



*Tieslietu ministrija*

# Provisions on Jurisdiction and Recognition in EU International Family Law

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# A. Rules on jurisdiction and recognition in matrimonial and maintenance matters

Two Regulations applicable:

- Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility
- Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

# B. Brussels *Ibis* Regulation

## I. Introduction

The Regulation has been applicable since 1 March 2005 in all Member States with the exception of Denmark,

## II. Scope of application, Art. 1

The scope is confined to the dissolution of the matrimonial ties. The Reg. does not apply to any ancillary issues, such as maintenance obligations, property consequences of the marriage or consequences of divorce. Parental responsibility is included.

# III. Jurisdiction

## 1. Grounds of jurisdiction

Complete system of grounds of jurisdiction

## 2. Several alternative grounds of jurisdiction in matrimonial matters

a) Habitual residence of the spouses,  
Art. 3 para. 1 lit. a first indent

Husband and wife have their habitual residence in the same Member State.

## Habitual residence: autonomous concept

A person's habitual residence is the place where the person has established on a fixed basis the permanent or habitual centre of his interests, with all the relevant factors being taken into account.

b) Last habitual residence if one of the spouses still resides there, Art. 3 para. 1 lit. a second indent

Courts of the Member State of last habitual residence of the spouses if one of them still resides there

c) Habitual residence of either spouse in case of a joint application, Art. 3 para. 1 lit. a third indent

An uncontested divorce may be filed with the courts of the Member State of the habitual residence of either spouse.

d) Habitual residence of the respondent, Art. 3 para. 1 lit. a fourth indent

A spouse may apply for a divorce at the place of habitual residence of the respondent.

e) Habitual residence of the applicant provided that he or she has resided there for at least one year before making the application, Art. 3 para. 1 lit. a fifth indent

Habitual residence for at least one year required.

f) Habitual residence of the applicant provided that he or she has resided there for at least six months before making the application and applicant is a national of that Member State, Art. 3 para. 1 lit. a sixth indent

Habitual residence in the home country for at least six months required.

g) Common nationality (common “domicile” in the case of UK and Ireland), Art. 3 para. 1 lit. b

Dual nationality

Mr Hadadi	Ms Mesko
Hungarian and French nationality	Hungarian and French nationality
Divorce proceedings before Pest Court (Hungary)	Divorce proceedings before Paris Court (France)
Based on Hungarian nationality	Based on French nationality

European Court of Justice: Both nationalities are to be taken into account, so that each of the courts of those two Member States can have jurisdiction on that basis.

Case C-168/08 Hadadi./ Mesko [2009] ECR I-6871



### 3. Exclusive jurisdiction, Art. 6

Mrs Sundelind Lopez	Mr Lopez Lizazo
Swedish national	Cuban national
Resident in France	Resident in Cuba
Last common habitual residence in France	
Application for divorce in Stockholm (Sweden)	

Regulation applies also if defendant habitually resident outside EU and not an EU national.

Swedish courts could not base their jurisdiction to hear the petition on their own national law since the courts of another Member State (France) had jurisdiction under Art. 3 Brussels IIbis.

European Court of Justice C-68/07, *Sundelind Lopez v Lopez Lizazo*, [2007] ECR I-1 1321

## 4. Residual jurisdiction, Art. 7

No court of a Member State has jurisdiction pursuant to Arts. 3, 4 and 5.

Then jurisdiction is to be determined, in each Member State, by the laws of that State.

# 5. Parental responsibility, Art. 8

The court of the State where the child is habitually resident has jurisdiction.

The concept of 'habitual residence' must be interpreted as meaning that it corresponds to the place which reflects **some degree of integration by the child in a social and family environment**. To that end, in particular

- the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family's move to that State,
- the child's nationality,
- the place and conditions of attendance at school,
- linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration.

It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case.

(European Court of Justice, Proceedings brought by A - Case C-523/07)

# IV. Lis pendens, Art. 19

A competent court in a Member State seised first will have jurisdiction over the divorce proceeding (“First come, first served”)  
Two proceedings necessarily involve the same cause of action once the same subject-matter lies “at the heart of the two actions”. Also where actions not identical  
– e.g. divorce and legal separation

# V. Recognition and enforcement of matrimonial judgments

## 1. Applicable rules, Arts. 21 – 52

In cases of contact with children and child abduction some special provisions apply (Art. 40 ff.).

The recognition rules of the Regulation apply irrespective **of** the nationality and domicile of the parties; only the origin of the judgment counts.

## 2. Recognition

Automatic recognition of all judgments without any intermediary procedure being required (Art. 21 para. 1)

Grounds for non-recognition in matrimonial matters (Art. 22 ):

Almost the same as in the Brussels I Reg.:

- contrary to public policy,
- document which started the proceedings was not served in time,
- irreconcilable decisions

Differences **in** the national law regarding matrimonial matters cannot be the reason for the non-recognition of a judgment, Art. 25

### 3. Enforcement

Exequatur proceedings for enforceable judgments.  
Enforcement of the decision follows national law.

# C. Maintenance obligations

## I. Maintenance Regulation

The Regulation applies to maintenance obligations arising from a family relationship, parentage, marriage or affinity (Art. 1 para. 1).



# II. Jurisdiction

## 1. General rule

In matters relating to maintenance obligations, several courts may have jurisdiction according to Art. 3 ff.

## 2. Choice-of-court agreements and appearance of the defendant

The Regulation contains a list of courts which may be agreed **upon** (Art. 4 para. 1). This includes:

- (a) a court or the courts of a Member State in which one of the parties is habitually resident;
- (b) a court or the courts of a Member State of which one of the parties has the nationality;
- (c) in the case of maintenance obligations between spouses or former spouses:
  - (i) the court which has jurisdiction to settle their dispute in matrimonial matters; or
  - (ii) a court or the courts of the Member State which was the Member State of the spouses' last common habitual residence for a period of at least one year.

There is also jurisdiction based on the appearance of the defendant (Art. 5).

### 3. Subsidiary jurisdiction, Art. 6

Courts of the Member State of which both parties are nationals.

### 4. *Forum necessitatis*, Art. 7

Proceedings cannot be brought in a country outside the EU with which the dispute is closely connected, there is a *forum necessitatis*. The matter may be brought before the court of a Member State with which the case has sufficient connection. Such a sufficient connection may be the nationality or habitual residence of one of the parties.

## 5. Modification of judgments, Art. 8

### III. *Lis pendens*, Art. 12

If proceedings concerning the same parties and involving the same cause of action are brought before the courts of different Member States, jurisdiction **will** lie with the court first seised.

Once proceedings have started in a particular Member State, other States must decline jurisdiction.

# IV. Recognition and enforcement of decisions

## 1. Decisions from EU-Member States bound by the Hague Maintenance Protocol of 2007, Art. 17 ff.

Enforceable in another Member State without the need for a declaration of enforceability.

## 2. Decisions from EU-Member States not bound by the Hague Maintenance Protocol of 2007

Declaration of enforceability from the Member State of enforcement necessary

## 3. General rules

Enforcement is governed by the law of the enforcing Member State (Art. 41).

There is no review as to substance (Art. 42).