

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

CHAPTER II

JURISDICTION

SECTION 1

Divorce, legal separation and marriage annulment

Article 3

General jurisdiction

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

a in whose territory:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her ‘domicile’ there;

b of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the ‘domicile’ of both spouses.

2 For the purpose of this Regulation, ‘domicile’ shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland.

Article 4

Counterclaim

The court in which proceedings are pending on the basis of Article 3 shall also have jurisdiction to examine a counterclaim, insofar as the latter comes within the scope of this Regulation.

Status: Point in time view as at 01/03/2005.

Changes to legislation: There are outstanding changes not yet made to Council Regulation (EC) No 2201/2003. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

Article 5

Conversion of legal separation into divorce

Without prejudice to Article 3, a court of a Member State that has given a judgment on a legal separation shall also have jurisdiction for converting that judgment into a divorce, if the law of that Member State so provides.

Article 6

Exclusive nature of jurisdiction under Articles 3, 4 and 5

A spouse who:

- (a) is habitually resident in the territory of a Member State; or
- (b) is a national of a Member State, or, in the case of the United Kingdom and Ireland, has his or her ‘domicile’ in the territory of one of the latter Member States,

may be sued in another Member State only in accordance with Articles 3, 4 and 5.

Article 7

Residual jurisdiction

1 Where no court of a Member State has jurisdiction pursuant to Articles 3, 4 and 5, jurisdiction shall be determined, in each Member State, by the laws of that State.

2 As against a respondent who is not habitually resident and is not either a national of a Member State or, in the case of the United Kingdom and Ireland, does not have his ‘domicile’ within the territory of one of the latter Member States, any national of a Member State who is habitually resident within the territory of another Member State may, like the nationals of that State, avail himself of the rules of jurisdiction applicable in that State.

SECTION 2

Parental responsibility

Article 8

General jurisdiction

1 The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seised.

2 Paragraph 1 shall be subject to the provisions of Articles 9, 10 and 12.

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Article 9

Continuing jurisdiction of the child's former habitual residence

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 Article 8, retain jurisdiction during a three-month period following the move for the purpose of modifying a judgment on access rights issued in that Member State before the child moved, where the holder of access rights pursuant to the judgment on access rights 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.

Article 10

Jurisdiction in cases of child abduction

In case of wrongful removal or retention of the child, the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention shall retain their jurisdiction until the child has acquired a habitual residence in another Member State and:

- (a) each person, institution or other body having rights of custody has acquiesced in the removal or retention;
- or
- (b) the child has resided in that other Member State for a period of at least one year after the person, institution or other body having rights of custody has had or should have had knowledge of the whereabouts of the child and the child is settled in his or her new environment and at least one of the following conditions is met:
 - (i) within one year after the holder of rights of custody has had or should have had knowledge of the whereabouts of the child, no request for return has been lodged before the competent authorities of the Member State where the child has been removed or is being retained;
 - (ii) a request for return lodged by the holder of rights of custody has been withdrawn and no new request has been lodged within the time limit set in paragraph (i);
 - (iii) a case before the court in the Member State where the child was habitually resident immediately before the wrongful removal or retention has been closed pursuant to Article 11(7);
 - (iv) a judgment on custody that does not entail the return of the child has been issued by the courts of the Member State where the child was habitually resident immediately before the wrongful removal or retention.

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Article 11

Return of the child

1 Where a person, institution or other body having rights of custody applies to the competent authorities in a Member State to deliver a judgment on the basis of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (hereinafter ‘the 1980 Hague Convention’), in order to obtain the return of a child that has been wrongfully removed or retained in a Member State other than the Member State where the child was habitually resident immediately before the wrongful removal or retention, paragraphs 2 to 8 shall apply.

2 When applying Articles 12 and 13 of the 1980 Hague Convention, it shall be ensured that the child is given the opportunity to be heard during the proceedings unless this appears inappropriate having regard to his or her age or degree of maturity.

3 A court to which an application for return of a child is made as mentioned in paragraph 1 shall act expeditiously in proceedings on the application, using the most expeditious procedures available in national law.

Without prejudice to the first subparagraph, the court shall, except where exceptional circumstances make this impossible, issue its judgment no later than six weeks after the application is lodged.

4 A court cannot refuse to return a child on the basis of Article 13b of the 1980 Hague Convention if it is established that adequate arrangements have been made to secure the protection of the child after his or her return.

5 A court cannot refuse to return a child unless the person who requested the return of the child has been given an opportunity to be heard.

6 If a court has issued an order on non-return pursuant to Article 13 of the 1980 Hague Convention, the court must immediately either directly or through its central authority, transmit a copy of the court order on non-return and of the relevant documents, in particular a transcript of the hearings before the court, to the court with jurisdiction or central authority in the Member State where the child was habitually resident immediately before the wrongful removal or retention, as determined by national law. The court shall receive all the mentioned documents within one month of the date of the non-return order.

7 Unless the courts in the Member State where the child was habitually resident immediately before the wrongful removal or retention have already been seised by one of the parties, the court or central authority that receives the information mentioned in paragraph 6 must notify it to the parties and invite them to make submissions to the court, in accordance with national law, within three months of the date of notification so that the court can examine the question of custody of the child.

Without prejudice to the rules on jurisdiction contained in this Regulation, the court shall close the case if no submissions have been received by the court within the time limit.

8 Notwithstanding a judgment of non-return pursuant to Article 13 of the 1980 Hague Convention, any subsequent judgment which requires the return of the child issued by a court having jurisdiction under this Regulation shall be enforceable in accordance with Section 4 of Chapter III below in order to secure the return of the child.

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Article 12

Prorogation of jurisdiction

1 The courts of a Member State exercising jurisdiction by virtue of Article 3 on an application for divorce, legal separation or marriage annulment shall have jurisdiction in any matter relating to parental responsibility connected with that application where:

a at least one of the spouses has parental responsibility in relation to the child;

and

b the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by the spouses and by the holders of parental responsibility, at the time the court is seised, and is in the superior interests of the child.

2 The jurisdiction conferred in paragraph 1 shall cease as soon as:

a the judgment allowing or refusing the application for divorce, legal separation or marriage annulment has become final;

b in those cases where proceedings in relation to parental responsibility are still pending on the date referred to in (a), a judgment in these proceedings has become final;

c the proceedings referred to in (a) and (b) have come to an end for another reason.

3 The courts of a Member State shall also have jurisdiction in relation to parental responsibility in proceedings other than those referred to in paragraph 1 where:

a the child has a substantial connection with that Member State, in particular by virtue of the fact that one of the holders of parental responsibility is habitually resident in that Member State or that the child is a national of that Member State;

and

b the jurisdiction of the courts has been accepted expressly or otherwise in an unequivocal manner by all the parties to the proceedings at the time the court is seised and is in the best interests of the child.

4 Where the child has his or her habitual residence in the territory of a third State which is not a contracting party to the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children, jurisdiction under this Article shall be deemed to be in the child's interest, in particular if it is found impossible to hold proceedings in the third State in question.

Article 13

Jurisdiction based on the child's presence

1 Where a child's habitual residence cannot be established and jurisdiction cannot be determined on the basis of Article 12, the courts of the Member State where the child is present shall have jurisdiction.

2 Paragraph 1 shall also apply to refugee children or children internationally displaced because of disturbances occurring in their country.

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Article 14

Residual jurisdiction

Where no court of a Member State has jurisdiction pursuant to Articles 8 to 13, jurisdiction shall be determined, in each Member State, by the laws of that State.

Article 15

Transfer to a court better placed to hear the case

1 By way of exception, the courts of a Member State having jurisdiction as to the substance of the matter may, if they consider that a court of another Member State, with which the child has a particular connection, would be better placed to hear the case, or a specific part thereof, and where this is in the best interests of the child:

- a stay the case or the part thereof in question and invite the parties to introduce a request before the court of that other Member State in accordance with paragraph 4; or
- b request a court of another Member State to assume jurisdiction in accordance with paragraph 5.

2 Paragraph 1 shall apply:

- a upon application from a party; or
- b of the court's own motion; or
- c upon application from a court of another Member State with which the child has a particular connection, in accordance with paragraph 3.

A transfer made of the court's own motion or by application of a court of another Member State must be accepted by at least one of the parties.

3 The child shall be considered to have a particular connection to a Member State as mentioned in paragraph 1, if that Member State:

- a has become the habitual residence of the child after the court referred to in paragraph 1 was seised; or
- b is the former habitual residence of the child; or
- c is the place of the child's nationality; or
- 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 this property.

4 The court of the Member State having jurisdiction as to the substance of the matter shall set a time limit by which the courts of that other Member State shall be seised in accordance with paragraph 1.

If the courts are not seised by that time, the court which has been seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

5 The courts of that 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 of their seisure in accordance with paragraph 1(a) or 1(b). In this case, the court first seised shall

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decline jurisdiction. Otherwise, the court first seised shall continue to exercise jurisdiction in accordance with Articles 8 to 14.

6 The courts shall cooperate for the purposes of this Article, either directly or through the central authorities designated pursuant to Article 53.

SECTION 3

Common provisions

Article 16

Seising of a Court

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

Article 17

Examination as to jurisdiction

Where a court of a Member State is seised of a case over which it has no jurisdiction under this Regulation and over which a court of another Member State has jurisdiction by virtue of this Regulation, it shall declare of its own motion that it has no jurisdiction.

Article 18

Examination as to admissibility

- 1 Where a respondent habitually resident in a State other than the Member State where the action was brought 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 to arrange for his defence, or that all necessary steps have been taken to this end.
- 2 Article 19 of Regulation (EC) No 1348/2000 shall apply instead of the provisions 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.
- 3 Where the provisions of Regulation (EC) No 1348/2000 are 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

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the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.

Article 19

Lis pendens and dependent actions

1 Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2 Where proceedings relating to parental responsibility relating to the same child and involving the same cause of action are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

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

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.

Article 20

Provisional, including protective, measures

1 In urgent cases, the provisions of this Regulation shall not prevent the courts of a Member State from taking such provisional, including protective, measures in respect of persons or assets in that State as may be available under the law of that Member State, even if, under this Regulation, the court of another Member State has jurisdiction as to the substance of the matter.

2 The measures referred to in paragraph 1 shall cease to apply when 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.

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