



# JUDICIAL COOPERATION IN CIVIL MATTERS

## DAY 4

### BRUSSELS IIA REGULATION

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

**Author: Jitka Kratochvílová, Denisa Petriláková**

**Prepared for the purposes of a legal language seminar (Slovak Republic, Omšenie, Judicial Academy, January 23 – 27, 2016)**

*Study material is developed for the project “Training Legal Languages for Effective Functioning of Judicial Cooperation in EU”. It is produced solely for educational purposes. It has been created for the purposes of legal language training with the financial support of the Justice Programme of the European Union.*



REPUBLIKA SLOVENIJA  
MINISTRSTVO ZA PRAVOSODJE  
CENTER ZA IZOBRAŽEVANJE V PRAVOSODJU



REPUBLIKA HRVATSKA  
MINISTARSTVO PRAVOSUĐA



Justičná akadémia  
Slovenskej republiky



**Key terms (English)**

Study online: [https://quizlet.com/\\_1ijerh](https://quizlet.com/_1ijerh)

1. *matrimonial matters*: matters of or pertaining to marriage; derived from marriage
2. *parental responsibility*: all rights and duties relating to the person or the property of a child. Includes rights of custody and rights of access. (Brussels IIa, Chapter I, Article 2, point 7)
3. *habitual residence*: autonomous European law term; compare to domicile (Brussels IIa, Chapter II, Article 3, point 2)
4. *rights of custody*: includes rights and duties relating to the care of the person of a child, in particular the right to determine the child's place of residence (Brussels IIa, Chapter I, Article 2, point 9)
5. *rights of access*: in particular the right to take a child to a place other than his or her habitual residence for a limited period of time (Brussels IIa, Chapter I, Article 2, point 10)
6. *guardianship*: when a court orders someone other than the child's parent to: Have custody of the child; or Manage the child's property (called "estate"); or Both
7. *curatorship*: The power given by authority of law, to one or more persons, to administer the property of an individual who is unable to take care of his own estate and affairs
8. *foster family, institutional care*: a minor has been placed into a ward, group home, or private home of a state-certified caregiver, referred to as a "foster parent". The placement of the child is normally arranged through the government or a social service agency. The institution, group home or foster parent is compensated for expenses.
9. *divorce*: A court decree that terminates a marriage; also known as marital dissolution.
10. *legal separation*: a court-decreed right to live apart, with the rights and obligations of divorced persons, but without divorce. The parties are still married and cannot remarry.



11. *marriage annulment*: A judgment by a court that retroactively invalidates a marriage to the date of its formation.
12. *child abduction*: Child abduction is the offense of abducting or kidnapping a child by an older person. There are two types of child abduction. They are: parental child abduction and abduction by strangers.
13. *wrongful removal or retention of a child*: the breach or violation of the other parent's custody rights under the laws where the child is a habitual resident
14. *jurisdiction*: the practical authority granted to a legal body to administer justice within a defined area of responsibility
15. *recognition and enforcement of decisions/judgements*: Mutual recognition of judicial decisions is a process by which a decision usually taken by a judicial authority in one EU country is recognised, and where necessary, enforced by other EU countries as if it was a decision taken by the judicial authorities of the latter countries.



**MATERIAL FOR DAY 4: THE NEW BRUSSELS II REGULATION:**

**AIM: READ ABOUT BRUSSELS IIA AND USE RELEVANT VOCABULARY WITHIN MEANINGFUL CONTEXT**

**Target: Having gone through the material you will be able to ANSWER questions related to Brussels IIa using correct and common lexical items and correct grammar structures:**

**Task 1: Read and discuss the sentences containing phrases in bold:**

**ACT:** Brussels II Regulation (EC) No 2201/2003, also called Brussels IIA or II bis, is a European Union Regulation on conflict of law issues in family law between member states; in particular those related to **divorce, child custody** and international **child abduction**. It replaces Convention 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. The regulation does not apply to Denmark.

<b>SUMMARY</b>	
A single legal instrument to help <b>international</b> couples resolve disputes, involving more than one country, over their <b>divorce</b> and the <b>custody</b> of their children.	
<b>WHAT DOES THE REGULATION DO?</b>	
It sets out:	
rules determining which <b>court</b> is <b>responsible</b> for dealing with <b>matrimonial matters</b> and <b>parental responsibility</b> in disputes involving more than one country	
rules making it easier to <b>recognise and enforce judgments</b> issued in one EU country in another	
a procedure to settle cases in which a parent <b>abducts a child</b> from one EU country and takes them to another.	
It <b>does not</b> deal with <b>substantive family law matters</b> . These are the responsibility of individual EU countries.	



<b>KEY POINTS</b>	
The Regulation applies to civil law cases involving more than one country that relate to (Chapter I, Article 1, point 1):	
divorce	
Legal separation	
the annulment of a marriage	
Any aspect of parental responsibility (such as custody and access rights)	
One of its main objectives is to uphold <b>children's right to maintain contact with both parents</b> , even if they are separated or live in different EU countries.	
The Regulation <b>does not apply</b> to cases concerning (Chapter I, Article 1, point 3):	
grounds for divorce or the law applicable in divorce cases	
divorce-related issues such as maintenance	
establishing and challenging paternity	
judgments on adoption and the associated preparatory measures	
annulling or revoking an adoption	
a child's first and last names	
the independence of children from their parents or guardians	
trusts and inheritance	
measures taken in response to criminal acts committed by children.	

**Questions Part 1:**

Q1: Which instrument has been replaced by Regulation Brussels IIa and since when?

Q2: What are the two main areas which are covered by the regulation? Expand on the first area (three points).

Q3: What is one of the main objectives of the regulation?

Q4: Does the regulation deal with the substantive family law matters?

Q5: Name at least 3 issues that are NOT covered by this regulation.



<b>MATRIMONIAL MATTERS</b> (Chapter II, Section 1)	
There is no general rule on jurisdiction in matrimonial matters. To determine the EU country where the courts have the right to rule on a case, the Regulation instead sets out 7 alternative <b>grounds for jurisdiction</b> based on the spouses' nationality or on where they normally live.	
<b>PARENTAL RESPONSIBILITY</b> (Chapter II, Section 2)	
It applies to (Chapter I, Article 1, point 2):	
rights of custody and rights of access	
guardianship, curatorship and similar legal arrangements	
the designation and functions of any person or body in charge of the child or the child's property, or which represents or assists the child	
placing the child in a foster family or in institutional care	
measures to protect the child, covering the administration, conservation or use of his or her property.	
Such matters generally come under the jurisdiction of the courts in the <b>country where the child usually lives</b> . If it is impossible to establish where a child usually lives (as in the case of refugees), the EU country where the child is present automatically assumes jurisdiction.	
<b>CHILD ABDUCTION</b>	
The Regulation also lays down rules to settle cases in which children are unlawfully removed or kept.	
The courts of the EU country where the child normally lived immediately before abduction continue to have jurisdiction until the child lives mainly in another EU country.	

### Questions Part 2:

Q1: Is there a general rule on jurisdiction on matrimonial matters?

Q2: What is the general rule on jurisdiction on parental responsibility? What is an automatic rule if this cannot be established?

Q3: Which court has jurisdiction in case of child abduction?



<b>RECOGNITION</b> (Chapter III, Section 1)	
Under the Regulation, any EU country must <b>automatically recognise</b> judgments given in another EU country on matrimonial and parental responsibility matters. Recognition can be <b>refused</b> if, for example:	
recognition is clearly contrary to public policy	
the defendant did not receive the document initiating proceedings in time to arrange legal defence (in cases where the judgment was given in the defendant's absence)	
recognition is incompatible with another judgment given between the same parties.	
For judgments concerning parental responsibility, recognition can also be refused if:	
the child was not given an opportunity to be heard	
on the request of a person claiming that the judgment infringes his or her parental responsibility, the judgment was issued without this person having been given an opportunity to be heard.	
<b>ENFORCEMENT</b> (Chapter III, Section 2)	
A judgment on the exercise of parental responsibility enforceable in the EU country where it was issued can be enforced in another EU country when it has been declared enforceable there at the request of any interested party. However, <b>no declaration is required</b> for judgments granting rights of access or concerning the return of a child that have been certified by the original judge in accordance with the Regulation.	

### Questions Part 3:

Q1: Can recognition of another EU country judgment on matrimonial and parental responsibility matters be refused? If so, under what grounds?

Q2: Explain what a declaration of enforceability is and the procedure how to obtain it.

Q3: Is there a case when declaration of enforceability is not required?



<b>Cooperation between central authorities in parental responsibility cases</b>	
Each EU country designates a <b>central authority</b> (or more than one) whose duties include:	
helping parents seeking the return of a child abducted by another parent and taken to another EU country	
promoting information-sharing on national law and procedures;	
helping courts communicate with each other	
helping parents or guardians seeking to recognise and enforce decisions	
seeking to resolve disagreements between parents or guardians through alternative means such as mediation.	
Example: (Chapter IV, Article 53)	
<b>Designation</b>	
Each Member State shall designate one or more central authorities to assist with the application of this Regulation and shall specify the geographical or functional jurisdiction of each. Where a Member State has designated more than one central authority, communications shall normally be sent direct to the relevant central authority with jurisdiction. Where a communication is sent to a central authority without jurisdiction, the latter shall be responsible for forwarding it to the central authority with jurisdiction and informing the sender accordingly.	
Central authorities meet regularly as members of the European Judicial Network in civil and commercial matters.	

#### Questions Part 4:

Q1: Where can I find the contact to the central authority in another member state?

Q2: What languages can I use? Where to find?





<b>Exemptions and special provisions</b>	
Denmark is not a party to the Regulation and is therefore not bound by it.	
Special provisions are applicable to:	
the relations of Finland and Sweden with Denmark, Iceland and Norway as regards the application of the Nordic Marriage Convention of 6 February 1931	
relations between the Holy See and Portugal, Italy, Spain and Malta.	
Example: (Chapter II, Section 3, Article 16)	
A court shall be deemed to be seised:	
<p>(a) At the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent; or</p> <p>(b) If the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.</p>	



**Task 2: Study and practice the following lexical items in meaningful questions :**

Judicial cooperation in civil matters

Measures for protection of the child

Best interests of the child

To transfer the case to a court of another member state

To exercise jurisdiction

The hearing of the child

Grounds for non-recognition of judgments

Certificate issued to facilitate enforcement of the judgment should not be subject to appeal

Material error

Amicable resolution

Principle of proportionality – the regulation does not go beyond what is necessary

Member state of origin

Member state of enforcement

Applicant/respondent

May **avail** himself of the rules of the jurisdiction applicable in that state (Chapter II, Section 1, Article 7) - to avail of = to use/take advantage of

Former habitual residence



No request for return has been **lodged**

A request for return lodged by the holder of rights of custody has been withdrawn

The child is given the opportunity to be heard

The court shall act **expeditiously** in proceedings using the **most expeditious procedures** (Chapter II, Section 2, Article 11, point 3)

The child has a **substantial connection** with that Member state

Transfer to a court better placed to hear the case

Central authorities (Chapter II, Section 2, Article 15, point 6 and Chapter IV, Article 53.)

A document is lodged with the court (Chapter II, Section 3, Article 16, point 1 (a))

The document has to be **served** (Chapter II, Section 3, Article 16, point 1 (b))

Provisional measures

Incidental question

Grounds for non-recognition

Public policy (Chapter III, Section 1, Article 22 (a))

Representative ad litem (Chapter III, Section 2, Article 30)

Stay of proceedings (Chapter III, Section 2, Article 35)

Judgment was given in default (Chapter III, Section 4, Article 41, point 2 (a))

Date of legal effect

Exequatur – see declaration of enforceability



**Video Task:**

<https://youtu.be/G-r4tdBeJaA>

Watch the judgment of the UK Supreme Court being delivered and with your partner try to both repeat some sentences as well as sum up the fundamental facts of the case and the judgement as well as the reasoning.

Sources:

- 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, repealing Regulation (EC) No 1347/2000  
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l33194>
- 2) Practice Guide for the application of the new Brussels II Regulation  
[http://ec.europa.eu/civiljustice/parental\\_resp/parental\\_resp\\_ec\\_vdm\\_en.pdf](http://ec.europa.eu/civiljustice/parental_resp/parental_resp_ec_vdm_en.pdf)  
[http://ec.europa.eu/justice/civil/files/brussels\\_ii\\_practice\\_guide\\_en.pdf](http://ec.europa.eu/justice/civil/files/brussels_ii_practice_guide_en.pdf)