



Training of lawyers on EU Family Law (TRADICIL)

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**Jurisdiction in matrimonial matters and matters of
parental responsibility**

Dublin, 15 September 2025



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OLD

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of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, repealed Council Regulation (EC) No 1347/2000 (Brussels II bis)- to July 31, 2022

NEW

After August 1, 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)

SAME

CJEU jurisprudence re: Brussels II bis applicable for Brussel II ter

Module 1: Jurisdiction in matrimonial matters and matters of parental responsibility

Dublin 15 September 2025

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1 INTRODUCTION

FULL TITLE

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)

WHAT'S IT CALLED ?

Brussels II ter

Brussels IIb

Brussels II bis (recast)

Regulation 2019/1111

OLD

Council regulation (EU) No. 2201/2003 (Brussels II bis) on jurisdiction and the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, operated until July 31, 2022

NEW

After August 1, 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)

SAME

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BACKGROUND AND OBJECTIVES

The Regulation establishes uniform jurisdiction rules for divorce, legal separation and marriage annulment as well as for disputes about parental responsibility with an international element. It facilitates the circulation of decisions, as well as of authentic instruments and certain agreements, in the Union by laying down provisions on their recognition and enforcement in other Member States.

The Regulation clarifies the child's right to be provided with an opportunity to express his or her views in proceedings to which he or she is subject and also contains provisions complementing the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention') in relations between Member States. It is intended to help to

- strengthen legal certainty and increase flexibility,
- ensure that access to court proceedings is improved and
- to ensure that such proceedings are made more efficientⁱ

The smooth and correct functioning of a Union area of justice with respect for the Member States' different legal systems and traditions is vital for the Union. In that regard, mutual trust in one another's justice systems should be further enhanced. The Union has set itself the objective of creating, maintaining and developing an area of freedom, security and justice, in which the free movement of persons and access to justice are ensured. With a view to implementing that objective, the rights of persons, in particular children, in legal procedures should be reinforced in order to facilitate the cooperation of judicial and administrative authorities and the enforcement of decisions in family law matters with cross-border implications. The mutual recognition of decisions in civil matters should be enhanced, access to justice should be simplified and exchanges of information between the authorities of the Member States should be improved.ⁱⁱ

To this end, the Union is to adopt, among others, measures in the field of judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market. The term 'civil matters' should be interpreted autonomously, in accordance with the established case-law of the Court of Justice of the European Union ('the Court of Justice'). It should be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of this Regulation and, second, to the general principles which stem from the corpus of the national legal systems. The term 'civil matters' should therefore be interpreted as capable of extending also to measures which, from the point of view of the legal system of a Member State, might fall under public law. It should cover, in particular, all applications, measures or decisions in matters of 'parental responsibility' within the meaning of this Regulation, in accordance with its objectives.ⁱⁱⁱ

This Regulation covers 'civil matters', which includes civil court proceedings and the resulting decisions as well as authentic instruments and certain extra-judicial agreements in matrimonial matters and matters of parental responsibility. Moreover, the term 'civil matters' should cover applications, measures or decisions as well as authentic instruments and certain extra-judicial agreements concerning the return of a child under the 1980 Hague Convention, which, according to the case-law of the Court of Justice and in line with Article 19 of the 1980 Hague Convention,

are not proceedings on the substance of parental responsibility but closely related to it and addressed by certain provisions of this Regulation.^{iv}

In order to facilitate the circulation of decisions as well as of authentic instruments and certain agreements in matrimonial matters and matters of parental responsibility, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of decisions be governed by a legal instrument of the Union which is binding and directly applicable.^v

In order to ensure equality for all children, this Regulation should cover all decisions on parental responsibility, including measures for the protection of the child, independent of any link with matrimonial proceedings or other proceedings.^{vi} [same as Brussels II bis]

However, since the application of the rules on parental responsibility often arises in the context of matrimonial proceedings, it is appropriate to have a single instrument for matters of divorce and parental responsibility.

2 IMPROVEMENT NOT RADICAL CHANGE^{vii} - selected definitions and applicability

Scope of Brussels II ter

In matrimonial matters it applies to matters of divorce, legal separation or marriage annulment.^{viii} [same as Brussels II bis] It does not apply to grounds for divorce, property of the spouses, maintenance obligations, decisions refusing the dissolution of matrimonial ties.

In parental responsibility matters it applies to the attribution, exercise, delegation, restriction or termination of parental responsibility;^{ix} [same as Brussels II bis] rights of custody and rights of access, guardianship, curatorship and other similar institutions, [same as Brussels II bis] people that have in charge the person or property of a child/representing/assisting a child, the placement of a child in foster care, measures for the protection of the child as regards the management, preservation and disposal of the property of the child^x. [same as Brussels II bis]

The regulation does not apply to the establishment or the contesting of a parent-child relationship; decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption; the name and forenames of a child; emancipation; maintenance obligations [EU Regulation 4/2009]; trusts or succession; measures taken as a result of criminal law offences committed by children.^{xi} [same as Brussels II bis]

Selected Definitions -Article 2

'parental responsibility' means all rights and duties relating to the person or the property of a child which are given to a natural or legal person by a decision, by operation of law or by an agreement having legal effect, including rights of custody and rights of access;^{xii} [same as Brussels II bis]

'holder of parental responsibility' means any person, institution or other body having parental responsibility for a child;^{xiii} [same as Brussels II bis]

'child' means any person below the age of 18 years;^{xiv}

'rights of custody' includes 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;^{xv} [same as Brussels II bis] Recital no. 18 further clarifies that a person should be deemed to have 'rights of custody' where, pursuant to a decision, by operation of law or by an agreement having legal effect under the law of the Member State where the child is habitually resident, a holder of parental responsibility cannot decide on the child's place of residence without the consent of that person, regardless of the terms used under national law. In some legal systems which retain the language of 'custody' and 'access', the non-custodial parent might in fact retain important responsibilities for decisions concerning the child which go beyond a mere right of access.

'rights of access' means 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;^{xvi} [same as Brussels II bis]

'Member State of origin' means the Member State in which the decision has been given, the authentic instrument has been formally drawn up or registered, or the agreement has been registered;^{xvii} "[Brussels II bis defines Member State of origin as “the Member State where the judgment to be enforced was issued;”]

Habitual residence is not defined in the Regulation but has been addressed in CJEU caselaw as being “essentially a question of fact”^{xviii} for the court to determine and that “the view to be taken that the concept of ‘habitual residence’ is characterised, in principle, by two factors, namely, first, the intention of the person concerned to establish the habitual centre of his or her interests in a particular place and, secondly, a presence which is sufficiently stable in the Member State concerned”^{xix}. Article 3(1)(a) of Regulation No 2201/2003 must be interpreted as meaning that 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.^{xx}

WHO DOES IT APPLY TO

All EU member states save Denmark

Transitional provisions – article 100

3 JURISDICTION FOR MATRIMONIAL MATTERS

There have been virtually no substantive changes to jurisdiction in matrimonial matters despite criticism of Brussels II bis.^{xxi} Lusznat^{xxii} states that the Regulation has been rightly criticised as the seven concurrent grounds of jurisdiction in matrimonial matters undesirably facilitate forum shopping. Crowley has also pointed out that “the lack of hierarchy amongst these stated grounds accords the power to choose the jurisdiction to one or other of the parties and fails to impose any principle-based identification of the most appropriate jurisdiction in the particular circumstances.”^{xxiii}

He goes on to suggest that the reason behind the inactivity is political as he states that revising Articles 3–7 Brussels IIa would have “opened questions, particularly how to treat same-sex marriages and registered partnerships, which would have, because of the necessary unanimity (Article 81(3)(i) TFEU), endangered the whole reform project.”

Article 3 General Jurisdiction

In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State:

(a) 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

(b) of the nationality of both spouses

Very similar to the corresponding article 3 in Brussels II bis. The difference being the explicit reference to domicile for UK and Ireland in Brussels II bis.

The reference to nationality is less clear in the new Regulation as one has to refer to Article 2.3 to discover that “For the purposes of Articles 3, 6, 10, 12, 13, 51, 59, 75, 94 and 102 the concept of 'domicile' replaces the concept of 'nationality' for Ireland and the United Kingdom, and it has the same meaning as under each of the legal systems of those Member States.”

Article 4 Counterclaim

The court before which proceedings are pending on the basis of Article 3 shall also have jurisdiction to examine a counterclaim, insofar as that counterclaim falls within the scope of this Regulation. [same as Brussels II bis]

Article 5 Conversion of legal separation to divorce

Without prejudice to Article 3, a court of a Member State that has given a decision granting a legal separation shall also have jurisdiction to convert that legal separation to a divorce, if the law of that Member State so provides. [same as Brussels II bis]

Article 6 Residual jurisdiction

1. Subject to paragraph 2, where no court of a Member State has jurisdiction pursuant to Article 3, 4 or 5, jurisdiction 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 Articles 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.

[same as Brussels II bis]

4 JURISDICTION FOR PARENTAL RESPONSIBILITY

Right to be heard

Recital 2 of the Regulation provides that “this Regulation clarifies the child's right to be provided with an opportunity to express his or her views in proceedings to which he or she is subject and also contains provisions complementing the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('the 1980 Hague Convention') in relations between Member States. Therefore, this Regulation should help to strengthen legal certainty and increase flexibility, to ensure that access to court proceedings is improved and to ensure that such proceedings are made more efficient”.

Best interests of the child

Recital 19 continues the theme –

“The grounds of jurisdiction in matters of parental responsibility are shaped in the light of the best interests of the child and should be applied in accordance with them. Any reference to the best interests of the child should be interpreted in light of Article 24 of the Charter of Fundamental Rights of the European Union ('the Charter') and the United Nations Convention on the Rights of the Child of 20 November 1989 ('UN Convention on the Rights of the Child') as implemented by national law and procedure.”

Similarly to Recital 12 of Brussels II Bis, Brussels II ter provides at Recital 20 “

“To safeguard the best interests of the child, jurisdiction should in the first place be determined according to the criterion of proximity. Consequently, jurisdiction should lie with the Member State of the habitual residence of the child, except for certain situations set out in this Regulation, for instance, where there is a change in the child's residence or pursuant to an agreement between the holders of parental responsibility.”

This is provided for in Article 7 which is subject to Articles 8 -10. Article 8 deals with continuing jurisdiction in relation to access rights, Article 9 with jurisdiction in cases of the wrongful removal or retention of a child and Article 10 in relation to choice of court.

Article 8 deals with continuing jurisdiction in relation to access rights and states that

1. 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 shall, by way of exception to the general jurisdiction, retain jurisdiction, for three months following the move, to modify a decision on access rights given in that Member State before the child moved if the person granted access rights by the decision continues to have his or her habitual residence in the Member State of the child's former habitual residence.
2. Paragraph 1 shall not apply if the holder of access rights referred to in paragraph 1 has accepted the jurisdiction of the courts of the Member State of the child's new habitual residence by participating in proceedings before those courts without contesting their jurisdiction.

This is the same as Brussels II bis.

Innovations – choice of court and conditions for agreement of the parties to establish jurisdiction

Article 10 Choice of court, sets out the conditions to be met to establish jurisdiction for the courts of the member state in re: parental responsibility as follows:

1. (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 point (b) of paragraph 1 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'.
- Persons who become parties to the proceedings after the court was seised may express their agreement after the court was seised. In the absence of their opposition, their agreement shall be regarded as implicit.
3. Unless otherwise agreed by the parties, the jurisdiction conferred in paragraph 1 shall cease as soon as:
- (a) the decision given in those proceedings is no longer subject to ordinary appeal; or
 - (b) the proceedings have come to an end for another reason.
4. The jurisdiction conferred in point (b)(ii) of paragraph 1 shall be exclusive.

Comment:

Choice of court permits the parties to choose the jurisdiction but the choice of court agreement will only be effective in establishing jurisdiction if it is in the best interests of the child. The jurisdiction is exclusive. This choice of court is a new and different means of establishing jurisdiction to the general jurisdiction contained in Article 7 – habitual residence. It is noteworthy that the parties can express their agreement after the court was seised and that in the absence of opposition, the agreement shall be regarded as implicit.^{xxiv}

Jurisdiction based on presence of the child Article 11 - where the habitual residence of a child cannot be established and jurisdiction cannot be determined on the basis of Article 10, the

courts of the Member State where the child is present shall have jurisdiction. This jurisdiction shall also apply to refugee children or children internationally displaced because of disturbances occurring in their Member State of habitual residence.

Transfer of jurisdiction to a court of another Member State Article 12

In exceptional circumstances, a court of a Member State having jurisdiction as to the substance of the matter may, upon application from a party or of its own motion, if it considers 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, stay the proceedings or a specific part thereof and either:

- (a) set a time limit for one or more of the parties to inform the court of that other Member State of the pending proceedings and the possibility to transfer jurisdiction and to introduce an application before that court; or
- (b) request a court of another Member State to assume jurisdiction in accordance with paragraph 2.

The court of the other Member State may, where due to the specific circumstances of the case this is in the best interests of the child, accept jurisdiction within six weeks after:

- (a) its seisure in accordance with point the setting of the time limit in (a) above; or
- (b) receipt of the request to assume jurisdiction.

The court second seised or requested to accept jurisdiction shall inform the court first seised without delay. If it accepts, the court first seised shall decline jurisdiction.

The court first seised shall continue to exercise its jurisdiction if it has not received the acceptance of jurisdiction by the court of the other Member State within seven weeks after:

- (a) the time limit set for the parties to introduce an application before a court of another Member State has expired; or
- (b) the date that court [of the other Member State] has received the request

The child shall be considered to have a particular connection with a Member State if that Member State:

- (a) has become the habitual residence of the child after the court was seised;
- (b) is the former habitual residence of the child;
- (c) is the State of the nationality of the child;
- (d) is the habitual residence of a holder of parental responsibility; or
- (e) is the place where property of the child is located and the case concerns measures for the protection of the child relating to the administration, conservation or disposal of that property.

Where exclusive jurisdiction of the court was established under Article 10 [choice of court] that court cannot transfer the jurisdiction to the court of another Member State.

Comment:

Brussels II bis Article 15 which dealt with transfer to a court better placed to hear the case, contained at 15(2) a condition that such a transfer “must be accepted by at least one of the parties”.

This condition is absent from both Article 12, 13 and as Luszna^{xxv} has observed this change strengthens the welfare of the child since all parties acting together are not able to frustrate transfer in the best interests of the child although their party autonomy remains relevant as they could complete a choice of court agreement which would exclude the transfer, however such agreements must still be in the best interests of the child.^{xxvi}

Request for transfer of jurisdiction by a court of a Member State not having jurisdiction *Article 13*

In exceptional circumstances and without prejudice to Article 9, if a court of a Member State which does not have jurisdiction under this Regulation, but with which the child has a particular connection in accordance with Article 12(4), considers that it is better placed to assess the best interests of the child in the particular case, it may request a transfer of jurisdiction from the court of the Member State of the habitual residence of the child.

Within six weeks following receipt of the request, the requested court may accept to transfer its jurisdiction, if it considers that due to the specific circumstances of the case such a transfer is in the best interests of the child. Where the requested court accepts to transfer jurisdiction, it shall inform the requesting court without delay. In the absence of such acceptance within the timeframe, the requesting court shall not have jurisdiction.

There is no corresponding provision in Article 13, which refers to exclusive jurisdiction of the Court under Article 10.

Residual jurisdiction *Article 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.

Provisional, including protective, measures in urgent cases *Article 15*

In urgent cases, even if the court of another Member State has jurisdiction as to the substance of the matter, the courts of a Member State shall have jurisdiction to take provisional, including protective, measures which may be available under the law of that Member State in respect of:

- (a) a child who is present in that Member State; or
- (b) property belonging to a child which is located in that Member State.

In so far as the protection of the best interests of the child so requires, the court having taken the measures referred to in the preceding paragraph shall, without delay, inform the court or competent authority of the Member State having jurisdiction pursuant to Article 7 or, where appropriate, any court of a Member State exercising jurisdiction under this Regulation as to the substance of the matter, either directly in accordance with Article 86 or through the Central Authorities designated pursuant to Article 76.

The measures taken in these urgent cases shall cease to apply as soon as the court of the Member State having jurisdiction under this Regulation as to the substance of the matter has taken the measures it considers appropriate.

Where appropriate, that court may inform the court having taken provisional, including protective, measures, either directly in accordance with Article 86 or through the Central Authorities designated pursuant to Article 76, of its decision.

Comment: it would be welcome if there was more detail of when these provisional and protective measures could be utilised appropriately.

Incidental questions Article 16

If the outcome of proceedings in a matter not falling within the scope of the Regulation before a court of a Member State depends on the determination of an incidental question relating to parental responsibility, a court in that Member State may determine that question for the purposes of those proceedings even if that Member State does not have jurisdiction under this Regulation. The determination of an incidental question shall produce effects only in the proceedings for which that determination was made.

If the validity of a legal act undertaken or to be undertaken on behalf of a child in succession proceedings before a court of a Member State requires permission or approval by a court, a court in that Member State may decide whether to permit or approve such a legal act even if it does not have jurisdiction under this Regulation. Article 15(2) shall apply accordingly namely In so far as the protection of the best interests of the child so requires, the court having taken the measures referred to in the preceding paragraph shall, without delay, inform the court or competent authority of the Member State having jurisdiction pursuant to Article 7 or, where appropriate, any court of a Member State exercising jurisdiction under this Regulation as to the substance of the matter, either directly in accordance with Article 86 or through the Central Authorities designated pursuant to Article 76.

6 JURISDICTION COMMON TO BOTH MATRIMONIAL MATTERS AND PARENTAL RESPONSIBILITY

Seising of a court Article 17

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 or she was required to take to have service effected on the respondent;
- (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 or she was required to take to have the document lodged with the court; or
- (c) if the proceedings are instituted of the court's own motion, at the time when the decision to institute the proceedings is taken by the court, or, where such a decision is not required, at the time when the case is registered by the court.

Some more clarity is provided by Recital (35) which states that the Regulation defines at what time a court is deemed to be seised for the purposes of the Regulation. In light of the two

different systems existing in the Member States, which either require the document instituting the proceedings to be served upon the respondent first, or to be lodged with the court first, it should be sufficient for the first step under national law to have been taken, provided that the applicant has not subsequently failed to take any steps that he or she was required to take under national law in order to have the second step effected.

Taking into account the growing importance of mediation and other methods of alternative dispute resolution, also during court proceedings, in accordance with the case-law of the Court of Justice, a court should also be deemed to be seised at the time when the document instituting the proceedings or an equivalent document is lodged with the court in cases where the proceedings have in the meantime been suspended, with a view to finding an amicable solution, upon application of the party who instituted them, without the document instituting the proceedings having yet been served upon the respondent and without the respondent having had knowledge about the proceedings or having participated in them in any way, provided that the party who instituted the proceedings has not subsequently failed to take any steps that he or she was required to take to have service effected on the respondent. According to the case-law of the Court of Justice, in the case of *lis pendens*, the date on which a mandatory conciliation procedure was lodged before a national conciliation authority should be considered as the date on which a 'court' is deemed to be seised.

Regulation (EC) No 1393/2007 of the European Parliament and of the Council (6) should apply to the service of documents in proceedings instituted pursuant to this Regulation.

Comment: failure to take the steps necessary to ensure service on the respondent can result in loss of jurisdiction. See also decision of the Court (Third Chamber) in *In the case of judicial separation and divorce proceedings brought between the same parties before the courts of two Member States*, Article 19(1) and (3) of 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, must be interpreted as meaning that, in a situation such as that at issue in the main proceedings in which the proceedings before the court first seised in the first Member State expired after the second court in the second Member State was seised, the criteria for *lis pendens* are no longer fulfilled and, therefore, the jurisdiction of the court first seised must be regarded as not being established.^{xxvii}

Examination as to jurisdiction Article 18

Where 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 this Regulation 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.

Examination as to admissibility Article 19

Where a respondent habitually resident in a State other than the Member State where the proceedings were instituted does not enter an appearance, the court with jurisdiction shall stay the proceedings so long as it is not shown that the respondent has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him or her to arrange for his or her defence, or that all necessary steps have been taken to this end.

Article 19 of Regulation (EC) No 1393/2007 shall apply instead of paragraph 1 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.

Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Lis pendens and dependent actions Article 20

Where proceedings relating to divorce, legal separation or marriage annulment 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.

Except where the jurisdiction of one of the courts is based solely on Article 15, [Provisional, including protective, measures in urgent cases] where proceedings relating to parental responsibility relating to the same child and involving the same cause of action 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.

In that case, the party who instituted proceedings before the court second seised may bring those proceedings before the court first seised.

Where a court of a Member State on which an acceptance of jurisdiction as referred to in Article 10 [Choice of court] confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement or acceptance declares that it has no jurisdiction under the agreement or acceptance.

Where and to the extent that the court has established exclusive jurisdiction in accordance with an acceptance of jurisdiction as referred to in Article 10 [Choice of court], any court of another Member State shall decline jurisdiction in favour of that court.

Right of the child to express his or her views Article 21

When exercising their jurisdiction in relation to Parental Responsibility, the courts of the Member States shall, in accordance with national law and procedure, provide 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 in accordance with this Article, the court shall give due weight to the views of the child in accordance with his or her age and maturity.

This is a mandatory obligation on the courts of the Member States.

Article 65

Recognition and enforcement of authentic instruments and agreements

1. Authentic instruments and agreements on legal separation and divorce which have binding legal effect in the Member State of origin shall be recognised in other Member States without any special procedure being required. Section 1 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.

2. Authentic instruments and agreements in matters of parental responsibility which have binding legal effect and are enforceable in the Member State of origin shall be recognised and enforced in other Member States without any declaration of enforceability being required. Sections 1 and 3 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.

Comment: although this relates to recognition and enforcement rather than jurisdiction it is included here simply for noting and to emphasise one of the themes emerging namely of greater autonomy for the parties to make their own agreements and choose their own jurisdiction.

END

ⁱ Recital no. 2

ⁱⁱ Recital no. 3

ⁱⁱⁱ Recital no. 4

^{iv} Recital no. 5

^v Recital no. 6

^{vi} Recital no. 7

^{vii} Maoli, Francesca **The Brussels II ter Regulation: A Quick Look at Some Significant Innovations** The EAPIL blog; 21 September 2022; <https://eapil.org/2022/09/21/the-brussels-ii-ter-regulation-a-quick-look-at-some-significant-innovations/>

^{viii} Article 1.1(a) of the Regulation

^{ix} Article 1.1(b)

^x Article 1.2

^{xi} Article 1.4

^{xii} Article 2.2(7)

^{xiii} Article 2.2(8)

^{xiv} Article 2.2(6)

^{xv} Article 2.2(9)

^{xvi} Article 2.2(10)

^{xvii} Article 2.2(4)

^{xviii} Judgement of 8 June 2017, OL, [C-111/17 PPU](#), [EU:C:2017:436](#), paragraph 51 as cited in Judgement of 25 November 2025 C-289/20 EU:C:2021:955, paragraph 52

^{xix} Judgement of 25 November 2025 C-289/20 EU:C:2021:955, paragraph 57

^{xx} Judgement of 25 November 2025 C-289/20 EU:C:2021:955, paragraph 62, 63 [ruling]

^{xxi} Lusznat, L “The Brussels IIb Regulation – Most significant changes compared to its predecessor and enhancement of the 1980 Hague Convention on International Child Abduction” *Journal of Private International Law*, 2024 Vol. 20, No. 1, 129–153, <https://doi.org/10.1080/17441048.2024.2338625>

^{xxii} Op. cit

^{xxiii} Crowley, Louise, *Family Law*, (Dublin: Roundhall Thomson Reuters, 2013)

^{xxiv} For more on this see Lusznat, L op. cit

^{xxv} Opt. cit

^{xxvi} Article 10(1)(c)

^{xxvii} A v B (Case C-489/14) see also Jurisdiction over divorce proceedings, the Times, 18 December 2015;
<https://www.thetimes.com/uk/law/article/jurisdiction-over-divorce-proceedings-ltf2mblcckm?t=1757842911040>



Training of lawyers on EU Family Law (TRADICIL)

Cormac Corrigan
International child abduction
Dublin, 15 September 2025




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Regulation 2019/1111 and implementation of child abduction return orders



Council Regulation (EU) 2019/111

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Direct recognition of decision given in a Member State without any special procedure being required: ARTICLE 30

No declaration of enforceability required for the decisions to be enforceable in another Member State: ARTICLE 34

Certificate issued by the court of the member state of origin in the language of the decision: ANNEX IV

No security, bond or deposit required: ARTICLE 75

Facility to suspend enforcement proceedings: ARTICLE 56

Temporary suspension of enforcement: ARTICLE 56.4

Limited basis for refusal of enforcement of decision: ARTICLE 56.6

ABDUCTION – RETURN SOUGHT – ORDER GRANTED
– ANNEX IV CERTIFICATE ISSUED – ORDER
RECOGNISED AND ENFORCABLE IN REQUESTING
MEMBER STATE – SECURING
COMPLIANCE/IMPLEMENTATION OF THE RETURN
ORDER IN THE REQUESTED STATE?

One of twins abducted by
grandparents from Member State
A to Member State **B**

Member State **B** has express laws
enabling implementation of Return
Order, coercively or voluntarily

Other twin abducted by Mother
from Member State A to Member
State **C**

Member State **C** does **not** have
express laws enabling
implementation of Return Order,
coercively or voluntarily

Module 2

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

Introduction

1. In this Regulation, in keeping with its predecessors¹, there is much and varied reference to ‘enforcement’, ‘enforceability’, and ‘recognition’, together with provisions detailing the grounds upon which recognition and/or enforcement may be refused or denied.

1.2. In addition, the Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part IV is addressed to “Enforcement” – hereafter the ‘Hague Guide’.

1.3. The issue which appears to be unaddressed or addressed inadequately is that of securing compliance with or implementation of return Orders under the Convention.

The 2019/1111 Regulation provisions on enforcement, etc.

2. It is acknowledged in the Regulation that, because of differences between national rules governing jurisdiction and the recognition and enforcement of decisions, the objectives of the Regulation can be better achieved by binding provision at Union level – see eg Recital 98. The Hague Guide, referred to above, states that *“It is worth noting that in this Guide “enforcement” is used as meaning “implementation by coercive measures”, i.e., “execution”. The implementation of a return through voluntary compliance is therefore not considered as “enforcement” for the purposes of this Guide.”* Recitals 65, 69 and 82 and Article 81 of the Regulation refer to “implementation” of decisions. Article 81.1 states *“A court of a Member State may request the courts or competent authorities of*

¹ 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, and Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses.

another Member State to assist in the implementation of decisions in matters of parental responsibility given under this Regulation, in particular in securing the effective exercise of rights of access.”

SLIDE II

2.1. It appears that differences in language used in common law systems and in civil law systems to describe specific legal processes and concepts may contribute to differences in understanding the issue addressed. For example, one interpretation may well regard ‘enforcement’ when used in the Regulation as encompassing implementation of the decision, whereas another interpretation may be that ‘enforcement’ constitutes the obtaining in a Member State in which the decision was not made of a domestic decision of that Member State. Whether the foregoing propositions are correct or not, and whether or not ‘enforcement’ and ‘enforceability’ in another Member State was/is intended to encompass actual implementation of the decision, it is suggested there is a gap in the Regulation when matters reach this stage as illustrated by the scenario in the following slide:

SLIDE III

2.2. This slide illustrates the stark reality of the absence of a European Union mandated provision for implementation of a return Order. For example, if Member State B in the slide scenario has a national domestic law to secure implementation of/compliance with the Return Order, twin 1 will be returned promptly in accordance with the objective of the Convention and Regulation. However, if Member State C does not have equivalent domestic laws, twin 2 is left to the ingenuity of lawyers in Member State C to craft a return mechanism.

2.3. Articles 1210-7 à 1210-10 of the French Civil Procedure Code : the prosecutor from the court which has jurisdiction is in charge of the enforcement of the decision. In case the parent refuses to return the child voluntarily, the prosecutor can take coercive measures, adjusted to the specific circumstances Art.1210-8. By way of further examples, in the United States of America, the Uniform Child Custody Jurisdiction and Enforcement Act expressly provides that a Court may enforce an order for the return of a child under the Abduction Convention, to include grant of a warrant to take physical custody of a child directing law enforcement officers to take physical custody of the child immediately; and providing for the placement of the child pending final relief. Similarly, in New Zealand, section 119 of the legislation enacting the Hague Convention in the State has detailed provision for securing the enforcement of an order for return of a child, including the issuing of a warrant authorising any constable or any social worker or any other person named in the warrant to

take possession of the child and to deliver the child to a person or authority named in the warrant for the purpose of returning the child in accordance with the order. Lastly, as another example, in various Federal and State legislation in Canada there are extensive detailed provisions in aid of securing compliance with a return order.

Non-legislative consideration of enforcement etc.

3. The EU Commission published a Practice Guide for the application of the 2019/1111 Regulation. In paragraph 5.5.1.1.3. entitled “*Grounds for refusal of enforcement due to long lasting grave risk - Article 56(6) and Recital 69*” it is stated that “*However, before refusing the enforcement under Article 56(6), the authority competent for enforcement or the court shall take appropriate steps to facilitate enforcement in accordance with national law and procedure and the best interests of the child. The implementation of the decision may be ensured with the assistance of relevant professionals, such as social workers or child psychologists. In particular, the authority competent for enforcement or the court should, in accordance with national law and procedure, try to overcome any impediments created by the change of circumstances (see Recital 69).*” (underlining added)

Thus, while in this particular context, it is/was envisaged that there would be an authority in each Member State competent for enforcement or, presumably in the absence of such authority, it is/was envisaged that the court could be involved. It is notable that there is specific reference to ‘national law and procedure’.

3.1. As recounted in the Practice Guide, information provided by Contracting States to the questionnaire issued disclosed that most of the States responding had one or more of the following coercive measures available: pecuniary fines; imprisonment of the abducting parent; and the physical removal of the child from the abducting parent. In this latter instance, regard should be had to the judgment of the European Court of Human Rights in *Ignaccolo-Zenide v Romania*² in which the Court held that Romania was in breach of Article 8 of the Human Rights Convention, having failed to make adequate and effective efforts to enforce the applicant’s right to the return of her children. The Practice Guide considered, and several Contracting States reported to like effect, that ‘contempt of Court’ was a ‘coercive measure’ available to enforce return orders. The *Ignaccolo-Zenide* case is also authority for the proposition that so far as the Human Rights Convention is concerned, it is insufficient for Contracting States to the Abduction Convention

² (2001) 31 EHRR 7

to merely provide indirect enforcement measures, but rather the Human Rights Convention requires the availability and use of direct action by State organs to secure return. The Practice Guide states: “*Each Member State party to the 1980 Hague Convention must equip itself with adequate and effective means to ensure compliance with its positive obligations under Article 8 of the ECHR*” citing *Raw v France* App no 10131/11.

3.2. The Practice Guide discusses these and offers proposals to be adopted in *anticipation of non/delayed compliance and in aid of securing return*. It is suggested that in all cases the court in making a return order should address the most appropriate option for securing the return of the child, in the interests of the least harm to the child. Further, it is suggested that the court order should be as detailed and specific as possible, including practical details for the return and what coercive measures are to be applied. In the Irish system, that last step may be one too far at the stage of granting the return order; however, it might assist if a judge granting the return order retained seisin of the case to ensure judicial continuity and knowledge which would better enable applications for enforcement remedies be heard and granted expeditiously. Another helpful suggestion is that courts would identify a hierarchical scale of different return options tailored for individual cases – so, for example, the return order in a given case might be framed in these terms:

- direct the child is to be returned to his/her State of habitual residence by the [abducting parent] on or before [date];
- in default of compliance with the foregoing, the [left-behind parent] or nominated person approved by the Court and known to the child to take custody of the child on [date] at [place] and to return the child.

Crafting implementation solutions from general legal provisions

4. Within Ireland the limits of both constitutionally derived Orders and habeas corpus Orders, together with the absence of express abduction specific enforcement provisions inform the approach that might, as best practice, be adopted to the framing of an order for return. It is commonplace for the order to direct the return of the child to [the State of his habitual residence] simpliciter or, occasionally, particularly with very young children, to direct return in the care of the abducting parent. Often there is neither any argument about the terms or the terms arrived at are the product of exchanges between the parties’ lawyers and/or with the Court. However, in anticipation of difficulties as to

prompt enforcement of an order, it is suggested that consideration be given towards framing the order in ‘unless’ terms: that is, for example,

“unless the Respondent (abducting party) returns the child to [State of habitual residence] on or before the [date], care of the child shall be entrusted to the Applicant (left behind party) to ensure the child’s return”.

Such framing of the return order, while not conclusive, would nonetheless leave an Applicant much better placed to avail of such general law procedures and secure the return of the child in the event of non-compliance.

4.1. Such ingenuity, however, obscures the absence of provision for when an abducting party ignores orders of the Court. As an example of how this might be overcome was addressed by MacMenamin J in *K v G*³. Having granted an Order directing the return of the child, on the following day a number of matters were brought to the attention of the trial Judge, inter alia, that the respondent was not disposed to accompany the child back to the Czech Republic, and that the respondent was not disposed in any way to cooperate with the implementation of the order. In the circumstances he directed that the Police should attend for the purposes of the child being handed over to the Applicant on a specified day. He also made an order preventing the child being removed from the jurisdiction directing that the Police authorities be informed and for the provision of an emergency passport. Whatever about the basis of jurisdiction for the grant of such relief, the reality is that the legislature has left to the ingenuity of lawyers and judges to supply gaps in the legislation directed to the implementation of orders for return.

4.2. The question might be asked whether the absence of harmonised laws within Member States on securing effective and expeditious implementation of/compliance with return Orders would ground a complaint of breach of the ECHR and/or the Charter of Fundamental Rights of the European Union.

³ [2010] IEHC 424.



Training of lawyers on EU Family Law (TRADICIL)

Sarah Fennell

**Recognition, enforceability and enforcement of
decisions in family matters**

Dublin, 15 September 2025



Co-funded by the European Union


Recognition, enforceability and enforcement of decisions in family matters

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)

Chapter IV: Recognition and Enforcement

- Section 1 (General provisions on recognition and enforcement; Articles 30 to 41)
- Section 2 (Recognition and enforcement of certain privileged decisions; Articles 42 to 50)
- Section 3 (Common provisions on enforcement; Articles 51 to 63)
- Section 4 (Authentic instruments and agreements; Articles 64 to 68)
- Section 5 (Other provisions; Articles 69 to 75).

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Article 2 of the Regulation – Definitions (to include):

- Decision
- Court
- Authentic instrument
- Agreement

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Recognition:

- See in particular Paragraphs 2, 3, 6, 18 and 54 of the Preamble to the Regulation
- Case C-145/86, *Hoffmann v Krieg*, 4th February 1988
- Article 30(1) of the Regulation – “A decision given in a Member State shall be recognised in the other Member States without any special procedure being required.”
- Article 30(2) of the Regulation - “In particular....no special procedure shall be required for updating the civil status records of a Member State....”.

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Recognition:

- Article 30(3) of the Regulation – application for a decision that there are no grounds of refusal referred to in Articles 38 and 39

(see the procedures in Articles 59-62, and where appropriate Section 5 of Chapter IV and Chapter VI)
- Article 30(4) of the Regulation – local jurisdiction in the Member State in which recognition is sought shall be determined by the national law of that Member State
- Article 103 of the Regulation – obliges Member States to communicate to the Commission which courts have jurisdiction (see e-Justice Portal)

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Article 40 of the Regulation – application for refusal of recognition

- Case C-195/08 PPU, *Rinau*, 11th July 2008 (CJEU)

“...except where the procedure concerns a decision certified pursuant to Articles 11(8) and 40 to 42 of the Regulation, any interested party can apply for non-recognition of a judicial decision, even if no application for recognition of the decision has been submitted beforehand.” (para. 97)

...Article 31(1) of the Regulation, in so far as it provides that neither the person against whom enforcement is sought, nor the child is, at this stage of the proceedings, entitled to make any submissions on the application, is not applicable to proceedings initiated for non-recognition of a judicial decision if no application for recognition has been lodged beforehand in respect of that decision. In such a situation, the defendant, who is seeking recognition, is entitled to make such submissions.” (para. 107)

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and the matters of parental responsibility,
and on international child abduction (recast)

Refusal of Recognition


Article 38 of the Regulation – Grounds for refusal of
recognition of decisions in matrimonial matters

Article 39 of the Regulation – Grounds for refusal of
recognition of decisions in matters of parental
responsibility

See also Recital 54 of the Regulation

Articles 69-71 of the Regulation provide rules to limit the
possibility to invoke the grounds of refusal


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Article 30(5) of the Regulation – Recognition as an incidental question (See also Article 16 of the Regulation)

Article 33 of the Regulation – Stay of proceedings

Recognition, enforceability and enforcement of decisions in family matters

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)

Documents to be Produced for Recognition

Article 31(1) of the Regulation – (i) a copy of the decision which satisfies the conditions necessary to establish its authenticity and (ii) the appropriate certificate issued pursuant to Article 36

Article 31(2) of the Regulation – translation or transliteration may be required (see also Article 91 of the Regulation dealing with languages)

Article 32 of the Regulation – in the absence of documents, the receiving court may specify a time for their production or dispense with the requirement for their production if it considers it has sufficient information to decide on recognition

Recognition, enforceability and enforcement of decisions in family matters


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)

Privileged Decisions: Recognition

Chapter IV, Section 2 of the Regulation: Recognition and enforcement of certain privileged decisions (provided that they have been certified in the Member State of origin in accordance with Article 47 - decisions in so far as they grant rights of access and decisions made pursuant to Article 29(6) of the Regulation in so far as they entail the return of the child

Article 43 of the Regulation – no special procedure

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Recognition, enforceability and enforcement of decisions in family matters

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)

Privileged Decisions: Recognition

Article 44 of the Regulation - Stay of proceedings – gives the Court a discretionary power in two situations (i) an application has been submitted alleging that the decision is irreconcilable with a later decision from the Member State in which recognition is sought or from a later decision which is recognisable there (ii) 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

Article 43(2) of the Regulation - a party who wishes to invoke a privileged decision shall produce (i) a copy of the decision which satisfies the conditions necessary to establish its authenticity and (ii) an Article 47 certificate.

Recognition, enforceability and enforcement of decisions in family matters


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)

Privileged Decisions: Refusal of Recognition

Article 50 of the Regulation – the decision shall be refused if and to the extent that it is irreconcilable with a later decision relating to parental responsibility concerning the same child which was given (i) in the Member State in which recognition is invoked or (ii) 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 the recognition is invoked.

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responsibility, and on international child abduction (recast)

Enforcement of Decisions

Enforcement of Decisions with regard to matters of parental responsibility -
see principally, Articles 34-37, 45-50 and 51-63.


The Abolition of Exequatur – Article 34(1) of the Regulation:

“A 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.”

Provisional enforceability by the court of origin of a decision granting rights
of access notwithstanding any appeal – Article 34(2) of the Regulation.

See Case C-4/14 *Bohez*, 9th September 2015 - scope of enforcement
provisions

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parental responsibility, and on international child
abduction (recast)

Enforcement Procedure – Article 51 of the
Regulation:

- Application for enforcement of decisions given in another Member State shall be governed by the law of the Member State of enforcement subject to the provisions of Chapter IV, Section 3 of the Regulation
- The party seeking enforcement is not required to have a postal address in the Member State of enforcement but is required to have an authorized representative if the law of the Member State requires it as mandatory.

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Documents to be Produced for Enforcement (see Annex III)


Article 35(1) of the Regulation

- (i) A copy of the decision, which satisfies the conditions necessary to establish its authenticity and
- (ii) The appropriate certificate issued pursuant to Article 36

Recognition, enforceability and enforcement of decisions in family matters

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)

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Documents to be Produced for Enforcement of Provisional (including Protective measures) (see Annex IV)

Article 35(2) of the Regulation requires:

- (i) a copy of the decision which satisfies the conditions necessary to establish its authenticity
- (ii) the appropriate certificate issued pursuant to Article 36, certifying that the decision is enforceable in the Member State of origin and that the court of origin:
 - has jurisdiction as to the substance of the matter; or
 - has ordered the measure in accordance with Article 27(5) in conjunction with Article 15 and
- (iii) where the measure was ordered without the respondent being summoned to appear, proof of service of the decision.

Article 35(3) and 35(4) of the Regulation - translations or transliterations may be required.


Recognition, enforceability and enforcement of decisions in family matters

Council Regulation (EU) 2019/1111 of
25 June 2019 on jurisdiction, the
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decisions in matrimonial matters and the
matters of parental responsibility, and on
international child abduction (recast)

Suspension of Enforcement: Grounds under Article 56 of the Regulation

- (a) An ordinary appeal against the decision has been lodged in the Member State of origin
- (b) The time for such an ordinary appeal has not yet expired
- (c) An application for refusal of enforcement has been submitted
- (d) The person against whom enforcement is sought has applied under Article 48 for the withdrawal of a certificate issued pursuant to Article 47.

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responsibility, and on international child abduction
(recast)

Suspension of Enforcement: Grounds under

Article 56 of the Regulation (Exceptional Cases)

Article 56(4): ...if enforcement would expose the child to a grave risk of physical or psychological harm due to temporary impediments which have arisen after the decision was given, or by virtue of any other significant change of circumstances.

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decisions in matrimonial matters and the matters of parental
responsibility, and on international child abduction (recast)

Refusal of Enforcement

See Articles 59-63 of the Regulation for the procedure for
submitting an application for refusal

Article 69 of the Regulation prohibits review of jurisdiction of
the court of origin and Article 71 of the Regulation provides that
under no circumstances may a decision given in another
Member State be reviewed as to its substance.

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Grounds for Refusal of Enforcement of Decisions in Matters of Parental Responsibility: Articles 39 and 41 of the Regulation

- (a) manifestly contrary to the public policy of the Member State in which recognition is involved, taking into account the best interests of the child;
- (b) default of appearance ...unless it is determined that the person has accepted the decision unequivocally
- (c) upon application by any person claiming that the decision infringes his/her parental responsibility given in the Member State in which recognition is invoked if given without such person having been given an opportunity to be heard

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Grounds for Refusal of Enforcement in Matters of Parental Responsibility: Articles 39 and 41 of the Regulation

(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;

(f) If the procedure laid down in Article 82 is not complied with.

(g) If the decision was given without the child who is capable of forming his/her views having been given the opportunity to be heard in accordance with Article 21 subject to some exceptions

See also Article 56(6) regarding grave risk and Article 57 on grounds for refusal of enforcement in the national law of the requested Member State.

Recognition, enforceability and enforcement of decisions in family matters

Council Regulation (EU) 2019/1111 of 25 June 2019
jurisdiction, the recognition and enforcement of


decisions in matrimonial matters and the matters of parental
responsibility, and on international child abduction (recast)

Enforcement: Appeals

Article 61(1) of the Regulation allows that either party may challenge or appeal against a decision on the application for refusal of enforcement.

Article 61(2) of the Regulation provides that such challenges or appeals should be lodged with the authority or court communicated by the Member State of enforcement to the Commission pursuant to Article 103.

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Council Regulation (EU) 2019/1111 of 25 June
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enforcement of decisions in matrimonial matters and
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abduction (recast)

Recognition and Enforcement of Authentic Instruments and Agreements

See Articles 64-68 of the Regulation (Chapter IV,
Section 4)

Article 64 addresses the scope of what is included such that
Section 4 applies in matters of divorce, legal separation and
parental responsibility to authentic instruments which have been
formally drawn up or registered and to agreements which have
been registered in a Member State assuming jurisdiction under
Chapter II.

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Recognition, enforceability and enforcement of decisions in family matters

Council Regulation (EU) 2019/1111 of 25 June
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Recognition and Enforcement of Authentic Instruments and Agreements

Article 65 of the Regulation: No special procedure required

Article 66 of the Regulation: Requirement for Certificates - see
Annex VIII for matrimonial matters and Annex IX for parental
responsibility matters.

Article 67: Rectification and withdrawal of the Certificate

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international child abduction (recast)

Recognition and Enforcement of Authentic Instruments and Agreements

Article 68(1) provides the grounds for the refusal of recognition of an authentic instrument or agreement on legal separation or divorce.

Article 68(2) provides the grounds for the refusal of recognition or enforcement of an authentic instrument or agreement in matters of parental responsibility.

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Training of lawyers on EU Family Law (TRADICIL)

Mihail Dinu

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

Dublin, 15 September 2025



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General context

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#TRADICIL

- Over 16 million international couples in the EU
- Cross-border challenges: assets, divorce, death
- Need for legal certainty

Legislative Framework

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- Regulation (EU) 2016/1103 – matrimonial property regimes
- Regulation (EU) 2016/1104 – registered partnerships
- Enhanced cooperation (18 Member States)

Participating Member States (Enhanced Cooperation)

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As of entry into force (2019), the following 18 Member States participate:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Finland
- France
- Germany
- Greece
- Italy
- Luxembourg
- Malta
- Netherlands
- Portugal
- Slovenia
- Spain
- Sweden

- Spain
- Sweden

Other Member States (e.g., Denmark, Ireland, Poland, Romania) do not participate.

Common Features of Regs. 1103 & 1104



- Cross-border scope only
- They regulate property aspects, not the validity of marriage or partnership itself
- Choice of law (party autonomy) and, failing that, objective criteria for establishing the law
- One law for all assets
- Recognition & enforcement
- Respect for national identity: they do not harmonize substantive regimes, but create a uniform framework of private international law

Comparative Analysis

Aspect	Regulation (EU) 2016/1103 Matrimonial Property Regimes	Regulation (EU) 2016/1104 Registered Partnerships
Scope	<i>Married spouses</i>	<i>Registered partners</i>
Applicability	Applies to <i>international marriages</i> with cross-border elements (different nationalities, residence abroad, assets in multiple states)	Applies to <i>registered partnerships</i> with cross-border elements, provided the partnership is validly created in a Member State that recognizes such institution
Participation	Adopted via enhanced cooperation – 18 Member States	Adopted via enhanced cooperation – 18 Member States
Choice of Law	Nationality or habitual residence of one spouse	Partners may choose the law of the state where the partnership was registered or the state of habitual residence of one partner
Default Law (in absence of choice)	Determined by connecting factors: First common habitual residence after marriage → common nationality at the time of marriage → closest connection	Determined by the law of the state where the partnership was registered
Common Principle — Unity of Regime	One single law applies to all property, regardless of its location; recognition & enforcement	Same principle
Jurisdiction	Courts competent under Brussels II bis (now Brussels II ter) for divorce, separation, annulment also competent for property matters; otherwise based on habitual residence or nationality	Jurisdiction linked to dissolution of partnership or courts of the state of registration
Recognition & Enforcement	Decisions, authentic instruments, and court settlements are recognized and enforceable in other participating Member States without special procedure	Same principle
Limitations	Does not regulate marriage validity, divorce, succession or maintenance obligations	Does not oblige states to introduce registered partnerships; applies only if such partnership is recognized in the state of origin
Challenges	Fragmented application (not all EU states participate). Interaction with national regimes and succession rules	Even more limited, due to absence of recognition of partnerships in several Member States (e.g. Poland, Romania)

Twin Regulations



Regulation (EU) 2016/1103 Matrimonial Property Regimes

Regulation (EU) 2016/1104 Registered Partnerships

COMMON FEATURES:

- Enhanced cooperation (18 MS)
- One law for all property
- Recognition & enforcement across MS
- International element required

KEY POINTS (2016/1103):

- Applies to spouses
- Choice: nationality or habitual residence
- Default: 1st common residence / common nationality / closest connection
- Linked to Brussels II jurisdiction

KEY POINTS (2016/1104):

- Applies to registered partners
- Choice: registration state or habitual residence
- Default: law of registration state
- Jurisdiction tied to dissolution/registration



Interaction with Other Instruments

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- Succession Regulation 650/2012
- Brussels II ter (2019/1111)
- Rome III (1259/2010)
- Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes

Practical Challenges

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- Drafting marriage contracts or partnership agreements
- Non-participating states
- Tax implications
- Need for multidisciplinary approach

Future Outlook

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FUTURE
IS CREATIVE

- Enhanced cooperation works but is fragmented
- Political sensitivity of partnerships
- Towards more EU unification in family law



Conclusion

- Families cross borders, law must keep pace
- Mission: protect citizens, contribute to EU coherence
- In Europe, Justice must travel as freely as Love



Training of lawyers on EU Family Law (TRADICIL)

Evangelos Daskas

Comparative analysis


Dublin, 15 September 2025



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EU FAMILY LAW

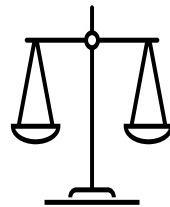
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Authentic instruments and agreements in Family Law cases under
Greek Law and their recognition and execution within EU.

A comparative analysis.



Introduction

- Greek family law has gone through significant changes the last 6 years, both in procedural and substantive law. From the provision for obligatory information on mediation both by the plaintiff's lawyer to her/his client before applying to the court and a mediator of common choice of both parties in a dispute, otherwise appointed by the Central Mediation Authority, to the almost obligatory joint custody system of children in case of a divorce or a separation, legal professionals and practitioners had to renew and reevaluate their knowledge and approach on family law cases. **An effort is being made so that less cases reach courtrooms, and more are resolved with ADR, especially mediation.**

Family Law Cases in Greek Justice system

- Family law cases are described in article 592 of Code Civil of Procedure. These are:
- 1. Matrimonial disputes, i.e. a) divorce, b) marriage annulment, c) recognition of the existence or non-existence of a marriage, d) the relations of the spouses during the marriage, which arise from it, except for those subject to paragraph 3 of Article 592 of the Code of Civil Procedure. The disputes arising from Law 3719/2008 on free cohabitation are also included in the same category.
- 2. Disputes arising from the relationship between parents and children, i.e. a) the challenge of paternity, b) the challenge of maternity, c) the recognition that there is or is not a parent-child relationship or parental responsibility, d) the recognition that there is or does not exist or is invalid the voluntary recognition of a child without the marriage of his parents or his assimilation with a child born in marriage due to a subsequent marriage of his parents, as well as the challenge of voluntary recognition, e) the recognition that there is or is not or is an invalid adoption or its termination, f) the recognition that there is or does not exist guardianship.
- 3. Other family disputes, i.e. a) the determination, reduction or increase of the contribution of each of the spouses to the needs of the family, the maintenance due to marriage, divorce or kinship, the costs of childbirth and the maintenance of the unmarried mother, as well as the maintenance of the mother from the inheritance portion that has been transferred to the child she is carrying; b) the exercise of parental responsibility in respect of the child during the marriage, and in the event of divorce or annulment of the marriage or in the case of a child without the marriage of the parents, the disagreement of the parents during the joint exercise of parental responsibility by them, as well as the communication of the parents and other ascendants with the child, c) the regulation of the use of the family home and the distribution of movable property between spouses, d) any other property law dispute arising from the relationship between the spouses, or the parents and children.
- 4. The claim of the non-negligent spouse for non-pecuniary damage, which may be adjudicated together in accordance with the same procedure of par. 1 no. 592 of the Code of Civil Procedure.

- Those cases are tried with the special procedure of Family cases of articles 591 to 613 of the Code of Civil Procedure and the applicable substantive law is contained mostly in articles 1346 to 1694 of Civil Code (Book 4- Family Law) but also other chapters of Civil Code (Property Law, Inheritance Law) as will other laws apply, depending on the case.
- From the above, it is obvious that some family cases of Greek Law are under the scope of Regulation 2019/1111, others under the scope of Regulation 4/2009 and others under the scope of regulation 2016/1103.


Non - judicial authentic instruments and agreements in Family Law Cases, concerning divorce and parental responsibility under the scope of Regulation 2019/1111.

- Under Greek Law, divorce can be consensual. Consensual Divorces are held before Notaries who are considered Public Authority. Consensual divorces incorporate the agreement of the spouses for their separation and if they have children, it is obligatory that this agreement regulates all issues concerning parental responsibility, custody, right of access and maintenance of the children. It is not unusual that this agreement also regulates property and maintenance issues between spouses. The agreement is signed by the parties and their lawyers, and the signature of the parties must be verified by a public service or by electronic means. Ten days after the signing of the agreement but no more than a month, the parties with their lawyers, that their attendance is obligatory, submit the agreement to a Notary of their choice, who incorporates it in the Divorce Act which can be considered an authentic instrument. Upon its submission to the competent Civil Registry (and if the marriage was religious, it must be first submitted to the competent Archdiocese or the equivalent authority of each religion) the marriage is considered dissolved, and the divorce is final and resolute
- Consensual divorces and their agreement terms are directly enforceable within Greece, for their provisions concerning parental responsibility, custody, communication rights and maintenance and are executed exactly like court decisions. Breaching these provisions is also a criminal offense.

Mediation Agreement

Mediation in Greece is regulated by Law 4640/2019, influenced by Directive 2008/52/EC. It is the third legislative attempt of introduction of the institution in Greek Justice System and the more successful so far.

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- Mediation constitutes an alternative dispute resolution mechanism that emphasizes dialogue, flexibility, and confidentiality. It is a voluntary process in which the parties, with the assistance of a certified and impartial mediator, attempt to reach a mutually acceptable settlement without the imposition of a judicial decision. The institution applies to a wide range of civil and commercial disputes. In certain categories of cases, such as specific family disputes and some civil claims, an initial mediation session is mandatory prior to initiating court proceedings. The procedure is designed to be less formal, less costly, and significantly faster than litigation, while also aiming to preserve ongoing personal or business relationships. Agreements achieved through mediation may be submitted to the competent court for validation, thereby acquiring binding and enforceable status. **The attendance of lawyers for all participating parties is obligatory, both in the initial and the main session.** Overall, mediation represents a significant shift in Greek legal culture, promoting consensual dispute resolution as a complement to traditional litigation.

Advantages of mediation

- Confidential negotiation- what is said/ proposed in the session stays in the session and cannot be used in a Court
- Ability to reach a tailor-made agreement based on the true needs of the parties
- Enforceable agreement
- Right to withdraw at any time with no penalty and reason
- Parties do not forfeit any rights and can start or continue judicial processes if negotiations fail

Disadvantages

- Reaching an agreement is not guaranteed

Not all family law cases though are eligible for mediation. According to the Legislator, the relations of the spouses during the marriage, which originate from it, can be mediated, except for those subject to paragraph 3 of Article 592 of the Code of Civil Procedure (paternity challenge etc), as well as the determination, reduction or increase of the contribution of each of the spouses to the needs of the family, the maintenance due as a result of marriage, divorce or kinship, the costs of childbirth and the maintenance of the unmarried mother, as well as the maintenance of the mother from the share of the inheritance assigned to the child she is carrying, the exercise of parental responsibility in respect of the child during the marriage; and in the event of divorce or annulment of the marriage or in the case of a child unmarried of the parents, the disagreement between the parents during the joint exercise of parental responsibility by them, as well as the contact of the parents and other ascendants with the child (right of access), the regulation of the use of the family home and the division of movable property between spouses; any other property law dispute arising from the relationship between the spouses, or the parents and children, as well as the claim of the non-negligent spouse for non-pecuniary damage, even in the context of divorce proceedings.

- From the above mentioned, it is concluded that a divorce cannot be issued with a mediation agreement **but all other issues deriving from a divorce, such as parental responsibility, custody, maintenance, access rights**, can be resolved via mediation and can be included in a mediation agreement. It is not uncommon that parties try to resolve their differences with mediation and if they succeed, they incorporate their agreement in the divorce act.
- As mentioned above, a mediation agreement can be submitted to the competent court – that is the court that would have jurisdiction for the case resolved and this agreement upon its submission to the court has binding legal effect and is enforceable within Greece.

- It is out of the scopes of this presentation to determine what happened with authentic instruments and agreements before Reg. 2019/1111 was put into effect, under Reg. 2201/2003, although there was a consensus that the previous Regulation did not include non-judicial divorces. The ECJ ruled on 15-11-2022 that “...where a competent extrajudicial authority approves, after an examination as to the substance of the matter, a divorce agreement, it is recognised as a ‘judgment’, in accordance with Article 21 of the Brussels Ia Regulation and Article 30 of the Brussels IIb Regulation...” but that was after the current regulation entered into force.
- The question is what happens if a notary divorce under Greek Law that dissolves a marriage and contains provisions about parental authority, custody, maintenance and access rights for the children of the couple and regulates property issues among spouses, must be recognized for all it contains in another member – state. The same complications arise when a mediation agreement, submitted to the Court that contains provisions about parental authority, custody, maintenance and access rights for the children of the couple and regulates property issues, must also be recognized for all its provisions in another member – state.

Reg. 2019/1111 definitions

- According to article 65 of Reg. 2019/2011, authentic instruments and agreements on legal separation and divorce which have binding legal effect in the Member State of origin shall be recognised in other Member States without any special procedure being required. Section 1 of this Chapter shall apply accordingly, unless otherwise provided for in this Section. Authentic instruments and agreements in matters of parental responsibility which have binding legal effect and are enforceable in the Member State of origin shall be recognised and enforced in other Member States without any declaration of enforceability being required. Sections 1 and 3 of this Chapter shall apply accordingly, unless otherwise provided for in this Section.
- A certificate must be issued by the competent Court of the Member State of origin according to article 66 of Reg. 2019/2011, with all checks and balances of the Regulation.
- Nevertheless, the above-mentioned authentic instrument and agreement will be enforceable within other EU Member States **only for issues concerning divorce, and parental authority (custody, access rights etc).**
- For all other issues, such as maintenance and property issues, **different sets of rules apply.**

Reg. 4/2009 definitions- maintenance cases

- For maintenance in particular, Reg. 4/2009 applies (article 1). According to article 48 of this regulation, Court settlements and authentic instruments which are enforceable in the Member State of origin shall be recognised in another Member State and be enforceable there in the same way as decisions, in accordance with Chapter IV. The provisions of this Regulation shall apply as necessary to court settlements and authentic instruments.
- That is, for maintenance issues, agreements are excluded, and it is questionable if a mediation agreement can be considered a court settlement, since the only involvement of the court is the deposition of the mediation agreement. Even if it is considered a Court settlement, then as in authentic instruments, the procedure of Article 48 applies and the competent authority of the Member State of origin shall issue, at the request of any interested party, an extract from the court settlement or the authentic instrument using the forms set out in Annexes I and II or in Annexes III and IV of Reg. 4/2009 as the case may be.

Reg. 2016/1103 definitions- marital assets cases

- Finally on property issues between the spouses, Reg. 2016/1103 applies (article 1). This Regulation recognises authentic instruments and court settlements as well but no agreements in the same way the other Regulations do, and the same problems arise about what is considered an authentic instrument and what a court settlement. Acceptance of authentic instruments and enforceability of authentic instruments and court settlements are regulated by Articles 58 to 60 of the Regulation, with a totally different manner from the other Regulations.

To sum up, issues deriving from the same event (divorce/ separation) that are dealt non-judicially with a unified document, independently of its legal form (authentic instrument, court settlement, agreement), follow totally different paths if the respective document must be recognised and/ or enforced in a third country- EU member state.

- This increases significantly the complexity of already complicated cases even if the parties involved wish to solve the differences amicably and avoid courts.
- Right below we are trying the present the different way each term is used in each regulation.

Term	Reg. 2019/1111 (Brussels II ter)	Reg. 2016/1103 (Matrimonial Property Regimes)	Reg. 4/2009 (Maintenance Obligations)
Authentic Instrument	Article 2(2): A document formally drawn up or registered in a Member State, authenticity established by a public authority or other authority empowered for that purpose.	Article 3(c): A document in a matrimonial property matter formally drawn up or registered as an authentic instrument, authenticity relates to signature and content, established by a public authority or other empowered authority.	Article 2(1)(3): A document in maintenance matters formally drawn up or registered as an authentic instrument, authenticity relates to the signature and content, established by a competent authority.
Agreement	Article 2(3): A document which is not an authentic instrument, concluded by the parties in matters within the scope of the Regulation, and registered by a public authority as communicated by a Member State to the Commission.	Article 3(b): A matrimonial property agreement is any agreement between spouses or future spouses by which they organise their matrimonial property regime.	Not specifically defined; agreements may be recognised if incorporated in authentic instruments or court settlements.
Court Settlement	Not explicitly defined as such; recognition applies mainly to decisions, authentic instruments, and agreements.	Article 3(e): A settlement in a matrimonial property regime matter approved by a court, or concluded before a court in the course of proceedings.	Article 2(1)(2): A settlement in maintenance matters approved by a court or concluded before a court in the course of proceedings.

Conclusion

- Family law cases in Greek Justice system and to the best of our knowledge in most EU state members respective justice systems, are usually regulated in a uniform way, since they are intertwined with different categories of family disputes and with other categories of cases, especially succession and property law. **If these complicated by nature case have international characteristics, they become even more complex from both procedural and substantive law aspect.**
- EU with the intention of creating an area of freedom, security and justice in which the free movement of persons is ensured and the gradual establishment of such an area, adopts measures relating to judicial cooperation in civil matters having cross-border implications. The social need for a unified legal space in family cases is more relevant than it ever was, since an increasing number of EU citizens establish in a different country than his / her birthplace, acquires assets and creates family, sometime more than once in her/ his lifetime, sometimes in different country, with people with the same characteristics. It is of utmost importance that these people know that in case of a divorce, which is increasingly common, their rights as spouses and parents can be assured independently of which country they reside.
- In addition to that, EU and member states invest heavily in ADR institutions and methods, in order to facilitate fast, peaceful and cost-effective approaches in family law cases. In Greece, the last few years, a serious effort has taken place to de- judicialize family law cases and overturn a litigation culture of decades. It is an effort not without mistakes but with successful milestones as well. The enforceability of non – judicial agreements, especially of notary divorce acts and mediation agreements has played an important role in this effort.

- As we saw, EU does not approach family law cases in holistic way, but with different Regulations for divorce and parental responsibility cases, for marital assets and for maintenance. Each regulation approaches with a different methodology the recognition and the enforceability of each category of cases.
- Imagine a couple, a Greek and an Irish, having married and acquired children in Greece, getting a divorce and with use of mediation they manage to settle all issues- custody, maintenance, right of access, partition of marital assets. If one of the parties starts living in another member – state and violates all the terms of the agreement, the complaining party can execute the agreement- which is a big success and a quantum leap forward- but with 3 different procedures and under 3 different regulations.

De lege ferenda

- As legal professionals in EU, we must work together for the unification of all regulations concerning family law cases in one simple, understandable and practical regulation, with uniform requirements, definitions and procedures for divorce, marital assets, parental responsibility, maintenance and right to access.
- Less complexity
- Simpler procedures
- Family cases must be approached in a unified and holistic way.