to the EU Member States
- Complements the Hague Convention of 1980
- Child under 16 years
- Who has the habitual residence in a Member State

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## THE CHILD HABITUAL RESIDENCE

- No definition in the Convention or in the Regulation.
- Autonomous EU Law concept interpreted by reference to EU law and ECJ Jurisprudence.
- Must by uniformity of interpretation in all the EU Member States.
- Factual concept, not the main residence and not parental intention residence alone but a combination of the following criteria:
  - Physical presence of the child
  - Circumstances of the child's living
  - Degree of integration of the child (social, school and family)
  - Mobility of the parent in charge
- Relevant ECJ Decisions: Case C-497/10 PPU- Mercredi v Chaffe (2010)  
Case C-111/17 OL v PQ (2017)



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### JURISDICTION

- Determined by the habitual residence of the child.
- the competence of the court of the Member State where the child was habitually resident immediately before the wrongful removal or retention (article 9 of the Regulation) until the child has acquired a habitual residence in another Member State and:
  - (a) each person, institution or other body having rights of custody **has acquiesced in the removal or retention**; or
  - (b) the child has resided in that other Member State for a period of **at least one year** after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:

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i. within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, **no application for return** has been lodged with the competent authorities of the Member State to which the child has been removed or where the child is being retained.

(ii) an application for return lodged by the holder of rights of custody **has been withdrawn** and **no new application** has been lodged within the time limit set in point (i).

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### JURISDICTION

(iii) an application for return lodged by the holder of rights of custody **was refused by a court** of a Member State on grounds other than point (b) of Article 13(1) or Article 13(2) of the 1980 Hague Convention and that decision is **no longer subject to ordinary appeal**.

(iv) **no court was seized** as referred to in Article 29(3) and (5) in the Member State where the child was habitually resident immediately before the wrongful removal or retention.

(v) **a decision on rights of custody** that does not entail the return of the child has been given by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.

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## RETURN PROCEDURE

### ❖ Hague Convention:

- The Contracting States designates a Central Authority (art. 6).
- Requires an Application (art. 8).
- The Central Authority should take all the necessary measures to ensure the voluntary return of the child if such voluntary (art. 10) .
- Expeditious Judicial or Administrative proceedings – 6 weeks from the date of the commencement of the proceedings, if more CA of the Requesting State request to the CA of the Requested State the reasons of the delay (art. 11).
- An Administrative order or a Court decision .
- Right of access to the child (art. 5 and 21).

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## RETURN PROCEDURE

### ❖ Council Regulation (EU) 2019/1111

- Involves a court of a Member State.
- The application can be done directly by the person/institution or other body alleging a breach of the rights of custody or with the assistance of the CA.
- The CA of the Requested State informs the CA of the Requesting State in 5 working days about the request of the return.
- Expeditious court proceedings – 6 weeks in the first stage and 6 weeks in the appeal.
- Right of the child to express his/her views, art. 21 is applicable.
- Expeditious enforcement of the decision ordering the return of the child - 6 weeks of the commencement of the enforcement procedure.

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## GROUND S FOR REFUSAL

- ❖ **Hague Convention – art. 13, Council Regulation (EU) 2019/1111 –art. 29**
  - the person, institution or other body having the care of the person of the child was **not actually exercising the custody rights** at the time of removal or retention, or **had consented to or subsequently acquiesced** in the removal or retention; or
  - there is **a grave risk** that his or her return would **expose the child to physical or psychological harm** or otherwise place the child in a intolerable situation.
  - the court or administrative body finds that the **child objects to being returned** and has attained an age and degree of maturity at which it is appropriate to take account of its views.

See also the Guide to Good Practice  
<https://www.hcch.net/es/publicationsandstudies/details4/?pid=7059>



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## RECOGNITION AND ENFORCEMENT

### ❖ Council Regulation (EU) 2019/1111

- Direct recognition, no exequatur (art. 30)
- No declaration of enforceability required for the decisions enforceable in another member state
- Certificate – Annex IV – issued by the court of the member state of origin in the language of the decision
- No security, bond or deposit (art.75)
- Suspension (art. 56)
- Refusal of enforcement (art. 56 paragraphs 4 and 6)

# INTERNATIONAL CHILD ABDUCTION



## ❖ Hague Convention 1996 for protection of children

- Art. 50: *"This Convention shall not affect the application of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, as between Parties to both Conventions"*
- Art. 7 Jurisdiction of the courts of the child habitual residence – similar to article no. 9 of the Regulation EU 1111/2019.
- Art 11 – necessary measurements in case of urgency by the authorities of any Contracting State in whose territory **the child or property belonging to the child** is present.
- Art. 12 – provisional measures for protection of the person or property of the child by the authorities of any Contracting State in whose territory the child or property belonging to the child is present.

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## SITUATION IN ROMANIA

- Central Authority – Ministry of Justice, Department of International Law and Judicial Cooperation.
- Jurisdiction – Bucharest Tribunal and the appeal to Bucharest Court of Appeal.
- No official data of the of requests received by the C.A. Only unofficial data are available.
- 2021-2022 between Romania and Italy there were 349 cases.
- 2022 were registered with The Bucharest Tribunal 85 cases, 65 were solved.
- The enforcement of the return decisions is quite inefficient. The bailiff is forbidden to take the child by force and only monetary sanctions are imposed.



# Training of lawyers on EU Civil Law (TRADICIL)

**Arantxa Cagigal Casquero**

**Recognition, enforceability and enforcement of  
decisions in family matters: Regulation EU 2103/1111,  
Brussels IIb, Recast**

**Bucharest, 23 May 2025**



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# 1.- INTRODUCTION

- Brussels II b/ter or Recast, is in force since 1 August 2022 and replaces Brussels II a.
- Scope: marriage, parental responsibility, child abduction
- Chapter IV of Regulation:
  - Section 1: General provisions (art. 30 to 41)
  - Section 2: Recognition and enforcement of certain privileged decisions ( art. 42 to 50)
  - Section 3: Common provisions on enforcement (art. 51 to 63)
  - Section 4: Provisions on recognition and enforcement of authentic instruments and agreements (art. 64 to 68)
  - Section 5: Miscellaneous provisions (art. 69 to 75)

# 1.- INTRODUCTION



## 1.1 Characteristics of recognition and enforcement:

A dual regime is maintained, distinguishing between a general system and a privileged one.

- Decisions subject to the **GENERAL REGIME**, **section 1**
  - Recognition
  - Documents: authentic copy of decision and certificate issued pursuant article 36
  - Application for recognition or application for a decision that there are no grounds for the refusal of recognition
  - Stay of proceeding
  - Grounds of refusal
  - Enforcement
  - Proceeding pursuant to articles 59 to 62



# 1.- INTRODUCTION



## 1.1 Characteristics of recognition and enforcement:

- Decisions subject to **the PRIVILEGED REGIME**, **section 2:**
  - Decisions granting right of access and decisions issued under article 29.6 when they involve the return of a child. A party also can choose apply the provisions of section 1
  - **Recognition:**
    - Documents: authentic copy of decision and certificate issued pursuant article 47, annex IV and VI
    - Application for recognition or application for a decision that there are no grounds for the refusal of recognition
    - Stay of proceeding
    - Grounds of refusal listed in article 50
  - **Enforcement**
    - Proceeding pursuant to articles 59 to 62

# 1.- INTRODUCTION



## 1.2 Principles:

a) Documents to be produced:

- Authentic copy of the decision, and its translation (art. 90, sworn translation)
- Certificate of article 36 ( annex II, II and IV), article 47 ( annex V and VI), article 66 ( annex VIII and IX).
- Certificates of article 36 may be rectified; but the ones in article 47 and 66 may also be withdrawn.

b) language to be use is the one from the Member State or origin but translations or transliterations could be needed.

c) Even if recognition and enforcement are authomati, parties may submitt aplicación for refusal on the grounds listed in the Regulation

d) Jurisdiction is governed by articles 3 and sequens.

e) Service and notification rules are the same for recognition and enforcement

f) It is prohibited the review of jurisdiction of the court of origin

g) It is prohibited the review as to substance of the decision from the Member State of origin

h) Legal aid for any party who has benefit from legal aid in the Member State of origin

i) Regulation eliminates the exequatur and relates suspension of the proceeding applying for recognition and enforcement

j) Regulation includes the recognition and enforcement of authentic instruments and agreements

## 2.- TITLES TO BE RECOGNICED AND ENFORCED

### ARTICLE 2 of Regulation

#### DECISION:

- Judgement, decree, order
- Been down by a court with jurisdiction
- Court covers administrative or other authorities exercising jurisdiction in matrimonial matters or matter on parental responsibility
- Decisions approved by the court issued following the examination of the substance
- Decisions granting divorce, separation or annulment of marriage
- Decisions on the substance of parental responsibility, including decisions ordering the return of a child to another Member State, provisional/protective measures.

#### AUTHENTIC INSTRUMENTS AND AGREEMENTS:

- Authentic instruments drawn up or registered as authentic by a public authority empowered by a Member State
- Agreements concluded between the parties and registered afterwards by a public authority (France, private or consensual divorces)

## 2.- TITLES TO BE RECOGNICED AND ENFORCED

A CERTIFICATE ISSUED PURSUANT TO ARTICLES 36, 47, 54 AND 66 must be produced in order to apply for recognition or enforcement:

- Annex II: decisions in matrimonial matters (article 36)
- Annex III: decisions in parental responsibility (article 36)
- Annex IV: decisions ordering the return of a child (article 36)
- Annex V: privileged decisions concerning right of access (article 47)
- Annex VI: privileged decisions on the substance of rights of custody entailing the return of a child (article 47)
- Annex VII: certificate concerning the lack or limitation of enforceability of certain decisions granting right of access or entailing the return of a child (article 49)
- Annex VIII: certificate for authentic instruments and agreements in matrimonial matters
- Annex IX certificate for authentic instruments and agreements of parental responsibility

Annex X is a correlation table between Brussels IIa and IIb.

### 3.- RECOGNITION OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS

#### A) RECOGNITION OF DECISIONS

##### A.1 GENERAL DECISIONS IN MATRIMONIAL AND PARENTAL RESPONSIBILITY MATTERS

###### A.1.1 DECISIONS IN MATRIMONIAL MATTERS

- Authentic copy of the decision and certificate issued pursuant to article 36 is needed, which may be rectified.
- Incidental registrarial recognition: no procedure is required to update the civil records on the basis of a decision involving a matrimonial matter which may no longer be appealed
- Incidental judicial recognition before a court in another Member State hearing a case
- Application for a decision that there are no grounds for the refusal of recognition following procedure pursuant to art. 59 to 62.
- Application for refusal of recognition following procedure pursuant to articles 59 to 62:

\* Grounds for refusal are listed in article 38

### 3.- RECOGNITION OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS



#### A) RECOGNITION OF DECISIONS

##### A.1 GENERAL DECISIONS IN MATRIMONIAL AND PARENTAL RESPONSIBILITY

##### A.1.2 DECISIONS IN MATTERS OF PARENTAL RESPONSIBILITY

-Authentic copy of the decision and certificate issued pursuant to article 36 is needed, which may be rectified and withdrawn.

- Indidental judicial recognition before a court in another Member State hearing a case

- Application for a decision that there are no grounds for the refusal of recognition following procedure pursuant to art. 59 to 62.

- Application for refusal of recognition following procedure pursuant to articles 59 to 62:

\* Grounds for refusal are listed in article 39, and decision may be refused if it was given without the child who is capable of forming his views having been given the opportunity to express his views in accordance with article 21.

\* Grounds for refusal of recognition of privileged decisions from article 42 are the one set in article 50: irreconcilable decisions with a later decision relating to parental responsibility concerning the same child given in the Member State where recognition is invoked, or in another Member State or in the non-Member State of the habitual resident of the child provided that the later decision fulfills the conditions for its recognition in the Member State where recognition is invoked.

### 3.- RECOGNITION OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS



#### A) RECOGNITION OF DECISIONS

##### A.2 PRIVILEGED DECISION, ARTICLE 42

Decisions in so far as they grant right of access, including right of access of grandparents to grandchildren; and decisions pursuant to article 29.6 in so far as they entail the return of a child, and for this decisions prevails the mechanism of overriding in order to respect the order of return of a child, although it is possible a declaration of irreconcilability. ( C-195/08 PPU Rinau, C-403/09 Desticek, C-211/10 Povse, C-491/10 Aguirre Zagarra)

Documents to be produced: authentic copy of the decision and certificate issued pursuant to article 47, annex V and VI. Parties may apply in the court of the Member State of origin for rectifying or withdrawing the certificate pursuant to article 48.

It is possible the stay of the proceeding of recognition pursuant to article 44 if an application has been submitted alleging irreconcilability or an application for the withdrawal of the certificate has been submitted

Application for refusal of recognition following procedure pursuant to articles 59 to 62

Grounds for refusal of recognition of privileged decisions from article 42 are the one set in article 50: irreconcilable decisions with a later decision relating to parental responsibility concerning the same child given in the Member State where recognition is invoked, or in another Member State or in the non-Member State of the habitual resident of the child provided that the later decision fulfills the conditions for its recognition in the Member State where recognition is invoked.



### 3.- RECOGNITION OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS

#### A) RECOGNITION OF DECISIONS

**A.2 PROCEDURE.** Procedure for refusal of recognition in accordance with article 40 shall be applied pursuant to articles 59 to 62

#### A.3 STAY OF PROCEEDINGS :

- GENERAL DECISIONS, article 33, the court before a decision given in another Member State is invoked may stay its proceeding in whole or in part where an ordinary appeal has been lodged in the Member State of origin; or if an application for a decision that there are no grounds for refusal has been submitted

- PRIVILEGED DECISIONS, article 44, the court may stay its proceeding in whole or a part if an application alleging irreconcilability as referred in article 50 has been submitted; or the person whom recognition is sought has applied for the withdrawal of a certificate issued pursuant to article 47

### 3.- RECOGNITION OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS

#### B) RECOGNITION OF AUTHENTIC INSTRUMENTS AND AGREEMENTS, section 4 (articles 64 to 68)

To be recognized in another Member State, these instruments and agreements must have BINDING EFFECT IN THE MEMBER STATE OF ORIGIN, and the ones in matters of parental responsibility must be enforceable.

The instruments or the agreement must be provided to the competent authority in a copy and the certificate issued pursuant to article 66 (annex VIII for matrimonial matters; and annex IX for matters of parental responsibility), which may be rectified or withdrawn.

Procedure is related in article 51.

Grounds for refusal of recognition are listed in article 68:

- Matrimonial matters:

- \* instruments and agreement contrary to the public policy

- \* Authentic instruments and agreement in matrimonial matters can be refused if it is irreconcilable with a decision, an authentic instrument or agreement between the same parties in the ME of recognition; or if it is irreconcilable with an earlier decision, authentic instrument or agreement given in another ME or in a non ME between the same parties provided the earlier decision, authentic instrument or agreements fulfils the conditions necessary for its recognition in the ME of recognition

- Matters of parental responsibility only can be refused if they are irreconcilable with a later decision, authentic instrument or agreement in matters of parental responsibility given in the ME of enforcement; or irreconcilable with a later decision given in another ME or in a non ME of the habitual residence of the child provided it fulfils the conditions necessary for its recognition in the ME of enforcement; or upon application by any person who claims that was concluded without that person having been involved or without the child capable of forming his own views having been given the opportunity to express his views; or, at least, if long lasting risk occurs.

## 4.- ENFORCEABILITY



### **ARTICLE 34**

Regulation abolishes any declaration of enforceability, exequatur.

A decision given in a Member State may be directly enforceable in another Member State in the same manner as a domestic decision, and no needs any procedure to declare enforceability.

The exequatur is replaced by a certificate accompanying the decision issued by the court of the Member State of origin that declares the decision is enforceable

The control of regularity of the decisions to be enforced stays on the courts of the Member State of origin, which may even withdraws the certificate if a party applies for in the case of privileged decisions and authentic instruments and agreements.

This certificate must say if the decision is enforceable and if there is still chance to appeal, or it is possible provisional enforcement

But the court of the Member State of enforcement will control the regularity also, since the parties may apply for refusal of enforcement for the grounds listed in the Regulation.

As said, Recast maintains a dual enforcement framework, for general decisions and privileged decisions.

## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS



### *Section 3, articles 51-63*

#### **5.1.- AUTHORITIES AND COURTS COMPETENTS FOR ENFORCEMENT (ARTICLE 52, RECITAL 60)**

- Application for enforcement is to be submitted to the authority under the law of the ME of enforcement, according with the rules of jurisdiction of chapter 2 and 3 of the Regulation.
- The party seeking enforcement is not required to have a postal address in the ME of enforcement, but is required to have an authorized representative if the law of the ME requires it as mandatory.

## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS



### 5.2.- DOCUMENTS TO BE PRODUCED FOR ENFORCEMENT

Authentic copy of the decision, and the appropriate certificate issued pursuant to article 36, 45 and 66.

The appropriate certificate shall confirm the enforceability of the decision, as well as certifying that the court of origin has jurisdiction as to the merits of the case or that the provisional measure has been issued in order to protect a child from a grave risk when the return of the child is ordered. If a provisional measure is issued, a party requesting its enforcement has to produce proof that the decision has been served properly to defendant.

A competent court may require the party to provide translations or transliteration of a relevant part of the certificate and of the decision.

Articles 37, 48 and 67 determine the rectification, and withdrawal of the in the Member State of origin in case of privileged decisions and authentic documents and agreements.

## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS

### 5.3.- PARTIAL ENFORCEMENT, ARTICLE 53

For a decision given in respect of several matters, the enforcement could be refused for any of the matters, but enforcement shall nonetheless be possible for the parts of the decision not affected by the refusal.

Nevertheless, partial enforcement is expressly excluded as regards enforcement of decision ordering the return of a child containing provisional or protective measures which have been ordered to protect the child from a risk referred in article 13 of the 1980 Hague Convention. Since these measures need to be effective in the ME where the child resided habitually prior to the wrongful removal or retention.

## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS

### 5.4.- ARRANGEMENTS FOR THE EXERCISE OF RIGHT OF ACCESS (ARTICLE 54, RECITAL 61)

In the case a decision given in one Member State concerning right of access cannot be enforced in another Member State due to lack of specific arrangements in the decision needed under the law of the ME of enforcement, in order to facilitate the enforcement, the authorities competent for enforcement or the courts in the ME of enforcement are entitled, pursuant to article 54, to make arrangements for organizing the exercise of right of access, due to the principle of the best interest of the child.

It refers to details regarding where and when the child should be picked up or dropped off, where supervised contact shall be envisaged, or the participation of a child protection authority in the access.

The arrangements for the exercise of the rights of access cease to apply following a later decision by the courts of the ME having jurisdiction as to the substance of the matter.



## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS

### 5.5.- SERVICE OF THE DECISION AND THE CERTIFICATE, ARTICLE 55

- In order to respect for the rights of the defense, it requires that no enforcement measure may be taken before the appropriate certificate and the decision has been served on the person against whom enforcement is sought.
- The certificate is to be accompanied by the decision if not already served on that person in the ME of origin and, where applicable, accompanied by the details of the arrangement for the exercise of the rights of custody ordered in the ME of enforcement.
- So, before applying for recognition, service of the decision and certificate must have been done.
- Service shall take place in accordance with national law of the ME of origin, but if the service is in another ME, service shall be performed in compliance with the service of documents, Regulation EU 2020/1784. And to third parties may be executed pursuant to the Hague Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters.

## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS

### 5.6.-SUSPENSION OF ENFORCEMENT, ARTICLE 56

Article 56.1-4 introduces uniform grounds for suspension of the enforcement proceedings, where one of the grounds may even amount to refusal of enforcement (article 56.4 and 6)

Suspension of enforcement is applicable to general and privileged decisions under article 42, and to authentic instruments and agreements.

Article 57 permits suspension of the enforcement on grounds envisaged under the law of the ME of enforcement as far as they are not incompatible with the application of articles 41, 50 y 56.

#### **Grounds for suspension of the enforcement:**

1.- Where the enforceability of a decision is suspended in the ME of origin, the court or authority of the ME of enforcement is obliged to suspend the enforcement of its own motion or upon application of the person against whom enforcement is sought, or of the child concerned.

2.- Appeal against the decision, application for refusal of enforcement or withdrawal of the certificate according to article 47.

Suspension of the enforcement proceedings under article 56.2 is possible where an ordinary appeal against the decision has been lodged in the ME of origin, or an application for refusal of enforcement based on articles 41, 50 or 57 has been submitted in the ME of origin, or the person against whom enforcement is sought has applied in accordance with article 48 for the withdrawal of a certificate issued pursuant to article 47 in the ME of origin (privileged decisions).

3.- exposure of the child to a grave risk of physical or psychological harm

4.- Grounds for suspension under the national law. These grounds should be applied alongside those provided for by the regulation in so far as they are not incompatible with the application of articles 41, 50 and 53. For example: challenges based on formal errors under national law in an act of enforcement, if the enforcement has become impossible in case of force majeure, serious illness of the person to whom the child is to be handed over, or a war breaks out in the ME to where the child is to be returned.

## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS



### 5.7 PROCEDURE FOR SUBMITTING AN APPLICATION FOR REFUSAL

- The procedure is regulated in **articles 59 to 63**.
- This procedure also applies to the application for a declaration that there are no grounds for refusal of recognition (article 30.3) and to the application for refusal of recognition (article 40.1). And it is also relevant for applications for refusal of enforcement of authentic instruments and agreements.
- Application for refusal of enforcement is regulated in articles 58, 59 and 60.
- If the application is based on the grounds set out in article 56, 57 and 68, it shall be submitted to the authority or the Court depending on the national law, but if the application of enforcement based on article 39, shall be submitted only to the courts.
- The local jurisdiction is determined by the law of the Member State in which the proceedings are brought.
- The procedure is governed by the law of the Member State of enforcement in so far as it is not covered by uniform rules of the Regulation.
- The Regulation determines which documents are to be provided, an authentic copy of the decision, and the certificate issued pursuant articles 36, 47 and 66
- The procedure may be stayed
- The authority competent for enforcement or the court should act without undue delay in procedures concerning the application for refusal of enforcement.
- Once applying for the refusal of enforcement, the court or authority competent shall give the decision, and this decision may be challenged or appealed.
- National law determines if the decision given on the challenge or appeal may be subject to further challenge or appeal.

## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS



### 5.8.- REFUSAL OF ENFORCEMENT

#### 5.8.1- General

- Once a party has applied for the enforcement of a decision given in another ME, the person against the enforcement is sought may apply for refusal basing on the grounds for refusal listed in the regulation. These grounds are exhaustive and it is possible to apply for more than one.
- The regulation expressly prohibits the review of jurisdiction of the Court of origin (article 69) and as to its substance (article 71).
- National law determines whether the grounds for refusal of enforcement set out in regulation are to be examined ex officio or upon application, for example the review of the order public ground.

## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS



### 5.7.- REFUSAL OF ENFORCEMENT

#### 5.8.2- GROUNDS FOR REFUSAL OF ENFORCEMENT FOR DECISIONS IN MATTERS OF PARENTAL RESPONSIBILITY

**ARTICLE 41** in conjunction with ARTICLE 39 determines grounds for refusal of enforcement for DECISIONS IN PARENTAL RESPONSIBILITY MATTERS:

**1º.** Decisions manifestly contrary to the public policy of the ME of enforcement taking into account the best interests of the child. Examples of this ground are the situation of illness of the child, or a child who is mature enough and doesn't want to comply the decision about one of his parents.

STJUE 16 January 2019, case law Liberato, C 386/17, which refers to a decision issued violating rules of lis pendens.

**2º.-** Decisions 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 way as to enable that person to arrange for his defense unless it is determined that such a persona has accepted the decision unequivocally.

**3º.-** Decision irreconcilable with a later decision relating to parental responsibility given in the ME of enforcement. Only a later decision relating the same matter given in a ME of enforcement may justify the refusal.

**4º.-** Decision irreconcilable with a later decision relating to parental responsibility given in another ME or in non ME of the habitual residence of the child provided that the later decision fulfils the conditions necessary for its recognition in the ME of enforcement.

**5º.-** Refusal upon application by any person claiming that the decision infringes his parental responsibility if it as given without such person having been given the opportunity to be heard. This refers to the cases of withdrawal of custody of any parent, but it includes even an institution.

**6º.-** if the procedure laid down in article 82 has not been complied with, it refers to placement of a child in another ME

**7º.-** If the decision was given without the child who is capable of forming his own views having been given the opportunity to be heard in accordance with article 21.

**8º.-** Long lasting grave risk, article 56.6, and in these cases is important the court or authority to be assisted of professionals, such as social workers or psychologists

## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS

### 5.8.- REFUSAL OF ENFORCEMENT

#### 5.8.3- GROUNDS FOR THE REFUSAL FOR PRIVILEGED DECISION.

**ARTICLE 50** determines grounds for refusal of enforcement for privileged decisions

The so called certain privileged decisions (article 42) , these granting a right of access and return orders within the context of the overriding mechanism. So the court in the requesting state has retained the right to override a decision not to return the child issued by the court in the requested member state, provided that such a non return order is based on the reason under article 13 of the 1980 Child Abduction Convention.

The decision certified in accordance with article 42 is automatically enforced with no possibility of opposition its enforcement, but

1º If the decision is irreconcilable with a later decision relating parental responsibility given in the ME of enforcement.

2º. – If the decision is irreconcilable with a later decision given in a non ME of the habitual residence of the child provided the later decision fulfills the conditions necessary for its recognition in the ME of enforcement

3º.- if exists a long lasting grave risk

## 5.- ENFORCEMENT OF DECISIONS AND AUTHENTIC INSTRUMENTS AND AGREEMENTS

### 5.8.- REFUSAL OF ENFORCEMENT

#### 5.8.4- GROUNDS FOR THE REFUSAL OF ENFORCEMENT OF AUTHENTIC INSTRUMENTS AND AGREEMENTS

**ARTICLE 68** lists the grounds for refusal of enforcement of authentic instruments and agreements.

1º.- Authentic instruments and agreement in matrimonial matters, only can be refused if it is manifestly contrary to the public policy of the Member State of recognition, or it is irreconcilable with a decision, an authentic instrument or agreement between the same parties in the Member State of recognition; or if it is irreconcilable with an earlier decision, authentic instrument or agreement given in another Member State or in a non Member State between the same parties provided the earlier decision, authentic instrument or agreements fulfils the conditions necessary for its recognition in the Member State of recognition

2º.- Authentic instruments and agreements in matters of parental responsibility only can be refused if they are irreconcilable with a later decision, authentic instrument or agreement in matters of parental responsibility given in the Member State of enforcement; or irreconcilable with a later decision given in another Member State or in a non Member State of the habitual residence of the child provided fulfills the conditions necessary for its recognition in the Member State of enforcement; or upon application by any person who claims that was concluded without that person having been involved or without the child capable of forming his own views having been given the opportunity to express his views; or, at least, if long lasting risk occurs.

## 6.- CONCLUSIONS

### Good Practices and Common Mistakes

#### **Good Practices:**

- Proper legal advising in family matters when applying for measures in divorces which affects child custody, or right of access and children could be relocated both in defended divorce or mutual consent divorce proceedings
- Check certificates in advance and provide to the courts
- Ensure child is heard when applicable according to national law of the habitual residence of the child
- Provide translation if required
- Service and appearance of the defendant
- Application of multiple PIL instruments dealing with closely related matters: maintenance, protection measures, matrimonial property regimes and property consequences of register partnerships; and succession

#### **Common Errors:**

- Missing appropriate certificate
- Inadequate service of documents
- Wrongly applying for enforcement
- Decisions given in default of appearance





# Training of lawyers on EU Civil Law (TRADICIL)

**Béatrice Bloquel**

**International Child Abduction: the French approach of  
the Hague Convention and Brussels IIA recast Regulation**

**Bucharest, 23 May 2025**



Co-funded by the European Union

# Introduction – some figures

Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

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)

Source of information : French Central Authority (Département de l'entraide, du droit international privé et européen (Direction des affaires civiles et du Sceau – Ministère de la justice).

## **How many cases of Child abduction had France to deal with ?**

- **In 2023** : 257 cases (in average, 270 cases per year in 5 years) :
- About wrongful removals :
  - ✓ 35% of wrongful removals occur in the EU
  - ✓ 20% of wrongful removals occur in Europe outside the EU
  - ✓ 15 % of wrongful removals occur between France and North Africa
  - ✓ 30 % of wrongful removals occur between France and the rest of the world
- 367 children
- Average age of the child at the time of the removal : 7 years
- In terms of enforcement : more than 60 % of the returns are voluntary, 35 % of the voluntary returns occur after a decision

**In 2022**: approximately 200 cases of wrongful removals

80 % of the returns that are demanded are based on the Hague Convention, with or without a European Regulation

50 % of the cases are between EM states

Average length of the proceedings between the date of reception of the request of the return by the Central Authority and the closure of the case :

- ✓ When the Hague Convention is applied : **6 months**
- ✓ When another Convention is applied or when no Convention can be applied : **8 months**

**85%** of the cases are closed in less than one year when the Hague Convention is applied

In **75%** of the cases, the mother is the one who removed the child illegally

## I- About the French Central Authority

Département de l'entraide, du droit international privé et européen (Direction des affaires civiles et du Sceau – Ministère de la justice).

The French Central Authority is attached to the Ministry of Justice.

In 2017, the FCA was constituted of 23 people, amongst them, 13 were dealing with Family matters.

Interesting that the FCA is attached to the Ministry of Justice because it allows the FCA to form suggestions for further Regulations. In other States, Central authorities are for instance attached to the Ministry of Education and Youth

Very active / real ally

Efficiency of the FCA depends on the Country where the child has been wrongfully removed / whether the Hague Convention is applicable or not

## What is the role of the French Central Authority ?

Article 7 of the HC 1980 : « **Central Authorities shall co-operate** with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention »

The French Central Authority plays the part of a « conductor» between civil proceedings and criminal proceedings.

- The FCA communicates with the foreign judge;
- The FCA is able to provide, if asked, with the reception and treatment conditions of a child if he is to be returned in France
- The FCA is the strong arm of the French public Prosecutor : the FCA communicates with the Prosecutor to provide him with the information of the localisation of a parent has taken his child to another country for instance.
- She has more limited power if no Convention is applicable because in that case, only local proceedings are possible, coupled with criminal proceedings in France, which can be introduced to try to obtain the return of the child



## II- Return of the child : French Proceedings

### A- Amicable proceedings

#### Article 8 of the Hague Convention :

**Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.**

The application shall contain -

- a)* information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- b)* where available, the date of birth of the child;
- c)* the grounds on which the applicant's claim for return of the child is based;
- d)* all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

- e)* an authenticated copy of any relevant decision or agreement;
- f)* a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- g)* any other relevant document.

Like the most of the States part of the HC, the FCA can be seized as a an authority of the requested State or as an authority of the requesting state

The French Central Authority appreciates whether she will cooperate or not in the case a request of return is presented to her, amongst all regarding the information the requesting parent has the duty to present, according to article 8 of the HC 1980,



It has **no obligation** to cooperate. Article 27 of the HC 1980 :

*“When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application.”*

The FCA has 5 days to acknowledge good reception of the return request - art 23 B IIa recast Regulation :

*“2. Where the Central Authority of the requested Member State receives an application referred to in Article 22, it shall, **within five working days from the date of receipt of the application**, acknowledge receipt. It shall, without undue delay, inform the Central Authority of the requesting Member State or the applicant, as appropriate, what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information.”*



If the request of the child to be returned in the country of his habitual residence before the wrongful removal or retention is not manifestly unfounded :

- France is the requesting State: : the French Central Authority addresses the request of return to the foreign Central Authority in order to establish a cooperation.

There's also the possibility to seize directly the CA of the requested State to accelerate the proceedings but pros and cons)



If the case involves two foreign countries, you cannot seize the French Central Authority.

- France is the requested State: the FCA must take all appropriate measures in order to obtain the voluntary return of the child.(**article 10** of the Hague Convention).

Contradictory to what has been said before, **France considers that it is necessary to first address to the CA of the requesting State** (Morocco), even though there's a delay in the communication of the case by the CA of the requesting State (Australia, USA)

If the CA has reasons to think that the child has been removed to another State, the FCA immediately informs the CA of the requesting state and transmits the application to the CA of the third State (**article 9** de la Convention)



The French Central Authority can:

**Try to find an amicable solution via a mediation with a mediator;** : a letter is sent to the parent who has removed the child by the FCA (Cellule de médiation familiale du ministère de la justice).

In France, there's a list of international mediators that is regularly updated (21 juillet 2023 : [https://www.justice.gouv.fr/sites/default/files/2023-08/liste\\_mediateurs\\_familiaux\\_internationaux.pdf](https://www.justice.gouv.fr/sites/default/files/2023-08/liste_mediateurs_familiaux_internationaux.pdf)), There's a classification according to the language of the mediation : german, english, spanish, italian, dutch, arabic

**Reminder : Article 25 of Brussels II a recast** favours as much as possible mediation or another amicable method of dispute resolution to avoid proceedings in front of the Judge, unless the circumstances don't allow it

It's also important to have in mind that mediation can be put into place after the return decision of the Judge to help with the implementation of the decision,

*« As early as possible and at any stage of the proceedings, the court either directly or, where appropriate, with the assistance of the Central Authorities, shall invite the parties to consider whether they are willing to engage in mediation or other means of alternative dispute resolution, unless this is contrary to the best interests of the child, it is not appropriate in the particular case or would unduly delay the proceedings. »*

## Proceed to the localisation of the child

**Solicit the prosecutor** in order for him to seize the French judge

**Inform the French judge** if he's already seized on the merits of a parental responsibility matter linked to the case on the basis of article 16 of the Hague Convention

The FCA informs generally the Prosecutor, who informs the Judge.



Of the competence of the Prosecutor



Some countries, like Germany, require certificates based on article 16 or order of request from the State Judge where the child lived before his wrongful removal or retention.

## B- Judicial proceedings

**Article 11 of the Hague Convention** : « *The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children* »

In France, the immediate return proceedings can be introduced :

**By the French Central Authority** : the FCA does not seize the French judge directly. She will first transmit the request to the competent Prosecutor of the Court of appeal which is territorially competent, who then will transmit the request to the Prosecutor of the competent judicial Court (**article 1210-4** of the French civil procedure code).

In that case, the requesting parent can voluntarily involve in the proceedings but it is the Prosecutor that will seize the judge for the defense of the public order (**article 423** of the French civil procedure code).

**By the parent who has had his child wrongfully removed** : if the FCA is not proactive enough or to go faster.

According to **article 1210-5 of the French Civil Procedure Code**, only the **Family Judge (Juge aux affaires familiales)** has jurisdiction in disputes concerning **Child abduction** (décret n°2019-912 du 30 août 2019, en vigueur au 1<sup>er</sup> janvier 2020 – annexe tableau VII du COJ).

According to **article 1210-6**, the return request is formed, instructed and judged according to the rules of an accelerated procedure (procédure accélérée au fond)

It's an exception, as such proceedings cannot be formed in front of the Family judge (exception à la règle: pas de PAF au JAF).

Regarding the intervention of the Prosecutor, it's important to mention that when he's the principal party to the proceedings, he must be present at the hearing. His presence must be proved by a mention in the decision or any other proof (Civ. I, 25/01/2023, n° 21-25.735 + Civ. 1, 12/07/2023, n° 21-22.057)

### Regarding the length of the proceedings:

**According to article 11 of Brussels II a**, the authorities must render a decision within **6 weeks** from the date of their sasine

**Article 24 of Brussels IIa recast** has softened and clarified this rule. It made it more realistic regarding the practice and judicial reality.

From now on, the return **decision must be rendered in 6 weeks departing** the sasine, and each action (appeal) causes another 6 weeks.

Consequences: the decision of the first judge must be rendered 6 weeks after he's been seized (6 semaines après la remise de l'assignation au greffe (avant l'audience)). If the case is in front of the Court of appeal, 6 weeks after the defendant has filed his brief in response.

In Paris, the hearing is usually fixed 3-4 weeks maximum after the sasine of the first judge.

Article 481-1 of the French Procedure Code : the decision of return or no return shall be appealed in a 15 days delay.

Delay starts when the decision has been served by a bailiff, unless the decision specifies that the delay starts the day the decision is rendered.

When the Court of appeal is seized, the proceedings take the path of urgent proceedings : procédure à bref délai

articles 905-1 and 906 of the French Procedure Code

➤ Article 1210-12 : to file an appeal in front of the High Court, the delay is also 15 days

## What about the enforcement of the decision?

Articles 1210-7 à 1210-10 of the French Civil Procedure Court : the prosecutor from the court which has jurisdiction is in charge of the enforcement of the decision.

- Article 1210-7 : he can proceed with the audition of the person with whom the child who has to be returned is
- If he has to deal with forced enforcement : in case the parent refuses to bring the child back voluntarily, the prosecutor can take coercitive measures but they have to be adjusted to the circumstances (art.1210-8 )

# III-The French judges' approach

## A- The French judges' approach of art, 13 b of the HC 1980 (grave risk)

Reminder : article 13 of the Hague Convention provides that :

*“Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that :*

*a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or*

***b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”***



- This exception is used (too) many times
- However, it can be effective in cases where domestic violence on the other parent or the child is involved
- This exception remains difficult to apprehend, it must be done carefully: strict interpretation of article 13b with having in mind that it can have consequences for the rest of the proceedings (parental responsibility on the merits) / major factor linked to the serenity in the pursuing procedure
- Judges carefully analyze the supporting evidence : they need enough pieces of evidence that demonstrate the real existence of domestic violence, not only a probability
- Necessity to have a forward-looking analysis of the danger if the child is to be returned in his State of habitual residence before the wrongful removal
- The burden of proof of the existence or non existence of adequate protective measures lies on the parties and their lawyers

*Article 27 -3 B II a recast . Where a court considers refusing to return a child solely on the basis of point (b) of Article 13(1) of the 1980 Hague Convention, it shall not refuse to return the child if the party seeking the return of the child satisfies the court by providing sufficient evidence, or the court is otherwise satisfied, that adequate arrangements have been made to secure the protection of the child after his or her return.)*

## B- The French judges' important part regarding the return of the Child

The opinion is that the return of the child in his country of habitual residence is not supervised,

B IIa recast has corrected that by allowing the Judge to take provisional or conservative measures to protect the child of the grave risk if he has to return in his country of habitual residence (art 27)

Judges feel also the need to cooperate more with other judges via networks

Also encouraged by Brussels IIa recast Regulation, art 86 « Cooperation and communication between courts” :

*“1. For the purposes of this Regulation, **the courts may cooperate and communicate directly with, or request information directly from, each other provided that such communication respects the procedural rights of the parties to the proceedings and the confidentiality of information.**”*

Existing networks :

- European Judicial Network in civil and commercial matters (judges, but also lawyers, bailiffs, central authorities, liaison magistrates...)
- International Hague Network of Judges (only judges experimented in family law; to this date , 158 judges of 89 Etats (december 2024)



# Training of lawyers on EU Civil Law (TRADICIL)

**Roxana Catea**

**Property of international couples (marriages and  
registered partnerships)**


**Bucharest, 23 May 2025**



Co-funded by the European Union

# Context of adopting rules on Matrimonial and Registered Partnership Property Regimes in the EU

Training of Lawyers on  
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Growing number of cross-border  
marriages and partnerships within  
the EU

EU mobility leads to complex legal  
situations regarding assets


Necessity for an EU  
legal framework

Legal uncertainties upon divorce  
or death without a clear  
framework

Prevalence of differing national  
property regimes

# Property of International Couples – Matrimonial and Registered Partnership Property Regimes in the EU

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Legal Framework

Jurisdiction

Applicable law

Practical issues

Reccomendations



# Legal instruments

## Regulation 2016/1103: Matrimonial Property Regimes

- Applied from 29.01.2019 (some articles from 2016 and 2018)

## Regulation 2016/1104: Property Consequences of Registered Partnerships

- Applied from 29.01.2019 (some articles from 2016 and 2018)

# Relevant preambles

- **Regulation 2016/1103:** Matrimonial Property Regimes

*(15) To provide married couples with legal certainty as to their property and offer them a degree of predictability, all the rules applicable to matrimonial property regimes should be covered in a single instrument.*

*(16) In order to achieve those objectives, this Regulation should bring together provisions on jurisdiction, applicable law, recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements.*

*(17) This Regulation **does not define ‘marriage’**, which is defined by the national laws of the Member States.*

*(28) The effects of the recording of a right in a register should also be excluded from the scope of this Regulation. It should therefore be the law of the Member State in which the register is kept which determines whether the recording is, for instance, declaratory or constitutive in effect. Thus, where, for example, the acquisition of a right in immovable property requires a recording in a register under the law of the Member State in which the register is kept in order to ensure the erga omnes effect of registers or to protect legal transactions, the moment of such acquisition should be governed by the law of that Member State.*

# Relevant preambles

- **Regulation 2016/1104:** Property Consequences of Registered Partnerships

*(21) This Regulation should not apply to other preliminary questions such as the existence, validity or recognition of a registered partnership, which is covered by the national law of the Member States, including their rules of private international law.*

*(22) As maintenance obligations between spouses are governed by Council Regulation (EC) No 4/2009 (6), they should be excluded from the scope of this Regulation, as should issues relating to the succession to the estate of a deceased partner, since they are covered by Regulation (EU) No 650/2012 of the European Parliament and of the Council.*



# Objectives of the Regulations

- Enhance legal certainty and predictability for international couples
- Promote recognition and enforcement of decisions across borders
- Ensure respect for party autonomy
- Simplify and unify legal proceedings in cross-border contexts

# Scope and Exclusions – art. 1

- (a) the legal capacity of spouses/partners;
- (b) the existence, validity or recognition of a marriage/registered partnership;
- (c) maintenance obligations;
- (d) the succession to the estate of a deceased spouse/partner;
- (e) social security;
- (f) the entitlement to transfer or adjustment between spouses/partners, in the case of divorce, legal separation or marriage annulment/ annulment of the registered partnership, of rights to retirement or disability pension accrued during marriage/registered partnership and which have not generated pension income during the marriage/registered partnership;
- (g) the nature of rights in rem relating to a property; and
- (h) any recording in a register of rights in immovable or moveable property, including the legal requirements for such recording, and the effects of recording or failing to record such rights in a register.

# Main Common Concepts for the Twin Regulations – art. 3



‘decision’ means any decision in a matter of a matrimonial 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

‘court settlement’ means a settlement in a matter of matrimonial property regime which has been approved by a court or concluded before a court in the course of proceedings

‘authentic instrument’ means a document in a matter of the property consequences of a registered partnership which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:

(i)

relates to the signature and the content of the authentic instrument, and

(ii)

has been established by a public authority or other authority empowered for that purpose by the Member State of origin

‘Member State of origin’ means the Member State in which the decision has been given, the authentic instrument drawn up, or the court settlement approved or concluded

‘Member State of enforcement’ means the Member State in which recognition and/or enforcement of the decision, the authentic instrument, or the court settlement is requested

# Specific concepts related to Regulation 2016/1103:

## Matrimonial Property Regimes – art. 3

- (a) ‘matrimonial property regime’ means a set of rules concerning the property relationships between the spouses and in their relations with third parties, as a result of marriage or its dissolution;
- (b) ‘matrimonial property agreement’ means any agreement between spouses or future spouses by which they organise their matrimonial property regime;

# Specific concepts related to Regulation 2016/1104: Consequences of Registered Partnerships – art. 3

- (a) ‘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;
- (b) ‘property consequences of a registered partnership’ means the set of rules concerning the property relationships of the partners, between themselves and in their relations with third parties, as a result of the legal relationship created by the registration of the partnership or its dissolution;
- (c) ‘partnership property agreement’ means any agreement between partners or future partners by which they organise the property consequences of their registered partnership;

# Jurisdiction rules - Art. 4–11

General rule: court with jurisdiction over divorce also rules on property

Alternative: court of last common habitual residence

Party autonomy (Art. 7): choice of forum possible

# Residual Jurisdiction



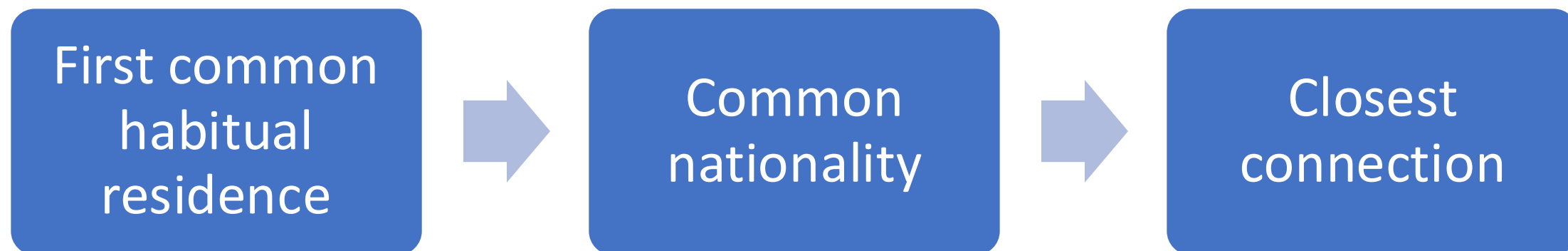
When no court of a participating Member State has jurisdiction

National law applies as fallback

Ensures access to justice even outside the EU framework

# Applicable Law - Art. 20–22

## Default rule, when there is no choice of law





# Habitual residence

- habitual residence - concept has to be interpreted autonomously and independently regardless of the national concepts.
- The Court of Justice of the European Union (CJEU) has slowly built up the content of the term in its case law.
- Generally, it represents the place where a person has the centre of his or her interests.
- Additionally, the CJEU emphasised that ‘a person may have the centre of his interests in a Member State in which he or she does not habitually reside, in so far as other factors, such as the pursuit of professional activity, may establish the existence of a particularly close link with that State’ (Joined Cases C-509/09 and C-161/10, *eDate Advertising GmbH v X and Olivier Martinez, Robert Martinez v MGN Limited*, ECLI:EU:C:2011:685, para. 49).

## CJEU, 5 November 2021, IB vs FA, C-289/20

- A husband of French nationality lodged an application for divorce before the French judge whereas his wife of Irish nationality contested that jurisdiction, assuming that the applicant's habitual residence was still in Ireland (although he had settled to France for professional reasons, he periodically visited their former common residence to stay with the children).
- The Court of Justice held that from all the circumstances of the case it was possible to conclude that the applicant effectively had moved to France for exclusive professional reasons, but he had divided almost equally his time between the two Member States. Nevertheless, not only (from a merely literal point of view) do all the relevant provisions refer to habitual residence in singular rather than in plural, but the use of the adjective “habitual” also indicates that the residence must have certain permanence or regularity and that the transfer of a person's habitual residence to a Member State reflects the intention of the person concerned to establish there a permanent or habitual centre of his or her interests, with the intention that it should be of a lasting character.
- In other terms, the concept refers to the place where the person had established, on a fixed basis, his or her permanent or habitual centre of interests.

## Principle of unity of the applicable law

- One law will be applied to all the couple's assets, regardless of where the assets are located (Art. 21) or the nature of these assets.
- Example: Mr. Yohannis, a German national, and Mrs. Oreiro, Italian, fix their common habitual residence in Spain shortly after their marriage. They have assets in their respective countries and in Spain. They have not concluded an agreement on the choice of applicable law. → Spanish law will apply to all the couple's moveable and immoveable assets.

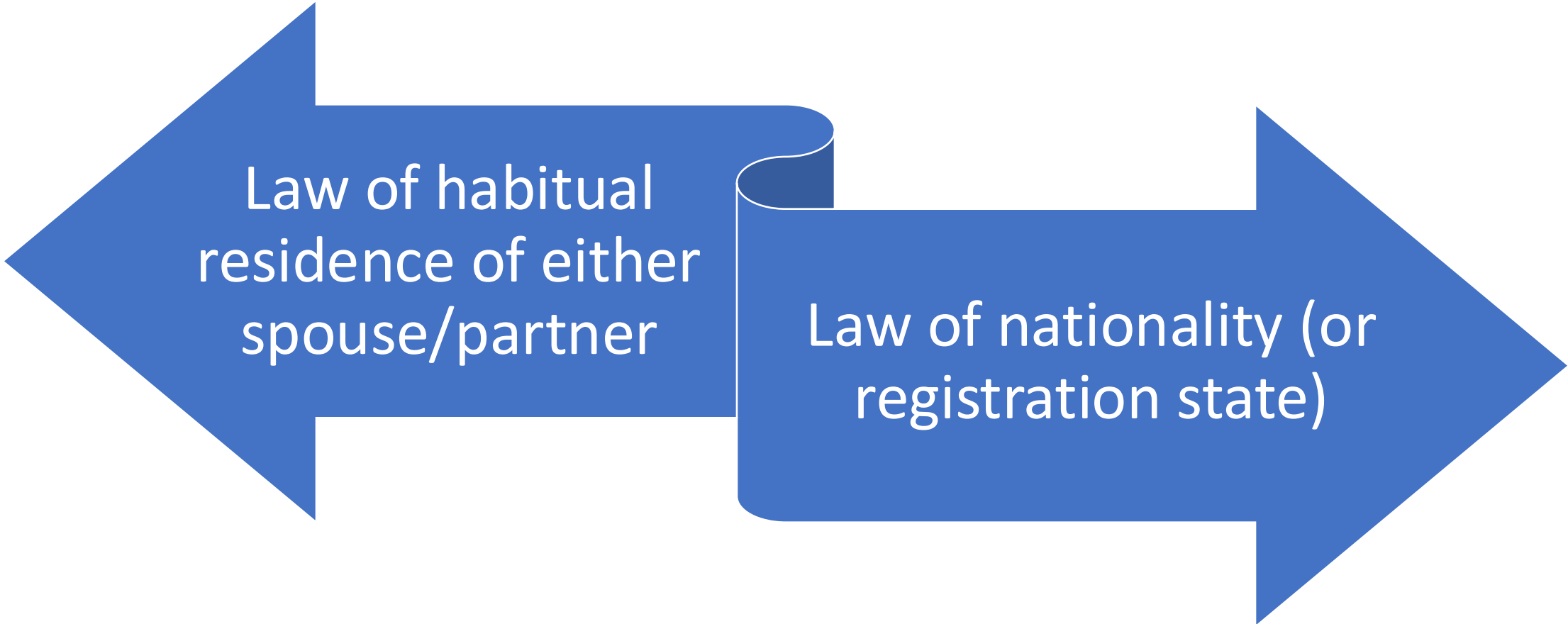
# Choice of law – freedom of choice

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Law of habitual  
residence of either  
spouse/partner

Law of nationality (or  
registration state)

# Choice of law agreement – validity conditions



- expressed in writing, dated and signed by both spouses;
- communication by electronic means allowed, if it provides a durable record of the agreement;
- additional formal requirements of the law of the Member State in which both spouses have their habitual residence at the time the agreement apply;
- additional formal requirements of the laws of the Member States where the spouses are habitually resident shall apply;

# Example 1 – International Marriage



- Couple: German-French nationals, habitual residence in Romania
- Divorce occurs in Romania
- Without a valid choice of law, Romanian law applies (first habitual residence)
- With a valid choice: German or French law could potentially apply

# Example 2 – Registered Partnership



- Belgian same-sex partners relocate to Italy
- Italy does not recognize registered partnerships
- Jurisdiction and law of partnership origin (Belgium) apply

# Recognition and Enforcement of a Decision

Decisions automatically recognized in other participating states

Specific grounds for non-recognition (public policy, lack of serving the defendant, irreconcilability)

The jurisdiction of the Member State of origin may not be reviewed



# Authentic instruments

Recognition of same (or most comparable) effects for an authentic instrument as in the Member State of origin

The authentic instrument must not be contrary to public order in the Member State concerned

Enforceability of authentic instruments in similar conditions as enforceability of decisions

# Practical Challenges

Non-recognition of partnerships in some states

Lack of awareness among courts and practitioners

# Conclusions

