

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 III

RECOGNITION AND ENFORCEMENT

SECTION 1

Recognition

Article 21

Recognition of a judgment

1 A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2 In particular, and without prejudice to paragraph 3, no special procedure shall be required for updating the civil-status records of a Member State on the basis of a judgment relating to divorce, legal separation or marriage annulment given in another Member State, and against which no further appeal lies under the law of that Member State.

3 Without prejudice to Section 4 of this Chapter, any interested party may, in accordance with the procedures provided for in Section 2 of this Chapter, apply for a decision that the judgment be or not be recognised.

The local jurisdiction of the court appearing in the list notified by each Member State to the Commission pursuant to Article 68 shall be determined by the internal law of the Member State in which proceedings for recognition or non-recognition are brought.

4 Where the recognition of a judgment is raised as an incidental question in a court of a Member State, that court may determine that issue.

Article 22

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

A judgment relating to a divorce, legal separation or marriage annulment shall not be recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought;
- (b) where it was given in default of appearance, if the respondent was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable the respondent to arrange for his or

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her defence unless it is determined that the respondent has accepted the judgment unequivocally;

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

Article 23

Grounds of non-recognition for judgments relating to parental responsibility

A judgment relating to parental responsibility shall not be recognised:

- (a) if such recognition is manifestly contrary to the public policy of the Member State in which recognition is sought taking into account the best interests of the child;
 - (b) if it was given, except in case of urgency, without the child having been given an opportunity to be heard, in violation of fundamental principles of procedure of the Member State in which recognition is sought;
 - (c) where it was given in default of appearance if the person in default was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defence unless it is determined that such person has accepted the judgment unequivocally;
 - (d) on the request of any person claiming that the judgment infringes his or her parental responsibility, if it was given without such person having been given an opportunity to be heard;
 - (e) if it is irreconcilable with a later judgment relating to parental responsibility given in the Member State in which recognition is sought;
 - (f) if it is irreconcilable with a later judgment 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 judgment fulfils the conditions necessary for its recognition in the Member State in which recognition is sought.
- or
- (g) if the procedure laid down in Article 56 has not been complied with.

Article 24

Prohibition of review of jurisdiction of the court of origin

The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Articles 22(a) and 23(a) may not be applied to the rules relating to jurisdiction set out in Articles 3 to 14.

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Article 25

Differences in applicable law

The recognition of a judgment may not be refused because the law of the Member State in which such recognition is sought would not allow divorce, legal separation or marriage annulment on the same facts.

Article 26

Non-review as to substance

Under no circumstances may a judgment be reviewed as to its substance.

Article 27

Stay of proceedings

1 A court of a Member State in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

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

SECTION 2

Application for a declaration of enforceability

Article 28

Enforceable judgments

1 A judgment on the exercise of parental responsibility in respect of a child given in a Member State which is enforceable in that Member State and has been served shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

2 However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland or in Northern Ireland only when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

Article 29

Jurisdiction of local courts

1 An application for a declaration of enforceability shall be submitted to the court appearing in the list notified by each Member State to the Commission pursuant to Article 68.

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2 The local jurisdiction shall be determined by reference to the place of habitual residence of the person against whom enforcement is sought or by reference to the habitual residence of any child to whom the application relates.

Where neither of the places referred to in the first subparagraph can be found in the Member State of enforcement, the local jurisdiction shall be determined by reference to the place of enforcement.

Article 30

Procedure

1 The procedure for making the application shall be governed by the law of the Member State of enforcement.

2 The applicant must give an address for service within the area of jurisdiction of the court applied to. However, if the law of the Member State of enforcement does not provide for the furnishing of such an address, the applicant shall appoint a representative *ad litem*.

3 The documents referred to in Articles 37 and 39 shall be attached to the application.

Article 31

Decision of the court

1 The court applied to shall give its decision without delay. Neither the person against whom enforcement is sought, nor the child shall, at this stage of the proceedings, be entitled to make any submissions on the application.

2 The application may be refused only for one of the reasons specified in Articles 22, 23 and 24.

3 Under no circumstances may a judgment be reviewed as to its substance.

Article 32

Notice of the decision

The appropriate officer of the court shall without delay bring to the notice of the applicant the decision given on the application in accordance with the procedure laid down by the law of the Member State of enforcement.

Article 33

Appeal against the decision

1 The decision on the application for a declaration of enforceability may be appealed against by either party.

2 The appeal shall be lodged with the court appearing in the list notified by each Member State to the Commission pursuant to Article 68.

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3 The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

4 If the appeal is brought by the applicant for a declaration of enforceability, the party against whom enforcement is sought shall be summoned to appear before the appellate court. If such person fails to appear, the provisions of Article 18 shall apply.

5 An appeal against a declaration of enforceability must be lodged within one month of service thereof. If the party against whom enforcement is sought is habitually resident in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him or at his residence. No extension of time may be granted on account of distance.

Article 34

Courts of appeal and means of contest

The judgment given on appeal may be contested only by the proceedings referred to in the list notified by each Member State to the Commission pursuant to Article 68.

Article 35

Stay of proceedings

1 The court with which the appeal is lodged under Articles 33 or 34 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged in the Member State of origin, or if the time for such appeal has not yet expired. In the latter case, the court may specify the time within which an appeal is to be lodged.

2 Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.

Article 36

Partial enforcement

1 Where a judgment has been given in respect of several matters and enforcement cannot be authorised for all of them, the court shall authorise enforcement for one or more of them.

2 An applicant may request partial enforcement of a judgment.

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SECTION 3

Provisions common to Sections 1 and 2

Article 37

Documents

1 A party seeking or contesting recognition or applying for a declaration of enforceability shall produce:

a a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

and

b the certificate referred to in Article 39.

2 In addition, in the case of a judgment given in default, the party seeking recognition or applying for a declaration of enforceability shall produce:

a the original or certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document;

or

b any document indicating that the defendant has accepted the judgment unequivocally.

Article 38

Absence of documents

1 If the documents specified in Article 37(1)(b) or (2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.

2 If the court so requires, a translation of such documents shall be furnished. The translation shall be certified by a person qualified to do so in one of the Member States.

Article 39

Certificate concerning judgments in matrimonial matters and certificate concerning judgments on parental responsibility

The competent court or authority of a Member State of origin shall, at the request of any interested party, issue a certificate using the standard form set out in Annex I (judgments in matrimonial matters) or in Annex II (judgments on parental responsibility).

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SECTION 4

Enforceability of certain judgments concerning rights of access and of certain judgments which require the return of the child

Article 40

Scope

- 1 This Section shall apply to:
 - a rights of access;
 - and
 - b the return of a child entailed by a judgment given pursuant to Article 11(8).
- 2 The provisions of this Section shall not prevent a holder of parental responsibility from seeking recognition and enforcement of a judgment in accordance with the provisions in Sections 1 and 2 of this Chapter.

Article 41

Rights of access

- 1 The rights of access referred to in Article 40(1)(a) granted in an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

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

- 2 The judge of origin shall issue the certificate referred to in paragraph 1 using the standard form in Annex III (certificate concerning rights of access) only if:
 - a where the judgment was given in default, the person defaulting was served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable that person to arrange for his or her defense, or, the person has been served with the document but not in compliance with these conditions, it is nevertheless established that he or she accepted the decision unequivocally;
 - b all parties concerned were given an opportunity to be heard;
 - and
 - c the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity.

The certificate shall be completed in the language of the judgment.

- 3 Where the rights of access involve a cross-border situation at the time of the delivery of the judgment, the certificate shall be issued ex officio when the judgment becomes enforceable, even if only provisionally. If the situation subsequently acquires a cross-border character, the certificate shall be issued at the request of one of the parties.

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Article 42

Return of the child

1 The return of a child referred to in Article 40(1)(b) entailed by an enforceable judgment given in a Member State shall be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition if the judgment has been certified in the Member State of origin in accordance with paragraph 2.

Even if national law does not provide for enforceability by operation of law, notwithstanding any appeal, of a judgment requiring the return of the child [^{X1} mentioned in Article 11(8)], the court of origin may declare the judgment enforceable.

2 The judge of origin who delivered the judgment referred to in Article 40(1)(b) shall issue the certificate referred to in paragraph 1 only if:

- a the child was given an opportunity to be heard, unless a hearing was considered inappropriate having regard to his or her age or degree of maturity;
- b the parties were given an opportunity to be heard; and
- c the court has taken into account in issuing its judgment the reasons for and evidence underlying the order issued pursuant to Article 13 of the 1980 Hague Convention.

In the event that the court or any other authority takes measures to ensure the protection of the child after its return to the State of habitual residence, the certificate shall contain details of such measures.

The judge of origin shall of his or her own motion issue that certificate using the standard form in Annex IV (certificate concerning return of the child(ren)).

The certificate shall be completed in the language of the judgment.

Editorial Information

- X1** Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 338 of 23 December 2003\)](#).

Article 43

Rectification of the certificate

1 The law of the Member State of origin shall be applicable to any rectification of the certificate.

2 No appeal shall lie against the issuing of a certificate pursuant to Articles 41(1) or 42(1).

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Article 44

Effects of the certificate

The certificate shall take effect only within the limits of the enforceability of the judgment.

Article 45

Documents

- 1 A party seeking enforcement of a judgment shall produce:
 - a a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
 - and
 - b the certificate referred to in Article 41(1) or Article 42(1).
- 2 For the purposes of this Article,
 - the certificate referred to in Article 41(1) shall be accompanied by a translation of point 12 relating to the arrangements for exercising right of access,
 - the certificate referred to in Article 42(1) shall be accompanied by a translation of its point 14 relating to the arrangements for implementing the measures taken to ensure the child's return.

The translation shall be into the official language or one of the official languages of the Member State of enforcement or any other language that the Member State of enforcement expressly accepts. The translation shall be certified by a person qualified to do so in one of the Member States.

SECTION 5

Authentic instruments and agreements

Article 46

Documents which have been formally drawn up or registered as authentic instruments and are enforceable in one Member State and also agreements between the parties that are enforceable in the Member State in which they were concluded shall be recognised and declared enforceable under the same conditions as judgments.

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SECTION 6

Other provisions

Article 47

Enforcement procedure

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

2 Any judgment delivered by a court of another Member State and declared to be enforceable in accordance with Section 2 or certified in accordance with Article 41(1) or Article 42(1) shall be enforced in the Member State of enforcement in the same conditions as if it had been delivered in that Member State.

In particular, a judgment which has been certified according to Article 41(1) or Article 42(1) cannot be enforced if it is irreconcilable with a subsequent enforceable judgment.

Article 48

Practical arrangements for the exercise of rights of access

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

2 The practical arrangements made pursuant to paragraph 1 shall cease to apply pursuant to a later judgment by the courts of the Member State having jurisdiction as to the substance of the matter.

Article 49

Costs

The provisions of this Chapter, with the exception of Section 4, shall also apply to the determination of the amount of costs and expenses of proceedings under this Regulation and to the enforcement of any order concerning such costs and expenses.

Article 50

Legal aid

An applicant who, in the Member State of origin, has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedures provided for in Articles 21, 28, 41, 42 and 48 to benefit from the most favourable legal aid or the most extensive exemption from costs and expenses provided for by the law of the Member State of enforcement.

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Article 51

Security, bond or deposit

No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the following grounds:

- (a) that he or she is not habitually resident in the Member State in which enforcement is sought; or
- (b) that he or she is either a foreign national or, where enforcement is sought in either the United Kingdom or Ireland, does not have his or her 'domicile' in either of those Member States.

Article 52

Legalisation or other similar formality

No legalisation or other similar formality shall be required in respect of the documents referred to in Articles 37, 38 and 45 or in respect of a document appointing a representative ad litem.

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